

CONSULTATION ON THE MARINE BILL



MARINE CONNECTIONS' RESPONSE

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The Marine Connection (reg UK charity 1062222)
PO BOX 2404, London, W2 3WG
Tel: 020 7499 9196, Fax: 020 7409 2133

www.marineconnection.org

"Protecting dolphins & whales worldwide"

CONSULTATION ON THE MARINE BILL - MARINE CONNECTIONS' RESPONSE

1. The Marine Connection is a UK based charity committed to working internationally for the care and protection of dolphins and whales. Through continuous education, campaigning and research we effectively contribute towards a world that understands and respects all cetaceans and their natural habitat. Threats to marine mammals have never been so great as they are today, therefore by raising public awareness to these threats and pressing for more effective legislation, the Marine Connection are actively securing a safer future for dolphins, whales and the marine environment.
2. Marine Connection works on an International level, with projects and campaigns in Peru, Australia, Japan, Africa, Greece, Egypt and here at home in the UK, where much of our work is focussed. Marine Connection has a total of 3,000 members, with many choosing to be part of our "adopt a dolphin" project in the Moray Firth in Scotland.

General Comments on the Marine Bill

3. Marine Connection originally began as a voluntary organisation 8 years ago, but has been working as a registered charity and campaigning for better protection for whales, dolphins and porpoises for the last 3 years. Marine Connection are encouraged that the Government is proposing a wide ranging Marine Bill which will address marine nature conservation as well as management of our activities at sea. Marine Connection believes that the Marine Bill presents an excellent opportunity to achieve this.
4. Marine Connection is also pleased that those responsible for drafting the Marine Bill consultation have, in the main, been innovative, and have not relied on existing models, such as those that apply to land management, which would be inappropriate at sea.
5. There is currently a fundamental need to move away from management on a species basis to management on an ecosystem basis. A species cannot be conserved without also conserving the ecosystem that supports it - noting, of course, that different life history stages often live in very different places within different ecosystems. This requires a coherent legislative framework that will deliver the Government's stated goal of "clean, healthy, safe, productive and biologically diverse oceans and seas" (Safeguarding our Seas, May, 2002). This framework should set out clear goals, objectives, targets and indicators for social, economic and environmental elements, but must place the environment at the heart of the management of marine activities, in order to deliver an ecosystem approach. The marine environment is not being sustainably managed at present, and the need for a change in approach is urgent - 'business as usual' is not an option. New limits and ways of working will need to be imposed on the economic and social sectors if even modest environmental targets are to be achieved. The environmental sector welcomes the proposed new planning system, which we hope will bring more transparency and accountability to marine development. However, we believe the consultation misses an opportunity to provide a wider policy framework based on an explicit recognition that a healthy marine ecosystem is essential for many of the economic and social benefits that are derived from the sea, and underpinned by the precautionary principle.

6. Marine Connection is concerned that the Bill is developing into a piece of legislation that, while improving decision-making and providing better regulation, is losing sight of the need for a healthy marine ecosystem.
7. In the consultation, the purpose for the Marine Bill is described as introducing a new framework for the seas, based on marine spatial planning, that balances conservation, energy and resource needs (para 3.8). While we accept that the objective must be to try and balance the needs of all sectors, we believe that in some circumstances conservation of individual features and the ecosystem will have to be considered the priority. This needs to be explicitly acknowledged by the Bill. The consultation presently implies that conservation will happen, as long as it does not affect development and other sectors. This would be a dangerous precedent, and would compromise not only the future of our whales, dolphins and porpoises, but would compromise the whole marine environment and both future economic and social benefits as well.
8. Marine Connection note the key principles set out in Section 4. We are however concerned that some stakeholders may misinterpret 'sustainable development' as an endorsement of continuing development activities, beyond the carrying capacity of the ecosystem, in spite of government commitments, as set out in the Marine Bill consultation document and in 'Safeguarding Our Seas'.
9. We wish to see the ecosystem approach enshrined in the Marine Bill as the key management tool for implementing long-term sustainable use of marine resources. This is a commitment under the CBD (Convention on Biological Biodiversity).
10. In the text of the CBD under 'An agreement for action' it states: "The long-term viability of species and ecosystems depends on their being free to evolve in natural conditions. This means that humans have to learn how to use biological resources in a way that minimizes their depletion. The challenge is to find economic policies that motivate conservation and sustainable use by creating financial incentives for those who would otherwise over-use or damage the resource".
11. Marine Connection believes that all maritime competent authorities should have a statutory duty of care for the marine environment and its biodiversity. This would require them to take the environment into account in the exercise of their functions, essential if we are to achieve a healthy marine ecosystem, which should be an overarching goal of the Marine Bill.
12. A duty of care is a legal obligation imposed on an individual, requiring that they exercise a reasonable standard of care while performing their role. A duty of care may be considered a formalisation of the implicit responsibilities held by an individual towards another individual within society.
13. A duty of care for fisheries managers for example could operate to:
 - a. Ensure sustainable marine ecosystems, having due regard to a precautionary approach.
 - b. Maintain and where necessary rebuild stocks and their supporting ecosystems, thereby enabling exploitation of living resources on a sustainable basis.

14. Marine Connection is a member of Wildlife and Countryside Link (WCL) which has made a detailed response on the main issues discussed within the Marine Bill Consultation. Marine Connections' response will therefore focus on key issues relating specifically to whales, dolphins and porpoises, rather than duplicating the WCL response. This document aims to compliment that of WCL.
15. Marine Connection have been campaigning for better protection of whales, dolphins and porpoises and their associated environment and we embrace the opportunities presented to us in the Marine Bill. We are aware however of the legislative process and the need to maintain pressure for a full Marine Bill to be brought forward for consideration by Parliament at the earliest opportunity. Marine Connection and its members will continue to campaign to ensure that its objectives are achieved and the diverse marine realms of the UK's seas are given the protection they deserve and so desperately need.

Lissa Goodwin
Marine Connection

Section 7: Managing Marine Fisheries

1. The Government's stated goal of "clean, healthy, safe, productive and biologically diverse oceans and seas" will only be achieved if the framework governing inshore sea fisheries is seen as a priority issue within the Marine Bill, given that fishing in the inshore sector is known to have a critical impact on both cetacean species and the wider marine ecosystem.
2. Several recent government publications on fisheries policy (such as "*Securing the benefits*" and "*Charting a new course*" – both 2005) have deferred discussion of inshore fisheries management with mention of consultation on proposals for inshore fisheries in the Marine Bill, but now even this consultation is deferring consideration of inshore fisheries management.
3. Marine Connection welcomes the latest announcement stating that "*new powers and clearly defined duties*" will be given to the Sea Fisheries Committees (SFC). We would also welcome more precise detail on Defra's proposals for inshore fisheries management reform, as well as a timetable for future consultation on inshore fisheries. We would like to be amongst those consulted on the detail for inshore fisheries within the Marine Bill.
4. A new legislative framework is required that will address the weaknesses, gaps and inadequacies in the current system, and allow both current and new management practices to deliver the ecosystem approach. This framework requires the adoption of a proactive, precautionary, ecosystem based approach.
5. There are positive aspects within the existing SFC system, which a new legislative and management framework for inshore fisheries must continue to deliver. Of particular benefit has been the potential for local decision-making and participative management by people with a detailed knowledge and experience of the local fisheries. It is vital that we do not lose the unique quality of community and involvement of individual fishermen that is presently found in the Sea Fisheries Committees. Marine Connection was heartened to hear the Government's statement of support for this local quality. However, it is also vital that the makeup up of SFCs (or their equivalent) is reformed, to redress the current bias towards members with a vested interest in the local fishing industry. There must however also be a strong, central co-ordinating role to ensure consistency in structure, approach and enforcement.
6. The Government should introduce legislation which:
 - a. Furnishes clear, logical and well-defined terms of reference for all authorities involved in the management framework of inshore waters.
 - b. Must be applied appropriately and sensitively across all sectors, and introduces new ways of regulating the use, management, recovery, protection and monitoring of the marine environment, coupled with better enforcement.
 - c. Requires a joined up approach, with SEA undertaken on a sea area basis, as applicable to the fisheries involved, to include all future planning strategies that are developed for inshore fisheries and aquaculture.
 - d. Contains a requirement for all new inshore fishery projects to be the subject of an Environmental Impact Assessment (EIA), including

