



Marine Information Network
www.marinet.org.uk



**Friends of
the Earth**

Allington House
Allington
Chippenham
Wiltshire SN14 6LN
Tel. 01249 653972

June 2006.

For the attention of: Mr. David Bench, Head of Marine Legislation Division,
Department for Environment, Food and Rural Affairs,
Area 2E, 3-8 Whitehall Place, London SW1A 2HH.

Dear Mr. Bench, Consultation on Proposals for a Marine Bill.

Thank you for the invitation to MARINET, the Marine Network of Friends of the Earth Local Groups, to comment on the published proposals, March 2006, for a Marine Bill. Our comments are outlined below.

We will first set out what we regard should be the principal features of the Marine Bill, and then outline our reasoning in respect of each of these features.

Key Features:

1. The marine environment, in all aspects within the 200 nautical mile economic zone, should be the responsibility of a Ministry of the Sea with a Secretary of State at Cabinet level.
2. A marine spatial plan recording all uses, known and proposed, and all marine resources should be prepared on a region by region basis for the entire marine environment within the 200 nautical mile economic zone. This marine spatial plan would be prepared by an agency of government responsible to the Ministry of the Sea.
3. All licences pertaining to use of the sea and its resources within the 200 nautical mile economic zone would be issued by an agency of government responsible to the Ministry of the Sea. This licensing agency would be separate and distinct from the agency responsible for the spatial plan.
4. An agency of government, known as Marine England (with counterparts in the devolved administrations) would be established with responsibility for the designation, management and enforcement of marine nature conservation within the 200 nautical mile economic zone. This agency would be responsible to the Ministry of the Sea, and would be separate and distinct from the agencies responsible for marine spatial planning and licensing.

Ministry of the Sea.

The management of the marine environment, and decisions relating to its use and resources, are currently divided between a number of Departments of State.

Given that the marine environment is a distinct entity in its own right in the same way that, for example, such concerns as agriculture, health and transport are distinct entities and meriting of a specific Department of State, so we hold that the marine environment is also such an entity which merits and would clearly benefit from its own Department of State.

Hitherto, political responsibility for various aspects of the marine environment (e.g. fisheries, oil and gas production, mineral extraction and so forth) has been divided between different Departments of State. This has resulted in a division of political responsibility for the marine environment at senior government level. This fragmentation of political responsibility has meant that the interests of the marine environment, as a distinct entity with its own needs and nature, has not been fully recognised and, as a consequence, not well served. The remedy is to consolidate and unite political responsibility within a specific Department of State so that the interests of the marine environment can be represented continuously and unambiguously at senior government level.

A Secretary of State, with a seat in the Cabinet, would ensure that that the marine environment is fully represented in its own right; that political responsibility is clearly defined and located; and, that decision making with regard to spatial plans, licences and nature conservation are commonly and collectively served by a single centre of administration at senior political level.

A Ministry of the Sea would represent all aspects of the sea in terms of uses and resources, including fishing. The Ministry would be responsible for government policy with respect to all aspects of the marine environment within the 200 nautical mile economic zone.

The Ministry would establish three agencies of government to administer the three principal aspects of marine management. Namely, an agency responsible for the drawing up of a marine spatial plan governing the uses and resources of the marine environment; an agency responsible for the licensing of the use of the marine environment and its resources; and, an agency responsible for the designation, management and enforcement of the conservation of the marine environment.

These agencies would each be separate and distinct from each other, each charged with responsibility in their own specific area. The agencies would function on an inter-active basis in order to determine decision-making on matters pertaining to the marine environment. Political responsibility for these three agencies, in terms of their sound administration and the policy context in which they operate, would rest with the Ministry of the Sea and its Secretary of State.

The Ministry, in terms of policy and the proper administration of these agencies, would be charged with producing a Marine Planning Policy Statement, a Marine Licensing Statement, and a Marine Nature Conservation Statement. These Statements would be issued with the endorsement of Parliament. Additional Statements, such as for fishing and other principal uses of the sea, could also be issued in such a manner.

The Marine Bill would specify that policy statements issued by the Ministry of the Sea and administrative agencies would be predicated upon the ecosystem-based approach to marine management, defined as follows:

The Ecosystem Approach.

