

NATURAL ENGLAND BOARD

Meeting 5
6 June 2007

Paper No: **NEB P07 22**

Title: **Marine Consultation Response**

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1. Purpose

1.1 The purpose of this paper is to outline the key elements of Natural England's response to the Government's Marine White Paper.

2. Recommendation

2.1 That the Board endorses the response as summarised in this paper.

3. Background

3.1 The Government published its Marine White Paper on 15 March. Consultation runs until 8 June 2007. The White Paper covers five key policy areas, over which the Government intends to legislate: Marine Spatial Planning, Marine Licensing, Fisheries, Nature Conservation, and proposals for the establishment of a Marine Management Organisation (MMO). A brief outline of the main proposals in the White Paper is given in the background note, Annex 1.

3.2 Attached at Annex 2 is the summary of the key issues raised by the White Paper, and of Natural England's proposed response to each of them. We will submit to Defra, a complete summary response (in a rather lengthier format than the paper before the Board) together with a more detailed technical response. A first draft of the summary response has been reviewed by Board Outcome Group 1, and we will capture the Outcome Group's comments, together with those of the full Board in our final response.

3.3 Board members will recall that we submitted a response to the original Marine consultation in 2006 following some discussion with the Skeleton Board. Subsequently, we have developed our thinking on the issues covered in the White Paper, through the phases of the Policy process, culminating in the discussion at the April meeting of the Policy Steering Group.

4. Issues

4.1 Issues raised by the White Paper are summarised in the paper attached at Annex 2. The proposals for Marine Spatial Planning and Marine Licensing (while raising a large number of detailed issues for consideration), appear sensible in so far as the proposed planning regime aligns with terrestrial planning. We have greater concerns over the proposals for Marine Conservation and Fisheries (in particular those itemised below). It is our view that

the proposals for a Marine Management Organisation require further work to clarify the its remit and governance.

- 4.2 Consultation on proposed Marine Conservation Zones. The White Paper proposes that Natural England is responsible for the identification of possible Marine Conservation Zones in inshore English waters. It also proposes that consultation on our proposals should include an assessment of social and economic impacts. The White Paper does not propose which organisation should be responsible for carrying out the consultation, nor does it specify the form of consultation.
- 4.3 Identification of the Designating (confirming) body for Marine Conservation Zones. The White Paper states that before a site designation is confirmed, Ministers will need to be satisfied that socio-economic interests have been given appropriate consideration, and that they may take the advice of a range of bodies including Natural England and the MMO in doing so. No statement about the identity of a confirming body is made, but we understand that it is Defra's intention that Secretary of State should be the confirming authority.
- 4.4 Enforcement. The White Paper proposes the creation of an offence of causing damage to or destroying any species or habitat or other feature for which a site has been designated. It also proposes that the MMO should be given the power to establish bye-laws for otherwise unregulated activities. It is proposed that the MMO is given responsibility for the enforcement of nature conservation legislation and the prosecution of offences in UK offshore waters, territorial waters adjacent to England and internal waters in England. In contrast to the situation on land, the White Paper does not propose to give Natural England the ability to take enforcement action against offences related to damage of NCZs.
- 4.5 Role of Natural England in establishing the evidence base for NCZ management. To ensure that the right management measures are in place, sites will need to be monitored to assess whether they are delivering their objectives, and whether the current management is delivering the required effects. The White Paper is currently silent on this subject.

ANNEX 1

Marine Bill White Paper – Background and key proposals

Background

1. A new Marine Bill was one of Government's legislative commitments made alongside the Queen's Speech in April 2005. It is Government's intention for the Marine Bill to go to Parliament in the 3rd session, probably around February/March 2008.
2. The Marine Bill will have a UK scope and cover five broad policy areas (marine spatial planning, marine licensing, fisheries, nature conservation and a Marine Management Organisation). Government consulted on the policy options for each of these areas, except for fisheries, between March and June 2006. The responses to the consultation were broadly favourable to Government's proposals.
3. Government decided in November 2006 to consult on its chosen policy options for the Bill through a White Paper accompanied by a partial Regulatory Impact Assessment. These were published on 15 March 2007 and the consultation runs until 8 June 2007.

