

A Draft MARINE BILL

Prepared on behalf of WWF

This is a Bill to establish a framework of marine spatial planning. The Bill falls into five parts. Part 1 requires all competent authorities to take reasonable steps to achieve the conservation purposes of the Bill by imposing this as a statutory purpose. The aim of the statutory purpose is to integrate conservation into the remainder of the Bill whose focus is primarily on the achievement of sustainable development when planning for the marine environment or managing important marine sites and marine features.

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Acknowledgements

This Draft Marine Bill has been prepared on behalf of WWF by Deborah Tripley and Daniel Owen of Fenners Chambers. Deborah Tripley prepared Parts One, Two and Four. Daniel Owen prepared Part Three. Kate Markus of Doughty Street Chambers also provided input to the Bill. The Welsh aspects of the Bill were prepared by Guy Linley-Adams, Solicitor. Some of the clauses in the Bill use text from existing or draft UK legislation, in respect of which Crown copyright is acknowledged.

This Bill has been produced by WWF to stimulate the discussion for UK-wide marine legislation, and to push the marine stewardship agenda forward. This Bill is not intended to be prescriptive. Rather it is designed to provoke and guide debate and detailed thought among those who would contribute to the government’s own proposed marine bill.

WWF has developed this Draft Bill, to illustrate what some aspects of much-needed marine legislation might look like in legal language. The Bill is a good starting point and is intentionally incomplete. For example, governance and enforcement are critical areas that must be addressed, and new legislation is needed for fisheries in the context of a marine bill.

This *Draft Marine Bill* shows that it is possible to include various marine issues in one piece of legislation. It also highlights the complexity of managing the many diverse pressures through an integrated approach.

Much of the legislative text in this Draft Bill has been developed from policy papers produced by Wildlife & Countryside Link’s (WCL) Marine Campaign for comprehensive legislation. WWF is an active member of WCL and has produced this *Draft Marine Bill* to complement the work of WCL. Link wishes to further progress towards new legislation that will ensure effective nature conservation and ecologically sustainable development in UK seas. With this in mind, WWF issues this Draft Bill as a challenge to government to achieve Link’s aims. WWF welcomes the opportunity to discuss this Draft Bill with other marine stakeholders and government in the coming months.

PART ONE

STATUTORY PURPOSE

1. Statutory purpose

(1) It is the duty of any competent authority to which this section applies, consistent with the proper exercise of its functions, to take reasonable steps to achieve the conservation purposes of this Act.

(2) In complying with the duty imposed by subsection (1) an authority must have regard to-

- (a) any strategy designated under section 3(1), and
- (b) the United Nations Environmental Programme Convention on Biological Diversity of 5 June 1992 as amended from time to time (or any United Nations Convention replacing that Convention).

(3) A competent authority within this Part is any authority with functions under the following enactments-

- the Dockyard Ports Regulation Act 1865,
- section 2(2) of the Military Lands Act 1900 (provisions as to use of sea, tidal water or shore),
- the Whaling Industry (Regulation) Act 1934,
- section 34 of the Coast Protection Act 1949,
- the Crown Estate Act 1961,
- the Harbours Act 1964,
- the Continental Shelf Act 1964,
- the Prevention of Oil Pollution Act 1971,
- Part II of the Control of Pollution Act 1974,
- the Wildlife and Countryside Act 1981 (marine nature reserves),
- Part II of the Food and Environment Protection Act 1985 (deposits in the sea),
- the Petroleum Act 1987,
- the Electricity Act 1989,
- the Water Resources Act 1991,
- the Land Drainage Act 1991,
- the Sea Fisheries Acts within the meaning of section 1 of the Sea Fisheries (Wildlife Conservation) Act 1992,
- the Transport and Works Act 1992,
- the Radioactive Substances Act 1993,
- sections 128 and 129 of the Merchant Shipping Act 1995 (prevention of pollution from ships),
- the Government of Wales Act 1998,
- the Petroleum Act 1998,
- the Pollution Prevention and Control Act 1999,
- the Energy Act 2004,
- the Environmental Assessment (Salmon Farming in Marine Waters) Regulations 1988,
- the Merchant Shipping (Prevention of Pollution) (Law of the Sea Convention) Order 1996,
- the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996,

- the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998,
- the Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) Regulations 1999,
- the Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations 1999,
- the Harbour Works Regulations,
- the Countryside and Rights of Way Act 2000
- the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000,
- the Electricity Act 1989 (Requirement of Consent for Offshore Wind and Water Driven Generating Stations) (England and Wales) Order 2001,
- the Offshore Chemicals Regulations 2002,
- the Offshore Installations (Emergency Pollution Control) Regulations 2002,
- the Environmental Impact Assessment and Habitats (Extraction of Minerals by Marine Dredging) Regulations **[not yet made]**,
- the Water Environment (Water Framework Directive) England and Wales Regulations 2003, and
- this Act.

and shall also include any authority in Wales as have such functions as above devolved under the Government of Wales Act 1998, National Assembly for Wales (Transfer of Functions) Order 1999 or subsequent such Orders.

(4) The Secretary of State, and in so far as the functions of any such competent authorities are devolved functions under the Government of Wales Act 1998 or National Assembly for Wales (Transfer of Functions) Order 1999 or subsequent such Orders, the National Assembly for Wales may amend, add, delete or alter the above list by way of regulations at any time and as is seen fit.

(5) In so far as any functions of any competent authority are prescribed in this Act and

- (a) are not functions devolved to the National Assembly for Wales under the Government of Wales Act 1998 or the National Assembly for Wales (Transfer of Functions) Order 1999 and subsequent such Orders, but;
- (ii) are functions exercisable within or affecting the marine area of Wales as defined by Regulation 6 of the National Assembly for Wales (Transfer of Functions) Order 1999, or
- (iii) are functions that affect any land that is partially in England and partially in Wales

these functions shall be exercisable by that authority but only in consultation with or at the request of the National Assembly for Wales.

2. Meaning of Conservation purposes

- (1) The ‘conservation purposes’ of this Act shall mean-
 - (a) the conservation of biodiversity as defined by the Convention on Biological Diversity 1992, and
 - (b) the strategy designated under section 3(1).

