



## **Draft Marine Bill**

### **Executive Summary**

The Royal Society of Edinburgh recommends that the following key issues merit further consideration and/or revision:

- The issue concerning the interactions with the Scottish Marine Bill is of great concern. The boundary between the jurisdiction of the Scottish and UK Bill at 12 nm is unworkable because it will add complexity and will lead to conflict and/or inconsistency in several important areas including fisheries, marine conservation, licensing/consenting and charging. We recommend strongly that the Scottish Bill should legislate out to 200 nm.
- We further recommend that the Marine Policy Statements in Scotland and the rest of the UK should be aligned with each other as much as practically possible and that they should be subject to public consultation, scrutiny and parliamentary approval.
- The Draft Marine Bill is an opportunity to resolve the controversial position of The Crown Estate. We recommend that Crown Estate revenues should lead to tangible benefits to the users of the marine environment by helping to support the marine management process.
- We recommend that the Draft Marine Bill is explicit about the need for a UK Marine Science Strategy and the need to keep it up-to-date. We further recommend that delivery mechanisms for marine science to support policy using Research Councils and HEIs should feature strongly within the portfolio of research required by the Marine Bill and that Defra or the Marine Management Organisation (MMO) should be tasked to engage with these other research providers to maximise leverage of current national research capacity to support policy.
- We recommend that great care is taken when setting up marine licensing administered by the MMO to avoid distortions between the need for it to generate revenue streams and its conservation and protection responsibilities.
- We recommend that appropriate weight is attached to consideration of conservation, social and economic factors when establishing Marine Conservation Zones to ensure that designations are not unduly constrained and to ensure that designated areas form a coherent ecological entity.

- With regard to fishing, we recommend that the Draft Marine Bill should be explicit about its objectives to tackle overfishing but that it should aim to achieve this through a balance of local empowerment for fisheries management and continued regulatory reform.

## **Introduction**

1. The Royal Society of Edinburgh (RSE), Scotland's National Academy, welcomes Defra's consultation on the Draft Marine Bill and the opportunity this provides to comment on the issues raised by it. The following is a response to the Policy Paper and has been prepared by RSE Fellows who have considerable expertise in various aspects of the marine environment. We believe that the Society is extremely well placed to take a central role as the Scottish Government and the UK Government develop the marine agenda. The Society has access to the thinking of the scientific community but because of its wide base, it can also marshal input from the economic, social and planning side.
2. The UK Government's commitment to a more holistic and integrated approach to managing the conflicting demands placed on the UK marine environment is to be strongly welcomed given its vital importance to our defence, economy and quality of life. We fully recognise that the Bill builds on a substantial series of position papers and consultations that have had widespread comment from the marine sector. In addition it benefits from the findings of the House of Commons Select Committee Inquiry, *Investigating the Oceans*. The Society's response emphasises the fundamental relationship and interactions of the proposals in the Bill with the marine proposals that are being developed for Scotland. The Society intends to respond to the Scottish Government's consultation on its proposals for a Marine Bill for Scotland when it is launched and we would be pleased to send Defra a copy of our response.
3. In the opening section of the Policy Paper's Executive Summary it states ... *The introduction of the Bill to Parliament will depend on the availability of Parliamentary time*. However, given the Bill's complexity and importance we would recommend that the Bill be given high Parliamentary priority.

## **Marine Policy Statement, Marine Management Organisation and Marine Planning**

4. Inevitably there is a heavy emphasis on regulation and administration of what is a hugely complex area of strategy, planning policy and legislation with many Government departments being involved. In our view this could be a recipe for confusion and more likely delay, especially in the early stages of evolution of the MMO. It is crucial that great care and attention be given to the MMO's inception, constitution and authority. In this regard, we understand that there are a number of exceptions to the MMO being the primary regulator of most activities in the marine environment. These include oil and gas installations which will continue to be regulated by BERR and renewable energy installations. It is important that the MMO does not become an unnecessary bureaucratic layer of planning.

