

RESPONSE TO Defra CONSULTATION

PROPOSALS FOR A MARINE BILL

SUMMARY

- The Environment Agency fully supports Government commitment to the Marine Bill and we welcome the opportunity to comment on this consultation.
- New legislation is needed to address the current state of the marine environment, the lack of strategic marine planning and to streamline licensing. Such changes are necessary to deliver the Governments' vision for the marine environment of 'clean, healthy, safe, productive and biologically diverse oceans and seas'.
- The introduction of a new statutory marine spatial planning (MSP) framework, covering all human activities and marine nature conservation interests, is fundamental to delivering the Governments' vision for the marine environment through an ecosystem approach that integrates and reconciles environmental and socio-economic needs [see section 2.2 and Annex 2]. The objectives of the MSP should set the framework within which all sectoral interests are managed and licensing regimes operate.
- The MSP framework must include effective mechanisms to co-ordinate with and complement other planning regimes in areas of adjacent or overlapping interest (e.g. in the coastal zone). Examples include the land use planning system, River Basin Management Plans for the EC Water Framework Directive (that apply out to 1 nautical mile) and Shoreline Management Plans.
- The MSP framework must be able to operate effectively across political boundaries. Whatever policies are implemented by the devolved administrations, it is essential that the system is simpler and more effective than it currently is. For example, any new arrangements put in place by the Welsh Assembly Government and the UK Government must be complementary and effectively integrated [see section 3.2].
- We support the need for an improved licensing regime that clarifies and simplifies legislation for both users and regulators and streamlines current arrangements, in line with the objectives stated in this consultation. We consider working towards an integrated licensing regime (option 4) for all licences for sea-based activities to be the most desirable outcome. Steps to integrate the licences under the Food and Environment Act 1985 and the Coast Protection Act 1949 should start the process [see section 2.3 and Annex 3]. Licensing of land-based activities that may affect the marine environment, such as discharges from land-based plant into tidal waters should remain under the current regimes, but subject to regulatory decisions conforming to the Marine Spatial Plan.
- We support the introduction of new measures to deliver better and appropriate protection of marine nature conservation interests and meet the Governments' strategic goals (*Safeguarding Sea Life*, Defra 2005). We believe that legislative

changes relating to all five policy areas identified (marine ecosystem objectives; marine protected areas; controls on unlicensed activities; species conservation and enforcement) are required to achieve these aims [see comments in section 2.4 and Annex 4 of our response].

- We are disappointed that the consultation did not invite comments on marine fisheries. It is essential that future decisions on marine fisheries reform are not made in isolation from the other elements of a Marine Bill and, given our involvement in inshore and migratory fisheries management, we have chosen to submit views on this workstream [see Annex 1].
- Decisions on the role of the Marine Management Organisation (MMO) will depend of the outcomes of the other workstreams and at this stage it is too early to take a comprehensive view on what its remit should be. However, a core function of the MMO should include responsibility for marine spatial planning. Licensing could also be a core function, providing there are appropriate checks and accountabilities to ensure licensing decisions are made in accordance with the MSP. We support this as a way of delivering an integrated licensing regime. The role of marine nature conservation advisors must remain independent from the MMO [Section 2.6 and Annex 5].
- We have concentrated our response on improvements for management of England and Wales waters, as well as UK waters beyond the territorial seas. The Environment Agency has significant environmental planning and regulatory responsibilities across inland and coastal waters. Whilst the consultation document addresses only those functions that have not been devolved, we recognise the Welsh Assembly Government's aspirations for the marine environment. We want to see a co-ordinated and complementary approach to marine management across administrative boundaries for the benefit of the UK marine environment.

1.0 INTRODUCTION

- The Environment Agency plays a major role in the sustainable management of our coasts, seas and estuaries. Our wide remit puts us in a unique position to protect many of the features of the England and Wales marine environment. Most of our responsibilities for the marine environment lie in the zone where the land meets the sea. This is the zone of maximum human impact.
- Our responsibilities include regulating activities in controlled waters; establishing and enforcing environmental standards; compliance monitoring; reporting on the state of the environment; and flood risk management. We have statutory responsibilities for the management of migratory fish and, in 60% of estuaries across England and Wales, have powers for the management of sea fisheries. We also have a duty to promote the conservation of wildlife and habitats dependent on the aquatic environment.
- We are the competent authority for several EC Directives, including Water Framework Directive (WFD), Bathing Waters Directive, Shellfish Waters Directive, Nitrates Directive and the Urban Waste Water Treatment Directive in England and Wales. We are also a competent authority for the Habitats Directive.
- Further details of our marine and coastal responsibilities are given in Annex 10.

- We welcome the opportunity to comment on proposals for a Marine Bill. We firmly support the commitment by Government to deliver a new strategic management framework for the marine environment that balances conservation, energy and resource needs and delivers the UK Government and devolved administrations' vision of 'clean, healthy, safe, productive and biologically diverse oceans and seas'. These drivers are also reflected in our own Marine Strategy for 2005-2011 which sets out our contribution to helping Government deliver its objectives for the marine environment.

2.0 COMMENTS ON THE MARINE BILL PROPOSALS:

2.1 Scope of the proposals

We agree that the five Marine Bill workstreams (marine spatial planning, marine licensing, marine nature conservation, marine fisheries and potential for a marine management organisation) are the right areas to focus on. However, we are disappointed that the decision was taken not to consult on the marine fisheries workstream as part of this package, given the links and inter-dependencies between this and the other workstreams. We have therefore chosen to submit comments relating to marine fisheries management within this response [see Annex 1].

2.2 Planning in the marine area

2.2.1 Objectives and principles

Marine Spatial Planning (MSP), with coherent policies and planning guidance, will provide greater certainty for developers and create a more effective, strategic marine management regime that can address the cumulative impact of different pressures on the environment [Q.1]. MSP needs to be statutory, and include all development (in the traditional sense) and all sea use [Q.2]. We support the objectives and principles proposed by Defra in the consultation and we would like to see the ecosystem approach at the core of the planning process to achieve sustainable development [Q.3 & Q.6].

MSP should drive the decision-making process in the marine area to enable a proactive approach to sea-use planning and a more equitable use of space [Q.4]. The plans need to be binding on decision-makers while allowing flexibility to take account of future uncertainties and new activities [Q.5].

We believe that marine spatial planning policies and the plan itself should apply from the highest astronomical tide and cover all of the sea where the UK exercises its sovereign rights [Q.8]. Clarification of the seaward limit of the land-based planning system is also recommended. We consider an overlap between the two planning systems (between high and low water marks) to be appropriate as long as there is a mechanism to co-ordinate the two systems and a clear hierarchy of plans. Such an overlap will help secure integration between the two planning systems and better co-operation between the planning bodies responsible.

2.2.2 The planning process

Marine spatial planning should be the responsibility of an accountable, impartial, organisation with sustainable development as one of its primary duties. This body should take a strategic overview of the planning process [Q.14].

We support the approach Defra has proposed in applying a system of national strategic policy statements that then lead to the development of statutory plans at a regional scale [Q.17]. More detailed sub-regional plans should be used where necessary, such as at the coast and areas of high resource use. It is important to respect the administrative boundaries between the four UK Administrations. Policy statements should guide development of the plan and provide a steer in specific areas, such as nature conservation and resource use. Plans should be subject to wide consultation [Q10 & Q.11].

Planning should take a long-term view, looking ahead for at least 20 years, and also preferably looking over similar time scales as the Shoreline Management Plans, to 100 years, accounting for longer-term trends such as climate change. We recommend review of the plans at no greater interval than six years, where possible linking with the WFD or other existing planning cycles [Q.13].

Adequate data is needed to inform the plan, however lack of data should not be a reason for holding back the planning process, and the precautionary principle should be applied at times where there is insufficient data, pending research to acquire the missing information. Data will inform development of charts and maps for the marine area to help provide greater certainty and in communicating the specific goals for the marine area [Q20 & Q.24].

There needs to be a democratic process to underpin the planning system as well as a clear process of appeal with a range of appeal options. Plans need to be accountable and enforceable, and borne out of broad consultation and transparency in the planning process [Q.26]. There should also be a process for independent scrutiny of the plan [Q.28] to ensure that the MSP principles and objectives have been met and that sustainability appraisals and strategic environmental assessments have been fully addressed [Q.25].

2.2.3 Links with other plans

Within the marine area, there are other plans, including River Basin Management Plans for the WFD (that apply out to 1 nautical mile from territorial sea baselines), and Shoreline Management Plans for coastal erosion and flood risk management, that will need to be integrated into the MSP and land-use planning systems. A clear hierarchy of plans must indicate how they will work together. Work on how the MSP and the RBMPs interact must be considered in the early phases of developing MSP. The principles of Integrated Coastal Zone Management (ICZM), as set out by the EC ICZM recommendation, should be applied to help link the plans in the coastal zone.

2.3 Licensing Marine Activities

2.3.1 Consideration of options

The Environment Agency supports the need to improve the existing licensing regime to create a more transparent and streamlined system that will deliver the objectives of the Marine Spatial Plan.

Of the four options identified in the consultation, we do not consider option 1 (i.e. do-nothing) to be viable as the system will retain all of its existing difficulties [Q40].

We consider that option 2 (merging of Food and Environment Protection Act (FEPA) 1985 and Coast Protection Act (CPA) 1949, is an absolute minimum and should

proceed irrespective of the Marine Bill as part of the modernising regulation agenda [Q42]. We would expect to be closely involved regarding the resolution of existing interface issues between Waste Management Licensing and FEPA.

Options 3 and 4 both hold a number of advantages and disadvantages [Q44 – 47]. Taking these into account, we consider that the most desirable outcome will be the development of a fully integrated licensing system. We recognise that there will be challenges with this option. It could be difficult to establish an integrated system immediately because of the way in which the current system works. We would recommend a steady migration towards this solution. The first step of this process would be to merge FEPA and CPA (i.e. option 2) as the foundation to the system, then look to integrate all considered marine licenses into this system. This would allow the process to be modified as the system evolves and allow time for the support systems to be put in place. We do not favour Option 3 as the sectoral complications would remain, streamlining would not be achieved and it does not have the direct links to the Marine Spatial Plan or the assurance that decisions will be made in accordance to the plan.

2.3.2 Principles of a new licensing regime

We believe the following basic principles should apply:

- Within a strategic marine spatial planning framework, and under statutory Marine Spatial Plans, licensing must deliver the regulatory component for achieving the objectives of the plan.
- The application process must be as simple as practicable for the applicant and the determination process as efficient as possible for the regulators to deliver their relevant permit (s).
- Defining and managing the areas of regulatory overlap in a co-ordinated and efficient way is essential.
- There should be a common model for environmental licensing and we endorse and would propose the Environmental Permitting Programme (EPP) generic proposals currently being consulted on by Defra/WAG be adopted.
- The system should be flexible and able to address new trends and technologies without major reforms being required.

2.4 Marine Nature Conservation

We support the need for new and stronger measures to better protect marine nature conservation interests. The Review of Marine Nature Conservation clearly identified the need for change and what those changes should be.

2.4.1 Marine ecosystem objectives

Marine ecosystem objectives should be at the heart of any new marine management and protection regime [Q.52]. They should be enshrined in the marine planning process. However, regard must be given to the costs of setting up the objectives and to the costs of monitoring them. The objectives should have some kind of statutory basis (e.g. a duty to have regard to them) to ensure that the objectives have a consequence if not met [Q.53]. Objectives should be based on those existing (e.g. good ecological status for WFD), where appropriate, to avoid duplication and confusion. They should also be statistically robust, measurable and allow detection of human impacts on marine ecosystems over natural variability. Until such

objectives can be developed, the precautionary principle should be adopted with regard to planning and licensing decisions.

2.4.2 Marine protected areas

A new statutory framework is urgently needed to address the lack of a coherent network of nationally important areas for marine nature conservation throughout UK marine waters [Q.54]. This framework should absorb existing Marine Nature Reserves (MNRs) so long as the new system includes the specific purposes of MNRs and affords existing sites full and effective protection [Q.55].

The new MPA framework should be multifunctional, covering interests such as nature conservation, heritage, geomorphology and fishing [Q.56]. Site protection measures should address interests that are not the primary reason for site designation, so long as the achievement of the primary objectives of the site are not compromised [Q.57]. A mechanism will be needed to ensure different interests are properly balanced with regard to the primary interest.

Nationally important sites for marine nature conservation should be selected on scientific merit alone, as is the case with current site-safeguard systems [Q.58]. The scientific case should be open to challenge, but non-scientific matters should not influence any decision. A straightforward mechanism for amending the reasons why a site has been designated, its boundaries, and in exceptional circumstances, denotification, is appropriate so long as safeguards are in place to avoid abuse [Q.59].

The MPA framework should establish sites afforded different levels of protection reflecting the interests at stake [Q.60]. However, the framework should avoid over-complicated and confusing multiple types of designation. Protection of the sites should be delivered through direct management of sites as well as indirectly through wider marine management measures [Q.62]. Sites should be protected through a package of measures, including: consenting of specific operations likely to damage; assessment of any activities likely to damage sites; a duty of care on all competent authorities; and a duty of care on all users to avoid intentional and reckless damage [Q.63].

The MPA network should include European and nationally important sites and integrate with the existing terrestrial site-safeguard network. This can best be achieved by clarifying the seaward boundary of SSSIs (as a minimum, to include whole estuaries) and ensuring overlap with MPAs that extend to high water [Q.64-66]. There will be a need to clarify which system prevails in any particular circumstances.

2.4.3 Species protection measures

The current protection of nationally important marine species is poor, with limited measures specific to marine species and limited geographic scope [Q.67]. Of the three options identified for species protection legislation, extending existing species protection measures would make the greatest contribution to marine nature conservation. However, significant additions to those provisions are needed to make it fit for purpose in the marine environment [Q.68]. In particular, a statutory framework for species recovery in the marine environment is urgently needed.

Wider marine management powers need to be updated to make them fit for purpose in the marine environment. Existing byelaw-making powers need to be available for marine nature conservation purposes [Q.70]. Other regulatory measures – such as Biodiversity Stop Orders and support for local management partnerships – must be considered [Q.71].

2.4.4 Enforcement

New marine protection and management measures must be effectively enforced. Much can be achieved through existing marine enforcement agencies. These agencies should be given a general duty of care towards the marine environment and the ability to use existing enforcement powers for marine nature conservation purposes [Q.73]. It would be sensible for one organisation to take a lead role in co-ordinating enforcement activities across the different bodies involved.

2.4.5 Delivery of Marine Bill functions

The marine nature conservation functions arising from the Marine Bill should be carried out by organisations that are independent nature conservation advisors with appropriate powers, resources and skills to do the job. In particular, the organisations must be skilled at stakeholder engagement [Q.74].

2.5 Managing Marine Fisheries

Please see Annex 1 for our comments on fisheries matters. We feel it is appropriate to submit these as part of our response to this consultation.

2.6 The potential for a new Marine Management Organisation (MMO)

We support the need for a single body to have responsibility for MSP. In the absence of an existing organisation suited to taking on this role, we recognise that a new body that can take a balanced view across all sectors will probably be needed. However we note that in Wales, the Assembly Environment Minister has stated that the Welsh Assembly Government will not be looking to create a new establishment to act as a MMO.

The other functions that a MMO could undertake will depend on the options that are selected for the other workstreams [please refer to comments in Annex 5]. Given our interests in marine and coastal management, we wish to be involved in any further work to develop the remit of the MMO [Q.90].

3.0 OTHER ISSUES

There are some critical issues that need to be fully addressed in relation to taking forward options for the Marine Bill in how it will take into account:

- i) The need for integrated management across land and sea (i.e. in the coastal zone)
- ii) Requirements of devolved administrations (e.g. managing across political boundaries)
- iii) Flood risk management
- iv) Monitoring and assessment
- v) Enforcement

3.1 Management across land and sea

There needs to be a consistent and joined up approach in the coastal zone, where so many planning activities, impacts from human activities and nature conservation interests span across both land and sea. Effective measures will need to be put in place to ensure that all bodies involved in planning and licensing issues work together and take account of each others plans and objectives.