3. Biodiversity strategy

- (1) The Secretary of State and the National Assembly for Wales as respects Wales, must designate one or more strategies for the conservation of biodiversity.
- (2) These strategies shall set out ways in which an authority shall achieve any of the following:
 - (a) the implementation of an ecosystem approach to the marine environment,
 - (b) the sustainable development of the marine environment,
 - (c) the protection, maintenance, enhancement, restoration and recovery of species and habitats and marine landscapes as established on any list provided for by the Secretary of State or National Assembly for Wales as appropriate under this Act or in any other manner as is seen fit,
 - (d) the protection and preservation of cultural heritage,
 - (e) the right of every person to have the environment protected, for the benefit of the present and future generations, including a right to live in an environment adequate to his or her health and well-being.
- (3) The Secretary of State or National Assembly for Wales as appropriate must publish any strategy so designated, including lists provided for under subsection 2 (b) above, in such manner (including on the internet or by other electronic means) as is seen fit.
- (4) The Secretary of State or National Assembly for Wales as appropriate may review such strategies published under subsection (3) above from time to time and must publish any revised strategies.
- (5) The Secretary of State and National Assembly for Wales must within 3 years of the date on which strategies under subsection (3) are first published lay before the House of Commons or National Assembly for Wales as appropriate a report regarding the implementation of those strategies.
- (6) In so far as this section concerns Wales, any such strategy must form part of any scheme for the promotion of sustainable development in Wales as required by section 121 of the Government of Wales Act 1998.

4. Overriding public interest

- (1) A competent authority may exercise its functions contrary to the conservation purposes of this Act if satisfied that –
 - (a) there is no alternative to the carrying out of its functions in such a way and that such functions must be carried out in such a way for imperative reasons of overriding public interest, or
 - (b) if it is an emergency action particulars of which, including details of the emergency, were notified to the Secretary of State, and in addition the National Assembly for Wales as respect Wales, as soon as practicable after the start of the action, and the action is taken to avoid danger to human life or health.
- (2) A competent authority may not exercise its functions in accordance with subsection(1) unless it has first carried out an appropriate assessment of the effects on the marine environment of its failure to achieve the conservation purposes of this Part.
- (3) A competent authority shall only exercise its functions contrary to the conservation purposes after it has taken into account any representations made by the

public concerned and obtained the consent of the Secretary of State or National Assembly for Wales as appropriate

(4) Upon being requested by a competent authority for consent to exercise its functions in accordance with subsection (1), the Secretary of State or National Assembly for Wales as appropriate may:

- (a) grant or withhold consent; and
- (b) if consent is granted, issue directions to the authority as to the exercise of the function or functions in question including a direction to exercise its functions in such a way as to:
 - (i) minimise any damage or disturbance to the marine environment,
 - (ii) restore, so far as reasonably practicable, any damage or disturbance caused, and
 - (iii) provide any necessary compensatory measures so as to secure the conservation purposes.

(5) The Secretary of State and National Assembly for Wales shall notify any decision made under subsection (4) above within 28 days beginning with the day on which his consent was requested.

(6) This power is without prejudice to any other power the Secretary of State or National Assembly for Wales may exercise in relation to the function in question.

(7) The Secretary of State and National Assembly for Wales shall publish any consent in such manner (including on the internet or by other electronic means) as is seen fit.

PART TWO MARINE SPATIAL PLANNING

Chapter one – Establishing a system of marine spatial planning, advisory body and regional bodies

[Explanatory Note: Re: Use of the term ‘sustainable development’

The use of the term ‘sustainable development’ throughout the Bill is not intended to be prescriptive as to any existing or future definition of the term that may be considered appropriate by the government or other conservation bodies.

WWF-UK has used the term to mean ‘improving the quality of all human life while living within the carrying capacity of supporting ecosystems. In this context ‘carrying capacity’ means the capacity of an ecosystem to support healthy organisms, while maintaining productivity, adaptability, and capability of renewal.’ This is merely proposed as a working definition for the purposes of these draft provisions.

However, it should not be taken that this definition is one that necessarily finds favour with all LINK members, who may wish to apply a different definition or different terminology when proposing future legislation within the context of the following provisions. WWF-UK recognises that there are many other competing definitions for the term ‘sustainable development’ and would anticipate that there would be wide stakeholder involvement in any definition applied by the Government to any future marine Bill.]

5. Duty and functions of the Secretary of State and National Assembly for Wales

(1) It shall be the duty of the Secretary of State and the National Assembly for Wales to establish a framework for marine spatial planning (‘MSP’ in this Part) in the marine area in accordance with the following sections of this Part and in order to ensure the sustainable development of the marine area, and, as respects Wales, this framework shall be expressly included in any scheme made by the National Assembly for Wales under section 121 of the Government of Wales Act 1998

(2) A framework for MSP shall comprise –

- (a) an advisory body
- (b) regional marine bodies and regional marine spatial plans
- (c) sub-regional bodies and sub-regional spatial plans
- (d) UK guidance issued by the Secretary of State jointly with the National Assembly for Wales
- (e) directions and regulations

(3) In establishing a system of MSP the Secretary of State and National Assembly for Wales shall have regard to the rights and duties of other States and shall act in a

manner compatible with provisions arising from international obligations, agreements or treaties to which the UK is a contracting party, including¹:

- (a) the United Nations Convention on the Law of the Sea 1982 (UNCLOS).
- (b) the United Nations Convention on Migratory Species (Bonn Convention, including the Agreement on the Conservation of small cetaceans of the Baltic and North Seas – ASCOBANS and the Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area- ASCOBAMS).
- (c) the Paris Convention for the Protection of the Marine Environment of the North East Atlantic 1992 (OSPAR).
- (d) 5th International Conference on the Protection of the North Sea, BERGEN Declaration 2002.
- (e) the Climate Change Convention
- (f) the United National Programme Convention on Biological Diversity 1992.
- (g) the UNECE Convention on Access to Information, Public participation in Decision Making and Access to Justice in environmental matters (Aarhus Convention) 1998.
- (h) the Ramsar Convention on Wetlands of International Importance especially as Waterfowl Habitat, 1971.

(4) In this Part, as respects Wales, any functions the responsibility for which has been wholly or partly devolved under the Government of Wales Act 1998 or National Assembly for Wales (Transfer of Functions) Order 1999 or subsequent such Orders, shall be performed by the National Assembly for Wales in consultation with the Secretary of State where necessary..

(5) In this Part, as respects Wales, any functions not devolved to the National Assembly for Wales under the Government of Wales Act 1998 or the National Assembly for Wales (Transfer of Functions) Order 1999 and subsequent such Orders, but exercisable within or affecting the marine area of Wales as defined by Regulation 6 of the National Assembly for Wales (Transfer of Functions) Order 1999, or affecting any land that is partially in England and partially in Wales shall be exercisable by the Secretary of State but only after consultation with or at the request of the National Assembly for Wales.

