

# Taking forward the Marine Bill: The Government response to pre-legislative scrutiny and public consultation

September 2008

This document sets out the Government response to the public consultation on the draft Marine Bill and to the reports of the following Parliamentary Committees:

- The Ad Hoc Joint Committee on the Marine Bill.
- The Report of the Environment, Food and Rural Affairs Committee on the Draft Marine Bill: Coastal Access Provisions.

## Executive Summary

### Overview

In April of this year, the UK Government published a draft Bill for pre-legislative scrutiny and public consultation. This document sets out how the Government intends to take forward the measures set out in that draft Bill, in light of the issues raised in the public consultation and the recommendations that emerged from pre-legislative scrutiny. It includes our response to the issues raised on the impact assessment published with the draft Bill and the Government's response to each of the recommendations made by the Committees conducting pre-legislative scrutiny.

### Context

The draft Bill set out in legislation the proposals which were widely supported in the Marine Bill White Paper – 'A Sea Change'. These included a new marine planning system and licensing rules, a new organisation to ensure better marine management, new powers to enable the creation of a network of marine conservation zones and improvements to the management of marine and freshwater fisheries. The draft Bill also includes measures for providing greater access to the English coast.

### Pre-legislative scrutiny and the public consultation

Pre-legislative scrutiny was completed by a Joint Committee of the House of Lords and House of Commons, and the Environment, Food and Rural Affairs (EFRA) Select Committee. Between them they received evidence from over 100 different witnesses (either in writing or orally) and made 119 specific recommendations to the Government in their two separate reports.

Alongside this, Defra conducted a public consultation on the draft Bill via its website. This generated 399 'non-campaign' responses, and around 3,500 responses affiliated to specific campaigns organised by the Royal Society for the Protection of Birds, International Fund for Animal Welfare and Friends of the Earth, and a further 11,000 responses from the Ramblers' Association, in support of coastal access.

Overall, around 459 organisations and individuals offered their views on our proposals in the draft Bill. We believe the nature of the responses and Committee reports indicate ongoing broad stakeholder support for our overarching proposals.

On the detail of our proposals, the process has generated useful feedback which has informed the way forward set out in this document. We have set out the Government's response to each of the Committees' recommendations in a schedule within this report. However, we have not responded to each individual point made via the public consultation. We have instead identified recurring themes and responded to them, particularly where the Committees considered the same or similar points. A separate analytical summary of the responses made to the public consultation is available on the Defra website at:

[http://www.defra.gov.uk/corporate/consult/marinedraft Bill/summary-responses.pdf](http://www.defra.gov.uk/corporate/consult/marinedraft%20Bill/summary-responses.pdf)

## **Moving forward**

In light of the pre-legislative scrutiny and the results of the public consultation, the Government intends to further develop the draft Bill and our planned implementation of it in the following ways, subject to Parliamentary time. We will:

- establish a new organisation, called the Marine Management Organisation (MMO) to deliver marine functions in the waters around England and in the UK offshore area (for matters that are not devolved) which we will ensure is properly resourced and has a clear and unambiguous purpose (see section 3.1);
- take forward the proposed new marine planning system including through amending the draft Bill to introduce a requirement on policy authorities to periodically review the Marine Policy Statement (MPS); make the MPS subject to a similar Parliamentary process as National Policy Statements; and ensure marine plan authorities are under an obligation to do what they can to ensure compatibility with terrestrial plans (see section 3.2);
- improve the provisions on licensing by requiring each appropriate licensing authority to establish an appeals mechanism and setting out detailed transitional arrangements (see section 3.3);
- amend the draft Bill provisions relating to nature conservation in various ways to provide greater clarity and certainty, including through conferring a statutory duty on Ministers to designate Marine Conservation Zones and setting out other functions and responsibilities on the face of the draft Bill (see section 3.4);
- continue with our plans to strengthen the management of marine fisheries, including by replacing Sea Fisheries Committees with newly created Inshore Fisheries and Conservation Authorities (see section 3.5) and to modernise powers for the licensing and management of migratory and freshwater fisheries (see section 3.6);
- streamline and modernise enforcement powers ensuring enforcement officers are appropriately trained; provide a power to establish an appeals process for statutory notices under the licensing provisions; and provide guidance that the maximum level of fixed monetary penalty will be capped at £5,000 (see section 3.7);

- place a duty on the Secretary of State and Natural England to secure a long distance route and land available for open-air recreation, including through amending the draft Bill to require Natural England to conduct a review of early implementation, and to report to Parliament after 10 years (see section 3.8).