3.2 Management across political boundaries

3.2.1 Key Issues

The powers and duties, within the Wales Territorial Sea (WTS) are either devolved or under UK Government control. The consultation document addresses only non-devolved functions. Where the responsibility has been devolved it is up to the devolved administration to consider whether any changes may be required.

There will, almost certainly, be different priorities within Wales for improving management of the marine environment. In Wales, the Assembly has confirmed that it will not be looking to create a new organisation to act as a MMO and may have different priorities for marine nature conservation.

The decisions taken by devolved administrations will be critical to the ultimate success in delivering a more effective management framework for the UK marine environment as a whole. Any new arrangements should be simpler and more effective than the current system.

As an organisation with planning and regulatory responsibilities across both England and Wales, it is crucial that new arrangements brought in via the Marine Bill continue to allow us to operate in a consistent and effective way. An example is in delivery of River Basin Management Plans and programmes of measures for the EC Water Framework Directive. These plans will not only need to take account of cross-border issues, but also different planning and licensing regimes across inland and coastal waters.

3.2.2 Relevant elements of the Marine Bill Consultation

If administrative boundaries are used, for MSP to be carried out successfully, there needs to be a co-ordinated and complementary approach to developing and implementing the plans across devolved boundaries. The same is true at the local scale, for example in the coastal zone and estuaries, where cross-border issues occur.

A new system of MSP must take full account of the different terrestrial planning system in Wales, address the priorities for Wales and help deliver the Wales Integrated Coastal Zone Management Strategy. We welcome the general direction of the Welsh Assembly's recent ICZM Strategy in highlighting the need for an integrated approach to the management of the land-sea boundary.

It is vital that the same principles are used to take planning and licensing decisions, even if there are different measures in place to deliver these. Whichever body is responsible for new marine management functions in Wales, it is important that it delivers the aims for the marine environment contained in the Welsh Assembly Government's Environment Strategy for Wales.

3.3 Flood Risk Management

In the Government's first response to Making Space for Water (Defra's fore-runner to a new flood management strategy for England), Defra made it clear that it intended the Environment Agency to have a strategic overview of a sustainable coastline in England. In this we will work with the current marine Local Authorities to produce consistent and sustainable Shoreline Management Plans (SMPs) that influence the planning process and deliver appropriate protection measures in the light of sea level rise and climate change. It is envisaged that some measure of legislative change will be required to facilitate delivery of the strategic overview and, with the support of Defra, we may look to the Marine Bill to deliver some of this change for England.

3.4 Monitoring and Assessment

The consultation recognises the importance of having good data and information to inform planning and decision-making and the need to co-ordinate and improve its availability. We agree that common standards for data collection and management should be put in place and that identified gaps in data need to be addressed. Mechanisms should also be agreed for those holding marine data to make it available. Where data is currently not available, the precautionary principle should be applied to decision-making.

The consultation document also identifies marine monitoring and data collection, research, and co-ordination of existing data, as potential non-core functions of the MMO. We agree that the MMO could have an important role in co-ordinating marine data collection and management, however we believe it is important that all relevant authorities currently collecting data and information in relation to their functions should continue to do so. The Environment Agency currently undertakes a significant amount of monitoring in estuaries and coastal waters to support delivery of our functions, for example assessing compliance with EC Directives, local operational monitoring and investigations and in informing regulatory decisions. This is likely to increase to meet the requirements of WFD.

3.5 Enforcement

Enforcement of marine nature conservation legislation is addressed in the consultation document, however wider enforcement activities do not appear to have been considered in terms of the best approach to delivering them.

We support the need for better co-ordination of existing enforcement arrangements between different organisations with responsibilities for enforcing marine legislation. The MMO could take a lead role in co-ordinating enforcement activity and intelligence, sharing across bodies undertaking enforcement activities to improve effectiveness and efficiency.

FURTHER INFORMATION

Further information or background to this response can be obtained from Lindsey Richardson, Acting Marine Policy Manager, Environment Agency, King's Meadow House, King's Meadow Road, Reading, Berkshire, RG1 8DQ either by telephone on 0118 9535751, or by e-mail at lindsey.richardson@environment-agency.gov.uk

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GLOSSARY

CCW	Countryside Council for Wales
CEFAS	Centre for Environment, Fisheries and Aquatic Sciences
CPA	Coast Protection Act 1949
EA	Environment Agency
EIA	Environmental Impact Assessment
EPP	Environmental Permitting Programme
FEPA	Food and Environment Protection Act 1985
ICZM	Integrated Coastal Zone Management
LFM	Local Fisheries Manager
LUP	Land Use Planning
MCA	Maritime and Coastguard Agency
MMO	Marine Management Organisation
MSP	Marine Spatial Planning
NERC	Natural Environment and Rural Communities Act 2006
OSPAR	Oslo and Paris Convention
POMs	Programme of Measures
RBMP	River Basin Management Plan (the method for the delivery of the WFD)
RIA	Regulatory Impact Assessment
SA	Sustainability Appraisal
SEA	Strategic Environmental Assessment
SMP	Shoreline Management Plan
SNCO	Special Nature Conservation Order
SSSI	Site of Special Scientific interest
UKBAP	UK Biodiversity Action Plan
UNCLOS	United Nations Convention on Law of the Sea
WAG	Welsh Assembly Government
WFD	Water Framework Directive 2000/60/EC - Establishing a framework for community action in the field of water policy

ANNEXES

ANNEX 1: Managing Marine Fisheries

The consultation paper did not invite comments on marine fisheries. However, we believe it is important that the marine environment is taken as an integrated whole and on this basis that it is appropriate to offer comment on fisheries matters.

We published our national strategy for fisheries for 2006 – 2011, 'Better fisheries for our nations' in February this year. The strategy sets out three outcomes to which we aspire:

- Improved fish stocks and a better environment for wildlife and people;
- More chances for more people to fish and fisheries performing better; and
- Sustainable fisheries boosting the local economy.

Against this background and in response to the suite of recent marine fisheries reviews we have developed a number of principles with respect to sustainable marine fisheries management:

- Promotion of a healthy fish resource, available to all users, with optimal associated benefits for society and the economy
- Holistic, integrated and inclusive management based upon the ecosystem approach
- Inclusion of the recreational angling community in the management process
- Sustainable well-regulated exploitation based on sound science
- Effective, robust, integrated enforcement
- Greater integration of fisheries and environmental legislation and policy
- Greater emphasis on stock and habitat protection and enhancement measures.
- Greater emphasis on measures which tend to reduce and restrict unsustainable fishing and illegal landings
- Greater emphasis on the application of effort controls to marine fisheries management. These may include limitations on fishing methods and the temporary or permanent closure of fishing grounds to protect spawning and nursery grounds
- The promotion of branded, local, high value, low impact, commercial fisheries.

Main issues

There is general agreement among existing fisheries management bodies, the inshore fishing industry and sea anglers that further work must address three main points:

- **Institutional arrangements** – to replace today's fragmented inshore fisheries management with a more effective, uncomplicated approach. There is a need to ensure an efficient and straightforward approach to regulation and enforcement for users. Local stakeholders need to be involved within an integrated and strategic approach. Management of inshore fisheries needs to address the needs of sea fish, shellfish and migratory fish. The latter depend on a good environment and effective management through all of their range in the sea and in rivers;

- **Legislative reform** – to replace the ageing domestic fisheries legislation with new powers tailored to the demands of managing 21st century fisheries. Legislation for managing inshore sea fisheries in England and Wales, although reviewed in the 1960s, remains broadly the same as in the 1890s. New laws can address the pressures the 21st century fleet is placing on fish stocks and the environment – a real issue in the management of sea fisheries in estuaries. Existing legislation may also compromise the ability to meet Water Framework Directive (WFD) objectives if there is a need to manage fisheries differently to achieve better ecological status; and
- **Enough funding and support** – to enable an organisation charged with fisheries management to provide an effective service. We have never been funded to fulfil our sea fisheries role and funds to support our work on migratory fish (salmon, sea trout and eel) are continually under pressure. Sea Fisheries Committees have been making a case for some time that their funding through local authorities is inadequate to meet their needs. Working in tidal waters requires skilled people with good training and equipment. Any arrangement for inshore fisheries management needs adequate funding to be fully effective.

The Review of Marine Fisheries and Environmental Enforcement (Bradley Review)

In our response to the Bradley Review we described our current role in relation to inshore fisheries management (for example we are currently the sea fisheries authority in over 60% of estuaries in England and Wales). We proposed an option that, given appropriate tools and resources, the Environment Agency could take over responsibility for inshore fisheries management.

What is needed

- Simpler institutional arrangements the public can easily understand. There needs to be more efficient and coherent inshore fisheries management – a real improvement on today's fragmented management regime.
- Improved legislation that will allow organisations charged with fisheries management to adopt effective and innovative ways to manage inshore fisheries. This includes dealing with pressures on fish and shellfish stocks, impacts on the marine environment, illegal commercial fishing by unlicensed fishers and developing recreational sea fisheries.
- Enough funding and support to allow those accountable for inshore fisheries management to recruit sufficient skilled and motivated staff, invest in necessary equipment and infrastructure and deliver effective and efficient services.
- Better integration between marine and migratory fisheries management. Migratory fish have to pass through inshore waters, literally running the gauntlet of sea fisheries managed by outdated legislation. This situation lags behind the progress we have made with migratory fisheries legislation. Sea fisheries legislation needs updating and integrating with that now used to manage migratory fisheries.
- Consolidation of the Environment Agency's management of migratory fish (particularly salmon, sea trout and eel) between freshwaters and inshore coastal

waters. Currently management of salmon, sea trout and eels to 6 nautical miles provides for a fully integrated approach throughout these species lifecycles within England and Wales. We have discussed extending this regime to include shad, lamprey and smelt with Defra in the drafting of the Salmon and Freshwater Fisheries Bill. With the delay to that Bill we hope that such provisions can be included in the Marine Bill.

What is not needed

- The status quo – our domestic legislation and management regime differs little from that set up in the 1890s. Fisheries have changed beyond recognition since then. Change is needed to address dwindling stocks, prevent further environmental damage and to provide a sustainable future for inshore fisheries.
- Institutional change without legislative reform. Whatever organisation is eventually responsible for inshore fisheries management, it will need the tools to do the job properly. Today's outdated domestic legislation fails to meet the needs of 21st century fisheries management.
- Responsibility without powers or funding. It would be unacceptable for any organisation to be charged with managing fisheries without the resources to do the job properly and with enforcement and capital costs running to many millions of pounds every year.
- Interference with the management of migratory fish – a new regime should integrate and strengthen the management of migratory fish (particularly salmon, sea trout and eel) between freshwaters and inshore coastal waters.

We have outlined below a number of points that we believe would strengthen inshore fisheries management powers.

1. Defra should co-ordinate development of any measures for fisheries within the Marine Bill with the drafting of the Salmon and Freshwater Fisheries Bill (the progress of which is now uncertain). This is particularly important in relation to migratory fisheries – salmon, sea trout and eel and potentially shad, lamprey and smelt. The current bass consultation process has highlighted the importance of ensuring that the management of the marine fisheries takes account of the needs of migratory fish.
2. Currently, the establishment of a local fisheries management framework is permissive – if no one wants to establish one, then no Sea Fisheries Committee will exist. Local fisheries management should be a statutory requirement and the responsibility of a statutory body. Integrated Coastal Zone Management and the Water Framework Directive in particular cannot be delivered in the absence of local fisheries management. This situation exists today in a number of coastal and estuarine waters.
3. Most new fisheries, as well as new management measures for existing fisheries, may have implications for the marine environment. Fisheries regulators should be required to take into account wider environmental effects and to consult relevant bodies where appropriate.

4. Current local fisheries management byelaws cannot discriminate between hobby, part-time and commercial fishermen despite the impacts of their activities varying significantly. Similarly, regulations must be applied to all persons equally. Regulators should be able to permit discrimination where appropriate. However, discrimination must have adequate safeguards to reflect properly individual's rights (e.g. appeals mechanisms).
5. We recommend provisions to support greater use of effort controls that should apply to all fishermen, including recreational anglers.
6. Particular attention should be given to measures to offer effective protection of spawning fish, nursery sites and migration routes. Estuaries, inter-tidal areas and salt marshes are zones where such measures may be important and particularly beneficial.
7. Provision should be made for powers to recover costs from both commercial and recreational fishermen.
8. Regulators should be able to pre-empt new fishing techniques to ensure the appropriate management safeguards are in place before new fishing activities begin.
9. The collection of fisheries statistics and the monitoring of impacts on other interests are essential. Without an increased understanding of fisheries/wildlife interactions, sustainable fisheries management will prove elusive. The management body(ies) should have powers and resources to monitor and collect relevant data and information. The Marine Bill should also include provision to require fishermen (commercial or recreational) to record and report catches.
10. A provision that any operator whose facility entraps or impinges on fish populations should be required to keep a record of fish taken and to report to the relevant authority (e.g. entrainment in cooling water intakes of power stations).

Licensing

New arrangements for inshore fisheries management must be supported with adequate resource. There is a case that both recreational and commercial fishermen should contribute as beneficiaries. Introduction of cost recovery for only one user group is likely to be seen as inequitable.

The Environment Agency operates licensing schemes and cost recovery with respect to salmon, trout, eel and freshwater fisheries and covering net, trap and rod and line fishing including in estuaries and coastal waters. Licensing has been in place for such fisheries for at least the last 30 years. Funds from licensing contribute to our costs in regulation, monitoring, fisheries protection and improvement, but also provide for additional services that benefit the users including development of new fisheries and fishing opportunities, promotion of fishing, provision of information, production of angling guides and support to coaching schemes and angling events. Users are likely to better accept any cost recovery scheme if it is accompanied by development of such additional services as are appropriate.

Licensing arrangements for freshwater anglers now provide for purchase through a variety of convenient routes (all Post Offices, through the Internet, by telephone and by Direct Debit). The systems and database provide for analysis of sales patterns

and user preferences and for the means to target license-holders for specific services (information, guides, etc). We sell 1.2 million rod-licenses each year in England and Wales that contribute £20 million to our delivery of fisheries services. (Equivalent figures just for Wales are 70,000 licenses and £1.2 million.) Annual costs of enforcing rod licenses for England and Wales are about £2 million.

Licensing and cost recovery are an aid to effective management. The body that is charged with managing the inshore/coastal fisheries should be responsible for and control such processes. The Environment Agency has developed an effective and proven system for licensing anglers.

The Environment, Food and Rural Affairs Committee report *The Future for UK fishing* (published 24 March 2005, ref: HC122) supported the introduction of a licensing scheme for the recreational angling sector. The Committee recommended that the Environment Agency should be considered as the responsible organisation for the administration of such a scheme. In response, Government noted that a single scheme covering both freshwater and sea angling could potentially provide for economies in administration, and that many sea anglers are also freshwater anglers.

ANNEXES 2-8: Responses to questions in consultation document

ANNEX 2: Planning in the Marine Area

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

There is currently no coherent legislation to allow the strategic, organised management or protection of the marine environment. Marine planning and consenting is sectoral and carried out with little consideration of other impacts. We believe marine spatial planning (MSP) to be the most important foundation for a new strategic management framework for UK seas. It will enable co-ordination of different marine activities and balance socio-economic and environmental interests and requirements.

MSP is necessary to take account of increasing demand and competition for marine space, with the development of new technologies such as tidal power. It will provide a mechanism with which to assess and address the cumulative impact of different pressures on the marine environment. It will also provide greater certainty for all marine users.

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

Yes, we believe statutory provisions will be essential to ensure effective implementation and compliance with marine spatial plans. The failure of the voluntary approach to integrated coastal zone management in resolving any significant conflicts of interest exemplifies the need for marine spatial planning to have a statutory basis. Marine spatial planning must therefore be established on a sound legal basis, following a cycle of plan creation - implement - check and review. This will ensure that:

- i) the planning process actually happens and,
- ii) the planning process is given due weight and primacy in decision-making.

