Marine Information Network
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Friends of the Earth

Briefing, February 2009 : Marine and Coastal Access Bill.

<u>Marine Reserves Amendments</u> :

Has the UK the Legal Authority to create Highly Protected Marine Reserves in UK seas ?

The Royal Commission on Environmental Pollution, 2004, has recommended a network of highly protected marine reserves covering 30% of UK seas out to 200 nautical miles in order to both rebuild commercial fish stocks and to repair the widely documented damage to our marine ecosystem. In turn, this action would go a long way to achieving "good environmental status" for our seas to which the UK is committed under the EU Marine Strategy Framework Directive, 2008; and, such action is a clear example of the ecosystem-based approach to marine management to which the UK is also committed under the EU Marine Strategy Framework Directive (MSFD). However, is this likely to happen ?

At present, the answer is no. This is because there is currently no commitment on the face of the Marine Bill to include either highly protected marine reserves or the ecosystem-based approach to marine management. Neither of these management tools is mentioned in any clause in the Bill. Hence there is a need for the amendment of the Bill to include these important tools and executive powers. Their exclusion at the present time prompts therefore an important question – why are they omitted from the Bill ?

The UK Government is asserting that it cannot create highly protected marine reserves beyond the 12 nm territorial limit because such reserves would interfere with fishing rights, and therefore be in contravention of the EU Common Fisheries Policy. In short, the Government argues we have surrendered our sovereign powers in this matter, and therefore it is *ultra vires* for the UK Marine Bill to address this matter. Is this argument correct ? Indeed, is this the true legal position ?

It is true that fisheries policy in UK seas between 12 and 200 nm is now controlled by the EU's Common Fisheries Policy. However, this is as far as the truth in the UK Government's argument extends.

The legal facts are, we believe, somewhat different. Firstly, the UK government retains sovereign powers over marine **conservation** matters, as opposed to fisheries. These sovereign powers are recognised in the EU's MSFD which places an obligation on the UK to achieve "good environmental status" for our seas, which includes commercial fish stocks being maintained within safe biological limits and all elements of the marine food webs being maintained in normal abundance and diversity (ref. Annex I, para 3 and 4).

Secondly, Clause 40 of the opening preamble of the Marine Strategy Framework Directive states: "*The Common Fisheries Policy, including the future reform, should take into account the environmental impacts of fishing and the objectives of* ***this Directive*** [our emphasis]." Further, Clause 39 of the opening preamble of the MSFD states: "*Measures regulating fisheries management can be taken in the context of the Common Fisheries Policy, as set out in Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy . . . including the full closure of fisheries of certain areas, to enable the integrity, structure and functioning of ecosystems to be maintained or restored and, where appropriate, in order to safeguard, inter alia, spawning, nursery and feeding grounds.*" This is confirmed in Council Regulation 2371/2002, ref Article 4(1) and 4(2) para. (g) [ii] and [iv].

Therefore, the UK Government has powers under EU law to use and create both highly protected marine reserves and the ecosystem-based approach to marine management. So, what logical or legal reason exists for the UK not to write these powers in to UK Marine Bill ? In truth, we can see none.

For further information, please contact: Stephen Eades, tel. 01249 653972 or www.marinereserves.org.uk