- developments in aquaculture, new fishery projects or practices, significant changes in gear design and new areas of exploitation.
- e. Establishes a duty of care on all fisheries managers.
 - f. Develops, implements and resources an inshore fisheries strategy based on delivering economic, social, environmental and resource conservation objectives.
 - g. Provides mechanisms to deliver environmentally friendly, sustainable fisheries.
7. There should be new legislation for Sea Fisheries Committees that:
- a. Clarifies the aims and objectives of the SFCs, strengthens their powers and capacity (including to enforce), and requires the adoption of a proactive, precautionary and ecosystem-based approach.
 - b. Provides the SFCs with a secure funding framework, removes the uncertainty over their future support and enables them to perform their fisheries and environmental duties to the full.
 - c. Assures adequate resources for monitoring and scientific research capabilities to provide data and information for evidence-based management.
 - d. Introduces an effective licensing system for inshore fisheries that facilitates sustainable exploitation by giving the SFCs the power to attach conditions to fishing licences when issued.
 - e. Allows for the establishment of environmental objectives and a mechanism to achieve them via assessment, monitoring, and mitigation, followed by feedback into the system.
 - f. Develops clear lines of communication between SFCs and Central Government departments.
8. One of the other potential mechanisms for integrating fisheries policy with other systems of marine protection is the establishment of multi-purpose marine protected areas (MPAs) (para 7.14). Marine Connection believe that the ecosystem based approach to management requires legislation to provide for the designation of a representative network of Nationally Important Marine Sites which must include a series of Highly Protected Marine Reserves (HPMRs), along with new and improved measures to protect species and habitats throughout the marine environment, including provisions for monitoring. While we understand (in cost/benefit terms) the drive to integrate MPAs for nature conservation and fisheries purposes, we feel it is important to recognise that these are different goals, which are unlikely to be fully delivered together by any given site. The search for sites that meet both goals should not preclude the need to set up sites that primarily serve either nature conservation or fish stock conservation purposes.

Case Study: Cetacean Bycatch

The number of stranded cetaceans recorded in the UK has been steadily increasing since the early 1990s, with a particularly marked increase during the last five years (1999-2004), predominantly due to strandings of short-beaked common dolphins (*Delphinus delphis*) and harbour porpoises (*Phocoena phocoena*) in the south west of England¹. These deaths reflect a rise in incidental capture in fishing nets, known

¹ Natural History Museum (NHM) (2005) *Out of the Blue, The UK Whale & Dolphin Stranding Scheme*. Natural History Museum, London.

as bycatch. Observations of bycatch rates in specific fisheries suggest that certain populations are under serious threat. For instance, bycatch records in the UK and Irish offshore hake gillnet fishery in the Celtic Sea during 1992-4 indicate that as many as 2200 harbour porpoises were caught per year². Bycatch has also been found to be responsible for a consistently high proportion of the common dolphin strandings, recorded mainly in SW England, representing 71% of all established causes of death from 1990 to the end of 1999.

Marine Connection believes that the numbers of cetaceans being caught in UK waters is unsustainable. For harbour porpoises this represents 6.2% of the total estimated population³, other studies have demonstrated that even a 4% reduction is untenable³. Similar bycatch problems almost certainly explain the demise of this species elsewhere.

The 2000 meeting of the Parties to ASCOBANS (Agreement on the Conservation of Small Cetaceans of the Baltic and North Sea) agreed that as an intermediate precautionary objective, bycatch should be reduced to less than 1.7% of the best available population estimate.

In 2003, the UK Government published the UK Small Cetacean Bycatch Response Strategy which recognised "that the current level of small cetacean bycatch in certain European, including UK, fisheries could threaten their populations". In addition to this "The need to reduce the bycatch of small cetaceans in general and of the harbour porpoise in particular, was recognised to be a key priority in the Ministerial Declaration of the Fifth International Conference on the Protection of the North Sea (the Bergen Declaration) of 20-21 March 2002".

In 2004, the EU adopted Council Regulation (EC) No 812/2004 laying down measures concerning incidental catches of cetaceans in fisheries and amending Regulation (EC) No 88/98.

Later in the same year, the UK Government published the Review of Marine Nature Conservation (2004) which stated that "the current system for marine nature conservation is not fit for purpose". It further recommended that the "UK Small Cetacean Bycatch Response Strategy should be implemented as soon as practicable".

The Irish Sea Pilot also recommended that "national legislation should be introduced to control and reduce the killing, injury and disturbance of cetaceans and certain other vulnerable species, as a result of fishing and other activities".

Why we need new, comprehensive legislation

New protective legislation needs to be proactive, flexible and swift in implementation to be able to cope with protection of a mobile species living in a complex ecosystem. The precautionary principle should be applied to cetaceans, ensuring that protective

² Tregenza, N.J.C., Berrow, S.D., Hammond, P.S. & Leaper, R. (1997) Harbour porpoise (*Phocoena phocoena*) bycatch in set gillnets in the Celtic Sea. *ICES Journal of Marine Science*. 54, pp896-904.

³ Woodley, T.H. & Read, A.J. (1991) Potential rates of increase of a harbour porpoise *Phocoena phocoena* population subjected to incidental mortality in commercial fisheries. *Canadian Journal of Fisheries and Aquatic Science*. 48, pp2429-35

legislation is implemented based on current knowledge. This should be flexible enough to change with increasing knowledge or when new information comes to light. By their very nature cetaceans are mobile, exhibiting both temporal and spatial variation in distribution and behavioural patterns, which may be linked to changes in prey. Legislation should adopt an ecosystem approach to be able to deal with these potential changes in an effective manner.

New legislation for the SFCs needs to clarify the aims and objectives of the SFCs, to strengthen their powers and capacity, and require the adoption of a proactive, precautionary, ecosystem-based approach. In terms of monitoring and mitigating against cetacean bycatch, Marine Connection recommend that the SFCs be given the power to attach conditions to fishing licences when issued and change them as necessary, which would serve to regulate the industry and protect key sites utilised by cetaceans. They should also be given the power to close fisheries that are known to have a catch of cetaceans, turtles, seabirds, sharks and/or seals, until a suitable and effective mitigation measure has been identified. This is an essential requirement to be able to deliver marine ecosystem based objectives under the precautionary principle.

There is a conservation need to be able to accurately assess bycatch levels, with significant concern that the number of strandings, attributable to bycatch, is only a small percentage of the total number of individuals killed. The only way to identify bycatch levels within different fisheries is to place observer's onboard fishing vessels. Marine Connection recognise the UK's commitment to place observers across the fleet, however gaps still remain. There needs to be comprehensive monitoring across all fleets, of all vessels, regardless of size. Determining the nature and level of any bycatch will enable the development of appropriate mitigation measures (technical, restrictive or prohibitive) and abiding by these conditions will need to be considered and included in the marine bill. The monitoring programme will also have to include studying the efficacy of any mitigation measures employed and a suitable feedback mechanism for the results of this will need to be in place so further changes can be brought in if bycatch figures are unchanged or increasing.

Recommendations specific to cetacean bycatch

- a) New protective legislation needs to be proactive, flexible and swift in implementation to be able to cope with protection of a mobile species living in a complex ecosystem.
- b) A monitoring programme is required to assess the efficacy of mitigation measures employed. The outputs from this should feedback into the system to permit changes to be made where bycatch has been identified and/or where mitigation measures have been deemed ineffective.
- c) To introduce an effective licensing system for inshore fisheries that facilitates sustainable exploitation by giving the SFCs the power to attach conditions to fishing licences when issued and change them as necessary.
- d) The inshore fishery management body should be given the power to close fisheries that are known to have a catch of cetaceans, turtles, seabirds and/or seals, until a suitable, working mitigation device and/or measure have been identified.

Section 8: Planning in the Marine Area

1. Marine Connection believes that Marine Spatial Planning (MSP) has the ability to deliver an ecosystem-based approach for the management of activities in UK seas and to ensure sustainable use of our marine resources. Marine Connection believes that MSP should focus equally on the economic and regulatory objectives and benefits, as well as the environmental concerns.
2. In the consultation the purpose for the Marine Bill is described as introducing a new framework for the seas, based on marine spatial planning, that balances conservation, energy and resource needs. Marine Connection does not agree that "balance" will lead to sustainable development. We believe that in some circumstances conservation of individual features and the ecosystem will have to be considered a priority. This needs to be acknowledged by the Bill. It is important that nature conservation and protection of our marine biodiversity are given a value at least equal to economic needs. Otherwise we will not achieve government's vision of 'clean, healthy, safe, productive and biologically diverse' UK seas.

Answers to Questions

Q1. Is it appropriate for the UK Government to consider creating a new system of marine spatial planning?

1. Marine Connection believes it is appropriate for the UK Government to consider creating a new system of marine spatial planning. MSP will also deliver a streamlined, forward looking and joined up approach, which should not only serve industry, but also provide conservation for both species and habitats.

Q2. If so, should Government consider statutory provisions within the Marine Bill in order to implement a new system of marine spatial planning, or should alternative methods be considered?

1. Marine Connection believes that a statutory approach is essential to achieve the Governments aim of 'clean, healthy, safe, productive and biologically diverse' UK seas.
2. Marine Connection does not believe a non-statutory approach can secure the commitment needed for MSP to provide the much-needed move towards integrated marine management.