## Next steps

The Government published a Green Paper on 14 May 2008 which detailed the draft legislative programme for the next session, 2008-09. The Marine Bill was included in this draft legislative programme. The introduction of the draft Bill remains, however, subject to the availability of Parliamentary time.

*[Sections not relating to coastal access have been omitted]*

### 3.8 Improvement of access to the coast (Part 9 of the draft Bill)

**The draft Bill places a duty on the Secretary of State and Natural England to secure a long distance route ('the English coastal route') and land available for open-air recreation ('spreading room') accessible to the public around the coast of England. It amends existing legislation to provide a coastal margin, within which people will be able to walk along a long-distance route for the length of the English coast (with certain exceptions, including, for example, developed land, Ministry of Defence land, land used as a park or garden, railways and quarries). In addition, people will have access to coastal land such as beaches, cliffs, rocks and dunes, for the purposes of open air-recreation on foot.**

These aims were supported by the scrutiny process.

The Joint Committee made six recommendations relating to the proposed measures for coastal access. The main issues raised were the independent appeals process, compensation, parks and gardens, and costs. It welcomed the principle of increased access to the coast and that of 'spreading room' for outdoor, coastal recreation. It believed that the aim of a continuous coastal route around the length of the English coast is laudable, and it supported the intention of Natural England and the Government to ensure so far as is possible the continuity of the path.

The EFRA Committee made 23 recommendations. The main issues covered were discretion given to Natural England, including on estuaries, Parliamentary scrutiny of the Scheme, an independent appeal process, compensation, parks and gardens, cost and long-term maintenance. It stated that there are likely to be economic, health and social benefits from more people visiting, and enjoying, the coast. It saw the benefits of the proposed legislation in producing quicker, and more consistent, access creation than existing mechanisms, but proposed amendments to the draft legislation to make it sensible and fair.

The public consultation generated 191 responses. Where respondents expressed a clear view, there was broad support for the provisions in the draft Bill, with 96 respondents welcoming the coastal access provisions and 44 respondents who did not welcome the proposals. Responses primarily addressed: local consultation, resources

(specifically for long-term maintenance of coastal paths), excepted land (particularly on parks and gardens) as well as appeals mechanisms and compensation for coastal stakeholders. Over 11,000 members of the Ramblers' Association sent post cards with personal comments in support of the coastal access provisions in the draft Bill. We welcome the broad support given to the principle of providing for improved access to the English coast through new legislation.

#### Discretion given to Natural England and Parliamentary scrutiny

3.8.1 The EFRA Committee asked for further information to be included in the scheme that is being drawn up by Natural England, for instance clear explanations and diagrams about how it intends to align the route and determine the extent of spreading room. It felt that the draft Bill should require Natural England to carry out a review of the lessons it has learned from early implementation of the route and spreading room. It proposed that after 10 years Natural England should report to Parliament on progress with implementation. The draft Bill should provide that the Secretary of State can only approve the Scheme after Parliament has given its approval via the affirmative resolution procedure.

3.8.2 We welcome the EFRA Committee's views on how Natural England's outline scheme could be improved. It is Natural England's intention to prepare a more detailed draft at the time the draft Bill is published and this will include more details on the particular areas identified by the Committee. **We will include a provision in the draft Bill requiring Natural England to conduct a review of early implementation and will give further detailed consideration to the scope of the review. We agree that after 10 years Natural England should report on progress to Parliament.** We do not agree with the Committee's view that that the draft Bill should be amended so that the Secretary of State can only approve the Scheme after Parliament has given its approval via the affirmative resolution procedure as this will remove the flexibility for Natural England to amend the Scheme in a timely manner in the light of lessons learned from implementation.

#### Estuaries

3.8.3 The EFRA Committee felt that the provisions about estuaries in the draft Bill are very vague and leave excessive authority to Natural England. The draft Bill should include a clear specification about where the trail should cross estuaries. Twenty respondents to the public consultation asked that the management of access to estuaries be further clarified.

3.8.4 Estuaries range in size from for example the Severn, the Humber and the Thames down to small tidal rivers of only a few metres' width which indent the English coast. We recognise that estuaries throw up particular challenges, which include the importance of wildlife habitats and nature conservation. For this reason we do not feel that estuaries should automatically be included in coastal access, and the default position is that the cut-off point is 'the seaward limit of a river's estuarial waters' (which generally means the mouth of the river). However, we do feel that many estuaries are suitable for inclusion in coastal access for at least part of their extent. The draft Bill therefore allows Natural England the discretion to propose to extend the coastal route and margin to the first bridge or tunnel, or ferry if appropriate.