This approach recognises the following features as the basis of marine management:

1. The interdependence between predator and prey species.
2. The need to take account of interactions between different parts of the ecosystem, and the fact that managing a single aspect of the ecosystem, either exclusively or with specific emphasis, will not deliver long-term sustainability.
3. When using sustainability as a goal of management, it must be recognised that economic and social sustainability (relating to human activity) can only be achieved if the practices permitted by the management regime are environmentally sustainable.
4. Management practices must not be didactic (insisting upon or imposing a certain regime). Rather, they must be adaptive and capable of learning from experience and the act of management/intervention.
5. Management must establish a series of indicators by which to measure the success/failure of management practices. Ideally, these indicators should incorporate thresholds so that the need to support or alter management practices is signalled.
6. Management must be founded on robust science and observe the precautionary approach. Such management must have as its objective the restoration, promotion and maintenance of biodiversity. And, such management must recognise *all* the various human uses of the ecosystem in question.
7. The precautionary approach should be founded on the principle that no activity is allowed to occur until it can be shown that no damage will result from that activity. It should not be founded on the reverse i.e. any activity may occur until there is reason to believe that it may cause damage, although proof remains unavailable. The former version is a strong interpretation of the principle, the latter a weaker interpretation. The management regime should use the strong version. It is upon this strong version of the principle that environmental impact assessments should be founded.
8. Management should recognise that it is not possible to manage the marine environment. Our knowledge and understanding of this environment and its processes is simply too limited. Rather, the purpose of management is to manage human activities and their effects on the ecosystem, not to manage the ecosystem itself.
9. The management of human activities must always be based on protecting the resource in the long-term, and not on protecting the economic gain in the short-term.
10. Fishing, like other extractive activities, should be licensed and conform to the ecosystem-approach to management.

As a consequence, we endorse Option 3 as set out in para. 10.45 of the Consultation Paper for the formulation of marine ecosystem objectives.

An Agency for Spatial Planning.

An Agency, responsible to the Ministry of the Sea and constituted with its own specific terms of reference, should be established with the brief to prepare a marine spatial plan, on a region by region basis, for all UK seas within the 200 nautical mile economic zone.

The Agency would be charged, in the first instance, with responsibility to map and record all the uses and resources of the marine environment in order to provide both the initial basis and the ongoing development of a marine spatial plan.

The Agency would be charged, in the second instance, with responsibility to develop a long term policy framework for the use of the seas within the 200 nautical mile economic zone. This policy framework would be formulated with primary reference to the policy context set out in the Marine Planning Policy Statement issued with the endorsement of Parliament by the Ministry of the Sea. This means that the Agency could act as a neutral delivery body in terms of policy development, as set out in para. 8.67 of the Consultation Paper.

In the context of its role as a neutral delivery body for the development of the policy framework which would lead to the implementation of the marine spatial plan, the Agency would be charged, in the third instance, with responsibility to assess and record the compatibility of the various uses of the sea in regional areas, along with the impact of those uses on resources within the same regional area; it would be charged with offering suggestions as to preferences, based on the ecosystem approach, with regard to competing uses; and, it would be charged with presenting these assessments of compatibility and preferences regarding competing uses to a Strategic Environmental Assessment of the uses of the sea, region by region (as set out in para. 8.90 of the Consultation Paper). Ultimately, this would allow the Agency to develop “sensitivity maps” indicating where an activity would be likely to have more or less of an impact upon the environment or another activity (as set out in para. 8.87 of the Consultation Paper).

The Agency would be charged, in the fourth instance, to present all of the foregoing data and policy determination to an Examination in Public (Public Inquiry) in order to publicly test the accuracy and acceptability of the regional marine spatial plans. This Examination in Public would ensure that the regional marine spatial plans recommended by the Agency for endorsement by Parliament and the Secretary of State for the Sea had public legitimacy. We therefore recommend this proposal, as set out in para. 8.94 of the Consultation Paper.

The Agency for Spatial Planning would not be charged with responsibility for licensing of the use of the seas or conservation of the seas within the 200 nautical mile economic zone, the responsibility for licensing and conservation being the duty of separate Agencies established by and responsible to the Secretary of State for the Sea. However, the Agency for Spatial Planning would be required, by the terms of its constitution, to interact with these two other Agencies in performance of its overall responsibility to the ecosystem-based management of the sea.

An Agency for Licensing.

An Agency, responsible to the Ministry of the Sea and constituted with its own specific terms of reference, should be established with the brief to determine all licence applications in respect of all uses of the sea within the 200 nautical mile economic zone.

The Agency would have no other responsibility other than the determination, monitoring and enforcement of licences. This singularity in terms of its area of responsibility would ensure that it could be regarded as wholly impartial in its actions and decisions, and its constitution would require its procedures and decisions to be conducted in an entirely transparent manner.

The Agency would work in conjunction with the Agency for Spatial Planning and the Agency for Nature Conservation, but would be entirely separate and distinct from these other two Agencies, thus ensuring that its own decisions would be made in a wholly impartial manner.