Planning objectives should be measurable, with all licensing bodies taking decisions on permits within the plan area in accordance with the plan's objectives. The planning body will need to have access to relevant information to inform decision-making and to assess the impact of proposed activities. Core principles of environment management, enshrined within EC law should apply to the planning process, such as the precautionary principle, the preventative principle and the polluter pays principle.

It is important for the Marine Spatial Plan to have clear links to existing planning processes. As competent authority for implementation of the Water Framework Directive in England and Wales, we have to develop statutory River Basin Management Plans (RBMPs) that extend to one nautical mile from territorial baselines. Much of the regulatory delivery of RBMPs, particularly in estuaries and coastal waters will be by co-regulators rather than via Agency measures. It is essential that any planning system takes this into account, and that there are clearly defined relationships with other existing statutory systems and those with responsibilities for delivering them.

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

We broadly support these objectives for planning of marine activities in the waters around the UK, however we also suggest that the following additions and amendments could be made:

- There should be an objective to ensure that the system provides for consistent and transparent decision-making, and that Strategic Environmental Assessment/Sustainability Appraisal (SEA/SA) should be an integral part of the process. It will be important to have a clear distinction between the strategic nature of the marine spatial planning process, production of the plan and the regulatory decisions to be made under the umbrella of the plan.
- Objectives could identify the need to take account of temporal use of marine space in addition to spatial zoning of use. For example identifying when activities may only occur at certain times of year, either to protect the environment, or to enable two mutually exclusive activities to occur in the same area, but at different times.
- Objective (b) states 'achieve a fair balance.' Clarification or a definition of what is meant by, and how it aims to achieve 'a fair balance' would be useful.
- Objective (l) refers to reassurance for marine users and developers, but makes no reference to protecting and providing reassurance for the interests of the environment.
- Objectives should also take account of the need to link marine spatial planning with existing planning regimes in the coastal zone. They should also ensure that devolved administrations and UK Government work co-operatively to deliver joined-up and effective planning across administrative boundaries.

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

It is essential in order to enable a strategic approach to decision-making and to deliver the ecosystem approach to managing the marine environment. It should not only provide the context for decision-making, but also fundamentally drive and influence decisions. It should be the glue that sticks together what would otherwise be an uncoordinated sectoral approach. It is currently the lack of this that gives rise to confusion, conflict and uncertainty. MSP should guide the sustainable development of the marine environment and provide a strategic context for permitting decisions. SEA/SA will have an important role to play to ensure that this is achieved.

The MSP process should plan proactively for a better use of space, through practices such as the allocation of preferred areas. This should not only protect and control the exploitation of natural resources, but also mediate between competing uses for marine space. It should cover ongoing activities as well as proposals for change. It should provide a more secure framework for regulators and developers to work within in the marine environment without being too prescriptive or limiting. It should help protect important resources, including biodiversity, for the future. The whole MSP process should provide a faster, more efficient and accessible process for decision-making as many of the principles behind decisions will have already been decided under a plan-led system.

5. To what extent, if at all, should plans be ‘binding’ on decision-makers and decision-making?

Plans should be statutory and binding on decision-makers to provide certainty for developers and the environment. Plans must be binding on regulators, otherwise there is a risk of non-compliance with objectives and the plan would fail. Decisions should be made in accordance with the marine spatial plan unless material considerations indicate otherwise. Plans should apply to all sectors in the interest of fair competition and to provide a level playing field. Without this, the system would not produce significant change from the current situation.

There is a need for some flexibility to be built into the system in order to take account of uncertainties such as future use requirements and environmental response and change. This has been recognised in the terrestrial system with the introduction of the more easily reviewed Local Development Frameworks in England under the Planning and Compulsory Purchase Act 2004. However, there is a need to ensure that flexibility does not result in the loss of a long-term vision and strategic direction. The Regulatory Impact assessment (RIA) suggests that a binding plan would offer increased benefits over a non-binding plan, and at very little additional cost.

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

We support these principles, they are well established and our own Marine Strategy also reflects them. They are also consistent with the principles underpinning the Water Framework Directive. However, they are high-level principles that should apply to marine management in general and not just to marine spatial planning. Marine spatial planning should be seen as an important component of the marine management framework that contributes to the achievement of these principles.

In addition to these broad objectives stated here, the underlying principles of marine spatial planning could include those stated in Appendix 9 of our response (after Huggett, Southgate and Thompson 2003).

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

There is likely to be an initial extra burden as there is with establishing any new system for management. This will mainly relate to establishing a plan-making body, developing the planning process and initiating the first round of planning.

However, in the longer term, marine spatial planning should provide a more efficient and cost-effective mechanism through screening of proposals for marine activities at an early stage, thus reducing the current level of activity at many later licensing stages.

Regulatory requirements should be proportionate to the environmental impact of the activity. An objective decision support mechanism is required so that the individual activities can be assessed against a common set of principles and guidance. The MSP process will promote a more focused and co-ordinated approach to data collection, management and availability, there-by with the potential to make major cost savings in this area too. It should also save the developer time and money by providing greater certainty as to where development will be considered and eliminating speculative applications.

Where a statutory consultee role is created between the planning body and existing regulators and stakeholders in the marine environment, there is the possibility of increased workload from the current position as there are few statutory consultees to the existing licensing process. However we are certain that this will lead to more informed decision-making and better marine management.

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

Marine spatial planning should extend to all marine areas to encompass the whole marine environment. This should extend from inter-tidal waters (from the highest astronomical tide), through territorial waters, to the area of the continental shelf (including areas beyond 200 nautical miles where sovereign rights are exercised).

The seaward limit of the land-based planning system should be formally clarified to cover all internal waters or mean low water mark – whichever is greatest distance from the shore.

Overlap is justified and acceptable for the reasons outlined in paragraph 8.56. In addition, a degree of overlap could help to secure integration between the two planning systems and better co-operation between the planning bodies responsible. It is recognised that the overlap could be significantly large, which is why it is vital that hierarchy of plans and processes for integration of the two plans are put in place. Even without an overlap, aspects from MSP would still interact with the land based planning system and vice versa e.g. with saline lagoons.

Wherever an artificial boundary is set, there will always be developments and activities, impacts from these activities and/or nature conservation interests that span across land and sea, or other boundaries. Therefore the most important thing is that mechanisms are put in place to take account of these issues and to achieve agreement across organisations leading the different planning regimes based on the principles of ICZM.

We need to be able to clarify with certainty which activities are captured by which planning regime, and which regime has primacy over the other, under what circumstances. These mechanisms will need to be applied to a number of existing planning requirements, including marine spatial planning, Regional Spatial Strategies, the Wales Spatial Plan, Land Development Plans, River Basin Management Plans for Water Framework Directive and Shoreline Management Plans.

River Basin Management Plans will overlap with the proposed marine spatial planning system. The jurisdiction of RBMPs extend out to at least one nautical mile from the Territorial Sea Baseline (TSB) in England, Wales and Northern Ireland (3 nm in Scotland). Work on ensuring that RBMPs and the terrestrial planning system interact is still very much in its infancy. It is important that consideration is given to this area of overlap in jurisdiction early in the process. In fact MSP provides the opportunity to create a co-ordinated and logical approach.

In order for MSP to work effectively in UK waters, a set of common MSP strategic objectives should be established for all coastal waters around the UK to meet the commitments in 'Safeguarding our Seas'. However it is possible that they could be implemented through different delivery regimes. Plans should extend to all sea areas

irrespective of where the competency for their implementation lies. This provides a common framework within which all nations could effectively operate. The plans would have to be agreed between all relevant administrations, they would then be required to implement the plan using whatever powers are devolved to them.

9. Do you have any views on ways in which regulatory efficiency could be improved in the intertidal zone, if a new system of marine spatial planning were created?

Regulatory efficiency can be improved if lead responsibility for regulating activities in the inter-tidal zone is allocated, depending on the nature of the proposed activity, i.e. whether it is primarily land-based or marine-based. However there would need to be a mechanism to ensure that all bodies with a planning remit in this area are consulted on any proposals affecting it and, sign-off relevant plans through a statutory procedure. This should apply in the coastal zone beyond the inter-tidal area since some activities that occur on the landward or seaward side of the inter-tidal zone can still have potential impacts across the zone, e.g. land-based discharges, flood defence work etc.

River Basin Management Plans will have a key role to play as their remit extends across the land-sea interface. They will provide the process for managing environmental impacts in the coastal zone (through a whole ecosystem approach) from the full range of land and sea -based pressures.

See also question 7.

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

Yes, we support this approach. Although extending all aspects of land use planning out to the sea may not necessarily be the best option in all cases, tried and tested strategic tools can be utilised from the land use planning system.

To ensure that the system does not become more complex than necessary, policy statements should not try to cover all issues all of the time. One strategic marine policy statement would not be able to cover all aspects of MSP. A UK marine spatial planning policy statement could first be developed along with policy statements from devolved governments and then followed by policy statements giving sectoral guidance. In addition there needs to be the development of policies for specific aspects where required – such as nature conservation and energy production.

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

The principal requirements of any planning system are achieving sustainable development of the resource in question, accountability, clarity and enforceability.

Although the terrestrial planning system is not perfect, experiences can be gained from the long history of terrestrial planning system, which should be considered in developing a possible marine system, including:

- a clear purpose;
- a long term Vision;
- strategic cascade - don't duplicate policy at lower levels;
- public participation and 'Examinations in Public' or similar;

- to be spatial – to address and resolve conflicts between and integrate other plans for the marine environment (although this concept is still to be fully tested in the terrestrial environment);
- a clear timetable for public participation;
- to be evidence based;
- to integrate decisions wherever possible, not balance and trade off;
- positive planning.

There are two major differences between the terrestrial planning system and what the marine spatial planning system might look like; in the marine area it is difficult to specify local democracy or constituent and there are no individual property rights.

Terrestrial planning has been criticised as being over bureaucratic, in particular the public participation is excessively bureaucratic and does not engage many people, even with activities they might have a personal interest in. However, marine spatial planning should take the opportunity to improve on the shortcomings of the land-based planning system. The Royal Commission on Environmental Pollution's report identified a number of important shortcomings of the current land-based system (Royal Commission on Environmental Pollution 2002), and put forward a number of objectives for the revised system. These included:

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

These objectives for the terrestrial system should be borne in mind in developing a new MSP system.

Any proposal for MSP should be compatible with the river basin management planning system set out in the WFD. Statutory RBMPs will set out the process for managing environmental impacts across all inland and coastal waters out to 1 nm from the territorial sea boundary. They will address all human activities across the land-sea interface in terms of the pressures that they have on coastal waters. As the competent authority for the WFD in England and Wales, the Environment Agency has a substantial role to play in delivering MSP in the coastal zone.

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

It is important that the strategic marine planning policy statement does not become over complicated and keeps its strategic outlook. It risks grinding to a halt if too many lower tier planning issues are considered at the outset. It is important that they are still considered at some point in the process and not missed at lower tiers. However

it is difficult to comment until it is clear what sort of tiers are needed. In this respect, the proposals in paragraph 8.6a (h) and (l) could perhaps be dealt with at a lower lever, as circumstances in each regional sea will be slightly different, as will pressures and interests, and eventual solutions.

It will be essential that the marine planning policy statements provide clear guidance on the development of marine spatial plans (analogous to PPS11 on regional spatial strategies and PPS12 on local development frameworks). In Wales these points need to be considered within Planning Policy Wales and we suggest a Technical Guidance Note (s) specifically on marine and ICZM should be produced.

It is also essential that the MSP policy statement provides a clear link between the MSP and other plans and planning systems, particularly at the land – sea interface.

We strongly support the inclusion of European and international level obligations in the policy statement. This should include an explicit reference to the WFD and outline the part that the MSP will play in supporting the delivery of RBMPs. Each RBMP is required to list all relevant plans and processes and how these have been taken into account in developing the plan. This will include plans for the marine environment. There should be a similar requirement for MSPs to consider relevant plans and processes as part of plan development.

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

MSPs should plan ahead for a period of at least 20 years in order to provide a long-term vision for the future planning and management of the marine environment. However, they could usefully follow the same approach being developed for shoreline management plans. These develop policies according to three ‘epochs’: 0-20 years, 20-50 years and 50-100 years. This will take account of the impacts of climate change on the marine environment and coastal areas. Most major projects on the marine environment have long lead-in times so MSP needs to be valid over a fairly long time frame.

It will be important to ensure that ‘living’ plans are developed with regular reviews (at least every 6 years – ideally in line with river basin management planning cycles for the WFD). The review period must be short enough to ensure flexibility but long enough to provide sufficient certainty for users and investment. It must avoid establishing a planning industry where no sooner is the plan signed off, the review of the plan begins.

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

The plan-making body should have a statutory duty for sustainable development. It should protect, restore and where possible enhance the marine environment while promoting sustainable use and economic development for all of its resources. It will need to have appropriate accountability. This accountability would be to the stakeholders by having a transparent working process, and to Government by having clear objectives and a scrutiny process to ensure that objectives are being met. Creation of an advisory board made up of key stakeholders would also be appropriate.

We agree with the need for an independent, impartial body to lead and co-ordinate development of marine spatial plans. In the absence of another existing body being considered appropriate, this would need to be a new Marine Management Organisation (MMO). It should work with all key interests to achieve this within a common set of objectives. It will also need to work closely with other bodies with responsibility for planning in the coastal zone, for example the Environment Agency with regard to RBMPs.

In addition to leading development of the plans, the body will need to undertake SEA/SAs for the plans, be able to resolve disputes between different interests, identify and manage data requirements to support the planning and decision-making process. Additional roles would be dependent on the outcomes of the other Marine Bill workstreams.

We do not think it would be appropriate to extend outward into the marine environment the responsibilities of Local Planning Authorities in order to carry out MSP.

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

The whole of the marine environment should be covered by Marine Spatial Plans of some sort. Where there are currently few issues to be addressed, the level of detail and prescription of the plan could be reduced. Plan boundaries do not have to follow administrative boundaries. The plan simply guides who should do what where.

Consequently, plans could cover – for example – the marine areas of the UK and devolved administrations. However, within the plan, there would be geographic demarcation of those issues devolved to the Wales administration and those that are reserved. It is not appropriate to have more than one plan covering the same area of sea.

The regional seas scale is appropriate, and it is key that the planning process is applied equally across UK waters otherwise we run the risk of developers looking for loopholes in the system to site controversial/inappropriate developments. The size and nature of regions and divisions may vary widely in different parts of the UK depending on local conditions. The areas used must be large enough to avoid systemic conflicts of interest between adjacent areas.

The MSP system should have some flexibility to treat different areas in different ways, recognising spatial variations in the nature and intensity of marine developments and activities and the sensitivity of the marine environment. An appropriate hierarchy for MSP might be therefore:

- A UK wide expression of national objectives and principles for all the coasts and seas under the UK's jurisdiction
- National policy frameworks for the UK, and for England, Wales, Scotland and Northern Ireland/national plans.
- A regional policy framework/plan at regional sea level;
- And only when local circumstances require it, a local policy framework/ sub-regional plan. This could cover areas of high use such as coastal zones, estuaries, or areas offshore of high resource use.

In developing the boundaries for MSP's, consideration should be given to the river basin districts that have been defined across the UK for the WFD, and for which RBMPs will be prepared. The river basin district boundaries have been defined to

manage the inland and coastal water environment on the same holistic, integrated ecosystem approach that will underpin MSPs.

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

The marine spatial plan does not have to apply in the same way to all parts of UK waters. The high level aims for the marine environment should be applicable to all UK waters. Ideally we want to have regional marine spatial plans covering entire regional seas. We recognise, however, there may need to be some flexibility in plans and delivery to reflect the different policies of devolved administrations, and the flexibility to treat different areas in different ways. This would recognise spatial variations in the nature and intensity of marine developments and activities, and the sensitivity of particular marine environments.

The level of detail in planning should be fit for purpose and flexible depending on the need in that area. The 'ground rules' should be common. However the level of intervention may differ widely dependent on resource and development pressure.

See also answer to Q.17.

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

The tiered approach to planning suggested is sensible. It will be essential to have a more detailed level of planning in areas of high activity or of special interest. Plans should only be produced at the sub-regional sea, or local level, as and when local circumstances demonstrate need. Sub-regional or local level plans will be beneficial in heavily used areas, where there are many interests, or in areas of conflict. It is currently unclear who would have responsibility for producing and delivering sub-regional plans.