The Marine Bill White Paper proposals

4. Marine Spatial Planning

- 4.1 The White Paper proposes the introduction of a new system of marine spatial planning developed taking a two-stage approach:
 - The creation of a UK-wide marine policy statement agreed by all UK Government Departments and the devolved administrations which articulates a joint vision and objectives for the marine environment and its uses; and
 - The creation of a series of marine plans, which will implement the policy statement in specific areas, using information about spatial uses and needs in those areas.
- 4.2 All decisions made in the marine area should be in accordance with the UK marine policy statement and any relevant marine plan. It is proposed that the planning function be delegated to a Marine Management Organisation in waters for which the UK Government or Northern Ireland are the responsible administrations.

5. Marine licensing

- 5.1 The White Paper proposes to:
 - Create a reformed marine licensing regime based on consolidation of Part 2 of the Food and Environment Protection Act (FEPA), Part 2 of the Coast Protection Act (CPA) and the Communities and Local Government Marine Minerals Extraction Regulations;
 - Include all forms of dredging including currently unregulated types of dredging;
 - Streamline the licensing of offshore renewables;
 - Enable licences to be issued for extended programmes of linked activities to save developers from having to make multiple applications.

6. Marine nature conservation

- 6.1 The key White Paper proposals are:
 - The introduction of a new mechanism for the designation and management of Marine Conservation Zones (MCZs), including transferring existing Marine Nature Reserves (of which there are three in the UK) to the new MCZ designation;
 - A new byelaw-making power for the control of otherwise unregulated activities (e.g. recreational activities);
 - Improved and modernised enforcement arrangements;

- Development of a (non-statutory) suite of marine objectives that will set out what should be achieved for marine ecosystems and the human activities within them and which will form an integral component of marine plans.

7. Modernising marine fisheries management

7.1 The key proposals in the White Paper are:

- Modernisation of inshore fisheries and environmental management by establishing a clear purpose for Sea Fisheries Committees and updating their byelaw-making and enforcement powers as well as enhancing their funding arrangements;
- Changing the structure and make-up of Sea Fisheries Committees, so that a greater variety of stakeholders is involved in inshore management, and so that the Environment Agency, the MMO, and Natural England are provided with voting seats on each Committee;
- Making improvements to the operation of Several and Regulating Orders for the establishment and management of local shellfisheries;
- Introducing new powers for the management of recreational and unregulated fishing activities;
- Updating and strengthening enforcement powers and introducing a new system of administrative penalties for minor offences.

8. A Marine Management Organisation

8.1 The White Paper proposes:

- The establishment of a new and independent Marine Management Organisation (MMO) of 300-350 staff that will act as a champion for the integrated management of our seas;
- That the MMO includes functions relating to strategic planning, streamlined marine licensing, fisheries management, nature conservation monitoring and enforcement, monitoring and enforcement more generally and data management.

ANNEX 2

Marine Bill White Paper

Summary of issues and proposed Natural England responses

1. Marine Spatial Planning

The White Paper proposes the introduction of a new system of spatial planning involving: (1) the creation of a UK wide marine policy statement agreed by all UK government departments and the devolved administrations which articulates a joint vision and objectives for the marine environment and its uses; and (2) the creation of a series of marine plans, which will implement the policy statement in specific areas. All decisions made in the marine area should be in accordance with the policy statement and any relevant marine plan. It is proposed that the planning function be delegated to a Marine Management Organisation (MMO).

It is recommended that, in line with the principle outlined in our 2006 Consultation Response, we support the broad thrust of the proposals, including the proposals for a UK wide marine policy statement as a fundamental requirement to set the context for marine plans. We will wish to comment on what should inform the statement. We should support the proposal that all decisions made in the marine area should be made in accordance with the UK marine policy statement and any relevant marine plans.

But we will seek to clarify how the marine plans might be tiered. The White Paper appears to propose that only one plan can apply to an area, but this could result in inconsistency at the price of appropriateness to local circumstances. We will also support measures to ensure clear and consistent planning across the land and sea interface and between adjacent marine planning boundaries.

Additionally, we will outline the need for clearer provisions for examination and call in and clarification on Natural England's role in both. We will also want to clarify what is proposed under the planning policy statement, especially that it should cover all of Natural England's interests and enable environmental issues to be fully taken into account.