6. Advisory body to Secretary of State and National Assembly for Wales

(1) The Secretary of State and National Assembly for Wales shall jointly establish an advisory body [to be known as.....].

[Note: the aim is for a single unifying body to be responsible for advising the government on the establishment and co-ordination of regional bodies].

[Note: The above represents one option but should not be taken as representative of the views of LINK who have not as yet come to a view on this matter.]

(2) It shall be the duty of the [advisory body] to advise the Secretary of State and, as respects Wales, the National Assembly for Wales as to a system of regional marine bodies for the purposes of marine spatial planning.

¹ This provision is meant to serve the purpose of incorporating the UK's various international obligations. It will be for the Secretary of State and National Assembly for Wales in guidance to set out in what ways he believes actions will be compatible with these obligations.

- (3) The advisory body shall identify the boundaries of each region within the marine area [to be known as regional marine boundaries].
- (4) Any advice to the Secretary of State or National Assembly for Wales by the [advisory body] concerning regional marine boundaries may recommend alterations to any existing regional boundaries.
- (5) In advising the Secretary of State or National Assembly for Wales on regional boundaries the [advisory body] shall ensure that any advice is compatible with achieving sustainable development.
- (6) The identification of a regional marine boundary shall take into account –
- (a) the identification and mapping of a comprehensive series of marine landscapes using geophysical, hydrographical and biological data; and
 - (b) the assessment of the value of each marine landscape for nature conservation; and
 - (c) the sensitivity and vulnerability of the marine landscape to actual or likely human activities;
- (7) In advising the Secretary of State and National Assembly for Wales the [advisory body] shall identify parts of coastal waters where more detailed sub-regional marine spatial plans may be required.
- (8) A sub-regional marine spatial plan within subsection (7) above means a plan as for the purposes of spatial planning in the coastal waters in accordance with sections 23, 24 and 26 of this Part.
- (9) In providing advice to the Secretary of State and National Assembly for Wales in accordance with this section the advisory body shall prepare a strategy for the involvement of the public in the exercise of the advisory body's functions.
- (10) The strategy –
- (a) must include such persons as the Secretary of State or, as respects Wales the National Assembly for Wales prescribes;
 - (b) may include such other persons as appear to the advisory body to have an interest in matters relating to any human development in the marine area.
- (11) The advisory body shall provide further advice to the Secretary of State and the National Assembly for Wales on the following:
- (a) the functions to be exercised by each regional marine body;
 - (b) the name by which the regional marine bodies should be known; and
 - (c) the number of persons to be appointed to each regional marine body including a system of appointment and retirement;
- (12) The advisory body may consult and seek the participation of such persons as it considers appropriate to be members of any regional marine body.
- (13) The Secretary of State and, as respects Wales, the National Assembly for Wales shall make provision by way of regulation for the establishment of regional marine bodies.

7. Inquiries and hearings

When establishing the boundaries for marine regions in the marine area or proposals for the alteration of such boundaries the Secretary of State and National Assembly for

Wales as appropriate may by regulations made under section 31 of this Part consider any representations made in accordance with those regulations and cause a local inquiry or other hearing to be held for the purpose of hearing objections.

8. Publication of Notice

(1) Subject to the provisions of section 6 the Secretary of State and, as respects Wales, the National Assembly for Wales may establish marine regions having regard to the advice of the [advisory body].

(2) As soon as practicable after determining boundaries for marine regions the Secretary of State or National Assembly for Wales as appropriate shall –

(a) give notice of the determination to any person whose objection was referred to an inquiry or hearing in accordance with section 7 above and,

(b) publish a notice of the determination in the London Gazette and in both regional and local newspapers circulating in the area (or each of the areas) to which the marine region relates, including, as respects Wales, any Welsh or Welsh language publication as the National Assembly for Wales may prescribe.

9. Regional marine bodies

(1) It shall be the duty of the regional marine bodies to establish MSPs for their region to give effect to the sustainable development of the marine area in accordance with the conservation purposes and any guidance made under section 27 of this Part by the Secretary of State or National Assembly for Wales, and, as respects Wales, in accordance with any scheme for the achievement of sustainable development made under section 121 of the Government of Wales Act 1998.

(2) Each regional marine body shall develop and implement MSP to ensure the sustainable development of the marine area taking into account the following-

(a) any guidance issued by the Secretary of State or National Assembly for Wales,

(b) any list of nationally important marine features, including any management action and any network of nationally important areas or sites, including designated sites of special scientific interest (SSSIs), marine nature reserves, and European sites and European offshore marine sites;

(3) Each regional marine body shall make a detailed monitoring and evaluation report to the Secretary of State and, as respects Wales, to the National Assembly for Wales, at least every five years in matters prescribed by the Secretary of State or National Assembly for Wales as appropriate.

(4) The monitoring report shall contain specific information as to the extent to which the policies set out in the MSP as required by section 13 are being achieved.

(5) The regional marine body shall keep under review matters which affect or it expects to affect development and activities in its marine region or the planning and management of those activities and shall institute, where appropriate, a survey or surveys of the marine area for examining those matters.

(6) The regional marine body shall provide the Secretary of State and, as respects Wales, the National Assembly for Wales with a report of these reviews on an annual basis, the first report to commence 18 months from the date on which the first MSP is published and every 12 months thereafter.

- (7) The matters to be kept under review or examined in accordance with subsection (5) shall include-
- (a) the principal physical, biological and chemical characteristics of the marine region and, so far as they may be expected to affect that area, of any neighbouring areas;
 - (b) fisheries;
 - (c) communications and transport systems and traffic of the sea area;
 - (d) integrity of conservation networks, including the network of nationally important sites;
 - (e) environmental impact assessments of developments and human activities;
 - (f) 'good surface water chemical status' as defined in article 4(1) (a) of the Water Framework Directive (out to the limit of the territorial sea);
 - (g) on-going monitoring programmes, including the establishment of programmes for the monitoring of water status in accordance with requirements under the Water Framework Directive (EC Directive 2000/60/EC);
 - (h) economic resources within the sea area and the exploitation thereof, including, but not limited to, sources of energy and bio-prospecting.
- (8) Each regional marine body shall co-operate with other competent authorities with respect to all activities or measures in or affecting the relevant marine region.
- (9) Each regional marine body shall take into account such other matters as the Secretary of State or National Assembly for Wales may prescribe by way of regulations made under section 31 of this Act.
- (10) Regional marine bodies shall develop and implement marine spatial plans within such period as is prescribed by the Secretary of State and National Assembly for Wales.

