



## **Consultation on the Draft Marine Bill**

### **A response by the English National Park Authorities Association June 2008**

#### **Summary**

1. The English National Park Authorities Association (ENPAA) exists to provide a collective voice for the nine English National Park Authorities. It is governed by the Chairs of the nine Authorities, and this response therefore represents the overall view of the Authorities where there is a common position. However, not all National Parks have a coastline, and those that do differ in the amount of access already available and also in the coastal land types and uses. Individual National Park Authorities may therefore be submitting their own comments which will relate to their own specific circumstances. Our response is in two parts and relates to the provisions for coastal access (Part 9), and the rest of the Bill.

#### **Parts One – Eight of the Draft Marine Bill**

2. ENPAA broadly welcomes what promises to be a landmark piece of legislation. We support the vision, purpose and strategic objectives of the Bill; and the creation of the Marine Management Organisation (MMO). We do, believe, however, that the Bill could be improved in places by addressing the following:

- the Bill needs to explain in more detail the actual mechanisms that will be used to deliver integrated management of the coastal zone and marine environment. The Bill should require the MMO to take into account the policies and proposals of other statutory plans (including national park management plans) and clarify the relationship between the new marine plans and other existing initiatives;
- the MMO needs to have an effective approach to local consultation and involvement on coastal issues. A list of key statutory consultees for the new Marine Plans should be established; the MMO should involve a wide range of bodies, including national park authorities; and be given sufficient resources to fully implement the Bill;
- given the focus on wildlife conservation of the Marine Conservation Zones (MCZs), serious consideration needs to be given to how to protect cultural heritage, and in particular, sites of regional and local significance;
- a mechanism needs to be created to enable the national recognition of seascapes, including the marine dimension of our nationally important coastal landscapes and seascapes. They should be a statutory

- consideration for the marine planning authority in preparing their marine plan;
- in welcoming the proposals to designate MCZs, we believe the Bill should place specific obligations on Government to designate a comprehensive network of reserves that effectively protect marine biodiversity; and
  - the Bill should contain stronger provisions for ensuring that licences are granted, operated and monitored within high environmental standards; and give the MMO responsibility for all marine licensing irrespective of size.

### Part Nine - Coastal access

3. In general, we welcome the Marine Bill as an enabling mechanism to maximise access and recreational opportunities along the coast. In particular, we welcome opportunities to make a significant improvement to users' enjoyment of the coastline and to the ease of management of coastal paths.

4. We comment on the draft legislation and on Natural England's outline scheme for alignment. These comments are given in full below, but we would like to draw particular attention to the following points which we believe to be of the highest priority:

- funding must be made available in perpetuity for the maintenance of the route, and of the coastal margin;
- within National Parks, the Relevant Authority for giving directions relating to exclusions and restrictions of access on coastal margin should be the National Park Authority, as under CROW; and
- the proposed changes to the CROW legislation relating to restrictions, and in particular to restrictions requiring dogs to be under close control as opposed to on a lead, should be reconsidered.

## **Consultation on the Draft Marine Bill**

### **A response by the English National Park Authorities Association June 2008**

1. The English National Park Authorities Association (ENPAA) exists to provide a collective voice for the nine English National Park Authorities. It is governed by the Chairs of the nine Authorities, and this response therefore represents the overall view of the Authorities where there is a common position. However, not all National Parks have a coastline, and those that do differ in the amount of access already available and also in the coastal land types and uses. Individual National Park Authorities may therefore be submitting their own comments which will relate to their own specific circumstances.

2. Our response is in two parts and relates to the provisions for coastal access (Part 9), and the rest of the Bill.

#### **ENPAA comments on Parts 1- 8 of the Draft Marine Bill**

3. ENPAA broadly welcomes the introduction of a Marine Bill. We are pleased to have an opportunity to comment on what promises to be a landmark piece of legislation.

4. The Association supports the vision, purpose and strategic objectives of the Bill and many of its provisions, including the proposal to create a Marine Management Organisation (MMO) to provide a more integrated and coordinated approach to coastal and marine management. We remain concerned, however, about a number of issues which either require clarification or addressing in the Bill.

#### **Integrated Coastal Zone Management**

5. The absence of detailed proposals to achieve integrated management of the coastal zone and marine environment is a disappointment. This would appear to be a missed opportunity to deliver the UK's European commitments to Integrated Coastal Zone Management (ICZM).

6. Whilst we agree with the introduction of marine spatial planning, the Bill does not adequately explain the detailed mechanisms by which the new marine spatial planning system will be integrated with the existing terrestrial planning system. As a key element of ICZM, this would appear to be a critical omission.

7. The Bill must address issues such as overlapping systems of planning and regulation and minimise the profusion of plans (including shoreline management plans) where possible. There needs to be a system for resolving potential differences between the terrestrial and marine environments – and between the MMO and local authorities. In particular:

- the Marine Bill should require the MMO to take into account the policies and/or proposals of other statutory plans, for example, any

adjacent national park management plans and minerals and waste plans; and

- the relationship between the new marine plans and other initiatives remains unclear (for example, shoreline management plans, river basin management plans and the Water Framework Directive).