5. In all areas, the Bill has had to tackle the thorny issue of presenting a workable solution to the responsibility of the Devolved Administrations (DAs) over marine management and affairs. From the previous consultations, this was the single most discussed topic, affecting both legal, operational and delivery aspects of the Bill. The current proposal seems to be the establishment of two different pieces of legislation to govern Scottish Waters to 12 nm and from 12 to 200 nm. While this may represent a current political stand-off between the UK and Scottish Governments, it makes little sense in the long-term. If these issues are not resolved soon, we are in great danger of implementing legislation that is unworkable, at least for the region around Scotland. For there to be appropriate marine legislation in the UK it appears to be imperative that either there is a single UK Marine Bill, probably with a single UK MMO, or that responsibility for management from 12-200 nm is devolved. The dangers of a half-way house should be clear to most people, whatever their politics.
6. As far as possible the Bill should attempt to manage the marine environment at the same scales as those that define biogeographical boundaries. In this regard, the Bill needs to consider how the UK interacts with its European neighbours to ensure appropriate large scale management. At smaller scales the marine ecological system, as well as many stakeholders who use the marine environment, see no natural boundary at 12 nm. This is a purely artificial construct which has historical relevance rather than relevance to current or future management. Assuming that Scotland continues to develop its own plans for a Marine Bill, we have a choice between a short, roughly east-west boundary that represents an extension of the English/Scottish border, between the Scottish regulatory responsibility and the rest of the UK, or a very long boundary that follows the 12 nm isoline, as currently proposed. The extent to which the longer boundary (which is implied within the current Draft) can operate satisfactorily will depend upon the extent to which the Marine Policy Statement can capture the different priorities between Scotland and the UK. Current indications are that the priorities are sufficiently different, especially with respect to the fundamental approaches taken towards marine spatial planning, that congruence will be difficult to achieve. In these circumstances, the current Draft Marine Bill will establish an arena for continuous conflict between the respective MMOs in Scotland and the rest of the UK that will likely greatly reduce the effectiveness of the legislation.
7. The fact that *Scottish Ministers will not participate in the development and agreement of the [policy] statement* (para 3.3), means that this proposed legislation would be fundamentally flawed.
8. Paragraph 3.37 suggests *marine planning should reflect the current distribution of functions under the devolution settlement*. This seems to conflict with the wish for the UK Draft Bill to retain responsibility for the 12-200 nm region. For example, it is unclear how a Scottish MMO will manage 0-12 nm under one set of legislation with one marine policy and from 12-200 nm with another set of legislation and a different policy set by a different

legislature from their managing legislature. Or, is the UK MMO going to take responsibility for managing beyond 12 nm (para 3.38) but leave management of fisheries with the Scottish MMO within that region? The emerging picture is very confusing indeed.

9. For the reasons already given, the current Draft Marine Bill is a recipe for conflict because it places an unnatural boundary upon the governance process. Since it seems highly unlikely that the devolution process can be undone in this domain, the most parsimonious solution would be to devolve responsibility for marine management to 200 nm. This already exists for some functions, e.g. fisheries, so it seems that there would be nothing particularly remarkable about extending this to other functions.
10. The management of the sea bed, and particularly the role of The Crown Estate in this activity are not dealt with in the Draft Marine Bill. It appears likely that this could result in conflicting objectives between the MMO and The Crown Estate. While The Crown Estate could be considered as just another stakeholder, this does not reflect the real role of The Crown Estate as a nationwide authority controlling the sea bed. There are no other equivalent bodies active in either terrestrial or marine circumstances with such a comprehensive remit that acts through the Treasury on behalf of the Nation.
11. There are additional issues concerning the role of The Crown Estate as a collector of revenues for the use of the sea bed. Currently, there is little connection between the use made of these revenues (because they are simply returned to the Treasury) and benefits accrued to the users of the marine environment and to marine management. In essence, the revenues generated from The Crown Estate amount to taxation on use of the sea bed. We urge a review of the relationship between The Crown Estate and the new MMO. We also urge the Draft Marine Bill to clearly articulate how the revenues generated by The Crown Estate are to be used to support the policy objectives within the Marine Policy Statement.

### **Marine Data and Information**

12. The recognition of the important role of research within the Draft Bill is to be welcomed, although there is not much reference to broader multinational marine dimensions. It is vital to realise that climate change, weather patterns, the physical and ecological characteristics of the seas, including the behaviour of commercial fish populations are not specific to any single country. That is why research in these areas is multinational.
13. The framework in the Draft Bill for marine data and information requires further thinking and clarification. It is recognised that Defra already does much to sponsor research but, as a sponsor and user of research, Defra needs to play a full part in supporting marine science. Neither Defra nor the proposed MMO will have sufficient resources to sponsor all of the marine science that they need to support the functions of the Bill. The levels of resource required to fulfil the ambitions set out in the Draft Bill are well beyond current expenditures.

14. The Bill needs to reflect the role that Defra and the MMO can play in supporting marine science within the UK. Other Government departments share a need for high quality marine science within the UK and the Bill needs to lever its requirements for science and data from across the whole range of marine science being undertaken, including that offered by Research Council Institutes, HEIs and appropriate data centres.
15. Consequently, Defra and/or the MMO should not establish its research needs in isolation from those of other Government departments, agencies or charitable institutions. Following the *Investigating the Oceans* Report, the Inter Agency Committee on Marine Science and Technology, which has representatives from all Government departments and the DAs, as well as three independent members, has been dissolved. A successor committee is under consideration which will have within its remit, the design and implementation of a UK Marine Science Strategy. A strong recommendation is for the creation of a UK Marine Science Strategy that can guide research priorities across a broad range of research providers in a manner that will maximise overall benefits, guide delivery, and focus resources into areas where they are likely to be most effective. The Draft Bill needs to be explicit about establishing such a strategy that builds on the Marine Policy Statement.
16. Currently, the Draft Bill fails to develop an effective framework for research along these lines or others of a similar nature. It is important that the Bill should recognise the difference, in terms of function and delivery, between research involving the development of understanding of mechanisms and processes, on the one hand, and the gathering of data to service policy on the other, and consequently the different roles these play in supporting policy. At present, the Draft Bill does not adequately define these different requirements.
17. The Draft Bill is also vague about the kind of mechanisms that should be used to deliver science advice in to policy. It is important to define the overall role for the MMO.