10. General duties of competent authorities

- (1) It shall be the duty of every competent authority to exercise their functions in accordance with any MSP in so far as it affects the exercise of those functions.
- (2) Subsection (1) does not apply if the competent authority is unable to exercise its functions in accordance with the MSP as a result of:
- (a) any provision of primary or secondary legislation; or
 - (b) imperative reasons of overriding public interest,
- but, in the case of (b), the competent authority must act in accordance with section 4 of Part 1 of this Act and seek the consent of the Secretary of State or National Assembly for Wales in accordance with section 4(4) of Part 1 of this Act.
- (3) In exercising any of their functions for the purposes of section 9 a regional marine body may enter into agreements to achieve that purpose with any person, body, authority, government agency, devolved administration or minister.
- (4) With effect from the appointed day the marine spatial plan for a region shall include so much of the guidance established by the Secretary of State and National Assembly for Wales under section 27 as either may prescribe.
- (5) The appointed day is the day appointed for the commencement of this section

[Note: It is recognised that amendments may be required to the Town and Country Planning Act 1990 for the purposes of local authorities implementing aspects of any marine spatial plan relevant to land based planning.]

11. Directions by Secretary of State and National Assembly for Wales regarding marine spatial plans

- (1) Where a regional marine body fails to develop or implement a MSP within the prescribed period the Secretary of State and, as respects Wales, the National Assembly for Wales shall give directions to the regional marine body as to the establishment of a marine spatial plan.
- (2) The directions referred to in subsection (1) may, in particular—
 - (a) require the regional body to establish a marine spatial plan in accordance with the directions;
 - (b) require management measures, including monitoring measures, by the regional marine body of any spatial plans so established;
 - (c) set time limits within which any steps are to be taken, and
 - (d) provide that the approval of the Secretary of State and, as respect Wales, the National Assembly for Wales, is required before the spatial plan is established.
- (3) The Secretary of State and, as respects Wales, the National Assembly for Wales may issue further directions to those competent authorities listed in section 20(10) of this Part for the purpose of the provision of such information as may be specified in the direction.
- (4) The Secretary of State and, as respects Wales, the National Assembly for Wales may prepare a marine spatial plan (including a draft revision of any MSP) if the regional body fails to comply with any direction under subsection (2).

12. Preparation of MSP by the Secretary of State and National Assembly for Wales

- (1) If the Secretary of State or National Assembly for Wales prepares a marine spatial plan (including a draft revision) under section 11(4) then section 9 of this Part shall apply and any revision shall be treated as if the MSP had been received from the regional marine body.
- (2) The Secretary of State or as respects Wales, the National Assembly for Wales may, at any time before the regional marine body has adopted any MSP, direct that all or any parts of the plan are submitted to him for his approval.
- (3) If a direction is given under subsection (2) –
 - (a) the regional marine body shall not take any further steps for the adoption of the plan or any part of the plan, and;
 - (b) the plan or any part of it shall not have effect unless approved by the Secretary of State or National Assembly for Wales as appropriate.
- (4) The Secretary of State or National Assembly for Wales as appropriate may, after considering any particulars of any plan submitted in compliance with a direction under subsection (2) –
 - (a) approve them, in whole or in part and without modification or reservation, or
 - (b) reject them.
- (5) In considering particulars so submitted to the Secretary of State or National Assembly for Wales as appropriate shall take into account any objections made in

accordance with any regulations and the provisions of sections 7 and 8 regarding inquiries and publicity shall apply to the revised MSP.

(6) For the purpose of taking into account any objection or matter, the Secretary of State and National Assembly for Wales shall consult with any competent authority as is considered necessary.

(7) The Secretary of State or National Assembly for Wales shall provide reasons for any decision made under this section.

(8) In any marine region, the Secretary of State and, as respects Wales, the National Assembly for Wales may exercise such of the functions of the regional marine body as is thought appropriate.

(9) Proposals approved by the Secretary of State or National Assembly for Wales as appropriate under this section shall become operative on the appointed day.

10) The appointed day is the day appointed for the commencement of this section.

13. Contents of marine spatial plan- Part 1

(1) An MSP shall consist of two parts and shall mean any MSP or any revision of any MSP.

(2) Part 1 of any MSP shall consist of general policies, including identification of threats to the marine ecosystem within its jurisdiction and the intended response.

(3) Such policies shall be based upon social, economic and environmental criteria whilst adopting an ecosystem approach to the marine area.

(4) Part 1 of the MSP shall take account of any environmental assessment provided in accordance with EC Directive 2001/42/EC of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment and prepared by sectors proposing to, or carrying out human activities within their regional boundaries or adjacent boundaries.

(5) Part 1 shall, subject to subsection (6), establish a clear set of ecosystem quality objectives for the marine environment. They shall set short-term operational targets of 3 to 5 years for achieving sustainable development in the marine region.

(6) In setting ecosystem quality objectives the regional marine body shall have regard to-

- (a) environmental and socio-environmental assessments for the region;
- (b) the identification of marine resources and economic and other opportunities within the marine area, including identification of the marine sectors to be subject to the MSP, community and sectoral interests, industry objectives and priorities for development of the marine area;
- (c) competent authorities affected by or likely to be affected by any MSP;
- (d) any policies or targets set by any sub-regional plan for coastal waters.

(7) The setting of ecosystem quality objectives should ensure, that as a minimum, each regional marine body can manage the marine environment adaptively.

(8) Policies established in accordance with subsection (3) above shall also include indicators of socio-economic factors to be taken into account when setting short-term operational targets.

(9) The MSP shall provide for the periodic assessment of the quality of the ecosystems and general conformity with the objectives established in subsection (5).

(10) The periodic assessment shall be based on monitoring carried out for the purposes of this section and undertaken on a five yearly basis, the first to be undertaken within six years of the commencement of this Part.

(11) The regional marine body shall publish each completed periodic assessment in the London Gazette and, as respects Wales in any Welsh and Welsh language publications as may be prescribed by the National Assembly for Wales, and place them on a public register compiled in compliance with section 19 of this Part.

(12) Regulations under this section may make provision for matters to be included by regional marine bodies within their general policies.

14. Part 2 MSP

(1) Part 2 of the MSP shall consist of-

- (a) a plan
- (b) a summary of the plan containing such detail as the regional marine body thinks fit,
- (c) a written statement containing such detail as the regional marine body thinks appropriate (and so as to be readily distinguishable from the other contents of the plan) of their proposals for the use and development of the marine area;
- (d) a map (or maps) ;
- (e) such diagrams, illustrations or other descriptive or explanatory matter in respect of the general policies in Part 1 of the plan, or the proposals in Part 2 of it, as the plan-making authority think appropriate or as may be prescribed.