The Agency would act at all times in accordance with a Marine Licensing Statement which would set out its procedures and policy, and this Marine Licensing statement would be issued by the Ministry of the Sea with the endorsement of Parliament.

The Agency would be charged to act, at all times, in accordance with the policy framework based on ecosystem-based system of management and its attendant ecosystem objectives which would be established as the overall policy framework binding and governing the Ministry of the Sea through the Marine Bill.

The Agency and its decisions would be subject to appeal in matters of policy to the Secretary of State for the Sea, and in matters of law to the Courts. This appeal procedure would relate both to licence application determinations and subsequent enforcement action relating to those licences.

Accordingly, with reference to the Consultation Paper, we endorse the proposal for an integrated marine licensing regime as outlined in Option 4, and as detailed in para 9.75 where all licence applications for all uses of the sea within the 200 nautical mile economic zone are determined, monitored and enforced by a single, dedicated Licensing Agency.

An Agency for Nature Conservation.

An Agency, responsible to the Ministry of the Sea and constituted with its own specific terms of reference, should be established with the brief to determine, manage and enforce policies relating to nature conservation in respect of all aspects of the marine environment within the 200 nautical mile economic zone.

The Agency would formulate its policy based on the strategic goals as set out in *Safeguarding Sea Life*, published by DEFRA 2005 (and as recorded in para. 10.4 of the Consultation Paper).

The Agency would have a statutory duty to ensure that the ecosystem-based approach to marine management and its attendant ecosystem objectives are observed and implemented by all public bodies, including the Agency for Marine Spatial Planning and the Agency for Marine Licensing (as set out in Option 3, para. 10.45 of the Consultation Paper).

The Agency, known as Marine England (with counterparts in the devolved administrations), would be wholly separate and distinct from the Agencies for Spatial Planning and Licensing, and would be charged with the development and implementation of policy based on the Marine Nature Conservation Statement formulated by the Ministry of the Sea and endorsed by Parliament.

The Agency would be charged with responsibility to develop Marine Protected Areas within the 200 nautical mile economic zone, as specified in para. 10.51 of the Consultation Paper.

The Agency would be charged with responsibility to halt the decline of marine biodiversity across the European Union by 2010 (as agreed by the Heads of European Government in 2001); would be charged with responsibility to fulfil the United Kingdom's responsibility to complete by 2010 within the North Sea and the North East Atlantic a joint network of well-managed protected areas that, together with the Natura 2000 network (EU Habitats Directive), is ecologically coherent (as agreed by the UK under the 2003 Ministerial Meeting of the OSPAR Commission); and, would be charged, in order to fulfil the recommendation by the UK Royal Commission on Environmental Pollution in its 25th Report on the Impact of Fisheries on the Marine Environment, to develop selection criteria for establishing a network of marine protected areas so that by 2010 a large-scale, ecologically coherent network of marine protected areas is implemented within the UK, leading to 30% of the UK seas within the 200 nautical mile economic zone being established as no-take reserves closed to commercial fishing and, further, that these marine protected areas would be established in consultation with the public and stakeholders.

The Agency would establish the network of marine protected areas (which, we recommend, would cover at least 30% of UK seas within the 200 nautical mile limit and be designated as "non-extractive areas" so as to exclude all extractive activities and not just fishing) on an absolute basis. This would mean that within these designated areas the well-being of the marine ecosystem is paramount, and that no extractive activity would be permitted unless the extractive activity in question could demonstrate to the Agency that the ecosystem would not be damaged.

The Agency would establish the ecologically coherent network of Marine Protected Areas on the basis that a truly sustainable use of the sea, encompassing its economic and social uses as well as its environmental use, can only be accomplished if the ecological integrity of the sea remains intact. In other words, economic uses and social uses are conditional upon ecological integrity being in existence and being maintained. Hence, when developing the selection criteria for Marine Protected Areas, the Agency would be charged to ensure that the designation of such Areas would serve long-term economic and social uses and avoid short-term economic priorities. In undertaking these designations, economic and social stakeholders would be directly consulted.

Accordingly, in response to Question 58 of the Consultation Paper which asks whether a range of factors including social and economic considerations should be taken into account in choosing between sites for Marine Protected Areas, the answer is yes. It is essential that economic and social stakeholders are consulted. Only by this means will they own the decision to designate such areas in order to conserve and protect their long-term interests. Similarly, only by such means can it be said that the concept of sustainability in a full sense is truly functioning within the marine environment. Moreover, such designations must be flexible over time and be capable of change in the light of experience. This ensures that decisions are continually based on evidence, that stakeholders own the process of designation, and that the rewards of successful management can be delivered as those rewards become available.