2. Marine Licensing

The White Paper proposes to create a reformed marine licensing regime based on consolidation of part 2 of the Food and Environment Protection Act (FEPA) and part 2 of the Coast Protection Act (CPA); include all forms of dredging including currently unregulated types of dredging; streamline the licensing of offshore renewables; and enable licenses to be issued for extended programmes of linked activities to save developers from having to make multiple applications. Natural England is a statutory consultee for all marine licensing. Our main concern is that processes should be integrated and streamlined.

Our response to the licensing proposals should welcome the proposed reforms to FEPA and CPA; support the aim of "one project: one licence"; and provide comments on the practicability of the detailed proposals based on our experience of the operation of existing licensing regimes.

3. Nature Conservation (1) - Consultation on proposed Marine Conservation Zones

The White Paper proposes that Natural England is responsible for the identification of possible Marine Conservation Zones in inshore English waters. The White Paper also proposes that consultation on our proposals for Marine Conservation Zones should include an assessment of social and economic impacts. The White Paper does not propose which organisation should be responsible for carrying out the consultation.

The selection of sites for biodiversity conservation is one of Natural England's core existing responsibilities to meet both national and international obligations. In the case of marine SACs or SPAs, Natural England is responsible for the identification of, and consultation on sites when directed to do so by Defra. Natural England makes recommendations, based on science alone as required by the legislation, on marine SACs or SPAs that need to be added to the series to the relevant Minister. It is the Minister who is responsible for proposing sites to the Commission and directing Natural England to put them in place. Socio-economics cannot be taken into consideration as part of this process.

Natural England should propose that it is the appropriate body to carry out public and stakeholder consultation on proposed Marine Conservation Zones. In line with Natural England's emerging policy statement on Marine Protected Areas our response should indicate that we would wish to engage communities and stakeholders in this process. This would enable us to adopt an approach to consultation similar to the acknowledged best practice in Australia.

4. Nature Conservation (2) The role of Natural England in the management of Marine Conservation Zones

The Marine Bill should establish that Natural England is responsible for biodiversity management in connection with Marine Conservation Zones and should have adequate duties and powers for achieving this aim.

On SSSIs Natural England is responsible for biodiversity management through setting of conservation objectives, identification of operations likely to damage and identification of management regimes required to restore or maintain sites in favourable condition. The White Paper proposes an analogous process for MCZs in that the statutory nature conservation agencies will be responsible for drafting objectives for each site, these objectives will establish the biodiversity interest, the conservation aim and the management regime required to achieve it. It is proposed that the objectives are drafted in order to inform the site consultation process.

For MCZs, the proposal is that other public bodies will be responsible for consenting activities within Marine Conservation Zones that are consistent with their remit. The Marine Bill will establish responsibilities on public bodies to discharge their functions in a manner which does not compromise the objectives of a MCZ. Thus although Natural England will not be the consenting body, any authority which does issue a consent for an activity within or associated with a Marine Conservation Zone must do so after taking Natural England's advice.

Natural England should accept the role proposed in the White Paper to become the biodiversity management body for Marine Conservation Zones through the setting of conservation objectives, the identification of likely impacts and issuing advice on management and seeks that Natural England advice on management of the site must be taken into account by other marine regulators in carrying out their functions. We do not believe that Natural England should seek further responsibilities for all licensing and consenting activities within MCZs, as this is likely to be impractical.

5. Nature Conservation (3) Identification of the Designating (confirming) body for Marine Conservation Zones

The White Paper states that before a site's designation is confirmed Ministers will need to be satisfied that socio-economic interests have been given appropriate consideration, and that they may take the advice of a range of bodies including Natural England and the MMO in doing so. No statement about the identity of a confirming body is made, but it is Defra's intention that the Secretary of State should be the confirming authority. Discussion with Defra has suggested that MCZs will be put in place by the laying of a Statutory Instrument by the Secretary of State, which will need Cabinet Committee clearance. This will provide the opportunity for other Government Departments to express their views and concerns and potentially hinder the confirmation of sites.

Natural England should be the confirming/designating authority for MCZs. Adopting this approach is consistent with Natural England's role as confirming authority for SSSIs and will reduce the likelihood that socio-economic considerations may mean few or no MCZs are designated (as has happened for MNRs) or the worst options are always selected.

This could raise issues about how far Natural England's purpose allows the taking account of socio-economics. Natural England could be open to challenge about its decisions and would need to be able to fully and publicly defend the way in which it has taken socio-economics into account. If Natural England is to be the confirming body responsibility for preparation of an Regulatory Impact Assessment will fall to Natural England. Natural England will either have to develop the capacity to carry out this role or seek advice from the others, for example, the MMO.