Q3. Do you have any views on the broad objectives of marine spatial planning laid out above?

1. Marine Connection believe that MSP objectives should focus on inspiring sustainable development, environmental protection, forward planning and integration to achieve sustainable use of our seas by adopting a totalling inclusive approach. MSP should enable the conservation and recovery of marine species and habitats to be viewed of equal importance to the delivery of sustainable development.

Q4. What are your views on marine spatial planning as a context or framework for decision-making?

1. A statutory marine spatial planning framework is essential. It should not only provide the context for decision-making, but fundamentally drive or influence decisions relating to regulation and management of marine activities, to enable the transition from the current uncoordinated, sectoral approach to a fully integrated one. We welcome the description in paragraphs 8.34 - 8.38 of how MSP might fulfill this role.

Q5. To what extent, if at all, should plans be 'binding' on decision-makers and decision-making? (See the initial Regulatory Impact Assessment at Annex 5A for further information.)

1. Marine Connection believes that plans should be binding on decision-makers and decision-making to ensure MSP is implemented and its benefits are realised. We believe that decisions must be made in accordance with the marine spatial plan unless material considerations indicate otherwise.

Q8. Do you have any views on the geographical application of any new system of marine spatial planning?

1. Marine Connection believes that Marine Spatial Planning (MSP) is necessary to deliver an ecosystem-based approach to management of activities in UK seas.
2. A Regional MSP should be developed for each of the regional seas, based on bio-geographical regions, reflecting the ecosystem approach as proposed by the RMNC. We recognise that intensity of activity varies greatly between marine regions, and would not necessarily expect plans to be produced for every region, with the exception of areas with little activity e.g. Atlantic SW Approaches, Faroe-Shetland Channel, Rockall Trough & Bank, and Atlantic North West Approaches. MSP should extend from the mean high water springs to 200nm or beyond to the outer limits of UK jurisdiction where applicable.

Q10. Is this overall approach, involving a strategic marine planning policy statement, followed by spatial plans, appropriate?

1. Marine Connection supports the proposals for a Strategic Marine Planning Policy Statement (PPS) to provide context for regional marine spatial plans. Sub-regional plans, as well as being guided by national policy, will need to take account of regional marine spatial plans. The strategic marine PPS will need to contain clear policy guidance, overarching international and national marine policies and to assist in the integration of sectoral policies.

Q14. What are your views on the nature and role of the planning body which would undertake the development of spatial plans?

1. Marine Connection believe that the planning body which would undertake development of MSP must be a new body (MMO) which should be charged with implementing a MSP framework, with a duty to adopt ecosystem based management as a key tool for sustainable use of our marine resources.

2. Marine Connection would welcome the establishment of a Stakeholder Advisory Group, to work alongside the development of MSP and provide an advisory role to the MMO. The advisory group must include representatives of non-statutory stakeholders, for example NGOs, fisheries representatives and leisure users. This arrangement would ensure a consistent and transparent planning regime. It would mean that the Government would benefit from expert advice and sea users would be more likely to abide by the MSP and aid its implementation.

Q15. What are your views on the scale, location and possible boundaries of the areas used for spatial plans?

Marine Connection believes that Regional MSPs should be developed on the basis of the bio-geographical marine regions as proposed by the RMNC. The management of many activities is devolved with respect to the territorial waters (i.e. 0-12 nm) around Scotland, Northern Ireland and Wales, and NGOs in the devolved countries are campaigning for marine legislation in parallel with (and not subsequent to) the UK Marine Bill, which would introduce provisions for MSP in their territorial waters. It is essential that Westminster and the devolved administrations work closely together in developing and implementing MSP to deliver an ecosystem-based approach at the regional sea scale. We believe that Sub-regional MSPs will also be needed, for example for some estuaries or intensively used inshore areas, where habitats may be beneficial to both sea users and large marine fauna alike.

16. Do you think that Marine Spatial Planning should apply in the same way in all parts of UK waters?

1. We accept that there is a greater need for planning in some regional seas than others and do not consider the development of detailed plans for those regions where there is little activity to be a priority (e.g. Atlantic South West Approaches, Faroes-Shetland Channel, Rockall Trough and Bank, Atlantic North West Approaches – see map above) . We welcome the statement that the Strategic Planning Policy Statement would still guide decisions in areas without Regional MSPs, and would suggest that the need for plans in such areas be regularly reviewed.

Q17. What are your views on the need for planning at sub-regional or local level?

1. In areas where activity is high sub-regional MSPs will be critical to ensuring environmental protection in heavily used areas. A two-way exchange of information and policies between Regional MSPs and Sub-regional plans will be essential
2. The UK should also, where possible, work with other EU Member States such as Ireland to develop a truly ecosystem approach. Mechanisms are under development through the EU Marine Strategy (and associated Marine Framework Directive), and regional agreements (e.g. OSPAR) to ensure that neighbouring countries work to a shared vision, share best practice and work together to address cross-border issues.

Q18. What are your views on the activities, developments and resources within the marine area, which might be considered within spatial plans?

1. Marine Connection believes that all marine activities, developments and resources should be considered in a marine spatial plan. However, for a regional sea MSP we suggest that the coverage of coastal land use, tourism and marine recreation is quite broadscale (where these activities are intense, sub-regional plans may be needed). Detailed information in relation to fisheries activities and key sites will be critical in planning both use and protection for any particular area.

Q19. Are there any anticipated future types of marine use, or technological advances, which you think the UK Government should consider when developing the strategic marine planning policy statement or in the marine spatial plans?

1. Any future marine activities should be managed within the context of marine spatial planning. Regular review of the national strategy, as well as regional MSPs, should allow MSPs to be adapted to encompass emerging sea uses.

Q20. What are your views on data and information availability in relation to marine spatial planning?

1. Marine Connection agrees with the statement that “central to the success of many of the UK’s policies will be the collection, management and availability of marine data and information.” Underlying our call for Marine Spatial Planning, the Ecosystem Approach, fully informed SEAs and designation of various MPAs, is the need for integration of data, increased surveys and research, and mapping. Improvements in this area should not need legislative changes; however they may help – especially a legal requirement to collect new data, on a regular basis at the strategic level and obligations to release data.
2. We are aware of the considerable need for further information relating to specific activities, species temporal and spatial distribution, and habitat function; however this should not exclude activities and/or species from the plan. Instead the plan should be based on the best available knowledge at the time, with the ability to review plans as further information comes to light.

Q21. What are your views on the plan making process?

1. Marine Connection supports the outline given in 8.81-8.84 of the plan-making process, including the development of strategic data collection and collation, identification of preferred areas and a mechanism to handle conflicts. We note that much more detail remains to be developed.
2. We believe that full engagement of stakeholders will be key to facilitating conflict resolution during the planning process. We consider one of the key benefits of MSP to be the bringing together of all sectors, as opposed to relying on bilateral discussions to resolve issues arising at project stage.
3. However we would like to stress that, rather than being carried out at the end of the planning process, such assessment should be a fully integrated part of the process. SEA will be crucial to integrating the various environmental and sectoral objectives that MSP seeks to bring together, and will also provide a clear focus for stakeholder input and involvement.

Q22. How should conflicting demands on marine space be addressed in the development of spatial plans?

Marine Connection considers it essential that the MSP process respects MPAs and other designated sites. The planning process should help to ensure that conflicts between MPA interests and incompatible uses do not arise at project stage.

Q23. What are your views on the allocation of 'preferred areas' for certain activities, future development or protection of resources?

1. Marine Connection supports the proposal for 'preferred areas' providing they include preferred areas for conservation in addition to preferred areas for industry.
2. We suggest that preferred areas can refer to sites where the exact spatial location is not yet known, e.g. oil reserves, in addition to sites where spatial data will enable zoning of preferred areas e.g. spawning grounds. Potential sites for appropriate development will be identified in the Marine Spatial Plan, in addition to those in which developments or activities should be managed or restricted, and areas where there should be a presumption against damaging development or uses. Vertical zoning may also be required to protect species which are pelagic and by their very nature inhabit the water column, or conversely to protect those living on and within the sea bed. Legislation to underpin such zoning, will aid compliance and enforcement.
3. The preferred areas for conservation should include, but not be limited to, all MPAs (whether Nationally Important Marine Sites (NIMs), Special Areas of Conservation (SACs), HPMPs), as some sites that are not designated are also important e.g. nursery grounds, feeding sites and tidal rapids. It should be noted however, that not all preferred areas for conservation, with the exception of HPMPs, will necessarily exclude development.
4. Marine Connection hopes that MSP will ensure that MPAs, including HPMPs, are recognised as a legitimate use of the sea, and indeed an essential element in the delivery of sustainable development and to achieve the government's vision for our seas. Without them we do not believe MSP will deliver sustainability at the ecosystem level.