In the coastal zone other statutory plans will also need to be taken into account as part of the marine spatial planning process.

One aspect of the work of the RMNC which is not mentioned in this context, but could provide the spatial basis for developing sub-regional and local plans where appropriate, is the concept of 'seascapes'. This should be considered further. Seascape scale planning allows for ecosystems scale management.

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

Marine spatial planning should take account of all development (in the traditional sense) as well as other types of sea use and natural resources. In the name of consistency, all activities, developments and resource uses need to be considered in order to achieve UK Government objectives for the marine environment. Additional examples not mentioned in the document include migratory routes for birds, fish and marine mammals, sewerage infra-structure, pipelines and electricity generating stations.

It should cover use of the sea surface, water column, sea bed and beneath the sea bed. It needs to make a clear distinction between resource mapping and planning for use. For example, mapping a resource such as marine aggregates is a separate activity to mapping preferred use areas and exclusion zones for extraction.

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

It is important to consider all large-scale future marine developments, including existing and new offshore renewables, gas and mineral extraction, tidal barrages, new port developments, offshore airports and other energy production. The plan should cover everything, however the controls might not. Activities that the controls do not need to cover should be identified. In this way, new activities are covered until expressly excluded.

In addition, within 1 nautical mile, all proposed future large developments that could impact on the water environment will have to feature in the RBMP process under WFD.

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

A prerequisite for any spatial planning system is the need for adequate data and information, along with mapping systems to convey them. Whatever the final scope of MSPs, it is important that data and mapping systems are available to support them. As in the case of terrestrial planning, it is not necessary for all data sources to be held by a MMO or planning body but the planning body should be aware of and have access to all relevant data and information. This will assist the development of the plan, and for SEA and sustainability appraisal purposes.

Data, currently, is still fragmented and difficult to access. The need for consistent, quality assured long-term data sets is paramount to provide the evidence base for any development plans. It is important that data gathering/sharing is better co-ordinated. The Irish Sea Pilot and the Environment Agency's Ribble Pilot study (for WFD) have demonstrated that consistent, quality assured long-term data sets are paramount. There should be agreed standards for data collection and management. An early decision is needed on a common GIS system and meta-data collation to ensure consistency and efficiency. We continue to support data partnerships (MDIP) and will be an active contributor where practical. Information commissioned by developers for EIA should be made available to assist decision-making and avoid the need for duplication of data collection for different purposes. Data collected by different organisations in line with their functions should also be available.

A new level of data and information for the marine environment will be required to support the RBMP process for the WFD. The Environment Agency as the competent authority for the WFD in England and Wales will have a major role to play in co-ordinating the collection, management and reporting of this information. It is important that the links between MSP and RBMP are developed to support information exchange between the two planning processes.

Importantly, lack of information cannot be used as an excuse for lack of action and not planning at all. Identified data gaps should be plugged as soon as possible to ensure the new system of MSP is fully comprehensive, however where data is unavailable a precautionary principle should be applied.

21. What are your views on the plan making process?

The plan making process must:

- be participatory and subject to broad consultation.
- be flexible – if the plans are reviewed regularly they will be able to take into account new technologies and check that they are achieving the plan’s objectives
- be transparent - SA/SEA will also have a role in evaluation of options.
- use evaluation techniques such as optioneering and weighting of options

There will be important differences from the MSP and land-based planning:

- It will be necessary for the MSP system to embrace the management of ongoing activities as well as the regulation of proposals for change;
- The participation of the general public is likely to be limited and largely replaced by sectoral interest.
- It will be essential to allow sufficient time for public and stakeholder engagement using a variety of processes as appropriate. Traditional consultation on draft plans is unlikely to yield a satisfactory outcome.

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

Dealing with conflicting demands for space is the key role of planning. Decisions on conflicting demands should be made based on an ecosystem approach and principles of sustainable development. There is an important temporal aspect to marine spatial planning when considering conflicts. There may be the chance for the marine environment to accommodate seemingly conflicting demands, as they occur at different times.

The starting point when considering conflicting demands for marine space is to protect the resource so it can be used in a sustainable manner. Only once a resource is assured then consideration should be given to the conflicting demands. Once that has been assured, a decision-making framework based on a common set of guiding principles should guide the planning decisions. Conflicting demands should be resolved through the application of evaluation techniques (see Q.21) and through applying SA/SEA. This should be devised to ensure that impacts are considered from different pressures in an objective way that relate to the goals of the Marine Bill especially in the context of conserving and enhancing biodiversity.

Decisions made on statutory obligations must be paramount. A process is needed that takes meeting legal obligations (such as site protection) as the starting point, which establishes how and under what circumstances it is appropriate subsequently to derogate from these requirements (see Q. 63).

23. What are your views on the allocation of ‘preferred areas’ for certain activities, future development or protection of resources?

We consider this to be fundamental to the successful implementation and delivery of MSP to help reduce excessive regulatory burden. There may be a need to identify ‘preferred areas’ for specific activities, or the protection of certain resources, this could be a temporal/seasonal allocation, or it could be ongoing until withdrawn. This is likely to be required when an activity requires a specific location that is scarce. This may also be required where certain resources are endangered, risk being impacted by other activities or enjoy European or national protection. If ‘preferred areas’ were identified, it would also be necessary to keep these under constant review, in view of the rapidly changing nature of the marine environment and the activities within it.

This approach needs to be supported by a statutory 'presumption in favour' unless material considerations suggest otherwise. The preferred areas approach must also include the identification of resource protection zones (e.g. protection of corridors reserved for electricity cables) as well as the delineation of areas where there is a presumption against certain activities being allowed (e.g. scallop dredging in areas of maerl). However, while an application for a particular use in one of its preferred areas might get preferential treatment, and a faster decision, it is important that all decisions are made on the merits of the individual case.

This should not enable a short cut to the EIA process. Surveys and the decision-making process associated with the EIA process would still be required before granting permission. There is the possibility that due to lack of knowledge, preferred areas may be allocated in an area with national species or other type of habitat. There needs to be part of the process that checks for this and allows mitigation/compensation if required.

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

Spatial planning systems require maps to help provide certainty. Spatial information is an important aspect of communicating specific goals for a sea area, particularly for visualising multiple uses and helping users to understand the array of competing demands in the decision-making process.

Although the three dimensional nature of MSP will complicate the mapping process, maps will need to demonstrate that different activities can occur in the same column of water but at different levels or at different times. However, if a GIS system of maps is produced, it could be updated as and when new information becomes available and develop, in time, into a really useful system. There would need to be a clear commitment from whoever managed this system to keep it maintained and up to date. An agreed protocol for design, layout and data type is essential.

There is plenty of experience to draw on from elsewhere around the world. Regard should also be had to the findings of the RMNC Information Provision Sub-Group.

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

Sustainability Appraisal (incorporating SEA), as used under the English terrestrial spatial planning system, should be carried out on all MSPs in order to ensure that the resulting plans meet sustainable development objectives. SEA will surely be a requirement of such MSPs under the requirements of the SEA Directive, and the inclusion of SEA within SA would also include social and economic considerations alongside environmental. The English spatial planning system has shown that SEA can be successfully incorporated into SA. As noted in our response to earlier questions SA/SEA would also provide an essential tool in considering and evaluating options.

SEA and Sustainability Appraisals are an essential part of the planning process and are there to ensure sustainable development, and to assess the cumulative impacts of different activities on the marine environment and on socio-economic factors. In order to ensure marine spatial planning makes a full contribution to the achievement of sustainable development, it should have a statutory purpose to promote sustainable development. Marine spatial planning should promote resource

efficiency and ensure that the environmental capacity of the marine environment to accommodate development is not exceeded. This requires a cumulative assessment of impacts and pressures as well as marine capacity.

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

It is important that there is appropriate stakeholder participation and involvement right from the beginning of plan preparation, through to decisions on individual activities. This will be difficult to achieve because unlike on land where the impact of planning and decisions taken are generally restricted to a relatively local constituency, decisions on marine environment resource management will largely relate to a wider public interest. Identifying this wider constituency and engaging with it will be difficult.

This could be encouraged by establishing a MSP committee to oversee the process, to help the consultation and ensure effective involvement with the plan making-process. Committee meetings should be open to the public and their proceedings and decisions publicly available.

In addition, formal consultation on plans with stakeholder groups will be important aspects of communicating the MSP and developing a joint approach with stakeholders to achieve the goals. It might be possible to utilise the existing planning framework. It is important to ensure we have a process that is transparent and fully open to public scrutiny. All parts of the plan-making process should be publicly available, including reports/minutes of decision-making bodies/processes.

A clear process of process of appeal should be built into the process (see Q.27).

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

Any planning process can restrict the rights of individuals in order to achieve a greater public interest; this may be an economic interest, environmental interest etc. However it is not appropriate to restrict people's rights in order to achieve private interests, however it is appropriate to restrict these rights if they are causing damage. Existing user rights must be adequately respected. Where rights are established, the option remains to devise some form of compensation if those rights are deemed not suitable with the plan.

It is essential to build safeguards into the MSP system to ensure that the rights of individuals or organisations are considered. There should be a range of options available such as the right to be heard in relation to a proposed plan and a right of challenge against decisions. Regional representation on the planning committee will aid this, but relies on a clear democratic process.

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

The MSPs should be tested for their 'soundness' to ensure that the plan-making process, including the evaluation of options and SA/SEA have been fully complied with. Some form of 'independent' scrutiny of the plans will be essential for this.

There is a requirement for an examining or overseeing body, appointed by government, possibly with the opportunity for nominated representatives, to report on the production of the plan. They would report back to the appropriate Secretary of

States that the MSP making process has been carried out in an appropriate manner and is conforming to national objectives and policies etc. If the plan does not comply, it will need the power to require the MMO/Plan making body to revise the MSP accordingly. Testing the soundness of a MSP will be an important element of making sure the process is open and transparent.

29. Do you have any views on the implementation, monitoring and review of plans?

It is essential that plans can be easily and quickly updated as circumstances change, whilst also maintaining their long-term vision and strategic direction. The MSP might be made up of a number of individual planning documents dealing with specific issues, each of which can be updated and amended individually. Plans should be reviewed frequently and if possible, plans should be developed to run in parallel with either RBMPs cycles for WFD, or other planning cycles. The first RBMPs will be developed for consultation in December 2008, with the final plan required to be in place by December 2009. However, it is also important that the overall plan is monitored to check that policies within it are achieving their desired aims, and not having unanticipated effects/outcomes, and that this is fed back into the review process. Without monitoring it will not be possible to gauge whether the plan is being followed or is successful in achieving its objectives.

A related and extremely important issue is how compliance with the measures of the Marine Spatial Plan(s) is to be enforced in law. It will be essential for appropriate penalties to be available to competent authorities to address breaches and infringements identified by the monitoring of plan implementation.

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

See answer to questions 13 and 29 above, ideally they will fall within existing management cycles and timeframes, such as those for WFD RBMPs and therefore link to the Marine Strategy Directive, or with other existing planning cycles.

Whatever timeframe is selected, modification for emergency purposes must be possible.

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

Integrated planning should be a statutory obligation on all planning authorities. The UK government must ensure that a sufficiently integrated approach is adopted to harmonising all plans and advice provided for planners working with MSPs and other plans such as RBMPs, RSSs, or SMPs, particularly on how they should take each others plans into account in their own planning activities. Representation on a regional sea planning committee by the other plan making organisations will help this process.

In Wales, the Wales Spatial Plan is already in place having been approved by the National Assembly for Wales in November 2004. The development of this plan placed great emphasis on community involvement and followed extensive local consultation. The new Community Strategies will play a key overarching role in the new planning system within Wales. It is important that MSP for Wales fully integrates with these provisions.

The coastal zone is a uniquely complicated area for planning and presents some unique challenges, but it is wrong to suggest that it is significantly more complex than terrestrial planning. Overlap between the terrestrial and marine based planning systems, whilst adding a further complication, could help to ensure that the two systems are integrated as far as possible. RMBPs will inevitably overlap with MSPs in the same way that they overlap the land use planning system. A clear hierarchy between plans, policies and processes for developments to know which planning system takes primacy is essential.

Non-statutory ICZM is all about a planning process. The development of ICZM plans is a product of this process. It could be argued that non-statutory ICZM evolved to fill a policy and planning vacuum left by the limited scope of the Town & Country Planning system in coastal and marine areas. The development of statutory marine spatial planning provides the opportunity to fill this vacuum. The principles of ICZM, particularly those highlighted by the EC ICZM Recommendation, could be enshrined in the marine spatial planning framework.

Shoreline management plans (SMPs) and estuary flood risk management strategies straddle the boundary between land and sea areas. In this respect, it is vital that they are taken into account in both land and sea based spatial planning systems. SMPs decide the sustainable strategic management policy for our coastline in consultation with communities and stakeholders. These plans are prepared by coastal operating authorities and the Environment Agency. In the Government's first response to 'Making Space for Water' Defra has made it clear that it intends the Environment Agency to take a strategic overview on all coastal management planning and implementation in England. SMPs also set the strategic direction for capital investment in coastal erosion and flood risk measures. They are therefore implementation plans as well as spatial plans, and need to influence a wide cross section of land, marine and coastal planning and management activities.

ANNEX 3: LICENSING MARINE ACTIVITIES

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

It is both appropriate and necessary. This is a good (and rare) opportunity to consider what needs to be changed in the licensing system, who can make the changes and when the changes should be made (i.e. it might not be effective to make all of the changes at once). It will provide the opportunity to improve the effectiveness of the marine licensing process and marine spatial planning is central to help achieving this.

Licensing should be a mechanism for sound management of the relevant activities, not an end in itself. Only by placing the licensed activity in the context of the wider needs of the marine environment can appropriate controls be applied, and unnecessary regulation abandoned with confidence.

The whole purpose of integrating a marine licence system should be to deliver the objectives of the marine spatial plan.

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

The following provides a list of activities that are either currently being undertaken with poor or confusing regulatory coverage and potential new activities:

- Re-use of contaminated dredged material (e.g. for use as hard standings) which has been treated to 'lock in' contaminants
- Sediment re-charge schemes
- Use of dredged sediment in general
- Dredging activities that re-suspend or move material e.g. through agitation dredging.
- Offshore energy generation and storage
- Renewable power generation (tide/barrage/wind/wave)
- Direct-cooled thermal power stations (nuclear or conventional)- there is a need to control cooling discharges to the coast
- Soft engineering for coastal defence
- Recreational sea-angling is more economically important than commercial fishing so this activity needs to be picked up by the system
- Ship dismantling (e.g. ghost ships)
- Decommissioning of oil rigs
- Ship to ship transfer (e.g. Lyme Bay)
- Nano technology and its environmental impact
- Public expectation that information is readily available/on line and that licensing process can be done through e-business.
- Fish/shellfish harvesting using hydraulic dredging techniques.
- Chemical pollution from ships
- Port waste management schemes.
- New recreational activities such as hoverpods and kite surfing.

The following provides a list of new legislation that will need to be considered:

- The Water Framework Directive objectives set new environmental objectives for all waters out to 1nm that we must aim to achieve by 2015. These are based on ecological protection and ecosystem functioning (good status/potential within 1 nm; no deterioration).
- Revision of Bathing Waters Directive

- Proposed Marine Strategy Directive

The system should be flexible enough to pick up these activities and changes in legislation without significant changes to whatever regime is put in place. The licensing regime should consider impacts rather than activity so licences can apply to the majority of activities.

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

The marine environment is seen as a common resource and therefore use of the resource should be subject to some form of permission.

Our view is that all activities should require some form of consent or general licence before they can be carried out – unless expressly exempt. This should reflect the nature of the activity in question. This is because the sea is a public resource (unlike land where areas are privately owned) so anyone wishing to benefit from use of this resource should be required to apply to a public body for permission to do so.