### **Accountability of the MMO and local communities**

8. It is vital that consideration is given to how the MMO will interact with regional and sub-regional Statutory Authorities, other bodies, Non Governmental Organisations, Community Organisations and established coastal partnerships.

9. **It is particularly important that the MMO has an effective approach to local consultation and involvement on coastal issues** and that there are clear mechanisms to enable a degree of accountability for the MMO's activities at a local level.

10. A list of key statutory consultees for the preparation, monitoring and review of the new Marine Plans should be drawn up – including adjacent planning authorities and those covering protected landscapes such as National Park Authorities.

11. We would urge the Government to ensure that sufficient resources are provided to fully implement the Bill and the work of the MMO.

### **Cultural heritage**

12. Marine Conservation Zones (MCZs) are almost entirely focussed on wildlife conservation under the Bill.

13. There remain serious questions over how marine cultural heritage issues will be dealt with in future. These issues appear not to have been adequately addressed by this bill nor by the marine element of the draft Heritage Protection Bill (also under consideration at the moment). While 'historic and archaeological interest' is contained within the broad definition of 'environmental' concerns - no guidance is provided for sites which are significant but not of national importance.

14. Whilst the draft Heritage Protection Bill does provide for the protection of features of national importance, it does not consider the large number of marine cultural heritage sites which are of regional or local importance. On land, these types of site are protected through the planning system.

15. In the terrestrial planning system, advice provided to local planning authorities by archaeologists and conservation officers is based on the Historic Environment Record which is held at local authority level. This system ensures that historic and archaeological sites of local and regional importance are properly considered. This system ought to be replicated for the coastal and marine environment.

16. There is similarly no indication of responsibility for who will compile the records of marine cultural heritage sites not deemed of national importance and who will provide advice to the MMO for these sites.

17. A further issue is the definition of what should comprise a Marine Conservation Zone. The concept of MCZs for biodiversity is welcome, but it does seem a missed opportunity not to extend the concept to include sites of historic and archaeological importance – or alternatively set up specific heritage designations for these such as ‘conservation areas’. This concept would be particularly useful in providing an element of protection to groupings of marine cultural heritage sites which individually might not qualify as being of national importance but which as a group would be worthy of preservation. This is the basis for the ‘Conservation Area’ concept which is successful in the terrestrial planning systems.

### **Landscape and Seascape Protection**

18. We subscribe to the views put forward in the submission by the Coastal and Marine Working Group of Europarc Atlantic Isles, in particular that a mechanism needs to be created to enable the national recognition of seascapes, including the marine dimension of our nationally important coastal landscapes and seascapes. Such a mechanism would mirror the situation on land where the designation of national parks and AONBs is the means by which the national importance of particular landscapes is recognised.

19. Landscapes and seascapes, especially those of national importance, should be a statutory consideration for the marine planning authority in preparing their marine plan; however, without a means of recognition it is not clear how the new marine planning system can properly take into account their national importance.

### **Marine Conservation Zones (MCZs)**

20. The proposals to designate MCZs is welcomed and we agree that the Bill should place specific obligations on Government to designate a comprehensive network of reserves that effectively protect marine biodiversity.

21. This should include a suite of highly protected conservation zones of the richest sites which are selected using scientific evidence and objectively-based criteria. These zones should then be protected from damaging activities.

### **Marine licensing**

22. The Bill should contain stronger provisions for ensuring that licences are granted, operated and monitored within high environmental standards.

23. As development in the marine environment is a specialised activity, it would make better sense for the MMO to be the licensing Authority for all marine activities licensed by Government, irrespective of size. The Infrastructure Planning Commission will be focussed on major terrestrial developments and different skills and expertise are required on the coast and at sea.

## **ENPAA comments on Part 9 of the Draft Marine Bill - Coastal Access**

### **272 The coastal access duty**

24. The proposed order under section 3A of the Countryside and Rights of Way Act 2000 (CROW) indicates that Natural England will be the relevant authority for giving all directions relating to exclusions or restrictions of access on coastal margin. On other CROW access land, National Park Authorities are the relevant authority for land within National Parks. We believe that the partnership working between Natural England and National Park Authorities in giving directions on access land has worked and continues to work well. National Park Authorities have good local knowledge and experience and it would be both logical and beneficial for National Park Authorities to remain the relevant authority for all types of access land, including coastal margin.

25. The proposed order also removes the Schedule 2 restrictions that apply to dogs, replacing them with a general restriction requiring people to keep their dogs under close control. Paragraph 4 of Schedule 2 states that on CROW access land, dogs must be on a short lead between 1 March and 31; in order to protect ground nesting birds. Paragraph 5 states that dogs must be on a short lead in the vicinity of livestock. Many areas along the coast are important sites for ground nesting birds, and livestock graze in coastal areas. We believe that the retention of the general restrictions in paragraphs 4, 5 and 6 of Schedule 2 will be much more straightforward and will result in less confusion for the public than the proposed alternative.