Q24. What are your views on the process of developing maps or charts as part of the marine spatial planning process?

1. Marine Connection strongly supports the development of such maps, diagrams, illustrations or other descriptive or explanatory materials in respect of the general policies in the MSP, as appropriate or as may be prescribed.

Q25. Do you have any views on the need to consider the sustainability and environmental impacts of spatial plans, including the use of SEA in the process?

1. Marine Connection considers that cross-sectoral SEAs for each regional sea will be a key advantage of developing MSPs. We would prefer a purely SEA approach to be taken to MSPs, as opposed to the combined SA/SEA which is now applied to the land use planning system and which is proposed by the consultants carrying out the MSP Pilot. We believe that an assessment of the sectoral policies within MSPs, in combination, will allow environmental

objectives to be met and is key to delivering an ecosystem-based, sustainable approach to the management of activities at sea.

Section 9: Licensing Marine Activities

1. Marine Connection welcomes the opportunity the Marine Bill provides to improve the licensing system for development in UK waters and at the coast. We note in the consultation that the licensing system would operate within the context of a marine spatial planning system. Marine Connection welcomes this because it will enable more effective management of conflicting uses in UK seas, address the cumulative and in-combination impacts on the marine ecosystem, and enable UK Government to adopt a longer term more strategic view of the UK maritime area. In addition, we feel the improved licensing system for all uses must take full account of MSP in UK seas, including the policies set out in MSP, as well as relevant international obligations and commitments, such as those under OSPAR and the CBD.

Answers to Questions

Q32: Do you have any views on whether it is appropriate to use the Marine Bill to simplify and streamline the licensing system for marine activities?

1. Marine Connection supports streamlining of consents and licensing that enables efficient planning and licensing as long as all licensing systems are aligned with ecosystem-based management and marine nature conservation is also properly implemented. We also supports a more efficient system if it results in a reduction of unnecessary time spent by SNCOs, government departments and stakeholders (including developers and NGOs) in the current unwieldy and under resourced licensing system.
2. There is a need for a readily transparent process, including feedback to those who have sent in comments about licence applications. 'Simplifying and streamlining' must not result in less consultation. However, quicker and more efficient routes to obtain the views of government bodies and other organisations should be found. For example, if representatives of certain bodies (such as SNCOs) are involved in the MSP process and already knowledgeable about the area of that MSP, they can be the conduit for comments from their own organisation for a planning application. Marine Connection would like to be involved in this process as we are often the most knowledgeable on the cetacean conservation interests of an area.

Q34: Do you have any views on the inclusion or exclusion of certain regimes from the scope of the proposed licensing reforms in this consultation?

1. Marine Connection are very disappointed and concerned that controls not considered in the consultation paper include powers under the Department for Trade and Industry for:
 - a. Oil and Gas – construction and operation of submarine pipelines, under the Petroleum Act 1998.
 - b. Exploration and exploitation of oil and gas.
2. Marine Connection consider that all human activities, plans and projects must be considered under a single marine planning regime in order to achieve the desired integration as described in the consultation. Marine Spatial Planning for UK seas must include all information on current and proposed oil and gas exploration and extraction. In addition, consents for oil and gas exploration

and extraction must take full account of and be guided by UK MSP policies and plans for each Regional Sea in UK waters.

3. More stringent assessment of installations like cables and pipelines must be applied, so that cables and pipelines are subject to EIA in the marine environment and in particular when passing through areas for nature conservation. Applications for the laying of pipelines and cables should be considered together with the application for the installation where they are connected. This is fair to the developer and for nature conservation. Cables and pipelines may disturb a relatively narrow corridor of the seabed, but over the whole distance required, this can amount to a large area of marine habitat being destroyed. In addition the construction of any underwater structures may disturb either in the short or long term cetacean populations. Research is ongoing to assess the type and severity of the potential disturbance through key sites. In some cases, a small diversion of the cable or pipeline could avoid destruction of an important marine habitat. This will become clearer and easier to assess as data is collated for each MSP. Mapping proposals for cables and pipelines on top of data gathered for each MSP will help inform planning and licensing decisions.
4. Marine Connection welcomes the statement that SEA will be applied to each MSP. A proper SEA must be applied to each MSP, including working with an appropriate group of stakeholders. This will ensure that cumulative and in-combination impacts are considered as far as is possible in the overall plan for each regional sea.

Q38: Are there any other key principles that should be considered as part of any changes to the regulatory system?

1. Marine Connection notes the key principles referred to here and set out in Section 4. We are concerned that some stakeholders may misinterpret 'sustainable development' as endorsement to proceed with development activities, beyond the carrying capacity of the ecosystem, in spite of government commitments as set out in the Marine Bill consultation document and in 'Safeguarding Our Seas'.
2. We wish to see the ecosystem approach enshrined in the Marine Bill legislation as the key management tool for implementing long-term sustainable use of marine resources. This is a commitment under the CBD (Convention on Biological Biodiversity). English Nature, OSPAR and others have invested in developing documents to explain this approach. This must be properly explained to sea users and the public in conjunction with the Marine Bill.

Section 10: Improving Marine Nature Conservation

Marine Ecosystem Objectives

1. Marine Connection welcomes the development of thinking on Marine Ecosystem Objectives (MEOs), and we are keen to be involved in the further development of MEOs. We welcome the undertaking in "Safeguarding Sea Life" to integrate consideration of marine ecosystem objectives into marine management processes. We recognise that a framework of objectives to make the link between the UK's vision for the marine environment and marine management "on the ground" is central to implementing an ecosystem-based approach to managing human activities, and in turn allowing us to operate "within environmental limits".
2. We note that work is ongoing to consider socio-economic objectives and how these relate to MEOs or "ecological objectives". Whilst we recognise the role of humans within marine ecosystems, we believe it is essential that MEOs should relate specifically to marine ecosystem components (species, habitats and processes), reflecting that healthy marine ecosystems underpin a wide range of goods and services, and this should be reflected in the relationship between MEOs and socio-economic objectives.
3. MEOs do not replace the need for measures to manage activities directly. Marine Connection are calling for the Marine Bill to introduce a number of relevant tools, including MPAs and measures to protect cetaceans and the greater marine biodiversity in the wider sea. Marine Connection believes that such tools, of which MEOs should be one, are essential to achieving the UK's vision for the marine environment.
4. We believe that the Regional Seas will (in general) be the appropriate scale for the monitoring of MEOs, but that management measures will be needed to ensure that actions at local level are consistent with the objectives. We would note though, that different species and habitats will require different spatial scales to understand the status of populations. For example, cetacean populations will have much larger ranges than static species such as corals and echinoderms. However, the reproductive range of the latter species will need to be taken into account in terms of understanding the possibility of replenishing an area after a species has been removed.
5. It is essential that the indicators chosen to monitor MEOs provide useful information about the ecosystem component in question; we do not feel this is made clear by the example objectives explored in the Technical Paper. For example, the Technical Paper provides a worked example of how the system of high level and operational objectives should link to management measures. The operational objective is to avoid the risk of physical harm and to reduce disturbance of marine mammals. The target is "no dead or seriously harmed mammals in UK waters" and the associated indicator is that seismic surveys are undertaken with full compliance to JNCC guidelines. This indicator does not provide information about whether in fact there *are* dead or seriously harmed mammals in UK waters, therefore cannot inform us as to whether changes are needed to the management measure in question. We assume that this is intended simply as an illustrative example, (because a wider number of targets and measures would need to be associated with the operational objective), but feel it helps to make this point. This is not to suggest that we do not consider it important to monitor the application of

management measures, which will be important in assessing compliance (and is therefore also likely to be an important element in the feedback loop mentioned above).

6. A related but wider comment is that Marine Connection believe that to meet the UK's vision [and international objectives] MEOs will need to focus effort on demonstrably improving the condition of marine ecosystems, rather than simply maintaining them in their current state. We disagree with the technical paper's statement that "that current status is considered to be favourable". The marine environment is not being sustainably managed at present, and evidence of this has been provided by a number of reports including Defra's own "Charting Progress 2005". The need for a change in our approach is urgent - 'business as usual' is not an option. New limits and ways of working will need to be imposed on the economic and social sectors if the decline in marine ecosystem health and biodiversity is to be halted and recovery achieved. In addition, as mentioned above, the monitoring of progress towards MEOs must help us to assess where existing measures need to be adapted.
7. Finally, Marine Connection would like to see the revised BAP targets integrated into MEOs.

Answers to Questions

Q52. Which marine management regimes or processes should include the consideration of marine ecosystem objectives?