A system analogous to the General Permitted Development Order should be applied i.e. certain activities are deemed to have consent unless they meet certain criteria. This means a risk-based approach can be taken and therefore compliance with modern regulation principles is achieved. These rights could be removed if for example, the activity may have an adverse effect on a designated site that would require assessment.

We support the exclusion from the proposed licensing reforms (paragraph 9.22 of the consultation) of land-based controls for which we have responsibility. This ensures we can continue to apply an integrated catchment-based approach to environmental protection and improvement required under the legislation for which we are the competent authority. This particularly applies to the Water Framework Directive and our associated obligations to ensure Good Ecological and Chemical Status in estuarine and nearshore coastal waters. Consideration of cross-compliance issues between River Basin Management Plans and the Marine Spatial Plan and licensing decisions related to them, and how these should be addressed must therefore be included within the proposals.

Clear guidance must also be provided to enable developers to understand who the competent authorities are and which land based and marine licences are applicable.

There are several omissions from paragraph 9.26i, for example the Waste Licensing Management Regulations and Land Drainage Act. The consultation also omits that the Environment Agency as competent authority for Water Framework Directive is responsible for producing River Basin Management Plans and programmes of measures (PoMs) in inland waters and coastal waters out to 1nm. PoMs include, but are not limited to, licensing activities by the Environment Agency and co-deliverers.

We would expect that where the plan crosses administrative boundaries, agreement must be reached by both parties. This also applies to licences and the impacts of licences. If there is disagreement or different priorities between devolved and central government, there is the potential for impasse. A system must be in place to address this.

If one integrated system is the agreed approach, then the oil and gas licensing regime should also be included.

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

There should be a common core to all licensing. Defra/WAG and the Environment Agency are currently consulting on regulatory proposal for an environmental permitting programme (EPP). EPP is being developed to provide a generic 'core' that is intended to be common to all environmental permits, with regime specific components as a 'shell' to the common core. Current consultation focuses on the Waste Management Licensing and Pollution Prevention & Control regimes, however the consultation recognises that further decision by Government is needed on the extent of which the common platform should apply across the board.

Centralising the licensing process has advantages and this could be one of the core functions of the MMO, however this would depend on what the licensing reforms will be and other functions the MMO may carry out. For instance the MMO could provide a centralised administrative hub for marine licensing with the technical decision-making and enforcement sitting with existing regulators. Development of a suitable IS system could generate significant efficiencies.

The licensing system has to be as simple as possible and extremely user friendly to the applicant. There will be complex regulatory decisions to be made that will need an audit trail but the application process should be simple.

All licensing authorities need to be working to a common suite of environmental, economic and social standards that are defined in the marine spatial plan.

Guidance to applicants and regulators should be significantly improved and should cover what licences are required in addition to legislative timescales, information required and the bodies responsible for issuing the licence.

We support the principle that there should be wide statutory consultee scope but the costs of consulting and responding must be fully supported. Part of the planning (MSP) and the plan delivery should be to define the activities and areas where statutory consultation groups are likely to be needed. Public participation also has to be factored in.

It is also important that all consultees and licensing organisations are involved in the process at an early stage to avoid delays later. At present late involvement can cause significant delay.

The consideration of in-combination effects needs to be included within the process. At present there is limited opportunity to address this. The introduction of a marine spatial planning system should be integral to assisting in this as individual licence applications cannot address this satisfactorily.

Some suggestions for specific improvements associated with particular licensing legislation are listed below:

Section 34 of the Coast Protection Act 1949: The scope of the Minister's consideration of an application (for a 'navigation licence') and reasons for which it could be refused are extremely limited. The section specifically refers only to safeguarding navigation. Therefore, in coming to a decision about the

appropriateness of an application, the Minister is not required to have regard to the impacts of that application on the marine environment.

Section 8 of the Food & Environment Protection Act 1985: Apart from Section 8(1)(b) and the need to have regard to such matters as the authority considers relevant, there are no statutory procedures governing how Defra/WAG must go about considering an application to undertake anything involving a deposit on the seabed. There is no statutory requirement to consult other competent authorities, no requirement to advertise applications or to have regard to any representations made.

Paragraph 18 of Schedule 3 to the Harbours Act 1964: There are occasions where individuals or organisations wish to maintain an objection to an application for a Harbour Revision Order (e.g. to extend a dock) but do not wish to force a Public Inquiry. This may be because they do not agree with the proposal but accept that it is justified, or in order to maintain the ability to challenge the Secretary of State's decision if it is perverse (e.g. ignores the advice of the statutory nature conservation advisers regarding a compensation package). However, unless the Secretary of State considers such objections frivolous (unlikely given the Human Rights Convention and the right to a fair hearing) then a Public Inquiry must be held even if no-one wants it. This issue has been tackled by the Harbours Bill which has languished in the House of Lords for several years.

Section 1 of the Transport & Works Act 1992: The matters for which Transport and Works Orders may be made are extremely varied and can have wide-ranging environmental implications, including in marine areas. Schedule 1 states that an Order may relate to the construction, alteration, repair, maintenance, demolition and removal of railways, tramways, trolley vehicle systems and other transport systems within section 1(1) of this Act, waterways, roads, watercourses, buildings and other structures, as well as the carrying out of any other civil engineering or other works. However, the Transport & Works Act 1992 does not impose any duty on the competent authority to have regard to the marine environment.

Waste management controls currently extend to areas of land including land covered by water, where such land is above the low water mark of ordinary spring tides. FEPA sets out controls on deposits into the sea and onto the sea bed below the high water mark. FEPA controls however, are not 'aimed' at waste regulation ie they only cover deposition of material and not, for example, waste treatment. Waste treatment processes that occur within this area therefore need to be considered, but there is some confusion over the precise extent of waste management regulatory controls.

Waste treatment that occurs over land, below the low water mark, currently does not appear to be covered. This has been a particular problem with ship dismantling and waste ship storage and should be addressed within these proposals.

To remove this confusion and fill the gaps existing under current regulation, we consider that all waste activities in the immediate coastal boundary and within estuarine areas should be regulated via waste management licensing controls under the auspices of the Environment Agency. We however, do not propose that these controls should extend to the offshore area.

36. How can we ensure that the draft Marine Bill reduces regulatory burdens within Government and on business, within the licensing system?

We need to ensure that the current system is more effective; marine spatial planning has an important role to play in guiding users to appropriate areas before they even

get to the point of submitting an application. Legalisation and processes should be changed to avoid duplication and simplify the process where possible.

Good guidance is required, particularly where developments cross the land and marine boundary.

For every licensable activity there are scales of risk. It is important that low risk activities are recognised and granted exemption or have light touch regulatory requirements. For those that pose higher risks (environmental, economic or social) the scale of regulation should be proportionate to the risk and potential impact should the risk materialise. This does not seem to be addressed in the proposals.

The Marine Bill should introduce an audit system that facilitates risk-based regulatory decision-making and records the risks considered and the intended outcomes of the permit. The system should easily be publicly accessible.

37. Are the objectives for a reformed licensing system laid out above sensible?

We fully support the objectives in paragraph 9.37 that mirror the principles stated in the EPP consultation.

Some suggestions for further improvements are listed below:

- An additional objective should be consistency of decision-making.
- It needs to be explicit that there will be better environmental protection as a result of the reform.
- The expected outcome(s) of the regulated activity should be absolutely clear and be part of the permit e.g. contribute to achieving excellent status under the revised Bathing Waters Directive or contribute to achieving marine ecological objectives as listed in the nature conservation section. This does not occur in any current licensing procedures. We think that it is extremely important that the regulated community should know what the purpose of the regulation is. High level indications of these requirements could be indicated within the spatial plan. The spatial plan for example might say that there are protected areas (e.g. bathing waters) and for some the target is to meet high status and for others to maintain good status. Individual decisions on permits in such areas would need to reference the planned requirements and indicate how the permitted activity contributes to the objective.
- Likely development needs should be included at a high level in the marine spatial plan. Early engagement between developers and relevant regulators will inevitably speed up the process by ensuring common understanding of key issues and development needs from the beginning. This should be a formal and recognised part of any permitting process and funded by the charges for the licence/application.
- There needs to be a responsive appeals procedure that can rapidly address challenges to regulators decisions by applicants. This requirement is implicit but not explicit in the objectives for the reformed licensing system.

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

We would expect the marine spatial plan to identify all the relevant sectoral interests in the area of sea likely to be affected by the licensed activity and to provide a broad brush estimate of available capacity for new development. Where there are clear

interactions or potential conflicts between regulatory objectives, a fair and formal mechanism for resolution in the application determination process is essential.

The consideration of in-combination effects must be facilitated by the new process.

There should be a clearly funded mechanism for checking that permits and licences are being complied with and where necessary, enforced. That mechanism must be capable of adapting to changes within the lifetime of the permitted activity. Serious consideration would need to be given to, for instance, permit review timescales (licence for life or time limited) and also to the implications for permit holders of changes to the rules that were not considered during the permitting process. This is to ensure that the public can have confidence that the regulatory system is delivering the expected outcomes and can adapt to new challenges. This information then feeds into the review of the marine spatial plan so that further iterations can address continuity or new programmes of measures.

39. Are these appropriate options to consider in this consultation? Are there alternatives to, or variations on the above options, which should be considered?

Although there are many potential options when considering changes to the licensing system, we consider the four options proposed by Defra to be appropriate.

40. What are your views on the advantages or disadvantages of the 'Do Nothing' option?

Advantages

- No setting up costs.
- There maybe efficiencies to be gained by delaying changes until the requirements of the intended EU Marine Strategy Directive are clearer.
- No disturbance to existing regulatory infrastructure.

Disadvantages

- Not considered to be a viable option as we will run considerable risk of failing to meet international obligations (e.g. Water Framework Directive) as well as perpetuating an increasingly complicated and outdated marine consenting framework.
- The system will retain all its existing difficulties.
- It will be difficult to demonstrate delivery against the marine spatial plan.
- It would be feasible to set up a MMO and marine spatial planning without changes to the licensing systems but the effectiveness of the MMO and plan would be severely restricted.

As a long-term solution, we consider that this option is out of the question.

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

No. See above (Q40)

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

Option 2 is sensible and not too difficult to achieve but will be of limited use if implemented alone (i.e. without marine spatial planning etc). Duplication will be removed from the system for these controls. Since the majority of licence

applications are made under these, a significant amount of efficiency will be achieved. We would see this as a first step towards integration of the multiple permits needed for single activities e.g. laying an outfall pipe.

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

We consider this falls significantly short of the objectives of a reformed system including the components in answers 32 to 39 above, but does go some way to removing duplication. Merging of CPA and FEPA in our view is essential and an absolute minimum. This process ought to proceed irrespective of the Marine Bill as part of the modernising regulation agenda. Whilst this reform is important, it is a fairly minor component of the marine regulatory system in terms of delivering the marine spatial plans efficiently.

44. What are your views on the advantages or disadvantages of Option 3, a simplified sectoral regime?

Advantages

- It retains the basic legislative infrastructure which, whilst not without its problems, is tried and tested.
- It is familiar to current staff and applicants alike. It would remove two commonly required consenting regimes, so would make a significant contribution to reducing the regulatory burden on users.

Disadvantages

- Reliance on good communication between different departments and effective consultation.
- Consideration of in-combination effects will still be extremely difficult under this system.
- This is possibly the most complicated to achieve in terms of legislation. Merging just two regimes (option 2) and having one integrated regime (option 4) would be legislatively simpler in that they require the repeal of existing legislation and the development of bespoke new consenting regimes. Option 3 requires 'stitching in' existing CPA/FEPA regimes (which would need to be repealed) into a range of existing sectoral legislation which would need to be left fundamentally intact. This needs testing at the MSP level before committing to significant regulatory reform.

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

Assuming that the MMO has a strategic co-ordination role and that MSP delivers both the planning system and a plan for sectoral interests to work within, then it will make a significant contribution.

46. What are your views on the advantages or disadvantages of Option 4, an integrated regime?

Advantages

- It would deliver bespoke legislation to deal with all marine development and use through a single consenting regime.
- In terms of legislation required, it should be relatively simple to repeal existing provisions and replace them with a single common consenting process. This option would reduce the regulatory burden the most through simplifying the

marine consenting regime and would be specifically designed for today's challenges.

- It would provide the ability to consider in-combination effects on the environment and protected areas.
- All departments would be given an equal say – i.e. opinions would be balanced and all three principles (environment, social and economic) in theory would be considered as the co-ordinating body would be neutral. Decisions should be transparent, policy-compliant, informed and impartial. There would, however, need to be a clear process for resolving disputes, should departments not agree.
- From the applicants' perspective, the system should be considerably simpler, notwithstanding that the real complexities of interacting sectoral interests will necessarily have to be properly addressed.
- This option would mean that the MMO would have several roles. The first would be strategic advice to government and administering a marine spatial planning system that would lead to a statutory marine spatial plan. Secondly it would be responsible for co-ordinating the plan's programme of measures (wider than just regulatory permits). Thirdly, it would also provide tactical delivery of the permits and licences needed for sustainable marine resource use within the boundaries of the plan. Fourthly, it would monitor delivery of planned outcomes and feed into the subsequent review of the MSP.

Disadvantages

- There are risks associated with the introduction of a completely new regime as opposed to amending existing regimes. Current familiarity, etc. would be lost.
- There could be significant costs associated with the initial set up of this option.
- There would have to be a substantial stakeholder engagement process to explain the benefits of the changes and how they will work.
- The challenge would be to integrate the work of different government departments and regulators with interests in the marine environment and ensure compatibility with any future Marine Strategy Directive requirements.

We consider that the most desirable outcome is to achieve a fully integrated licensing system. We recognise that there will be challenges with this option. It could be difficult to establish an integrated system immediately because of the way in which the current system works. We would recommend a slow migration towards this solution. We would recommend a slow migration towards the optimum solution of option 4, i.e. a fully integrated system for those marine licences considered in the consultation document. The first step of this process would be to start option 2 as the foundation to the system then look to integrate all considered marine licences in this system. This will allow the process to be modified as the system evolves and allow time for the support systems to be put in place. Option 3 is not a favoured outcome as the sectoral complications would remain and it does not have the direct links to the Marine Spatial Plan or the assurance that decisions will be made in accordance to the plan.

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

Since it will involve a significant change to the existing situation, the opportunity should be taken to design it purposely to meet the objectives and principles. See above (Q 32-38)

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

Clearly health and safety risk assessment and environmental impact assessment must be applied to the exploration, investigation, development and operation of any such systems whether land or sea based. We would have a specific concern with the local and long-term issues associated with water quality when pumping out brine from salt deposits to make storage possible.

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

We would anticipate that this would be controlled via the oil and gas licensing procedures, subject to EIA and any protected area constraints.

50. Do you have any views on the capture and subsequent storage of carbon dioxide in naturally occurring sub-seabed geological structures to alleviate the effects and impacts of climate change and ocean acidification?

Carbon Capture and Storage (CCS) technology has clearly shown a great potential to contribute to climate change mitigation. There are however environmental risks and uncertainties with the process. If it can be demonstrated that these risks are manageable, there is a case for large-scale development of CCS technology. Demonstration projects should investigate the environmental impacts of CO₂ storage. This should not be done at the expense of efforts to improve energy efficiency and develop renewable sources of energy. CCS is only applicable to roughly a third of our CO₂ emissions, and efficiency measures offer by far the greatest available source of carbon savings, typically at the least cost. Additionally, the UK has plentiful and diverse renewable energy resources which if exploited can have significant energy security gains as well as lower local environmental impacts than burning fossil fuels, and from the by-products of the CCS process. In this respect, CCS may prove to be a useful bridging option that could support a transition to a more sustainable energy system.

At present the state of knowledge concerning the environmental impacts of CO₂ storage is not sufficiently developed to enable a comprehensive Environmental Impact Assessment (EIA) to occur. There is currently little understanding of the interactions that can occur between injected carbon dioxide and other chemicals/pollutants in the surrounding material. Little is understood about the impacts on water bodies, ecology, and wildlife. Due to these uncertainties and the limited experience with CCS processes it will be necessary to closely monitor demonstration projects. This experience will help to define what minimum standards and regulatory arrangements are necessary in advance of any possible large-scale uptake of CCS, and will help inform future EIAs and CCS planning decisions.