6. Nature Conservation (4) Ensuring effective compliance with clear responsibilities for carrying out enforcement

The White Paper states that *a person shall be guilty of an offence if they damage or destroy any species or habitat or other feature for which a site has been designated. The statutory nature conservation agencies would provide guidance on activities likely to cause damage to the features within individual sites.* It also proposes that the MMO should be given the power to establish byelaws for otherwise unregulated activities. This would replace the byelaw-making power that Natural England currently has under the Wildlife and Countryside Act.

It is proposed that the MMO is given responsibility for the enforcement of nature conservation legislation and the prosecution of offences in UK offshore waters, territorial waters adjacent to England and internal waters in England. This proposal is intended to address the current unsatisfactory enforcement of nature conservation legislation at sea which generally falls between a range of bodies including Natural England and the police, partly because these organisations do not have a presence at sea. A particular problem for Natural England is that there is no general offence of "damaging a European marine site", so it falls entirely to other marine regulators to put measures in place and then to ensure compliance with them.

The White Paper does not propose to give Natural England the ability to take enforcement action (including to bring prosecutions) against offences relating to damage of MCZs. This contrasts with the situation on land where, for SSSIs, prosecutions may be brought only by Natural England. In practice, Natural England works closely with the police who would hand over any evidence to Natural England to bring a prosecution. In the case of an operator which is in breach of a byelaw or consent put in place by another regulator, that regulator is responsible for taking any enforcement action.

Natural England should seek powers to enable it to bring prosecutions for offences relating to the damage or destruction of MCZ features. This would leave the MMO (and others eg. SFCs) responsible for the "on-the-ground" enforcement role but with a requirement to provide evidence to Natural England as a result of their enforcement action where it could lead to a prosecution under the "damage or destruction" offence. This would provide Natural England with a similar role to that for SSSIs and would make the best use of existing resources whilst preventing duplication.

7. Nature Conservation (5) Role of Natural England in establishing the evidence base for MCZ management

To ensure that the right management measures are in place, sites will need to be monitored to assess whether they are delivering their objectives and whether the current management is delivering the required effects. For European marine sites, monitoring entails a combination of ecological monitoring and recording the levels and types of activities occurring on sites. This is because without an idea of what is occurring in sites, it is often impossible to explain the causes for a particular change identified by the ecological monitoring. This monitoring role could, particularly

for activity monitoring, be enhanced by the presence of a warden on some sites and the MMO could contribute information gathered as part of its compliance monitoring role. Wardens could also play an educational/recreational role to fulfill, in relation to MCZs, Natural England's objectives for promoting public access, understanding and enjoyment.

Natural England should seek a duty to monitor sites. Monitoring would include both ecological condition monitoring and assessment of the level of activity occurring within the site (with input from the MMO). A duty should be placed on public bodies to act on the outcomes of monitoring and feed that back into how they manage activities on the site. Natural England should also ensure that there is nothing in the proposals that would prevent the appointment of a warden to a particular site. Carrying out ecological monitoring activities in the marine environment is costly. Having this role as a duty within the Bill carries resource consequences but also increases the likelihood that Natural England will be appropriately resourced to carry out this role.

8. Fisheries (1) Natural England role in relation to sea Fisheries Committees

The powers and structures of SFCs need modernising to enable SFCs to take a more pro-active approach to their responsibilities for marine ecosystem management. There is concern from Government that representation on SFCs hinders objective and balanced decision-making and that SFCs do not necessarily include the required skills. The White Paper has therefore proposed changes to SFC powers, clarification of their purpose and changes to committee membership. As part of the changes to committee membership, it is proposed that Natural England has a voting seat on each SFC. However, the proposals may not go far enough in ensuring the correct range of skills on SFCs and, more importantly, ensuring that they fulfill their nature conservation responsibilities. Membership of Sea Fisheries Committees risks compromising Natural England by implicating us in decisions of the Committees that run counter to our statutory purpose and responsibilities for the natural environment.

Natural England should propose an alternative approach whereby Natural England should be a statutory consultee for all relevant SFC decisions, and SFCs should have to take account of Natural England's advice or state publicly why they have not taken account of it. In addition, SFCs should be subject to an annual audit of performance possibly by the MMO, which should be required to consult Natural England on issues relating to SFC nature conservation duties and responsibilities.