26. The proposed requirement to keep dogs under close control has proved difficult to enforce on public rights of way, with the term 'close control' being open to a wide range of interpretation.

### **273 General provision about the coastal access duty**

27. Subsection 3 of this clause requires Natural England and the Secretary of State to strike a fair balance between the interests of the public in having rights of access over land and the interests of any person with a relevant interest in the land.

28. It is essential that any detrimental impacts in livelihoods along the coastline are avoided. There appears, however, to be no mechanism for compensation to those with a relevant interest in the land within this Bill. While we note the comments made by the Minister at the EFRA Select Committee, we would suggest that it would be impossible to strike a fair balance without making compensation available. Land in arable production will be particularly affected by the introduction of a coastal route, as will any land where there is a need for fences to be set back to accommodate the new coastal access provision. This stems from the concentrated access which is being generated, created by what in effect will be a linear route – in contrast to the access under CROW which, for example, is to large expanses of open moorland.

29. We suggest that compensation should be payable to anyone whose interest in land is depreciated, or who suffers damage by being disturbed in the enjoyment of land, such damage or depreciation being caused by the introduction

of new coastal access rights. In many instances this fair balance could be reached through section 39 (Wildlife and Countryside Act 1981) management agreements or by bringing a coastal access element into Entry Level Stewardship.

## **277 Long-distance routes**

### 55A Proposals relating to the English coastal route

30. We support the proposals to accommodate the roll back of routes that are subject to coastal erosion or encroachment by the sea. We recommend that this approach is taken to the full extent of the coastal route, rather than just to areas that are considered to be subject to coastal erosion. This is a more straightforward approach that will be easier for the public to understand.

31. We have some concerns over subsection 6 regarding the coming into effect of alternative routes at certain times of the year. Whilst we recognise the flexibility provided by this approach, it could cause significant confusion for the public, especially if different areas decide on different restriction periods. We recommend that where a route will not be acceptable at certain times of year, for example because of the risk of disturbance to nesting birds or migratory wildfowl, then that route is not made part of the coastal access route, the alignment process instead defining a route that can be used by the public all year round. Alternatively, statutory guidance should ensure consistency of seasonal diversions between regions.

### 55B Coastal margin

### 55C Consideration of reports made pursuant to the coastal access duty

### 55D Directions under Part 1 of the CROW Act

32. We welcome the clear indication that thorough efforts will be made to include owners and occupiers in the decision making process on the alignment of the new access rights, and on restrictions and exclusions that will be necessary. However the expectation that all interested parties engage in the coastal access report process may be too great. Even where an owner or occupier has engaged in the process, there may be unforeseen circumstances, possibly as a result of increased access, where a need for a restriction or exclusion arises after the publication of the report or after the commencement of the new access rights.

33. We suggest that there should be right to apply to the relevant authority for an exclusion or restriction to access on coastal margin, as there is on CROW access land.

## **283 Power for Natural England to fund works**

34. This clause allows Natural England to meet or contribute towards expenditure incurred in carrying out works subject to an agreement to establish or maintain the coastal route.

35. Expenditure will be required at the time of initial creation, and continually and in perpetuity in respect of the maintenance of the fabric and structure of the coastal route and margin. Adequate funding must be made available for the

creation of the new coastal access provision, and the funding of future maintenance must be planned for. Neither of these should be at the expense of funding for other existing access, such as National Trails or public rights of way.

36. Where it is possible to meet the needs of different users and to provide high quality recreational experiences, funding should be provided to meet these wider social opportunities.

### **General comments**

37. Within the coastal access duty we believe there should be a greater emphasis on achieving higher access rights, for example for cyclists and horse-riders, as well as improving access for the less mobile. With significant financial costs associated with the scheme, maximising the variety of different user groups who can utilise the route should be a priority.

38. We also wish to see emphasis on creating and improving links to the coast, and circular routes for all users along the coast, which is likely to provide the public with greater benefit than a continuous route along the coast. The new coastal route should link into the public rights of way network and to local transport/infrastructure links.

39. The provisions with regard to the removal of obstructions to the route appear to be weak. It would prove extremely challenging to keep the route open and usable in the face of repeated obstructions by a landowner/occupier. We suggest that consideration is given to elements of section 137 of the Highways Act 1980 in connection with this.

40. We note that paragraph 4.4.4 of Natural England's outline scheme acknowledges that '*Significant detours from the periphery of the coast may occasionally be necessary in order to take account of other uses of the land, or of wildlife sensitivities*'. We support this approach as it will not always be possible to develop a route along the coast where other land-uses or nature conservation interests exist and issues cannot be reconciled to the satisfaction of all interests. We support the Ministers comment to the EFRA Select Committee in this respect. The Sandford Principle which relates to management in National Parks may be helpful. Under this Principle, the NPAs are to pursue both statutory purposes (conservation and public enjoyment and understanding), but if a conflict arises between the two then the purpose of conservation is to take priority.

ENPAA  
June 2008