The term sub-seabed geological structures refers to both ex oil and gas fields and saline aquifers. While oil and gas fields are well documented and their ability to store gas has been proven, the same can not be said for saline aquifers. More research needs to be done on the suitability of saline aquifers before use.

We recently responded in detail on our views on carbon capture and storage to the HM Treasury's Consultation on Commercial Barriers to Carbon Capture and Storage. We are happy to provide more details if required.

51. Do you have any views on the creation for fit for purpose licensing provisions for the capture and storage of carbon dioxide in naturally occurring sub-seabed geological structures?

The Capture stage is likely to be able to be covered by aspects of the Pollution Prevention and Control regime, especially where occurring at installations such as power stations. The transport and storage phases might also be covered by this regime as the PPC Act 1999 extends to the marine area (section 7(9)). However this depends on the definition of the matter to be stored and whether it falls within the category of waste. Under the current regulations regulatory competency depends on whether the facility is located within territorial waters or offshore, eg Environment agency or DTI. Where saline aquifers are used that transcend the sea/land divide, it is important that the different regulatory frameworks and regulating bodies for both on and offshore are compatible and mechanisms put in place to ensure effective working.

The existing regulatory frameworks that may apply to CCS were not drawn up with CCS in mind. Consequently there is uncertainty over exactly which regulations apply and their effectiveness at protecting the environment and human health. This lack of clarity over current and future regulatory standards presents a significant barrier to development and use of CCS. Much of this uncertainty will be reduced, as Government is reviewing, and if necessary reforming regulation of the sector.

The Marine Bill could provide the opportunity to legislate. However, the five demonstration projects have not been completed and although these may require new or reformed legislation to proceed, the lessons learned from these projects will help guide future requirements for legislation. It is unclear how this will fit within the Marine Bill timetable. If the Marine Bill introduced an integrated licensing regime, it would be possible that it could consider the future inclusion of regulations for CCS. These would need to ensure that they operate with a high degree of safety and with tough environmental standards, without causing an unnecessary barrier to development. This will help in gaining public acceptance and guarantee confidence in CCS technology.

Strict standards and a risk based framework will also be necessary for setting monitoring requirements, to ensure quick identification and remediation of any leaks. Monitoring systems for CO₂ under transportation and storage will need to be highly robust and reliable. There is currently a lack of experience dealing with the transportation of large volumes of CO₂ in the UK, which would make risk assessments for health and safety and planning purposes difficult to perform. The expertise and experience from existing practices such as the gas storage industry can and should be utilised, but the high pressures and volumes that will be used in transportation, the corrosive nature of supercritical CO₂, and gaps in understanding the behaviour of stored CO₂, makes the direct transfer of knowledge impossible. Therefore trials and further research must inform these standards before CCS is taken up on a large scale.

Where the CCS activities are those related to enhanced oil recovery, it is sensible for the oil and gas legislation to be viewed as a mechanism for legislating for these activities.

ANNEX 4: Improving Marine Nature Conservation

52. Which marine management regimes or processes should include the consideration of marine ecosystem objectives?

Marine ecosystem objectives should be at the heart of any marine management regime. They should be robust and measurable. All decisions made under whatever marine consenting regime is introduced should have regard to these objectives. More importantly, the objectives should be enshrined in the planning process through the marine spatial plan.

The WFD is one way in which marine ecosystem objectives will be achieved in estuaries and coastal waters to 1 nautical mile from territorial sea baselines. However, given our lack of knowledge of the marine environment and ecosystems, consideration must be given to the costs of establishing and monitoring/surveillance of marine ecosystem objectives and who would do this.

53. Should the consideration of objectives be required through policy guidance, changes to management regimes or a statutory duty?

Option 1 (policy guidance) would provide the simplest, most straightforward way to incorporate the concept of marine ecosystem objectives into the marine management regime. However, they would have little consequence. Furthermore, even this option might require some kind of legislative change if the objectives are to be a material consideration. Keeping the objectives in policy makes for a more flexible system because it is easier to change policy than law, however this could have both advantages and disadvantages.

The objectives need to be reference points – thresholds – which when crossed trigger a consequence. The consequence might be to require the activity/proposal to be amended. Or it might require consideration of whether there is a public interest that overrides the impact – in which case a further consequence might be the provision of compensation. If the objectives are to have any meaning, people must be required to take notice of them and act accordingly. They should be enforceable with sanctions where proper account of them is not taken. This could be achieved by:

- Embedding the objectives in policy and making it a statutory requirement to have regard to them; or,
- Making the marine ecosystem objectives statutory.

The options are not mutually exclusive. Option 2 – enshrining the concept in the consenting regime – would still be required even if option 3 were chosen. However, it would have the disadvantage of restricting the consequences to just those things that require consent from competent authorities. There would be no requirement for competent authorities to consider environmental capacity in relation to all marine activities. We therefore favour making marine ecosystem objectives statutory.

54. Do you agree that a new mechanism for the designation of protected areas should be introduced in the Marine Bill?

Yes – for a number of reasons. A new mechanism is needed to address the lack of nationally important marine sites throughout all UK marine areas. Whilst it is true that existing and proposed marine Natura 2000 sites could provide some benefit to nationally important marine habitats and species, the national interest would not have the full protection afforded to the Natura 2000 interest.

A new mechanism is also needed to designate protected areas that deliver a wider range of designations and levels of protection than is currently available.

55. Should the new mechanism complement or replace legislation on Marine Nature Reserves?

It is widely agreed that Marine Nature reserves (MNRs) have been ineffective. The preferred option would be to repeal MNR legislation. However, in doing so, we must be mindful of their specific purposes that are defined in law. So long as these purposes are included in the purpose of a new nationally important marine designation, and – as a matter of law – existing MNRs automatically become protected nationally important marine sites, then it makes sense to avoid duplicating designations.

However, if protection of existing MNRs is not possible, then they should be retained along side complementary new MPA framework. This would ensure that the few nationally important marine nature reserves we already have remain protected. The situation should be reviewed some time in the future, though this might require further legislation if change is then the desired route.

56. Which of the purposes listed should the new mechanism cover? Are there any others that should be considered?

The mechanism for the designation and management of marine protected areas should cover multifunctional purposes. It should provide protection and management for a range of different interests, including nature conservation (for the reasons set out in paragraph 10.53 a – c) as well as for other interests (examples of these are given in paragraph 10.54 d – h). Sites have the potential to benefit more than one function, including socio-economic functions.

The consultation paper identifies a number of aspects of the purpose of site selection, but misses several critical reasons. For example, selecting sites according to representative species and habitats will only go part way to selecting a truly representative network. Regard must also be had to the concepts of:

- (a) Comprehensiveness (areas that add to the coverage of the full range of ecosystems within and across a bio-region);
- (b) Adequacy (a network that meets the minimum level of coverage to achieve the conservation objectives);
- (c) Integrity (ensuring inherent potential is realised so that the network has the capacity for ‘self repair’ after a perturbation at the same time as requiring minimal external support in order to persist).

Whilst the purposes defined in paragraph 10.53 a – c are important, the intrinsic interest of a site may not actually be the habitats or species that it supports per se, but the value a site has within a network of sites. In other words, a site could have collective importance where the importance of the site stems from contributing to the maintenance the network or national series. This concept is enshrined in the Habitats Directive (the objective to maintain a coherent network) and the OSPAR agreement relating to MPAs.

57. What are your views on site protection measures being used to protect interests other than those for which a site is primarily designated?

The protection of interest other than that which the site is primarily designated is a valid approach. For example, we should always consider the wider marine environmental benefits of fisheries measures. High quality, near pristine habitats important for spawning and nursery sites for fish are very likely to be of significant value in terms of wider biodiversity as well. In such cases, it will be important to have clear objectives for the site as well as to ensure that the consequences of designation (primary interests vs. other interests) are clearly established. It will be essential to ensure that the management and use of the other interests does not inhibit the achievement of the objectives set for the primary interests. This will require the development of a mechanism that will allow the different interests to be balanced and ultimately the public interest in the primary interest (e.g. nature conservation) to be protected.

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

The selection of sites and the role of socio-economic considerations is a sensitive issue. However, it is sensitive mainly because people fundamentally misunderstand the purpose of the site designation process. It is appropriate for the selection of nationally important marine conservation sites to be based solely on their scientific merits. The adequacy of the scientific case should be open to challenge, but site selection should not be influenced by non-scientific matters such as socio-economic issues.

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

Straightforward procedures for making changes to the network will be essential. There are various aspects to this. The reasons why a site is designated must be amendable (either to add new interest or to remove interest which, for whatever reason, has been lost). Additions and deletions to sites by amending site boundaries must also be possible.

However, the reasons for changing site boundaries (especially leading to a reduction in the site) and the complete denotification of sites should only be permissible in accordance with strict criteria and a rigid procedure. It should not provide a loophole for unjustifiable and avoidable damage to proceed.

Sites should be reduced only where there is an interest that overrides the nature conservation interests of the site. Sites should not be denotified unless the interest for which it has been designated has been completely lost, and there is no possibility of restoring that – or any other – interest. Site deletions and denotification should be subject to public consultation. Subsequent to site deletion or denotification, the assessment of site network coherence would need to be adjusted.

60. Do you agree that different marine nature conservation sites will need to have different levels of objectives?

It is unclear whether this question is asking about objectives for site management or different levels of protection.

In relation to site management, different sites will need different levels of objectives or standards to reflect differing local needs. Management objectives should be

tailored to individual sites. Such adaptability often gives better, more balanced outcomes than rigid fixed standards, provided there is adequate guidance on the objectives/standards application boundaries.

In relation to different levels of protection, relative importance will come into play on an individual basis in determining authorisations for activities and this will be guided by national policy (c.f. PPS9) on international, national and local requirements.

61. What are your views on a flexible site mechanism where levels of protection can be altered to meet site needs and objectives?

We support an approach where the legal framework is as simple as possible, allowing for tailor-made protection of each site which can be changed over time without having to go back to Parliament for new purposes and powers.

62. What are your views on whether marine protected areas should directly control activities managed at the national level, or provide protection through wider marine management mechanisms? What would be required to make each approach effective?

Not only are the two approaches not mutually exclusive, but they are actually both fundamental to the achievement of nature conservation in the marine environment. In particular, direct management at a national level can provide a reactive response to specific threats (such as development proposals), providing broadly similar rules for broadly similar circumstances. Indirect management controls are needed to establish a proactive management regime and would help keep consistency with existing mechanism and ensure that impact on the sites is considered at the appropriate times and at the right level.

63. Are there any other mechanisms that we should consider introducing for site protection? Should we introduce a requirement for an appropriate assessment to be carried out where activities are likely to cause significant damage to a site?

There are at least two approaches that need to be included in the marine site safeguard framework:

1. Where possible, a list of activities should be drawn up where there is a high risk that should they proceed, damage to the site would result. The list should be established at the time the site is designated. Anyone who wishes to carry out a listed activity should seek prior consent before doing so. This approach is relevant for within site activities and proposals.

2. There should be a catchall requirement that all activities likely to damage a site should be appropriately assessed. The key word here is 'appropriate'. This approach should apply to any activities or proposals, no matter where they might take place.

In relation to the second point, an assessment of existing systems helps to identify some of the fundamental building blocks for evaluating and advising on plans and projects. If similar systems were to be developed for plans and projects affecting nationally important marine species, a number of issues would need to be addressed. For example:

- How do you assess the implications of the plan or project, especially in combination with other plans and projects?

- What would be the reasons for permitting derogations (e.g. in the public interest)?
- What tests would have to be met?
- How are 'alternative solutions' to be assessed?
- What would constitute 'imperative reasons of overriding public interest'?
- How would an assessment be made of whether something is detrimental to the maintenance of the population?
- How would population favourable conservation status be defined?
- How would any system for derogating from the protection of nationally important species be differentiated from the protection regime for internationally important species?
- Can the same system apply both the plans and projects affecting sites and those affecting species outside sites?

Finally, the marine site safeguard system will need to define a duty of care. This should be imposed at two levels:

A. There should be a duty of care imposed on competent authorities. For example, S.11 of the Countryside Act 1968 requires public bodies to exercise their functions having regard to the conservation of natural beauty and amenity of the countryside whilst S.28G of the Wildlife & Countryside Act 1981 requires public bodies to exercise their functions to further the conservation and enhancement of SSSIs.

B. There should be a duty of care imposed on individual users of the marine environment. This can operate at two levels:

- The aim should be to avoid intentional acts of damage (i.e. the person appreciated what they did might be harmful); and
- Reckless acts should also be penalised (i.e. the person may not have realised what they did might be harmful, but it is reasonable to expect that they should have). See S.28P(6) & 6A of the Wildlife & Countryside Act 1981 (as amended by the NERC Act 2006) for an example of how this might work.

64. Do you consider that the seaward boundary of SSSIs should be clarified?

Yes, the seaward boundaries of SSSIs would benefit from clarification. The law should be clear to ensure maximum protection and no loopholes. Clear boundaries will help with enforcement.

65. Which option would you prefer for the interface between the two regimes? What are the key considerations?

A key issue in deciding where it might be appropriate to extend the seaward boundary of SSSIs to, is deciding the limit of the consequences of designation. There is no point in extending SSSIs seaward if there is no consequence. Therefore, this issue is linked to the issue of the seaward limit of local planning authority jurisdiction (see answer to Q.8).

In addition, a key consideration is that designations make ecological sense. Whilst the size of sites must be restricted within reason, sites should include all the ecological components so that – as far as possible – they are coherent units. It is illogical to exclude the sub-tidal areas within estuaries from the inter-tidal areas. Ecologically, the two are inseparable.

An approach that would deliver the maximum level of protection would be option 7 in Fig. 2 (i.e. overlapping regimes with additional flexibility. Sites may overlap). The principle of overlapping sites has been established for European marine sites and seems to work.

66. What do you consider are the best options for the landward boundary for marine protected areas and the seaward boundary for SSSIs and why?

The best option for the landward boundary of marine protected areas, given the above comments on ecological coherence, and given the fact they may be designated for a wider range of objectives than current terrestrially based sites, would be highest astronomic tide.

The seaward extent of the current land-based designations should overlap with the marine sites. Many of these sites also have terrestrial habitats (e.g. sand dunes) which are integral to the site. It would be illogical to define marine sites on the basis of ecological coherence and then divorce terrestrial aspects from those sites. Overlap would also help to ensure integration between land and sea based systems. However, the terrestrial system of site safeguard only has limited applicability to marine areas. Therefore, its extension into the marine environment should be limited to achieving site coherence.

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

Many threats in offshore areas – such as fisheries, pollution, development – are already covered by existing statutory regimes. However, the regard these regimes must have to marine species protection is scant. The NERC Act 2006 has introduced a new duty on public bodies in exercising their functions, to have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity. This will help. However, apart from this – and the minimal marine species protection measures contained in Part I of the Wildlife & Countryside Act and obligations arising from the Habitats Directive, there are few species-specific protection and restoration measures. Many offshore threats arise under systems that are not covered by a statutory regime, such as shipping. There are often controlled by voluntary measures, such as those introduced by the IMO.

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

Option (a) - 'maintain current coverage in territorial waters', amounts to a do nothing option. Doing nothing should not be an option. Option (c), 'repeal existing species protection legislation', should also be rejected. Existing species protection measures – even limited to territorial waters – should not be repealed unless bespoke marine species protection measures are introduced. The measures set out in paragraph 10.81 would go some way to delivering species protection, but those measures are not specifically targeted to the nationally important marine species needing protection (i.e. those that are rare, vulnerable, of special importance, etc).

Option (b), 'extend species protection legislation', of the three options, gets closest to what is needed. However, it would not simply be a case of extending the geographic area of the application of Part I of the Wildlife & Countryside Act – though this would be a start.

The options identified in paragraph 10.89 and 10.90 miss a major issue – the statutory basis for species recovery. Unlike other countries (e.g. USA, Australia), the UK has no species recovery programme established in law. The nearest we have is the Biodiversity Action Plan process (which has recently been given a statutory boost by S.40 of the NERC Act 2006).