(2) A regional marine body shall identify within its plan any network of nationally important marine protected sites established in accordance with Part 3 of this Act.

(3) Any MSP shall contain such other matters as may be prescribed or as the Secretary of State or National Assembly for Wales may in any particular case direct, including any further documents which must be prepared by the regional marine body in connection with any MSP.

(4) In preparing any MSP the regional marine body must-

- (a) carry out an environmental assessment of the proposals in the plan; and
- (b) prepare and publish a report of the findings of the environmental assessment.

(5) Plans prepared under this section shall be accompanied by an explanatory memorandum.

(6) The explanatory memorandum shall state;

- (a) the reasoned justification of the regional marine body for its policies and plans,
- (b) the information upon which its plan is based,

- (c) the relationship of the policies and plan to any guidance set out by the Secretary of State or National Assembly for Wales in section 27 and to the achievement of sustainable development and, in Wales, to the duties of the National Assembly for Wales under section 121 of the Government of Wales Act 1998.

(7) The regional marine body shall;

- (a) make copies of the explanatory memorandum, its policies and plans available for inspection at such places as may be prescribed by regulations made under section 31,
- (b) send a copy of the explanatory memorandum to the Secretary of State and National Assembly for Wales as appropriate, and
- (c) send a copy of the explanatory memorandum to any member of the public upon request.

15. Marine Zones²

[Explanatory Note: WWF-UK acknowledges that the provisions detailing zoning within any MSP are incompletely drafted. It hopes that they will provide interesting discussion on the value of zones, particularly for the purposes of allowing economic activity within any marine protected area that may be identified under the provisions of Parts 3 and 4. It would address its readership to the report of Sue Gubbay for further essential reading on this issue.]

(1) A regional marine body shall identify marine zones within its MSP in so far as they are consistent with the objectives of achieving sustainable development.

(2) Zones may provide for-

- (a) specified human activities to take place within the marine area;
- (b) the conservation of biodiversity

(3) A system of marine zones may be identified for any or all of the following purposes-

- (a) extraction or no extraction zones in respect of marine aggregates
- (b) no take areas in respect of fisheries
- (c) the conservation of biodiversity in accordance with Part 1 of this Act
- (d) any other purposes with respects specified human activities within the zone

(4) Regulations shall make provision for a regional marine body to consult with any competent authority or interested member of the public before identifying zones for these purposes.

(5) Where a zone is for the specified purpose of human activities as set out in subsection (4)(a) above the regional marine body shall carry out an environmental assessment of the implications of the zone for ecological quality objectives contained within the MSP for the marine region.

(6) The regional marine body shall take appropriate steps to avoid the deterioration or disturbance of nationally important marine features within the zone.

²This section contains provisions regarding zoning. The reader is also directed to read the report produced for WWF-UK by Dr Susan Gubbay entitled 'Marine Protected Areas in the context of Marine Spatial Planning – discussing the links.'

(7) Where the express purpose of a zone is for the conservation of biodiversity as set out in subsection (4)(b) the regional marine body shall take account of the economic and social needs contained within its marine spatial plan.

(8) A regional marine body shall take appropriate steps to ensure that any zone does not adversely affect the ecological coherence of any network of nationally important marine sites established under Parts 3 or nationally important marine features established under Part 4 of this Act.

16. Notice to be given to Secretary of State and National Assembly for Wales

(1) If a regional marine body considers it appropriate to establish a zone in accordance with the provisions of section 15 it shall notify in advance the Secretary of State and as respects Wales, the National Assembly for Wales.

(2) A notice under this section must;

- (a) identify the area proposed by means of maps;
- (b) specify the date on which it is to come into force, or the means by which that date is to be determined.

(3) A notice may;

- (a) contain prohibitions or restrictions for the carrying on of activities in a zone, or allow for the imposition of such prohibitions;
- (b) contain provision granting permission for persons to carry on prohibited activities, or for the grant of such permissions;
- (c) may confer discretions on such persons as may be specified or described in the notice;
- (d) may modify or revoke a previous notice; and
- (e) may make different provision in relation to different cases as the regional marine body sees fit.

(4) Without prejudice to the generality of subsection (3) above, restrictions, prohibitions specified within the notice regarding the activities of foreign flagged vessels within the marine region shall be in conformity with the Convention and shall take into account existing measures including in particular the routeing measures.

(5) After a notice is issued under this section, and before determining whether to establish a zone, the Secretary of State and National Assembly for Wales as respects Wales must either –

- (a) publish the notice in such manner as he considers appropriate and as soon as is reasonably practicable bring it to the attention of persons likely to be affected by it; or
- (b) ensure that it is published in that manner by the notifying regional marine body.

(6) Subject to giving notification in accordance with this section and any directions made by the Secretary of State or National Assembly for Wales the regional marine body may establish any zone in whole or in part, that falls within the marine region.

(7) The Secretary of State and as respects Wales, the National Assembly for Wales may direct that the proposals [or any part of them] require approval. If the Secretary of State or National Assembly for Wales so directs the proposals to establish a zone or any part of them shall not have effect unless so approved.

(7) The Secretary of State or National Assembly for Wales as appropriate may approve the proposals in this section in whole or in part, with or without modification, or reject them.

(8) Any approval must be in accordance with subsection 4(a) or (b) above and any zone shall take effect upon the publication of any notice in accordance with that subsection.

(9) For the purposes of this section ‘the Convention’ means the United Nations Convention on the Law of the Sea 1982 and any modifications of that Convention agreed after the passing of this Act that have entered into force in relation to the United Kingdom.

(10) The Secretary of State or National Assembly for Wales as appropriate may make further provision, by way of regulations, for the carrying out of activities by any person in any zone.

(11) Such regulations may include provision for –
(a) the creation of offences for the purpose of enforcement;
(b) conditions imposing obligations in relation to vessels or individuals on it, that must be satisfied whilst the vessel remains in the zone;
(c) Conditions imposing obligations on activities permitted within the zone.

17. Prohibited activities in marine zones³

(1) A vessel may enter or remain in a marine zone except where it is prohibited from doing so by-

- (a) a notice under section 16; or
- (b) by Order made by the Secretary of State or, as respects Wales, the National Assembly for Wales.

(2) The Secretary of State and, as respects Wales, the National Assembly for Wales may make further provision, by way of regulations, for the carrying out of activities by any person in any zone .

(3) Such regulations may make further provision for –
(a) conditions imposing obligations in relation to vessels or individuals on it, that must be satisfied whilst the vessel remains in the zone.
(b) conditions imposing obligations on activities permitted within the zone.