1. Holistic, integrated management of all human activities at sea is necessary to deliver an ecosystem-based approach to management, and MEOs are a key component of this approach helping to define what impacts on the ecosystem may or may not be acceptable at a given scale. MEOs should be integrated into the development of MSPs, should be relevant to all licensed activities and integrated into the management of inshore fisheries. Marine Connection advocates that measures are identified which should be triggered according to particular indicators, e.g. cetacean bycatch. It seems likely that fisheries in the area beyond UK competence will impact upon whether some MEOs can be achieved – monitoring of MEOs should allow any such unsustainable impacts to be identified, and assist the Government in bringing issues to the attention of the European Commission.
2. Marine Connection would like to see the introduction of Biodiversity Stop Orders, which could be used by the conservation agencies to control unlicensed activities under certain circumstances, along with byelaws – changes in the condition of MEO indicators could prompt the use of these tools, for example.
3. Monitoring MEOs should provide the information needed to assess whether government policies are capable of achieving international objectives and delivering an ecosystem based approach in the marine environment. It should also allow the Government to make a clear case for changes to international management regimes (e.g. the CFP) where they are demonstrated to be incompatible with the overall goal of healthy ecosystems (i.e. where the Government does not possess the necessary powers to manage impacts caused either by UK nationals or by nationals of other EU member states). In this context, we again note the relevance of the proposed EU Marine Strategy

Directive and the need for a robust and complimentary system at different levels of governance.

Q53. Should consideration of objectives be required through policy guidance, changes to management regimes or sustainable development?

1. Marine Connection believes that all three approaches will be necessary. We accept the detail of MEOs should not be included in the Marine Bill but would call for the Bill to contain a number of statutory duties in relation to MEOs, including:
 - a) A duty on the Secretary of State to develop a set of MEOs for the purpose of achieving healthy marine ecosystems
 - b) Duties on public bodies to carry out monitoring in order to measure progress against MEOs.
 - c) Duties on competent authorities to review management measures where monitoring indicates that MEOs are not being met.
 - d) A duty on all public bodies to contribute to the delivery of MEOs in the exercise of their functions. A duty on the Secretary of State to initiate a review of relevant policies where monitoring shows that MEOs are not being met.
 - d) A duty on the Secretary of State to make representations to relevant international fora where policies beyond the competence of the UK are impacting on the UK's ability to progress MEOs

Marine Protected Areas

1. Marine Connection welcomes the inclusion in the consultation of proposals relating to the designation and protection of MPAs. Analysis of harbour porpoise sightings data during 2002 demonstrated the identification of possible sites which could be considered as Special Areas of Conservation (SAC) or potentially Marine Protected Areas⁴; to date though, no candidate sites for the harbour porpoise have been put forward. As SACs currently stand they do not present a viable option for adequately protecting cetaceans in the UK. A two-tiered approach is required within which marine ecosystem objectives should be one of a number of tools utilised to protect cetaceans in UK waters. They will need to be based on the precautionary principle, working through a representative network of NIMSS, which must include a suite of HPMRs. Marine Connection considers that the new MPA mechanism should be statutory rather than voluntary and that the primary purpose of these sites should be to support the recovery and conservation of biodiversity and ecosystem processes.

Answers to Questions

Q54: Do you agree that a mechanism for the designation of protected areas should be introduced in the Marine Bill? Paragraphs 10.47-10.51.

⁴ Evans, P.G.H. & Wang, J. (2002) Re-examination of Distribution Data for the Harbour Porpoise around Wales and the UK with a view to site selection for this species. Sea Watch Foundation, Oxford.

1. Marine Connection believes that NIMSSs and HPMRs are pre-requisites for the sustainable management of the UK's marine environment. NIMSSs and HPMRs are also the principal delivery mechanism in respect of the UK's commitments on MPAs under the OSPAR Convention and the World Summit on Sustainable Development (WSSD) and as such will play a vital role in the protection of the UK's cetacean species. Furthermore, they play a vital role in the maintenance and monitoring of 'good environmental status' as required by the European Marine Strategy. If the Bill does not provide a mechanism for delivering effectively managed, MPAs for biodiversity conservation and recovery (NIMSSs and HPMRs), it is Marine Connection's view that the Bill will have failed.
2. Marine Connection are concerned about the regular reference to voluntary measures – they work as long as favourable economic circumstances prevail. This could hold for many years, even decades, but will almost certainly change at some point – at which point the agreement will fail, and all protection will be lost, often too quickly for new resources and protective measures to be deployed.
3. In order to adequately conserve and protect the UK's marine biodiversity and significantly contribute to our commitments under OSPAR "to develop an ecologically coherent network of well managed MPAs by 2010" we need to establish a network of statutory MPAs, including NIMSSs and HPMRs.
4. Like Natura 2000 sites, NIMSS are MPAs in which a range of activities are managed and controlled in accordance with the biodiversity conservation objectives of the site. In contrast, HPMRs benefit from a higher level of protection. HPMRs may encompass all or part of an MPA.
5. A suite of HPMRs throughout UK seas would bring specific benefits over and above those provided by other MPAs:
 - a. Promoting the recovery of the structure and function of the marine ecosystem.
 - b. Protecting the natural biodiversity and abundance of marine life.
 - c. Increasing public understanding and use through sustainable tourism.
 - d. Providing un-disturbed sites for long term monitoring.
 - e. Providing areas for intrinsic human enjoyment.
6. Marine Connection believes that a network of MPAs and HPMRs needs to be established for the conservation of cetaceans, to protect nursery and/or calving areas, important feeding sites – as these may additionally overlap with historical fishing areas and areas of high habitat and/or social use. It may be necessary to establish no-take zones for some fish species.

Q55: Should the new mechanism complement or replace legislation for Marine Nature Reserves? Paragraph 10.52.

1. Marine Connection agrees that the existing mechanisms for Marine Nature Reserves (MNRs) are insufficient to deliver the required protected area network, due to being restricted to the coastal zone. These mechanisms are also unsuitable in other ways. The MNR mechanism, while specific to marine sites, is flawed in a number of critical areas and has been acknowledged as such by Government and the statutory nature conservation organisations

2. It is Marine Connection's view that the new mechanism should replace legislation for Marine Nature Reserves. There are only three MNRs in existence (only one in waters under the Government's jurisdiction) and, provided that these sites were immediately transferred to the new system, there would be no benefit in maintaining the MNR legislation. The designation of the existing MNRs as NIMSS and/or HPMRs (as appropriate) should be treated as a priority during the implementation of the new legislation. To avoid a period in which the sites are unprotected, the MNR legislation should be repealed once the new legislation is in place.

Q58 Do you agree that, where options exist, a range of factors including social and economic considerations should be taken into account in choosing between sites? Paragraphs 10.59-10.62.

1. Marine Connection agrees that "*there may be areas of the marine environment that we want to protect because they are particularly special or are essential for the structure and functioning of marine ecosystems and the support of marine biodiversity.*" In other words, there are some sites or features that are unique or are so important in other ways that their protection is imperative, irrespective of the socio-economic impacts. These sites should be identified by the Statutory Nature Conservation Organisations and prioritised for designation.
2. In contrast, there will be many cases in which there is a choice of sites that could be designated to fulfil the conservation objectives, especially for those sites intended to protect representative examples of a particular feature. Marine Connection believes that in such cases, the relevant Statutory Nature Conservation Organisation should produce a short-list of preferred sites based solely on biodiversity considerations. Key factors should include the current condition of the sites and potential for recovery, their potential role in supporting ecosystems and biodiversity and their contribution to the protected area network. Once this short-list is complete, socio-economic and wider considerations might be taken into account in choosing between the sites, in order to achieve the maximum benefit from the protected area network.

Q59. Should we include provision for altering site boundaries, or de-designation of sites? Under what circumstances? Paragraph 10.63.

1. NIMSS and HPMRs should be viewed as permanent designations in order to derive full benefits in the long term. However, Marine Connection accepts the need for provision for altering site boundaries under specified circumstances. These circumstances should relate closely to the purpose of the site and the network. For example, new hydrological research might indicate that network connectivity would be more effective if the boundary were extended to include a particular feature or area. Alternatively, mobile species, such as cetaceans may move outside the original boundary in response to changes in prey distribution, requiring the movement of the boundary to enable effective protection of the species.
2. Marine Connection recommends that MPA boundaries are not drawn too 'tightly' to the edges of the key features, and that site and network design considers the value of buffer zones. The main function of this is to apply an approach that protects ecological processes as well as habitats and species. However, this approach should also reduce the need for boundary relocations.

3. Marine Connection also accepts the need for a mechanism for de-designation of part of a site (for example in relation to a boundary movement), or a site in its entirety in exceptional circumstances and on a site by site basis. Boundary alterations and de-designations must directly benefit biodiversity conservation and network function, and there must be a transparent process (including explicit criteria) for agreeing and implementing these changes. However it may not always be necessary to de-designate or move boundaries. Indeed it may be appropriate to review the value of an existing site in fulfilling the full range of MPA functions. For example, a site originally designated to protect a particular feature (e.g. a vulnerable species or habitat) might bring value to the MPA network by offering protection to a representative habitat/feature even though the original species or habitat is no longer present. Marine Connection believes that such considerations are important as part of a flexible system.