The Marine Nature Conservation Statement, prepared by the Secretary of State for the Sea and endorsed by Parliament should ensure that the Agency for Marine Conservation observes the following principles in the designation of Marine Protected Areas:

Marine Protected Areas (Marine Reserves).

Marine reserves should be built and managed in order to contain the following features:

1. Reserves exist to protect *representative areas* which reflect the diversity of marine habitats and the processes on which all species depend.
2. All extractive use of any resource (living, fossil, mineral) should be forbidden in the reserves, along with any form of habitat destruction, unless such activity can demonstrably be shown to be benign.
3. The reserves will be most effective if linked together in an ecologically coherent *network*.
4. A reserve should seek to protect the entire ecosystem within its boundary.
5. Due to the limitations of human knowledge and understanding of the marine environment, reserves must be established without waiting for any comprehensive understanding of their features or processes. The single criterion for their selection should be their ability to contain a representative spectrum of the marine ecosystem/environment, and their selection should **not** be made on the basis of single attributes.
6. The primary purpose and focus of reserves should be to help ecosystems to recover (given the present condition of the UK marine environment), and thereafter to preserve and improve those ecosystems.
7. Reserves should be regarded as insurance against further collapse of the marine environment, and they should provide a basis for scientific learning and knowledge of undamaged ecosystems.
8. Reserves, due to their establishment as an interconnected network, will be able to act as a means of replenishment of species throughout the entire marine environment. They will be able to make the entire environment more resilient to natural catastrophe, and they will provide a reservoir of harvested species where such species can grow to full maturity (thus increasing their fecundity).
9. It is most important that marine reserves are not regarded as “crown jewels”. Rather, they must be *representative samples* of the entire marine ecosystem, and they must cover at least **30%** (minimum) of the entire UK seas up to 200 nautical miles.
10. Marine reserves must be seen as a means for increasing human use and activity of the sea, and not exist exclusively for nature conservation. They must be capable of serving to regenerate fisheries, and must serve the economic and social (human) purposes of sustainability as well as the conservation purposes. Only by this means will they earn and merit the respect of commercial users of the sea.

Thus Marine Reserves must represent the full spectrum of biodiversity, and not be confined to some sub-set defined by commercial need or conservation rarity. Habitats should be replicated throughout the entire network of reserves which, themselves, should be interconnected and mutually supporting. The total area of sea designated as marine reserves should meet the objective of sustaining species/habitats in perpetuity, and should incorporate 30% of the sea area as a basic minimum. Their designation must be made on the basis of best scientific knowledge, local and traditional knowledge, and should be the result of full consultation with all users of the marine environment in order to ensure that all users understand and support their underlying principles.

Conclusion:

We are recommending the establishment of a Department of State (Ministry of the Sea) with responsibility for all aspects of the marine environment, and that its Secretary of State should represent these interests at Cabinet level. This ensures that political responsibility and the formulation of government policy is unified, coherent and accountable. We believe that this political structure is essential for the sound management of the marine environment into the future.

We are also recommending that the functions of marine spatial planning, marine licensing, and marine nature conservation be separated from each other, and that they be the responsibility of dedicated Agencies responsible to the Secretary of State for the Sea. This separation of function and responsibility within specific, autonomous Agencies will, we believe, result in clarity and transparency of administration; and, through the issuing of a Marine Spatial Planning Statement, a Marine Licensing Statement, and a Marine Nature Conservation Statement – each of which are issued by the Secretary of State and endorsed by Parliament – these Agencies will receive direction as to policy within a clearly accountable political framework, thus ensuring that the Agencies can both act with integrity within their own terms and also act as neutral delivery organisations.

On the question of integrated coastal zone management, and the question of whether there is a boundary – largely for planning purposes – between the terrestrial and marine environments, we recommend that the boundary should be mean high water mark. The basis for this recommendation is that the terrestrial environment clearly ceases in absolute terms once the high water mark is encountered, and that the marine environment largely ceases once the high water mark is reached. Obviously there is an inter-action between the two environments, and human activities can and do straddle both environments. Also, in an ecological sense, the two environments are intertwined and merge. Therefore, when a human use or an ecological function straddles these two environments, we recommend that licences be required from both the land-based planning authority (largely relating to land-based issues) and the proposed Agency for Marine Licensing (largely relating to marine-based issues). Thus, the Marine Bill should recognise this duality and require, in planning and licensing terms, dual authority approval in all licensing and planning decisions where the high water mark is involved.

We thank you for the opportunity to submit these comments, and we advise that we would be happy to clarify any specific matter or line of thought which we have outlined.

Yours sincerely

S. D. Eades
On behalf of
MARINET
Marine Network of Friends of the Earth Local Groups.