(4) Regulations under this section may confer discretions, with respect to the granting or imposition in accordance with regulations or permissions or conditions, on such persons as may be specified or described in the regulations.

[Explanatory Note: WWF UK note that there are international law imposes legal constraints on the applicability of this type of provision to foreign flagged vessels both within and outside the UK’s 12 nm territorial zone . However, it believes that the control and regulation of shipping is an important consideration for any future marine Bill and is worthy of further detailed discussion and consideration.]

³ WWF-UK note the difficulties in restricting fisheries and innocent passage of vessels beyond 12 nautical miles for those zones established for conservation purposes.

18. Offences relating to marine zones

- (1) A person guilty of an offence under section 17 shall be liable on summary conviction to a fine not exceeding the statutory maximum.
- (2) A person shall not be guilty of an offence under section 17 above where;
 - (a) the contravention was as a result of taking emergency measures in order to avoid danger to life or health; or
 - (b) the act was in accordance with section 4 of Part 1 of this Act and had the consent of the Secretary of State as required by section 4(4) of Part 1 of this Act.

19. Data and mapping

- (1) The regional marine body shall take all reasonable steps to enhance existing data and contribute, in so far as practicable, to existing baseline data for the marine area.
- (2) The Secretary of State and, as respects Wales the National Assembly for Wales, shall make provision by way of regulations for the available collection of data and research including data obtained in accordance with subsection (1) above, to be held on a public register in an appropriate format.
- (3) Any public register provided for by way of subsection (2) may include data collected as a result of the expenditure of public funds, including data produced by universities and research institutions or as a consequence of government or public agency contracts.
- (4) Competent authorities responsible for the enforcement of any legally binding conditions or obligations, however imposed upon operators in the marine area, shall ensure that any environmental data collected as a result of such obligations, including data collected as a result of any environmental statement, is collected in accordance with this section.

20. Adoption of MSP

- (1) The Secretary of State and the National Assembly for Wales as appropriate shall make regulations for the purposes of the adoption by a regional marine body of its MSP.
- (2) Regulations shall include provisions for consultation and publication of the MSP, together with a map or maps of the marine region, by the regional body before any adoption of the plan.
- (3) Where any objections or representations have been made to proposals for boundaries for marine regions under section 7, to proposals for a MSP under sections 13 and 14 the Secretary of State or National Assembly for Wales as appropriate shall cause a local inquiry or other hearing to be held for the purpose of considering those objections or representations.
- (4) No local inquiry or other hearing need be held under this section if all persons who have made objections have indicated in writing that they do not wish to appear.
- (5) A local inquiry or other hearing shall be held by a person appointed by the Secretary of State or National Assembly for Wales as appropriate.

(6) Regulations may –

- (a) make provision with respect to the appointment, and qualifications for appointment, of persons to hold a local inquiry or other hearing;
- (b) make provision with respect to the remuneration and allowances of the person appointed.

(7) Subsections (2) and (3) of section 250 of the Local Government Act 1972 (power to summon and examine witnesses) apply to an inquiry held under this section.

(8) The Tribunals and Inquiries Act 1992 shall apply to a local inquiry or other hearing held under this section as well as subsections (2) and (3) of section 250 of the Local Government Act 1972 (power to summon and examine witnesses) .

(9) Any MSP (including any revised MSP) prepared by the Secretary of State or National Assembly for Wales shall be adopted in accordance with regulations made under this section.

(10) Before the adoption of any MSP and subject to the above provisions, the regional marine body shall consult those competent authorities with relevant functions including, but not limited to, those functions under the following enactments—

- the Dockyard Ports Regulation Act 1865,
- section 2(2) of the Military Lands Act 1900 (provisions as to use of sea, tidal water or shore),
- the Whaling Industry (Regulation) Act 1934,
- section 34 of the Coast Protection Act 1949,
- the Crown Estate Act 1961,
- the Harbours Act 1964,
- the Continental Shelf Act 1964,
- the Prevention of Oil Pollution Act 1971,
- Part II of the Control of Pollution Act 1974,
- the Wildlife and Countryside Act 1981 (marine nature reserves),
- Part II of the Food and Environment Protection Act 1985 (deposits in the sea),
- the Petroleum Act 1987,
- the Electricity Act 1989,
- the Water Resources Act 1991,
- the Land Drainage Act 1991,
- the Sea Fisheries Acts within the meaning of section 1 of the Sea Fisheries (Wildlife Conservation) Act 1992,
- the Transport and Works Act 1992,
- the Radioactive Substances Act 1993,
- sections 128 and 129 of the Merchant Shipping Act 1995 (prevention of pollution from ships),
- the Government of Wales Act 1998,
- the Petroleum Act 1998,
- the Pollution Prevention and Control Act 1999,
- the Countryside and Rights of Way Act 2000,
- the Energy Act 2004,
- the Environmental Assessment (Salmon Farming in Marine Waters) Regulations 1988,

- the Merchant Shipping (Prevention of Pollution) (Law of the Sea Convention) Order 1996,
- the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996,
- the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998,
- the Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) Regulations 1999,
- the Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations 1999,
- the Harbour Works Regulations,
- the Countryside and Rights of Way Act 2000,
- the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000,
- the Electricity Act 1989 (Requirement of Consent for Offshore Wind and Water Driven Generating Stations) (England and Wales) Order 2001,
- the Offshore Chemicals Regulations 2002,
- the Offshore Installations (Emergency Pollution Control) Regulations 2002,
- the Environmental Impact Assessment and Habitats (Extraction of Minerals by Marine Dredging) Regulations [**not yet made**].
- the Water Environment (Water Framework Directive) England and Wales Regulations 2003 and
- this Act.

21. Revision of MSP

- (1) The regional marine body must prepare a draft revision of the MSP-
 - (a) when it appears to it necessary or expedient to do so;
 - (b) at such time as is prescribed, or at least every five years;
 - (c) if it is directed to do so by the Secretary of State in accordance with subsection (3) below.

- (2) A regional marine body shall give 28 days notice to the Secretary of State and as respects Wales, the National Assembly for Wales, of any intention to prepare a draft revision under sub-section (1)(a).

- (3) If the Secretary of State or National Assembly for Wales thinks it necessary or expedient to do so a regional marine body may be directed to prepare a draft revision of the MSP.