Previous proposals to establish a statutory framework for species recovery programmes have been rejected. To an extent, this is understandable, as the current BAP programme on land, based on the voluntary approach, is very active. However, the same cannot be said for BAP development and implementation for marine habitats and species. Therefore, a different approach to BAP in the marine environment – by placing it firmly on a statutory basis – is justified.

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

Any activity undertaken to excess or in an inappropriate place could have the potential to cause harm. It is not the activity as such that is harmful but the 'where and how much'. The fact that some activities are unlicensed makes it impossible to regulate them, so there will be a need for some controls. Examples could include pleasure boating, diving, etc.

It is now accepted that commercial marine fisheries and, to a lesser extent, recreational sea angling, do have environmental impacts on benthic ecology and biodiversity. Detailed reviews appear in *Turning the tide* (Royal Commission on Environmental Pollution) and in *Technical Methodology for Risk Assessment of Morphological Pressures in Transitional and Coastal Waters* (Environment Agency, WFD).

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

Byelaws are an important aspect of the marine management toolkit. However, the existing byelaws (reviewed by Government back in 1993) have many flaws and are not fit for the purpose of delivering marine nature conservation. At the very least, it should be possible for competent authorities to be able to use existing byelaw making powers for marine nature conservation and sustainability purposes.

It is likely that, even with the extension of the purpose of byelaw making powers, there will remain gaps where some types of activity will not be covered by byelaw making powers. Where this is the case, then the statutory nature conservation advisor should have a general power to make byelaws where no one else is able to (or willing to). However, it will be essential that the restrictions placed on a similar power are not replicated (see Regulation 36(3) of the Habitats Regulations that prevent such byelaws from interfering with the exercise of any functions of a relevant authority). This has prevented the statutory conservation organisations from acting even when the relevant authority concerned refuses to exercise its powers for nature conservation.

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

The concept of biodiversity stop orders should be given more consideration. Such orders existed for SSSIs in England and Wales until S.29 of the Wildlife & Countryside Act was repealed by the CRoW Act. However, this management tool was retained in the Nature Conservation (Scotland) Act and continues to exist for

Natura 2000 sites (see Special Nature Conservation Orders (SNCOs) under Regulation 22 of the Habitats Regulations).

Such stop orders would provide a means by which unforeseen problems can be quickly (and if appropriate, temporarily) dealt with until more formal management arrangements and agreements can be put in place. They should be a 'shoot first – ask questions later' tool. Orders should be made first (regulating the relevant activities) and then subject to challenge. Upon challenge, they may be revoked or replaced with appropriate byelaws or management agreements. Stop Orders should be subject to regular review (possibly annually) to ensure that such a measure is still appropriate.

The NCO in England and Wales was replaced by an offence of intentionally or recklessly causing damage or disturbance to designated interest. The problem with this approach is that the offence is against the individual and not general act of carrying out a prohibited activity. For example, if bait digging on an area of inter-tidal was prohibited, but 50 fishermen decided to ignore this, it would have to be demonstrated that each individual was causing intentional or reckless damage. If carrying out the activity was an offence, then there would be no question about an offence being committed. Byelaws are one way of getting round this problem. However, they do not provide a rapid reactive response to unforeseen problems.

The concept of a biodiversity stop order should not replace a duty of care on public bodies and other users.

Along side such measures, a partnership approach with stakeholders where conservation measures are achieved through agreement must also be developed. Critical to fostering an effective voluntary approach is the proper resourcing of local management forums. Support for existing coastal and estuary forums should be maintained and where appropriate, increased.

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

Powers to control unlicensed activities should be available to species protection in general. Therefore, they should be available beyond the MPA network. Powers should be capable of wider application in the interests of nature conservation in general.

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

Much can be achieved through better co-ordination of existing enforcement arrangements and agencies using processes that encourage wider intelligence gathering. Some further training and legislative changes may be necessary to fully optimise this co-operative stance, but the principles set out in Section 4 of the consultation paper are more likely to be effectively and efficiently delivered through this route than by the establishment of some entirely new independent enforcement mechanism.

Existing marine enforcement agencies should have a duty of care – they should be required to exercise their functions and powers to further the purpose of marine nature conservation. To this end, they should be given the powers to do this by

extending the purpose of existing enforcement powers to cover marine nature conservation purposes.

Enforcement agencies should be given the right tools for the job – tools that have teeth. A range of regulatory options should be available. Relevant authorities should be able to:

- Enter into voluntary agreements with users
- Negotiate management agreements with associated financial incentives
- Issue on the spot fines
- Confiscate equipment involved in breaches of species protection measures
- Require the restoration of damage caused
- Prosecute for offences that carry penalties that that may result in substantial fines for repeat offenders or imprisonment.

We are currently talking to both the new Marine Fisheries Agency and the Sea Fisheries Committees over future enforcement arrangements on the ground. Much greater co-ordination of effort on both marine fisheries enforcement and marine environmental monitoring is likely to be the result. This co-ordinated resource can have an important role to play in the marine environmental enforcement issues, particularly given the strong links between these three and other regulators such as Customs and Excise, coastguard services, the police, etc.

Effective marine environmental enforcement can also be aided substantially through the partnership approach fostered through local fora, such as estuary management planning processes. Good intelligence on marine fishing operations and many other activities is gathered by partner organisations, enforcement agencies, recreational users and many others and routed effectively to the right people in the right organisation via the estuary partnership.

Users can also contribute to effective enforcement. For example, anglers have always been quick to report on marine fishing and other activities. Given the new engagement in marine fisheries management that the sea angling community now has, as signalled in *Net Benefits* (and now seen in the Bass Measures consultations), there may well be a step change in the level of intelligence gleaned from this source, which could be very effectively harnessed. In the freshwater field, anglers carry the EA hotline number. Many, many first reports of pollution events, fish kills, poaching incidents etc come from such sources.

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

We agree that Government Departments should establish the law and policy and the Agency/MMO should advise in this respect. Delivery should be through relevant marine agencies, the MMO, etc.

The principles should include:

- An independent nature conservation advisor at arms length from political interference
- An organisation with expertise in marine nature conservation

- Decisions based on sound science, best available information and an assessment of risk
- Appropriate powers and resources to do the job including being able to act when others cannot
- The necessary duties to provide a safety net that ensures conservation is carried out
- An organisation well versed in effective engagement of stakeholders.

It makes sense to extend the remit of existing statutory nature conservation advisors to cover the whole of the marine environment since they already effectively deliver these principles. They should be required to fulfil the statutory purpose and the public interest in marine nature conservation. They should be required to establish and maintain the marine nature conservation framework (designate the network of nationally important marine nature conservation sites (subject to Council of Secretary of State confirmation), secure their management, identify nationally important marine habitats and species, oversee measures for their protection and recovery, etc).

However, this question should not be divorced from the need to impose on all public bodies a duty of care as well as the need to provide them with the necessary powers to meet the purpose of marine nature conservation (e.g. through marine consenting regimes and enforcement).

75. Do decisions on which organisations fulfil which roles affect any of your answers on other questions in this consultation document? If so, how?

Yes – depending on who does it will affect the nature of the principles and safeguards required to ensure the public interest in nature conservation is achieved.

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

See answer to Q.74

ANNEX 5: The potential for a new Marine Management Organisation

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

The decision to create a MMO will depend on the outcomes of the other Marine Bill workstreams. However, given the Government's commitment to establishing a new strategic marine spatial planning framework, we agree that this would need to be a core function of the MMO as there is no existing independent body that could undertake this remit.

Depending on the outcome of the licensing workstream, the MMO could play a licensing role. The MMO could take responsibility for delivering a new integrated licensing regime, absorbing the skills, expertise and resources of those bodies currently responsible for issuing sectoral marine licences in order to deliver option 4. If the MMO becomes responsible for licensing as well as planning, it becomes vital that safeguards are put in place to ensure that clear accountability and transparency is built into the decision-making process.

If the MMO becomes responsible for marine spatial planning, it would have an important role in ensuring that all licensing decisions were made in accordance with the plan.

Whichever outcome is selected, we would wish to be a statutory consultee with regard to any licensing decisions that could have impacts in relation to our areas of responsibility (e.g. as competent authority for WFD).

78. Are there other functions that you consider 'core' to an MMO? Why?

Depending on the outcome of the proposals for the EU Marine Strategy Directive (referred to in paragraph 11.64), the role of competent authority for this directive could potentially be a core function of the MMO. The need for a competent authority under such legislation needs more exploration.

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

Merger of the MFA into the MMO would not deliver any obvious efficiency. Any decision to do this should be part of the considerations for marine fisheries management as a whole and should take account of other potential functions of the MMO to ensure no conflict of interest.

80. Do you consider that CEFAS should remain outside an MMO, if established?

The commercial/consultancy parts of CEFAS should not be part of a MMO. Whether other parts of CEFAS, i.e. those delivering government monitoring programmes are absorbed into a MMO again depends on what other functions it could potentially undertake, and how monitoring is being addressed as a whole. This should not be looked at in isolation.

A significant amount of marine monitoring, relating to estuaries and coastal waters is also delivered by the Environment Agency to support delivery of our functions. It is important to our ability to deliver our responsibilities effectively that we continue to undertake monitoring related to this work.

81. Have we identified the right marine organisations for potential inclusion in an MMO?

Consideration of marine organisations to be included in the MMO as part of this consultation appears to be quite limited. For example, the Maritime and Coastguard Agency is excluded on the basis that it deals with safety issues. However, there is no reason why such safety issues could not be effectively dealt with within the MMO. Safety is a cross-cutting issue which is relevant to nature conservation, users, etc.

82. Are there any other marine organisations that we should be considering merging into an MMO?

See response to Q 81.

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

In relation to non-core functions and the MMO:

1. The development of a network of nationally important marine conservation sites should be a function of the independent nature conservation advisors although as they have a spatial element, they would clearly need to feature within marine spatial plans. As stated in paragraph 11.49, pure nature conservation functions would not fit well with the core functions of the MMO.

2. Co-ordinated licensing application system: see response to question 77.

3. Enforcement of nature conservation measures. This should not be a core function of the MMO in that enforcement should be undertaken by all relevant authorities, not exclusively by the MMO. However, enforcement would be an important non-core function that could be co-ordinated by the MMO.

4. Enforcement of marine licences. Given the move away from Government Departments being involved in delivery, whilst the actual consenting regimes may be retained by individual Departments, there is merit in considering whether the MMO should be given the role of enforcing consents.

5. Marine monitoring. Monitoring should not be seen as the role of a single organisation. All relevant marine authorities have an important role to play in collecting data and monitoring the marine environment. It is more cost effective if they do this as they go about their normal day to day business. However, the MMO could play an important role in co-ordinating marine data collection and management to help inform planning and licensing decisions.

6. Environmental byelaws. The extent to which environmental byelaws should be a non-core function of the MMO will partly depend on the extent to which other authorities will be able to use their existing byelaw making powers for environmental purposes. The more they can, the less the role for the MMO in this matter.

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

Yes – the role of statutory nature conservation advisors must be retained by the current nature conservation advisors to ensure no conflict of interest. Their role, remit, jurisdiction and powers should be expanded to effectively deliver the expanded marine role.

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

We have no others to suggest at this time.

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

The following conservation functions should be kept separate to those relating to planning and licensing of marine developments and other activities to ensure no conflict of interest in decisions taken by the MMO:

- establishing and maintaining a network of nationally important marine nature conservation sites,
- powers relating to the protection of marine species of national nature conservation importance, and
- provision of nature conservation advice.

We think it is very important that the MMO avoids internal conflicts of interest that might build from having incompatible roles. While it could be appropriate for the MMO to undertake both planning and licensing, there would have to be appropriate checks and accountabilities in place. The MSP would have to be statutory and binding, with licensing decisions being made in accordance with the plan (as local authorities currently do for terrestrial planning). Please see further comments in the Annexes on MSP and licensing.

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

Planning will need to be based on sound data collection. Therefore data collation (not collection) and planning are two very compatible roles.

88. Do you have views on the most appropriate status for an MMO?

The MMO should be largely independent of Government Department control. However, it should have significant powers and therefore must be accountable. Many of the functions of national (and arguably political) importance are likely to be retained by existing Government Departments (e.g. licensing of oil and gas exploration) so there should be no conflict between having a more independent body and achieving issues such as national security etc. The public body that appears to best fit what the MMO would deliver is the non-departmental public body (executive body). However, Executive Agency status would still provide some level of independence from direct Government day to day control should a greater degree of Government intervention be considered desirable.

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

Arguably, one of the reasons why the Environment Agency has been successful in delivering many of its functions is because it has genuine powers with teeth. Up until 2000, the same could not be said about the conservation agencies. Although this has now largely been rectified, there is still a culture that has not fully adapted to the new land management enforcement role the CRoW Act has provided EN & CCW.

The nature of the relationship of the MMO with other organisations must include:

- It must be seen as independent from political agendas and interference

- It must have teeth which it is clear it will use when appropriate
- It must be a modern regulator. Decisions must be consistent, based on an assessment of risk
- It must be firm but fair
- It must deliver real benefits with value for money.

The MMO would need a formal relationship with other bodies with a remit for managing the marine environment, including those with responsibilities in the coastal zone such as the Environment Agency and Local Authorities.

The same is true regarding co-ordination with the devolved administrations in terms of the different management arrangements they are likely to be putting in place.

90. Do you have any further information that would assist us in developing the RIA?

We are keen to be involved in further discussions and would be happy to provide more information where possible.

91. Are there any other comments you want to make regarding the potential creation of an MMO?

The Environment Agency would wish to be fully involved in discussions leading to decisions about whether a MMO will be created and what its functions would be, particularly in relation to identifying clear working relationships.

ANNEX 6: Initial Regulatory Impact Assessment – Marine spatial planning

92. Do you have any views on the risks associated with the current control system?

The current system lacks integration. There are no overall guiding objectives and vision. This creates uncertainty for both the developers and those wishing to protect the marine nature conservation aspects.

The greatest risk is the fact that without strategic planning, it is very difficult to plan for the future and current sustainable management of the marine resources.

93. Do you have any evidence that either supports or contradicts the risks of the current system as laid out above? We would welcome additional examples, quantified where possible.

No comment.

94. Do you have any examples of where conflicts have arisen between different marine activities, developments or resources? We would appreciate information about the costs incurred in any such situation.

No comment.

95. Do you have any examples or information regarding the costs to business of applying for licences that are later refused?

No comment.

96. Do you have any views on the risks or unintended consequences of any of the proposed options for a system of marine spatial planning?

The risks or unintended consequences are comprehensive.

However the risks of implementing Option 4 – the binding plan, should also include the additional resources required to manage some form of appeal system to deal with objections to the plan and subsequent decisions, as well as a process/body to test the ‘soundness’ of the plan.

In addition there is the consequence that option 3 would fall under the requirements of the SEA Directive, and therefore require adequate resourcing. This would certainly be the case for option 4.

97. Do you have any views on the potential benefits of any of the proposed options for a system of marine spatial planning? We would welcome quantified information where possible.

Option 4 would appear to offer the greatest environmental benefits as well as benefits to sustainable development.

Option 4 (and possibly 3) would require individual projects to have Environmental Impact Assessment (EIA), and in addition, the whole MSP would require Strategic Environmental Assessment (SEA) to be carried out.

98. Do you have any views on how these options might offer benefits to the system for licensing marine activities? We would welcome quantified information where possible.

Greater certainty and opportunities for integrated solutions. It would limit applications which would not receive permission as it would be clear beforehand that they would be denied as do not fit within the plan for that area of sea.

99. Do you have any views on the potential costs of collating existing available information about the marine environment or collecting additional information?

No costs are associated with option 1, however costs resulting from inaction and conflict are mentioned but in no way detailed. Inaction costs could come from infraction proceedings for not complying with EC Directives, such as achieving good ecological status for the WFD. A system of MSP will assist in achieving these and other EC objectives.

The costs of implementing option 2 take into account the cost of 'acquiring' the necessary data, but do not appear to take into account the costs involved in monitoring, reviewing or updating the data. Without updating, the data would quickly become worthless, undermine the process and reduce the 'soundness' of the plan. Some of the cost of data collection can be met through making better use of data collected for SA/SEAs and individual project EIAs – see answer to question 20.