Q60-61. Do you agree that different marine nature conservation sites will need to have different levels of objectives? What are your views on a flexible site mechanism where levels of protection can be altered to meet site needs and objectives? Paragraphs 10.64-10.66.

1. Marine Connection's view is that all MPAs should have biodiversity and ecosystem recovery and conservation as their sole purpose. Appropriate powers and duties should be provided to enable both direct and indirect control of activities in all MPAs, together with appropriate enforcement activity.

Q62-63. What are your views on whether MPAs should directly control activities managed at the national level, or provide protection through wider marine management mechanisms? What would be required to make each approach effective? Are there any other mechanisms that we should consider introducing for site protection? Should we introduce a requirement for an appropriate assessment to be carried out where activities are likely to cause significant damage to a site? Paragraph 10.67.

1. Experience from protected areas in the UK and overseas suggests that there should be both direct and indirect control of activities within HPMRs and NIMSSs. In New Zealand, for example, the Marine Reserves Act (1971) provides direct management of a range of activities while legislation also allows for sectoral indirect management within MPAs. In Natura 2000 sites, the relevant authorities have frequently been unable or unwilling to utilise their powers to provide appropriate indirect protection.
2. Marine Connection advocates that where possible (i.e. where appropriate powers could be newly created through the Marine Bill), control should be direct (e.g. through bye-laws and Stop Orders created by the SNCO), as this is likely to be the most effective and straightforward mechanism for ensuring protection of the sites. The Statutory Nature Conservation Organisations should be granted the appropriate powers (i.e. to stop activities in emergency situations and introduce bye-laws, both pro-actively and reactively, as a longer term measure), and these powers should take precedent over those relating to other sectoral interests within the MPA (e.g. fisheries bye-laws).
3. Marine Connection also advocates a requirement for the Department responsible for MPAs to inform and seek action from the relevant European

Directorate when activities regulated at a European level are preventing the MPA from fulfilling its function. This is an issue that will inevitably grow in importance as member states progress towards implementation of offshore Natura 2000 and OSPAR MPA networks. While, at present, there is no mechanism for resolving such conflicts, Marine Connection anticipates and advocates that this will need to change.

Species Conservation Measures

1. Marine Connection welcomes Defra's stated commitment to protecting marine species that are vulnerable to human impacts (p. 106). We look to the marine bill to introduce wide-ranging measures to support the protection, conservation and recovery of biodiversity, throughout the marine jurisdiction (i.e. to 200nm)⁵. Notwithstanding, the species protection measures contained in the Wildlife and Countryside Act 1981 (WCA) are considered important for those marine species particularly threatened by human activities. Marine Connection is anxious that introducing a new approach does not mean dismissing the measures which are already available (but need tightening up) through the WCA. Therefore, Marine Connection supports either of the following two alternatives:
 - a. Replace relevant sections of the WCA with clauses more specific to marine species in the marine bill, along with additional, new measures for protection, conservation and recovery of marine biodiversity (species and habitats) in the wider sea (all applicable to 200nm);
 - b. Amend identified elements of the WCA to address loopholes and ensure applicability to the marine environment; extend application of WCA to 200nm; AND introduce additional, new measures for protection, conservation and recovery of marine biodiversity (species and habitats) in the wider sea.
2. As previously discussed, Marine Connection is in principle supportive of work being undertaken to develop Marine Ecosystem Objectives (MEOs), but firmly believes that improved measures to protect biodiversity in the wider sea (as well as via spatial tools such as marine protected areas), will make an essential contribution to biodiversity protection and recovery. Such measures are therefore likely to be key to meeting MEOs. Marine Connection believes that MEOs do not obviate the role of Part 1 of the WCA in protecting marine species. We believe that this (or similar) legislation needs to be applied throughout marine waters, to 200nm. In addition, we advocate amendments to Part 1 of the WCA to ensure its effectiveness in the marine environment.

Answers to Questions

Q67: Are there threats to the conservation of marine species in the offshore area or elsewhere that are not addressed by existing measures and controls? Please give examples

1. Biodiversity is not limited to the inshore zone – indeed cetacean species regularly move between inshore and offshore areas – and human activities

⁵ The Scottish, Welsh and Northern Irish administrations all have responsibility for specific affairs out to 12nm, including marine conservation. Biodiversity policy and legislative proposals will need to consider these arrangements individually, and are likely to require a legislative approach that reflects these arrangements.

which may impact upon biodiversity are increasingly moving offshore. Therefore, nationally important marine biodiversity should be protected by UK law throughout waters where the UK has jurisdiction and responsibility – i.e. the whole UK continental shelf, and super adjacent waters out to the 200nm limit (noting that the devolved administrations have responsibility for nature conservation to 12nm⁶).

2. For example the UK is home to and visited by some 28 species of cetaceans, many of whom utilise waters beyond the 12nm limit. Protection in offshore habitats would safeguard pelagic species such as the common dolphin, minke whale (*Balaenoptera acutorostrata*) and rare, but increasing visitors such as humpback whales (*Megaptera novaeangliae*).
3. In summary, the 12nm limit is arbitrary for species such as those described above. Marine Connection therefore argues that the provisions of the WCA should be extended to 200nm. While we recognise that there are limited resources to enforce such legislation at sea, we believe the Marine Bill should provide the opportunity to prosecute individuals that intentionally or negligently impact upon protected species beyond 12nm. Extending the WCA (or similar new legislation) to 200nm would provide a clear message to marine stakeholders that such activities are not acceptable, and act as a deterrent to the law-abiding majority. The functions of the Marine Fisheries Agency (which may be integrated into a new MMO) should be extended such that it can enforce nature conservation laws as well as fisheries regulations. The Agency is likely to be well placed to identify incidental catches of cetaceans. Furthermore, with increasing levels of development in the offshore areas, such controls are likely to become increasingly relevant over time. The marine bill provides a key opportunity to build a flexible approach that meets our need now and in the future.

Q68: Which option for species protection in the Marine Bill would be most compatible with the principles described in section 4? Are there any other options that should be considered?

1. Marine Connection supports “option b – extend species protection legislation” which will provide protection for domestically listed species throughout UK waters. We also believe there is a need to amend identified elements of the WCA to address loopholes and ensure applicability to the marine environment; and to introduce additional, new measures for the protection, conservation and recovery of marine biodiversity (species and habitats) in the wider sea.
2. While all are of some value, the approaches to species protection outlined in paragraph 10.81 will not alone provide the level of protection required, for the reasons described as follows:
 - a. Voluntary approaches – The success of such schemes are of limited success in protecting threatened species, and are perhaps more appropriate for the inshore zone than beyond 12nm⁶.

⁶ The voluntary closed area of Lyme Bay to mobile gears has not restricted the recent influx of trawlers from Scotland and further afield causing damage to pink seafan colonies in the bay. Similarly, a voluntary no-anchor zone in Plymouth West Hoe has been unsuccessful in preventing anchor damage to the local fanshell population. The voluntary closed area in St

- b. Sectoral approaches – Sectoral approaches, such as the introduction of pingers to reduce bycatch, will provide increased protection for certain species but cannot protect all those species listed under the WCA.
 - c. Protected areas – While Marine Connection is highly supportive of proposals to introduce a network of MPAs, including for mobile species and ecosystems that support mobile species, this represents one of the tools available. Further protection is also needed within the wider marine environment outside MPAs. For example, the bottlenose dolphin populations of both the Moray Firth and Cardigan Bay are not only resident within the waters of these SACs. As such, these wide ranging species, need protection measures outside of any designated MPA, in any effective nature conservation toolbox for rare and threatened UK marine biodiversity.
 - d. Wider marine management – As discussed above, while Marine Connection supports the concept of MEOs, we believe that MEOs do not obviate the role of Part 1 of the WCA in protecting marine species. MEO whilst focusing management effort, does not replace the need for a range of mechanisms to provide clear unequivocal protection to rare and threatened UK marine species from damaging activities.
3. Marine Connection further suggests the following amendments with respect to the WCA are required:

New offence of reckless killing

4. The Council Framework Decision on Environmental Crime (2003/80/JHA) requires that unlawful killing of protected fauna and flora is established as a criminal offence when committed with negligence. Extending existing provisions to include reckless as well as intentional killing would implement the requirements of the Framework Decision in this regard.
5. Under the WCA, birds, Schedule 5 animals and Schedule 8 plants are currently protected against intentional, but not reckless, killing. We believe that there is now a major inconsistency in the legislation whereby the term 'reckless' is added to the lesser offences of disturbance but not to the more important offences of killing, taking or destruction of birds and animals. To overcome these inconsistencies and to overcome the difficulty of proving intent on the part of the offender Marine Connection proposes that the term 'reckless' be added to all appropriate sub-sections of the WCA which currently demand that intent is proven, namely 1(1), 3(1)(a), 9(1), 13(1)(a) and 13(1)(b). However, the implications of the introduction of this term need to be considered for the conservation of all animals and plants, and adequate legal consideration given to ensuring that the law does not undermine the necessary survey and management work for these protected species and their habitats.