- (4) Such a direction may require the regional marine body to prepare the draft revision-
 - (a) in relation to such aspects of the MSP as are specified, and
 - (b) in accordance with such timetable as is specified

- (5) The Secretary of State or National Assembly for Wales as appropriate may prepare a draft revision of the MSP if the regional marine body fails to comply with a direction under subsection (3) or if, in preparing any draft revision (whether under subsection (1) or (3)), it fails to comply with sections 9, 13 and 14 of this Part.

- (6) In preparing the draft revision, the regional marine body shall have regard to those matters listed in sections 9,13 and 14 and provide for an environmental assessment as if the draft revised plan were the MSP.

- (7) In preparing a draft revision the regional marine body must also-

- (a) carry out an appraisal of the sustainability of the proposals in the draft,
- (b) prepare and publish a report of the findings of the appraisal,
- (c) submit the report to the Secretary of State or National Assembly for Wales as appropriate.

(8) The draft revision of the MSP shall be adopted in accordance with section 20.

(9) A regional marine body or the Secretary of State or the National Assembly for Wales may withdraw a draft revision of the MSP at any time before it is adopted.

22. Interpretation

In this Part of this Act, except where the context otherwise requires-

‘marine spatial plan’ means a strategic plan for regulating and managing the marine area for the conservation purposes of this Act and shall include the integrated planning of all activities within a marine ecosystem or other geographical unit as identified by the Secretary of State or National Assembly for Wales

‘marine region’ means a region within the marine area that has been identified by the [advisory body] as having a regional boundary.

Chapter Two – sub-regional plans

23. Sub-regional planning authority

(1) The [advisory body] shall advise the Secretary of State or National Assembly for Wales as appropriate on the establishment of plan-making authorities for the purposes of developing and implementing sub-regional plans.

(2) The [advisory body] shall further advise the Secretary of State or National Assembly for Wales as appropriate on the boundaries of each relevant sub-region for the purposes of carrying out spatial planning of coastal waters.

(3) Any advice given by the advisory body under sub-sections (1) and (2) shall adopt an ecosystem approach and include the conservation purposes of this Act.

24. Sub-Regional Plans

(1) The plan-making authority, after consultation with the [advisory body], shall establish sub-regional spatial plans for coastal waters.

(2) The sub-regional plan must set out the Secretary of State's and National Assembly for Wales' policies (however expressed) in relation to the development and use of the marine area within the sub-region.

(3) Any sub-regional plan shall adopt an eco-system approach and be for the purposes of achieving sustainable development within the sub-region, but without prejudice to the generality of those purposes, shall include –

- (a) policies on the sustainable use of resources in the sub-region (for economic and social benefit);
- (c) policies for the promotion of public awareness, understanding and appreciation of the marine environment, including public participation in the development of the plans and the management of the sub-region;
- (d) setting targets to ensure compliance with conservation objectives, if any, in accordance with the MSP;
- (e) a review of the impact of human activities affecting features of geophysical, biological and hydrographical interest in the sub-region;
- (f) recognition of the threat to coastal waters, species and habitats posed by climate change and of the dangers and the rise in sea level;
- (g) coastal protection measures, including protection of coastal settlements and their cultural heritage;
- (h) sustainable economic opportunities and employment options

(4) When considering matters to be taken into account for the preparation of sub-regional plans the plan-making authority shall have regard to the following matters-

- (a) regional guidance from the Secretary of State and National Assembly for Wales,
- (b) the less-developed coast including National Parks, Areas of Outstanding Beauty and Heritage Coasts,
- (c) existing management plans for estuaries, estuarine marshes, open coasts, bays and semi-enclosed waters,
- (d) impacts arising from recreation, tourism and coast-dependent development,
- (e) coastal defence including risks of flooding, erosion and land instability,

- (f) regional, structural and local plans and any coastal management plan,
- (g) any River Basin management plan concerned with the implementation of the Water Framework Directive [EC Directive 2000/60/EC],
- (h) Biodiversity matters including the protection of nationally important features, sites of special scientific interest (SSSIs), marine nature reserves, and European sites and European Offshore Marine sites.

25. Assistance from certain local authorities

(1) The plan -making authority must consider whether in relation to its sub-region (or any part of it) it would be desirable for any other competent authority to assist it in carrying out any of its functions.

(2) Without prejudice to the generality of subsection (1) a plan-making authority shall consult with each or every one (so far as is appropriate) of the following authorities where any part of the area within the jurisdiction of such authority falls within the sub-regional area of the plan- making authority-

- (a) National Port authority
- (b) a river basin authority (as defined by the Water Framework Directive)
- (c) a local or district authority
- (d) a regional planning body

(3) If at any time it appears to the plan- making authority that there may be a need for such a competent authority to provide assistance in the performance of any of its functions it may make a request for assistance of such competent authority and the competent authority must provide the assistance requested unless to do so would be incompatible with the allocation of its own resources, the performance of its statutory duties or other legal obligations to which the competent authority is subject.

(4) The plan-making authority may reimburse a competent authority which provides assistance in accordance with subsection (3) for any expenditure incurred by the authority in doing so.

(5) Any arrangements made for the purposes of subsection (3) must be taken to be arrangements between [local authorities] for the purposes of section 101 of the Local Government Act 1972 (c.70).

(6) Nothing in this section affects any power which a body that is recognised as a plan-making authority has apart from this section.

[Note: This section is aimed to deal with any conflict that may arise between the functions of local authorities and other competent authorities over coastal waters so that decisions by the sub-regional bodies can be taken in an integrated way.]

26. Implementation of sub-regional plans

(1) Each plan-making authority shall –

- (a) develop and implement sub-regional plans for the purposes set out in section 24 and within such period (if any) as is prescribed by the Secretary of State or National Assembly for Wales;
- (b) keep under review matters which it expects to affect development and activities in its sub-region or the planning and management of those activities and shall take into account any surveys conducted by regional marine bodies, and any other relevant information obtained in accordance with section 19.

The matters to be kept under review shall also include, where appropriate, those matters contained in sections 13 and 14 of this Part.

(2) Each plan-making authority shall take into account such other matters as the Secretary of State or National Assembly for Wales may prescribe by way of regulations made under section 31 of this Part.

27. Guidance

(1) The Secretary of State shall in consultation with the National Assembly for Wales and other devolved administrations set out guidance for the integrated management of marine ecosystems in the UK.

(2) The guidance shall –

- (a) ensure the sustainable development of the marine area by, inter alia, providing for co-ordination and integrated working between regional marine bodies and competent authorities;
- (b) address all aspects of the management of human activities that affect the marine area for the purposes of MSP;
- (c) identify indicators of ecosystem quality in the marine area;
- (d) establish ecosystem quality objectives for the marine area; and
- (e) establish schemes by which the quality of the ecosystems of the marine area shall be monitored.