### **Marine Licensing**

18. The proposals on licensing should be carefully tested against future development of the MMO. Without reference to some form of independent arbiter, such license issuing may become the primary revenue stream for the MMO creating a distortion of its protection and conservation responsibilities. What safeguards will be built in, and how will the primary originators of the data used for such decisions be acknowledged? There are considerable parallels with other trading agencies such as the Ordnance Survey, Met Office and Hydrographic Office. We strongly recommend that these issues are clarified so that there is a clearly defined and transparent process.
19. The requirement for navigation, and measures to keep ships away from particularly environmentally vulnerable areas, should be recognised as being key aspects of marine spatial planning.

20. Also, there does not appear to be any reference to Strategic Environmental Assessments (SEAs) in the Draft Bill and we believe that provision should be made for SEAs or, for more local developments, the requirement for an Environmental Impact Assessment (EIA).

### **Marine Nature Conservation**

21. With regard to the establishment of Marine Conservation Zones (MCZs) we applaud the innovative thinking as the MCZs are not only designed to protect the rare and threatened species and habitats, but also the representative ones. It will be essential to develop the criteria used for selecting such a network of areas around the UK, not only in the coastal waters (with the DAs) but in the offshore UK waters. It is important that appropriate weight is attached to consideration of conservation, social and economic factors to ensure that designations are not unduly constrained. It is also important that the country-based approaches to coastal nature conservation integrate with the UK-based approach in the offshore waters. Only by designating areas that form a coherent ecological entity is there any hope, in a fluid environment, of conserving a sustainable community of pelagic and benthic organisms, let alone particular species.
22. It is regrettable that so few Marine Nature Reserves (none in Scotland) have been designated in the UK, and that implementation of the EU Habitats Directive has been tardy. Given the lack of progress with previous attempts to create such areas around the UK and the renewed commitment expressed in the current document, perhaps the UK could draw on the experiences of other countries who have successfully designated such areas (New Zealand, for example).
23. In Scotland, the Advisory Group on Marine and Coastal Strategy (AGMACS) considered a broader designation of Marine National Parks reflecting the needs of a greater number of stakeholders linked to conservation and monitoring objectives. The latter objective allows for consideration of climate change effects as well as human intervention. The Draft Bill would do well to consider the integrated nature of marine conservation in the face of multiple uses and threats at the ecosystem level.

### **Marine Fisheries**

24. The Draft Bill mentions sustainable use as a major objective, but it is evident that this often means economic sustainability, not ecosystem sustainability. In this respect the Bill does not appear to address the problem of continued overfishing that has taken place for well over a century in UK waters. Internationally, overfishing has proved equally intractable, and there is broad agreement amongst fishery scientists that fishing effort and fishing subsidies need to be reduced far more than has so far been feasible politically. In fact, the RSE's own Inquiry into the *Future of the Scottish Fishing Industry* (March 2004) found that most whitefish stocks had been over-fished and that fishing effort has been too high for much of the last twenty years.

25. Virtually all inshore fisheries management issues will fall to the DAs, which is appropriate. In Scotland a new agreement allows the Scottish Government to establish the *Conservation Credits Scheme*. The scheme aims to provide more flexibility that rewards Scottish fishermen with additional days at sea where they can demonstrate that they are signed up to initiatives which have a positive impact on the conservation of fragile fish stocks e.g. real-time closures schemes and trialling and implementing new gear types to increase selectivity and to reduce the level of discards. In fact, there has been a real-time closure of a cod spawning ground in the North Sea<sup>1</sup>.
26. A major driver of marine ecosystem alteration is that of alien species introduction. In this regard the Bill is largely mute, being only concerned with fish introductions to inland waters (Section 3.126).

### **Coastal Access**

27. We understand that Government is trying to fulfil long-standing commitments in relation to access to the coast and hence the section on Coastal Access in the Draft Bill. While respecting the need for additional legislation to cover this area, it may not be the most appropriate place to consider it within the context of the current Bill. Nevertheless, we endorse fully the improved coastal access consideration, and would hope that a similar approach may be adopted in Scotland under the land reform policies.

### **Additional Information and References**

In responding to this consultation the Society would like to draw attention to the following Royal Society of Edinburgh responses which are of relevance to this subject: *Inquiry into the Future of the Scottish Fishing Industry* (March 2004), *Developing a Strategic Framework for Scotland's Marine Environment* (July 2004) and *Developing Proposals for Coastal and Marine National Parks* (December 2005).

Copies of the above publications and further copies of this response are available from the RSE's Consultations Officer, Mr. William Hardie (email: [evidenceadvice@royalsoced.org.uk](mailto:evidenceadvice@royalsoced.org.uk)). Responses are also published on the RSE website ([www.royalsoced.org.uk](http://www.royalsoced.org.uk)).

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<sup>1</sup> <http://www.scotland.gov.uk/News/Releases/2008/01/16153907>