The end result of options 3 and 4 have identical costs associated with them. However as option 4 will go further than option 3, requiring more information to ensure that preferred areas are optimally placed it is unclear how this can be so.

100. Do you have any information about the costs of existing planning systems which may be broadly useful or indicative in considering a new system?

No comment.

101. Do you have any views on the potential costs of any of the proposed options for a system of marine spatial planning? We would welcome quantified information, where possible.

The costs of implementing option 3 – the non-binding plan, and option 4 – the binding plan, appear to be similar. However, in effect the administrative costs of implementing a binding plan, and the costs associated with the enforcement and ensuring the plan is adhered to are likely to be greater. Not only would some form of 'Inspectorate' and 'Appeals' system be required, but also some form of 'Examination in Public' would be required if MSPs are to be truly transparent and open, and respect the rights of individuals and organisations.

There would also be a proportional increase in costs to stakeholders participating in the system, and developers. The non-binding system seems to result in expenditure for no guaranteed result or even improvement over the current situation.

If the costings for options 3 and 4 are accurate, it does create overwhelming evidence for the benefits of a binding marine spatial plan.

102. Do you have any views on the potential impacts of any of the proposed options for a system of marine spatial planning on SMEs? We would welcome information, quantified where possible.

No comment.

103. Do you have any views on issues relating to competition regarding any of the proposed options for a system of marine spatial planning?

It should reduce uncertainty, provide joined up solutions and reduce conflict.

104. Do you have any views on issues relating to enforcement, sanctions or monitoring regarding any of the proposed options for a system of marine spatial planning?

If a planning system is to be truly effective, ultimately somebody needs to enforce whenever rules or decision are flaunted. Otherwise the system relies on goodwill, and all those who show it may loose out to those who breach the rules. Enforcement should be targeted, proportional and transparent.

ANNEX 7: Initial Regulatory Impact Assessment – Proposals for reform of marine licensing

105 Do you have any general information about the costs of the current licensing system?

No comment.

106. In particular, do you have any specific evidence in relation to the applications process within the current licensing system, as follows:

- a. Have you had to obtain one or more licences or consents for a particular project, development or activity? If so, what costs did you incur as a result of the application process, and how long did it take?
- b. Does the length or speed of the application process have significant cost implications for you?
- c. Have you undertaken or been involved in an advertising process in relation to a project, development or activity, either as a business or other participant? If so could you provide examples of the length of this process, and the costs that you incurred?
- d. Have you been involved in preparing an Environmental Impact Assessment for a project, development or activity, either as a business or other participant? If so could you provide examples and explain the costs that you incurred?

No comment.

107. Do you have any specific examples of the compensation / mitigation aspects of the current licensing system? Can you provide evidence of how complex it was, and costs you incurred?

No comment.

108. Do you have any views on the risks associated with the current licensing system? Evidence which supports or contradicts the risks laid out above or additional examples, quantified where possible, would be very useful.

The Environment Agency as competent authority for implementation of the Water Framework Directive will have a key interest in any development within the 1nm zone that presents a risk to achieving or maintaining good status. We agree with the analysis of risks set out in Annex 5B, para. 2.9.

109. Do you have any specific information with regard to the risks associated with the current system, as follows:

- a. Have you ever felt that you have been treated inconsistently as a result of the separation of different marine licensing regimes and the regulators responsible for them? If so please could you outline the situation that caused this treatment.
- b. Are there any instances where you believe the current marine licensing system was unable to take relevant environmental, social or cultural factors into account during decision making? If so could you provide examples, and quantify the environmental, social or cultural costs or disbenefits that resulted.
- c. Have you, or anyone you are aware of, been discouraged from investing in an area as a result of the complexity of the current marine licensing system?
- d. Do you believe that an excessive regulatory or administrative burden has been placed on you, or someone you know, as a result of duplication in

marine licensing legislation or systems, or the need to obtain more than one licence for a particular project? If so, could you place an estimate on the excessive cost placed on your business on an annual basis?

- e. Has the current marine licensing system inhibited or threatened to inhibit your use of new technologies or types of marine activity? If so could you explain the cause and estimate the cost to your business.
- f. As an individual or business, do you believe that there is any lack of transparency or certainty within the current marine licensing system, which has adversely affected you in any way? If so could you provide examples of where this has occurred, and estimate the cost to your business.
- g. As a participant in the licensing system or other interested party, are there instances where you believe a lack of transparency or certainty within the current marine licensing system, has meant that you were adversely affected by a decision in relation to a particular development or activity? If so, could you provide examples of where this has occurred and estimate the economic, environmental or personal cost that was incurred.

No comment.

110. Do you have any views on the risks or unintended consequences of any of the proposed options for a reformed licensing regime?

No comment.

111. Do you have any views on the compliance with or enforcement of any of the proposed options for a reformed licensing regime?

Good regulation is evidence based allowing risks to be assessed proportionately. Therefore a licensing regime must generate information intended to demonstrate that the permit when complied with makes a satisfactory contribution to the intended outcome. The costs of such monitoring/investigation/reporting should be an integral part of the licensing system. This might be in the form of annual subsistence charges. We recognise however, that some activities are in essence a one off and therefore should rightly only be paid for once.

We are firmly convinced that those who are regulated should 'own' and be fully aware of their permitted environmental impact or use of the environment and the onus for demonstrating achievement of the intended permit outcome should be on the permit holder not the regulator. The regulator's job should be to assess the information provided and if necessary take enforcement action.

It does not appear that the activities of inspection, compliance assessment, outcome evaluation and enforcement have received detailed consideration in this consultation. All are essential. Whilst what is permitted is crucial to the regulatory process, what is actually delivered determines the sustainability of the decision. Verification of delivery of what is permitted is essential.

112. Are there any other sectors or groups which would be affected by a reformed licensing regime?

The Environment Agency has no or only limited statutory consultee status for the majority of the legislation under consideration. As competent authority for Water Framework Directive we will need to ensure that our overview of all marine regulatory activity in the 1nm zone, which is essential for production of estuarine and coastal River Basin Management Plans and Programmes of Measures, is clearly separated from our direct regulatory responsibilities in this area. We would expect to be included as a statutory consultee, for Water FD purposes, in any proposal likely to impact upon development of a RBMP or delivery of a PoM.

113. Do you have any views on the potential benefits of any of the proposed options for reform of the licensing regime? We would welcome information as to the potential benefits, quantified where possible.

We have covered these in our answers to Qs 40 to 46.

114. Do you have any views on the potential costs of any of the proposed options for reform of the licensing regime? We would welcome information as to the potential costs, quantified where possible.

No comment.

115. Do you have any views on the potential impacts on SMEs of any of these options for reform of the licensing regime? We would appreciate information about the possible impacts, quantified where possible.

If the licensing system is to be truly risk based it should be feasible to grant exemption or limited registration for specified low risk activities undertaken by SMEs. It is important to note that small size of business does not necessarily equate to small environmental impact.

116. Do you have any views on competition issues relating to any of the proposed options for reform of the licensing regime? We would appreciate information about the possible effects on competition, quantified where possible.

No comment.

117. Do you have any views on issues relating to enforcement or sanctions regarding any of the proposed options for reform of the licensing regime?

For any permitting system to work effectively, there must be certainty in the regulated community and in the public at large that non-compliance with what is permitted will be punished and the effects of the non-compliance mitigated by the offender. Issuing a permit and expecting it to be complied with is not sufficient. There has to be an inspection and enforcement regime tailored to the nature of the permit and the risks to sustainable development that it poses. It is reasonable to expect regulators to report on the nature and outcomes of their inspection, monitoring, reporting and enforcement regimes. It is disappointing that current activity in this area is not addressed in the consultation or RiA.

ANNEX 8: Initial Regulatory Impact Assessment – Improving marine nature conservation

118. What costs would business or others incur if further deterioration in marine ecosystems or significant losses in biodiversity were to occur? Please provide quantified examples where possible.

No comment.

119. What are the benefits for businesses and others associated with improvements in the state of marine biodiversity? Please give quantified examples where possible.

No comment.

120. Would businesses benefit from clearer guidance on what needs to be taken into account in environmental impact assessments?

Yes – especially if the role of environmental impact assessment in marine development licensing and sea use is to increase.

128. How would you value the benefits to business and others in improvements in the state of marine biodiversity in marine protected areas?

A common way of assessing the value of conservation measures is to assess the contribution marine protected areas make to fish stocks. It is important that that some of the costs to users (e.g. £18m pa to the fishing industry in the Irish Sea – see paragraph 11.28c) are properly balanced with the benefits (e.g. increased viability of fish stocks etc). In this respect, the estimated increase in fisheries productivity (see paragraph 11.32) seems low given it is suggested up to 30% of the sea area would be closed to fishing. Evidence from elsewhere suggests that the value of MPAs is considerably higher. For example, from a study of more than 100 marine reserves, the populations densities of marine organisms were on average 91% higher, biomass was 192% higher, average organisms size was 31% higher and species diversity 23% higher within reserves (relative to the same sites prior to site designation or equivalent sites outside the reserves (Warner RR (2001) Using past maritime reserve performance as a guide for effective design. Paper presented at AAAS meeting: The scientific theory of marine reserves, San Francisco, 17 February 2001).

The Royal Commission report cited took no recognition of the critical part that the close inshore areas, including estuaries, saltmarshes and mudflats play in fish spawning and nursery provision for a range of commercial fish species. Further, the Defra seminar on Marine Fisheries Research (2005) concluded that the biggest gap lay in basic understanding of the early life history of many commercial species, many of which are closely associated with the near inshore areas. Novel work undertaken by the EA over the past decade, now developed for WFD shows clearly that estuaries and saltmarshes in particular, are critical areas for spawning and nursery provision. Saltmarshes appear to be the preferred nursery habitats for a range of commercial species, such as bass. To compliment the Royal Commission study and findings, for the inshore areas, the Agency has produced a discussion document *Candidate Marine Protected Areas - Estuaries and Coastal Saltmarsh* as part of the Marine Environment WG process. Sensitive management of all estuaries and saltmarshes could have very beneficial effects in both biodiversity and socio-economics terms. The *Comcoast* project is demonstrating multifunctional benefits arising from managed realignment in response to sea level rise, which include substantial fish nursery utilisation. WFD will see more habitat creation as part of the Programmes of Measures that will be required . All of these issues need to be seen, in a holistic manner, together with the approach described in *Turning the Tide*. "

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

It is an important principle that in most cases, it is far cheaper to avoid impacts in the first place, or to mitigate where impacts are unavoidable, rather than to implement compensation measures. Indeed, our ability to provide appropriate compensation measures in the marine environment is questionable.

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

No comment.

132. How would you value the benefits to business and others of an improvement in the state of marine biodiversity in offshore sea areas (beyond 12nm from the coast)?

No comment.

133. What are the costs of agreeing and implementing voluntary or sectoral measures for the protection of important marine species? Please give quantified examples where possible.

No comment.

134. To what extent would businesses be prepared to implement voluntary measures such as codes of conduct for the protection of important marine species? What level of take-up would you anticipate across marine industries?

No comment.

135. What would the costs and benefits be to businesses and others of modifying currently unlicensed activities to prevent significant impacts on biodiversity? Please give quantified examples where possible.

No comment.

136. What are the costs of agreeing and implementing voluntary controls on unlicensed activities such as whale-watching codes?

No comment.

137. What level of take-up would you expect to see of voluntary measures designed to prevent unlicensed activities from having significant impacts on marine biodiversity, such as voluntary restrictions on recreational activities in sensitive areas / seasons?

No comment.

138. Would small businesses expect any of the nature conservation proposals in this consultation paper to impact specifically or disproportionately on your business? Please include an assessment of the financial and other impacts on your business sector.

No comment.

139. Would any of the nature conservation proposals in this consultation paper be likely to affect the competitiveness of your business or sector? Please complete the competition filter test and include an assessment of the financial and other impacts on your business sector.

No comment.

140. What costs would be entailed in the effective enforcement of the proposals in this consultation document? Please include an analysis of any cost estimates provided.

No comment.

141. To what extent do you think there is scope for more efficient use of existing enforcement resources? Please give examples.

No comment.

ANNEX 9: Proposed principles for marine spatial planning

- Sustainable planning – marine planning should have a statutory purpose to promote sustainable development;
- Provide integrated ('joined-up') thinking:
 - bring together various sectors and issues in the one plan, integrating them so that conflicts are avoided or at least minimised, and synergies optimised.
 - help integrate policies and decisions both horizontally and vertically;
 - provide the framework or context for decisions made by existing sectoral regulatory authorities.
- Long term and forward looking – vision and direction are currently lacking in marine planning and management which tends to deal with current developments and trends or, at best, the very near future;
- Plan-led – it should be the plan that establishes whether a development is acceptable or not in principle;
- Provide spatial context – plans should cover large geographical areas, include all of the sea to extreme high water mark, and zone areas for use and development plus those to be avoided (in practice, the sea surface may often be capable of multiple use, so zoning does not necessarily equate with single use zones);
- Map both constraints and opportunities for development – a marine spatial plan should help developers to target areas where uses and development are acceptable and desirable, and conversely avoid areas where they could result in problems, such as adverse environmental impacts, or conflicts with other incompatible developments or uses. This would help reduce the risks users and developers are exposed to;
- Be subject to clear national policy statements (for development in coastal and marine waters) that set out principles for subsequent marine plans;
- Promote resource efficiency – planning and management should promote resource efficient development, i.e. 'making more with less';
- Promote full stakeholder participation and conflict resolution – marine planning and management should be participative and strive for consensus right from the point of plan development through to making decisions within the context of the plan. 'Balance' and 'compromise' should be avoided – win-win solutions that genuinely contribute towards sustainable development should be sought;
- Be based on proper assessment of the environmental capacity of the marine environment to accommodate development. This may require enhanced environmental information;
- Be subject to Strategic Environmental Assessment (SEA); and
- Restore as well as protect and conserve the marine environment, wherever possible. A vital feature of this must be the establishment of a coherent network of marine protected areas (including strictly protected and no-take areas) throughout the marine environment.

Environment Agency Roles and Responsibilities in the Coastal and Marine Environment.

Regulator:

- Competent Authority (designate) for the EC Water Framework Directive (including transitional and coastal waters);
- Effluent discharge permitting and compliance monitoring, under the Water Resources Act 1991, Environmental Protection Act 1990, and Pollution Prevention and Control Act 1999 (out to 3 nautical miles);
- Prosecution for pollution incidents in controlled waters under the Water Resources Act 1991 (out to 3 nautical miles);
- Regulation of fishing for salmon, migratory trout and eels to 6 nautical miles under the Environment Act 1995;
- Sea Fisheries Power (out to 6 nautical miles) in a number of transitional waters (estuaries);
- Competent and Relevant Authority under the Conservation (Natural Habitats, &c) Regulations 1994;
- Competent Authority for the Bathing and Shellfish Waters Directives; and
- Competent Authority for the Dangerous Substances Directive.
- Flood Risk Management;
- Regulation of coastal and some offshore installations for radioactivity (Radioactive Substances Act, 1993) and monitoring of sediments, seaweeds and air for radioactivity in the environment.

Monitoring and management:

- Coastal and tidal flood defence management and shoreline monitoring.
- Navigation – e.g. Rye Harbour (where we have a port authority role); Dee Conservancy.
- Monitoring, assessment and reporting for EC Directives and other international obligations (e.g. the National Marine Monitoring Programme), including research and Development of marine monitoring and assessment techniques; and
- Under the UK Biodiversity Action Plan, lead partner role for coastal saltmarsh and mudflats, (and contacts for many other BAP habitats and species); and
- Emergency Planning, e.g. Bristol Channel Counter Pollution Association Group

Advisor:

- Planning and development consultations; and
- Ports sector – advisory role on management
- Joint Agency and Government Working Groups (e.g. National Marine Monitoring Programme (NMMP), Review of Marine Nature Conservation)

Promotional:

- recreational activities associated with coastal waters