3.8.5 Having further considered the situation of estuaries and the comments made in pre-legislative scrutiny and public consultation, we believe that, in order to be able to deal appropriately with individual estuaries, but to ensure the decision is based on clear and transparent criteria, Natural England should be able to stop the route at any point between the mouth of the estuary and the first bridge or tunnel, but that we should set out on the face of the draft Bill the considerations which Natural England must have regard to in proposing this.

#### Appeals mechanism

3.8.6 The EFRA Committee said that the lack of a formal appeal process is a fundamental weakness of the draft Bill. It considered the right of landowners and occupiers to have an independent, third party appeal process to be an important element of the fair balance between public and private interests that the Government is aiming to achieve. It felt that the draft Bill should provide for such a process. Should an appeal process be allowed, it felt that the Government should ensure the costs involved with using it are minimised. The Joint Committee recommended that the designation of the route and spreading room, and decisions on exclusions and restrictions, be subject to an independent appeals mechanism. Nineteen respondents to the public consultation called for the provision of a mechanism for appeals to an independent body whereas two specifically said that there should be no provision.

3.8.7 The draft Bill requires Natural England to consult affected landowners before preparing its coastal access report which it has to submit to the Secretary of State and which will include details of the route, of associated spreading room and of any proposals for exclusions and restrictions on access. In addition the landowner is given an opportunity to make representations about matters in the coastal access reports. Those representations must be considered by Natural England and passed by Natural England to the Secretary of State who must also consider them before making a determination as to the position of the route. The report which Natural England draws up does not constitute a decision or a series of individual decisions, which can be appealed against, but rather a recommendation to the Secretary of State. The recommendation does not relate solely to the land of an individual landowner, but to an area of the coast where there are a variety of interests. Any proposal relating to the land of one landowner has implications for other interests and the report seeks to strike a fair balance between the different interests. It is for the Secretary of State to make a decision on whether the report strikes the correct balance. This decision is a general approval of the proposals as a whole. For these reasons we do not feel that an appeals process would be appropriate.

3.8.8 In carrying out these processes both Natural England and the Secretary of State are required to aim to strike a fair balance between the interests of the public in having rights of access over land and the interests of any person with a relevant interest in the land. There are also certain safeguards written into the Countryside and Rights of Way Act 2000 which are relevant to this balance. In particular there are safeguards for privacy, as the right of access does not apply to certain categories of 'excepted land' including land used as a park or garden, and land covered by buildings or the curtilage of such land. There is also provision for exclusions and restrictions on the right of

access, when necessary, for example for land management (which includes managing land for commercial purposes). We believe that these safeguards are adequate and appropriate.

### Compensation

3.8.9 The EFRA Committee said that the draft Bill should give Natural England the power to offer compensation to owners and occupiers who can demonstrate financial loss as a result of the coastal access provisions where such compensation is necessary to achieve the fair balance between public and private interests that the draft Bill requires. The Joint Committee said that if the Government intends to make payments of any kind for those suffering loss from the designation of the coastal route, there must be an open and transparent process. Forty-four respondents to the public consultation proposed that procedures be established for compensating property owners or businesses where a significant loss could be proven.

3.8.10 The draft Bill does not include any provision to enable Natural England to offer compensation. Our view is that the framework of the draft Bill provides sufficient flexibility in the alignment process to avoid situations where the coastal access rights will cause significant financial loss. The legislation gives Natural England the discretion it needs to position the route, in consultation and discussion with landowners, with this consideration clearly in mind.

3.8.11 The flexible nature of the legislation alongside the duty on the Secretary of State and Natural England to strike a fair balance between those with an interest in the land and the interest of the public in having access, as well as the provisions to exclude excepted land, particularly sensitive land such as parks and gardens and the curtilage of dwellings, will allow Natural England to avoid creating situations where compensation would be required. Natural England will also be under a duty to consult with landowners in deciding on any necessary conditions on access or areas where access should be excluded for example for land management purposes. Experience of using the exclusions and restrictions system under the Countryside and Rights of Way Act 2000 shows that it can be used in a wide range of situations to avoid financial loss for owners. The establishment of the new right will not affect the right of landowners to use, develop or sell their land as before.

3.8.12 Natural England will also be able to revisit decisions about alignment, and about the need for exclusions or restrictions, in the light of experience of actual impacts from access, and of any evidence that emerges of actual financial loss arising.