Defences

6. The WCA includes the defence that allows damage to protected species as 'the incidental result of an otherwise lawful operation'. Marine Connection argues that this is a significant loophole in the protection of species and that while damage may be an incidental result of an operation it can often be predicted. We suggest that this could be addressed by including in the

Agnes, Cornwall was fished by one of two full time potters, with 17 other hobby and part time fishermen respecting the boundaries.

legislation requirements to identify potentially damaging operations, assess their impact on the species in question, develop and introduce mitigation measures, and monitor their effectiveness so that further measures can be developed if necessary.

7. For example, in Cornwall a voluntary approach (Code of Conduct) to reduce porpoise bycatch was developed in 2004 by gill netters after a considerable number of porpoises and dolphins were stranded in Mounts and St Austell Bay with clear signs of gill-net entanglement. Within the code (which was developed by the Sea Fisheries Committee and the Cornwall Fish Producers Organisation), fishermen were asked to refrain from setting nets if porpoises were sighted in the vicinity of these two bays. It appears that the code had some success at raising the issue and has since been adapted by the industry for the whole county. However, there has been no monitoring by the fishermen themselves of the results of the operation in terms of reducing bycatch, and illegal fishing has since been reported by the Environment Agency whereby salmon and eel nets have been set too high at the mouths of estuaries, resulting in porpoise bycatch.

Q69: Do you consider that unlicensed activities currently threaten the conservation of marine ecosystems and biodiversity? If so which activities are of most concern and why?

1. Unlicensed activities (e.g. leisure craft), depending on extent and intensity, can disturb wildlife. There is evidence that disturbance has been increasing over the past 10-15 years, particularly with the advent of jet skiing. There is concern that direct collisions will injure and sometimes kill marine wildlife (through propeller damage, diver damage, anchor damage and so forth), but there is also the need to monitor increasing boat traffic which targets 'hotspots' of marine wildlife, and the impacts these vessels may have on the use of key breeding, feeding or resting grounds for species such as seabirds, seals, basking sharks and cetaceans.
2. Harassment of certain species (e.g. cetaceans) by pleasure boats is also a real issue, in particular in relation to underwater noise.⁷ Human induced noise has been documented to induce behavioural reactions including cessation of feeding, socializing and vocalising, changes in diving behaviour as well as avoidance or attraction. In addition, noise has been documented as causing displacement of cetaceans from preferred habitats. If disturbances are repeated or are of long duration, they may cause stress, debilitation and ultimately mortality⁸.

Q70: What are your views on the introduction of byelaw-making powers for the control of unlicensed activities?

1. Marine Connection believes that powers should be given to competent authorities to create zones where, for example, speed restrictions can be put in place or vessels are restricted from entering, for reasons of wildlife protection. Such powers could be used flexibly, to protect specific areas at certain times of the year, for example, when young animals (e.g. seal pups

⁷ Kelly C, Glegg, GA and Speedie, CD (2004) Management of Marine Wildlife Disturbance. *Ocean and Coastal Management* 47 (1-19).

⁸ Simmonds MP, Dolman S and Weilgart L (2003) Oceans of Noise. Published by WDCS. www.wdcs.org

during August and September) are more sensitive to intrusion by people and vessels. Use of byelaws, for example by local authorities, could be a useful means of reducing conflict and disturbance to wildlife in the coastal zone, to the limit of local authorities' jurisdiction. However, byelaws alone may be insufficient and further powers may be required for competent authorities (such as the ability to issue stop orders when there is an immediate and pressing threat to a protected species).

Q71: Are there alternative regulatory approaches to the control of such activities that we should consider?

Marine Wildlife Watching Code

1. A national, consolidated code of conduct for marine wildlife watching is needed and legislation could achieve this. A generic code, with statutory backing, that could be developed by additional clauses for local situations and different species would set the standard and provide guidance (how to operate and behave to minimise disturbance to marine wildlife) to both leisure and commercial pleasure craft that come into contact with marine wildlife. It would additionally aid enforcers, as non-compliance with the code could be used as supportive evidence for the offence of disturbance. The Nature Conservation (Scotland) Act has recently introduced such a provision and provides a useful example of how such codes may be underpinned by statute.

Biodiversity stop orders (BSOs)

2. The appropriate authority should be given powers to call an urgent halt to activities likely to damage NIMFs and Biodiversity Action Plan habitats and species. These powers would be relevant where, for example, ongoing operations were discovered to be having an unacceptable impact upon a species or habitat, or where a population of a mobile marine species unexpectedly occurred in an area where an operation could impact upon it. The potential benefits of providing such emergency powers was recognised in the RMNC final report (para 7.32). Marine Connection believes BSOs are a vital tool, given the fragility of some marine communities and the long-term damage that can be caused by a single activity during a short timescale. They should be reactive and quick, providing a tool by which activities can be urgently stopped until a byelaw or other appropriate mechanism can be implemented.

Q72: Should any powers to control unlicensed activities be related to marine protected areas, or capable of wider application?

1. Marine Connection believes that any powers to control unlicensed activities should be capable of wider application. Many of the species (e.g. cetaceans and sharks) that attract wildlife watching range over such large areas such that spatial restrictions are not practical. In this instance, Codes of Conduct/license regulation could be more relevant.
2. Marine Connection also advocates that a duty is placed upon the Secretary of State to report to the European Commission if issues beyond UK competence impact on nature conservation objectives. Furthermore, in order to facilitate legislative measures for biodiversity conservation it is important that where the UK is unable to take unilateral action, a clear remit and process for competent authorities (e.g. government departments) is set out in policy guidance to seek action/ resolution through the relevant international bodies.

Q73: What do you think are the most important improvements that the Government could make to the prevention of marine nature conservation offences and the enforcement of relevant legislation?

1. There have been no prosecutions under the WCA for offences relating to marine species since 1981 in spite of reported impacts on protected species. This does not mean that the legislation is redundant, but instead highlights the need for effective enforcement. While Marine Connection recognise that resources for enforcement will be limited, we believe that the introduction of new nature conservation measures will provide a clear indication to marine stakeholders that behaviour which negatively impacts upon protected species is not acceptable. Marine Connection further believe that this will act as a deterrent to the majority of sea users, discouraging them from engaging in behaviour that is harmful to wildlife, also the introduction of a marine wildlife watching code will make offences less likely, as well as aiding enforcement.

Q74: What are your views on which organisations should (or should not) carry out different stages of marine nature conservation functions arising from the Marine Bill to ensure the principles in section 4 and those in paragraphs 11.16-11.25 are delivered?

1. Marine Connection believe that the SNCOs must retain their independent nature conservation advisory role in relation to all aspects of marine management. They should also have responsibility for the identification, designation, direct management and monitoring of MPAs.
2. We also advocate that appropriate powers, duties and functions be given to the appropriate authorities to enforce marine nature conservation legislation, including the Royal Navy, the Maritime and Coastguard Agency and the Marine Fisheries Agency. We note that this latter may be integrated into the new MMO, and we suggest that the MMO could provide the necessary co-ordination between nature conservation enforcement bodies.
3. Furthermore, we believe all public bodies and office-holders should be given a statutory duty to further the conservation of biodiversity and to contribute to the achievement of MEOs.

Q76: Do you consider that any changes to functions, powers or duties of delivery organisations are needed to facilitate the implementation of nature conservation legislation in the Marine Bill?

1. A general duty should be placed on all public bodies and office-holders to further the conservation of marine biodiversity. The NERC Act 2006 contains a duty for all public bodies to "*have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity*". Clarity is needed on whether this duty applies throughout the marine jurisdiction of the UK, i.e. beyond the territorial waters of England and Wales and whether any new public body – such as an MMO – would be subject to this legislation. We also urge the Bill Drafting team to consider stronger wording similar to that contained within the The Nature Conservation (Scotland) Act 2004 i.e. "*It is the duty of every public body and office holder in exercising any functions, to further the conservation of biodiversity so far as is consistent with the proper exercise of those functions*".