9. Fisheries (2) The seaward extent of Sea Fishery Committee jurisdiction

The seaward limit of Sea Fisheries Committee (SFC) jurisdiction is 6 miles offshore with the enforcement of fisheries regulations between 6 miles and British Fishery Limits being the responsibility of the Marine and Fisheries Agency (MFA) (which it is proposed will be incorporated into the Marine Management Organisation). Enforcement of fisheries regulations is carried out by the Navy operating under a Defra/MoD agreement with between 4-6 vessels covering the whole of the UK and through aerial surveillance carried out under contract. In practice, enforcement is poor in territorial waters between 6 and 12 miles offshore. With the designation of new European Marine Sites and Marine Conservation Zones in territorial waters between 6 and 12 miles offshore, there is likely to be an increased need for enforcement activity to ensure that fisheries measures are being adhered to in relation to these sites, putting an additional strain on already limited capacity.

Natural England should propose that the seaward limit of SFC jurisdiction is extended to 12 miles offshore to enable SFCs to carry out enforcement activities in this area. Sea Fisheries Committees have significantly greater capacity than MFA with 10 large vessels covering English inshore waters to 6 miles, plus c15 smaller vessels. The main argument against extending SFC jurisdiction in this way appears to be that SFCs would then be involved in enforcing regulations applying to non-UK European fishing vessels. The White Paper

proposes that SFC officers be given powers to bring them into line with the powers of British Sea Fishery Officers. There would appear to be no reason why, with appropriate training for SFC officers with these powers, SFCs could not carry out this role effectively.

**10. Marine Management Organisation (MMO) (1)
Natural England's views on a new MMO taking responsibility for marine planning**

The White Paper proposes that a new MMO should be responsible for preparing and delivering a series of marine plans to implement the shared UK marine policy statement. Natural England has so far not expressed a view on whether this is an appropriate role for an MMO nor about how this role might relate to Natural England's responsibilities. Natural England's key concerns are that marine planning and its delivery ensure a consistent jurisdiction for planning and licensing across the land and sea interface and between adjacent marine planning boundaries and that planning decisions are taken in a way that seeks to integrate the three strands of sustainable development in the context of the democratic process. In particular Marine Spatial Planning will need to integrate with, for example, Regional Spatial Strategies, the land-use planning system and River Basin Management plans without creating an extra layer of bureaucracy in the coastal zone.

Natural England should support the proposal in the White Paper that marine planning is delivered by an MMO (whether or not the powers proposed were given to a newly constituted MMO or to an existing organisation with new powers) but with robust processes in place to ensure that the marine planning system joins up with other plans and processes at the coast. A national body with a strong sustainable development remit would be best-placed to ensure that environmental and socio-economic decisions are well integrated, would provide a good fit with most marine licensing and would be able to ensure consistency of approach through the establishment of a centre of expertise and supporting resources. It is likely to fit well with Government's Better Regulation agenda in providing a single point of contact for national stakeholders and regional bodies.

**11. Marine Management Organisation (MMO) (2)
Natural England's views on a new MMO taking responsibility for marine planning**

The White Paper proposes that the MMO is responsible for delivering the reformed licensing regime to regulate environmental, navigational and other impacts of constructions, deposits / removals, dredging, licensing of oil dispersants and carbon dioxide storage, the licensing of renewable energy installations in offshore waters and the regulation of orders under the Harbours Act. Some activities (eg. some forms of dredging) will fall under a licensing regime for the first time, whilst these and other regimes will be brought together under the same process, with the aim of delivering *one project: one licence*.

A number of licensing regimes will not be brought into the reformed licensing system administered by the MMO. These include the regime for regulating oil and gas developments and the licensing of renewable energy installations in inshore waters, for which proposals will be included in the Planning White Paper.

Natural England has not so far commented on the role that an MMO might play in delivering a reformed marine licensing system apart from setting out the principles that *there should be clear and consistent jurisdiction for planning and licensing across the democratic process*.

Natural England should agree with the proposal that the MMO is responsible for administering the reformed licensing regime and that Natural England should be a statutory consultee in this process. This is in line with the principles for marine licensing set out by Natural England in its response to the 2006 Marine Bill consultation.