### Parks and gardens

3.8.13 The EFRA Committee agreed with the Government that parks and gardens should be excepted land under the coastal access proposals. Nevertheless, it suggested that Natural England may attempt to negotiate voluntary access agreements with landowners of parks and gardens if this produces the most appropriate alignment. The Joint Committee supported the need to ensure that individuals' property rights and privacy are protected. The majority felt that the Government should give careful thought to what is included in the 'parks and gardens' exemption, but this was not the view of all;

some welcomed the exemption as it stands. The Joint Committee said that this is clearly an issue to which Parliament will wish to return when the Bill is introduced. But in any event it encouraged the Government and Natural England to co-operate with owners and occupiers in voluntary agreements outwith the legislation. Fifteen respondents to the public consultation agreed with the approach in the draft Bill. The large majority of these respondents focused on private gardens only. Five respondents considered that a blanket exclusion might not be appropriate in all circumstances and that it would be reasonable to provide for a route through in exceptional circumstances. They argued that without such provision the Government's vision of a continuous coastal route would be compromised. They noted that more precise, clearly defined terms would help the decision-making process.

3.8.14 We have previously indicated the main measures that we intend an Order under section 3A to contain, including proposals on any changes to the existing categories of 'excepted land' which are contained within Schedule 1 to the Countryside and Rights of Way Act 2000 for the purposes of section 2(1) of that Act. We have set out our intention to retain the category of 'Land used as a park or garden' in Schedule 1 as it affects land that will become coastal margin. Following Royal Assent, the details of the draft Order will be subject to a consultation process. The Order will then be subject to affirmative resolution by both Houses, as required under clause 278(7) of the draft Bill.

3.8.15 We note the Joint Committee's view that the Government should give careful thought to what is included in the 'parks and gardens' exemption, and that this is an issue to which Parliament will wish to return when the draft Bill is introduced. In the meanwhile, we will give further detailed consideration to what is included in parks and gardens.

3.8.16 We agree with the Joint Committee that owners of parks and gardens who are prepared to allow the coastal strip to pass through their land will be free to dedicate the necessary strip of land under section 16 of the Countryside and Rights of Way Act 2000.

#### Local consultation

3.8.17 There was widespread welcome among respondents to the public consultation for the proposals for local consultation. However, some felt that the provisions did not provide certainty that consideration would be given to the views of wider stakeholders.

3.8.18 We note concerns expressed in the public consultation about consideration of the views of wider stakeholders. We believe that the procedures in the draft Bill allow for appropriate consideration of the views of wider stakeholders. We will however amend the draft Bill to include access authorities in the list of those who may make representations on Natural England's report which will be copied in full to the Secretary of State. In addition, the draft Bill gives the Secretary of State power to specify in regulations persons to whom Natural England must give notice of the publication of coastal access reports. We will consult on any regulations in due course.

#### Funding and long-term maintenance

3.8.19 The EFRA Committee said that the Government should re-evaluate Natural England's assumption regarding the cost of developing the pathway. Once the exercise

is completed a detailed schedule of the proposal's cost should be published. It also said that the Government should clarify responsibility for, and the estimated costs involved in providing, long-term maintenance before the draft Bill is introduced. The Joint Committee recommended that the Government produce a detailed estimate of the costs of both establishing and maintaining the coastal path, and subject this analysis to consultation with concerned parties. Fifty respondents to the public consultation sought clarification on the provision of funding for long-term maintenance of the coastal route. Twenty-one respondents were concerned that Natural England's estimated expenditure of £50m over 10 years would not prove adequate to deliver the improvements required.

3.8.20 We will review any specific comments on the estimate of costs which have been submitted as part of the Government's public consultation on the draft Bill, and will ensure that all appropriate areas of cost have been taken into account in arriving at the figure. Natural England will continue to refine the costs estimate as implementation plans are further developed and in the light of experience as implementation commences. Building on the data gathered to date, Natural England is currently working with all access authorities around the English coast and undertaking a detailed audit of existing access provision to inform and refine its operational assumptions for the project. We will make available further information on the costs following the completion of Natural England's work with access authorities and subsequently as implementation proceeds.

3.8.21 We agree that it is important to clarify responsibility for, and the estimated costs of, the long-term maintenance of the coastal access route. We have previously indicated in our evidence to the Committee that Natural England will fund implementation and maintenance of the new parts of the trail during the ten-year implementation phase. The intention is that after the ten-year implementation phase, Natural England should contribute to the maintenance of the trail to an extent consistent with the findings of its current National Trails Review, which are expected later this year. Natural England will also aim to develop national-local funding partnerships, as has been the case for all of its and its predecessor bodies' other major initiatives to improve access to the countryside. Where the trail follows existing public rights of way, highway authorities will remain legally responsible for their maintenance.