2. Marine Connection advocate that the list of NIMFs should be given a legal status, as per Section 41 of the NERC Act relating to England, and that (again as per the NERC Act) the Secretary of State should be required to take steps to further the conservation of the species and habitats on the list, and to promote the taking of such steps by others. There should also be a requirement for the list to be revised, on a regular basis, and in consultation with the SNCOs. NIMFs should also be incorporated into MEOs, and that a number of statutory duties are required to ensure MEOs are taken into account in all aspects of marine management.
3. Marine Connection believes that powers should be given to competent authorities to create zones where, for example, speed restrictions can be put in place or vessels are restricted from entering, for reasons of wildlife protection. Such powers could be used flexibly, to protect specific areas at certain times of the year, for example, when they are important for raising young and animals are more sensitive to intrusion by people and vessels, e.g. seal haul outs during pupping season, whilst not restricting activities outside these areas or at other times of the year. Use of byelaws, for example by local authorities, might be a useful means of achieving this in the coastal zone and to the limit of local authorities' jurisdiction. However, byelaws alone may be insufficient and further powers may be required for competent authorities, e.g. operating in the context of marine spatial planning.
4. There is considerable evidence that human activities have significantly increased the overall level of sound in the oceans during the last few decades. Accordingly, there is growing concern that this trend is having a significant negative impact on marine life. Recent scientific evidence supports the observation of mass-strandings of cetacea as a result of chronic (propeller, sonar) and point (seismic survey, piling) impacts from noise in the marine environment. Cetaceans are also susceptible to displacement, stress, disruption to normal behaviour, injury or even death from underwater noise. Significant noise sources include increasing boat traffic, construction work (e.g. pile driving), seismic survey and military sonars⁹. Statutory acoustic guidelines should be developed and applied to all industries which introduce potentially harmful noise into the marine environment, with subsequent monitoring and reporting requirements and enforcement. Regulatory standards for the construction, design and use of technology in the marine environment should consider noise production levels along with other environmental concerns. Marine Connection also believes the extension of the criteria for the identification of MEHRAs should be considered, to take account of noise pollution from shipping.
5. Statutory acoustic guidelines should be developed for all activities which introduce potentially harmful noise into the marine environment, with subsequent monitoring and reporting requirements and enforcement. Regulatory standards for the construction, design and use of technology in the marine environment should consider noise production levels along with other environmental concerns.

⁹ Simmonds, M.P., Dolman, S. and Weilgart L. 2003. Oceans of Noise. Published by WDCCS – available on WDCCS website: www.wdcs.org

Regulatory Impact Assessment – Answers to Questions

Q132: How would you value the benefits to business and other of an improvement in the state of marine biodiversity in offshore sea areas (beyond 12nm from the coast)?

1. The ecosystem of the marine environment is linked in many ways, which we are beginning to understand. Protecting pockets of sedentary species outside 12nm may have influence on the larval supply from these source populations to populations within 12nm. During their adult stages, cetaceans, some seabird species, basking sharks and turtles migrate between offshore (>12nm) and inshore (<12nm) waters. When they come inshore, these species benefit the wildlife watching trade which is worth millions of pounds annually.

Q133: What are the costs of agreeing and implementing voluntary or sectoral measures for the protection of important marine species? Please give quantified examples where possible.

1. Volunteers can help with getting results from which conservation plans for protected species can be developed by SNCOs. What follows are the costs to maintain these data gathering projects derived from an EN report on marine volunteer surveys operation in England¹⁰

| Organisation | Survey (species) | Minimum cost (£k/pa) | Maximum cost (£k/pa) | Notes |
|-----------------------------|--------------------------------|----------------------|----------------------|--|
| Marine Conservation Society | Basking shark | 8 | 25 | Provided advice on Bonn Convention proposal |
| Seasearch | All subtidal protected species | 5 | 15 | Provided advice on protection of fanshells in Plymouth Sound |
| Sea Watch Foundation | Cetaceans | 8 | 25 | Provided research findings to JNCC |

Q134: To what extent would businesses be prepared to implement voluntary measures such as codes of conduct for the protection of important marine species? What level of take up would you anticipate across marine industries?

1. The WISE scheme as developed by Colin Speedie (<http://www.wisescheme.org>) has seen considerable growth in support since its inception in 2003. The training of operators consists of instruction in how to best view these creatures, whilst at the same time minimising disturbance to them. Now there are over 250 companies or individuals with WISE accreditation around the UK. WISE involves wildlife watching operators and general sea users attending a day-long course, and paying a fee to be trained in good practice when watching marine wildlife. There is obviously good support for the scheme, as it leads to an accreditation within the industry which is clearly valued amongst business, and in the future may attract more revenue as customers become familiar with the scheme. Wildlife Watching

¹⁰ EN report #556 – Irving R (2003) Volunteer participation in marine surveys. Report to EN, October 2003.

operators are already using the logo on their marketing materials. (e.g. Orca-Seafaris, <http://www.orcasea-faris.co.uk/main.asp>).

2. There has been mixed success of the Code of Conduct for the use of gill-nets and by-catch of cetaceans in Mounts Bay and St. Austell, although Marine Connection is positive that this type of agreement could be beneficial for raising awareness within business/industry, but needs funding for independent monitoring to record the results of any such scheme.

Section 12: The Potential for a New Marine Management Organisation

Q77: Have we correctly identified the functions that are 'core' to deciding whether to create an MMO?

1. Marine Connection agree that functions such as collation of data, mapping, SEA, consultation, monitoring and review are core to Marine Spatial Planning, and that the MMO should take overall responsibility for these. This must include powers to obtain data from reliable sources including stakeholders. 'Encouraging' sharing of data is not enough. There is an urgent need to collate and map all available data that will aid and inform MSP, and these data must be made available to the MMO.

Q78: Are there other functions that you consider 'core' to an MMO? Why? &

Q79: Do you consider that the Marine Fisheries Agency should be merged into an MMO, if established?

1. Marine Connections feels that the Marine Fisheries Agency should be an arm of the new MMO. The MFA should use its sea-going capability to aid enforcement and monitoring in UK seas, not only for fisheries and 'no take zones', but for nature conservation and the protection of marine species and habitats. The CFP applies from 0nm, and management of coastal fisheries is also required. Having two separate enforcement bodies would confuse fishers. If they are part of the same organisation this issue would not be a problem.

Q81: Have we identified the right marine organisations for potential inclusion in an MMO?

1. Marine Connection agrees that the MCA should remain outside of the MMO. However, it should provide information to the MMO that will inform the MSP, for example shipping movements in relation to offshore energy developments. The MCA should also work closely with the MMO, to contribute to enforcement for the protection of the marine environment, including managing disturbance and destruction of marine habitats and species, and pollution by shipping.

Q83: Do you wish to make any points to be included in our consideration of whether individual non-core functions should be delivered by an MMO?

1. Marine Connection agrees that the core functions of an MMO are Marine Spatial Planning and delivery of integrated licensing regime. Under non-core Functions, our view is that Nature Conservation Agencies must retain their powers to play a primary role in designation of Marine Protected Areas and protection of marine species and habitats. They should therefore be undertaking the initial assessment of areas, site selection, designation, development and selection of protective measures.
2. It is Marine Connection's view that the identification of Natura 2000 sites should remain the duty of the nature conservation agencies. Selection should be done in close collaboration between the MMO and Nature Conservation Agencies.

Q84: Do you agree that we should exclude the potential transfer of statutory (marine) nature conservation advisory roles to the MMO from further consideration?

1. Marine Connection believes that the Statutory Nature Conservation Organisations must retain their powers to play a primary role in designation of Marine Protected Areas and protection of marine species and habitats. Their stature as an independent government body should not be subsumed by the MMO, and they should continue to give advice in an independent capacity.

Q85: Are there any other 'non-core' functions that we should be considering for inclusion in an MMO?

1. The following responsibilities should also become part of the MMO's remit. They are compatible with its proposed core functions and necessary in order to implement an ecosystem approach to management in our seas:
 - a. facilitate "integrated decision-making" between government departments and stakeholders, using Regional MSPs as the guide, for the purpose of achieving consensus and sustainable use of marine resources;
 - b. ensure joined-up management between marine and coastal initiatives (e.g. integration between MSP and WFD and ICZM);
 - c. ensure the establishment of a framework for point of contact meaningful stakeholder involvement "to feed in to MSP (important for NGOs and developers);
 - d. provide policy guidance and advice on an adaptive approach to management (to cope with new technologies, lack of data, movement of species and habitats, and difficult-to-predict impacts);
 - e. provide policy guidance and advice on implementation of the precautionary principle (as well as applying the precautionary principle in its own work).
2. In addition, the MMO will have an overview of MSP and be charged with developing and implementing policies in line with national and international commitments. Therefore the MMO should hold the responsibility to ensure that climate change issues are considered "in the management of planning MSP and activities in the UK's maritime environment".

Q86: Are there functions you consider incompatible - i.e. they should not be undertaken in combination – whether by an MMO or another body?

1. Marine Connection reiterates here that the Statutory Nature Conservation Organisations must retain their powers to play a primary role in designation of Marine Protected Areas and protection of marine species and habitats. Their stature as an independent government body should not be subsumed by the MMO, and they should continue to give advice in an independent capacity.