(3) Before adopting guidance the Secretary of State shall consult with all devolved administrations in the UK and all those competent authorities referred to at section 20 (10) of this Part.

28. Operations

[Note: This section has not been drafted at this stage. It is recognised that it may be necessary to provide the regional bodies with powers to carry out operations within their regional boundaries, including a power to consent to or withhold consent for other activities or operations being carried on in their marine region. The extent of these powers and any duties needs further discussion. WWF would invite comment].

29. Control of operations

(1) Where the Secretary of State is satisfied that anything done, being done or proposed to be done pursuant to any consent, permission or licence for any operation within the marine region for which it has responsibility –

- (a) has had, is having, or is likely to have an adverse effect on the biological diversity of a marine region, or
- (b) has caused, is causing, or is likely to cause deterioration of the protection of nationally important marine features, sites of special scientific interest (SSSIs), marine nature reserves, and European sites and European Offshore Marine sites, and
- (c) steps can be taken to avoid, reverse, reduce or eliminate that effect, deterioration or disturbance,

the Secretary of State shall bring such matters to the notice of the competent authority with responsibility for those matters.

(2) Upon receipt of any notice the responsible competent authority (or if more than one, each authority) shall each consult with the Secretary of State as to any steps, if any, they intend to take.

(3) Where there is no responsible competent authority, or such competent authority fails to consult with the Secretary of State, subject to sub-sections (4) to (6) below, the Secretary of State may give notice in writing requiring the person to whom it is addressed to take such steps or refrain from carrying out certain activities as may be specified in the direction.

(4) Without prejudice to the generality of subsection (1) above, a notice given pursuant to this section may require within such period as specified in the notice-

- (a) the submission to the Secretary of State for approval of a plan of the steps to be taken;
- (b) the requirement to consult with any competent authority concerned with the consent, authorisation or approval of any operation.

(5) Any notice given pursuant to this section shall be in writing and shall not have effect unless it has been served on the person to whom it is addressed.

(6) The Secretary of State shall not issue a notice to any person unless-

- (a) it has served on that person a copy of a draft notice;
- (b) that person has been afforded a reasonable opportunity of making representations regarding the content of the proposed notice; and
- (c) the Secretary of State has taken into account any representations made by that person.

(7) Any competent authority and any other person shall comply with any notice served upon them for the purposes set out in this section.

30. Appeals

In so far as the Secretary of State serves a notice pursuant to section 29 of this Part any person aggrieved by such a notice or, as respects Wales, the National Assembly for Wales may appeal to the High Court within 28 days of receipt of the notice.

31. Regulations

(1) The Secretary of State and, as respects Wales, the National Assembly for Wales may by regulations make provision in connection with the exercise of any person, or competent authority of functions under this Part.

(2) The regulations may in particular make provision as to –

- (a) the procedure to be followed by the regional marine body in formulating marine spatial plans, revisions and appraisals under this Part;
- (b) the giving of notice and publicity, consultation with and participation by the public in anything done under this Part;
- (c) the making of representations about any matter to be included in any MSP and consideration of any such representations;
- (d) the remuneration and allowances payable to a person appointed to carry out an examination in public under sections 7 and 30 of this Part;
- (e) the time at which anything must be done for the purposes of this Part;
- (f) the manner of publication of any draft, report or other document published under this Part;
- (g) monitoring by regional marine bodies of their functions under this Part;
- (h) the making of byelaws under section 32 of this Part.

32. Byelaws

(1) The Secretary of State and National Assembly for Wales shall introduce regulations for the making and application of byelaws by the regional marine body for the proper implementation of marine spatial planning, including the establishment of any marine spatial planning zones.

(2) Such Regulations shall allow for the regional marine body to make and enforce byelaws made under this section for the purposes of ensuring the proper implementation of marine spatial planning.

(3) The confirming authority in relation to byelaws made under this section shall be the Secretary of State in England and the National Assembly for Wales in Wales.

(4) Regulations shall set out the procedure for making byelaws to be applied by any regional body.

(5) Any byelaws made by way of regulations introduced under this section shall provide for offences against byelaws.

33. Enforcement

[Note: This section shall await the outcome of further research into the enforcement aspects of the Bill as a whole].

PART 3

PROTECTION OF NATIONALLY IMPORTANT MARINE SITES

[Note re **"strict protection sites"**: The clauses below provide for a category of marine protected areas referred to as "nationally important marine sites", where human activities may continue subject to compatibility with the site's conservation objectives and the need to avoid an adverse effect on site integrity. However, WWF would also like the Bill to provide for a second category of marine protected area where the emphasis is much more on strict protection, i.e. no human activities (particularly extractive uses). WWF may in due course be providing policy on strict protection sites. Meanwhile, the clauses set out here only provide for "nationally important marine sites".]

[**Note re zoning of sites**: In respect of both nationally important marine sites and strict protection sites, it is understood that WWF may ultimately wish for the clauses to provide for zoning of such sites. WWF will develop a policy paper on zoning, which can be read alongside the Marine Bill. Meanwhile, the clauses set out here do not provide for such zoning.]

[**Note re the interaction between marine protected areas and marine spatial planning**: WWF has recently published a report entitled "Marine Protected Areas in the context of Marine Spatial Planning – discussing the links". Amongst other things, the report addresses the potential role of marine protected areas as one type of "use zone" within marine spatial plans.]

[**Note re integration of NIMS with SSSIs and MNRs**: Some consultees have pointed out that there is a need: (a) to be able to de-designate certain ineffective MNRs or the marine portion of SSSIs and re-designate such areas as NIMS; and (b) to integrate NIMS and any remaining MNRs or marine SSSIs into one national network. WWF agrees with this, but raises the point that some areas that straddle the land-sea divide may then be partly covered by a SSSI designation and partly by a NIMS designation. The timing of any re-designation also deserves further consideration: for example, is re-designation something that should be done under clause 3 (which provides for the first set of NIMS) or under clause 5 (which is a "mopping up" provision), or simply when the need arises based on the application of the site selection criteria? Overall, true integration of NIMS with SSSIs and MNRs is clearly desirable but would require careful thought about amendments to the Wildlife and Countryside Act 1981. Ultimately, this is clearly something that could be covered by the Marine Bill given more time.]

[**Note re amendment of Town and Country Planning legislation**: Some interaction is likely to arise between Town and Country Planning (TCP) legislation and the site protection clauses of the Bill, perhaps necessitating some amendment to the former. These clauses do not address amendments to the TCP legislation, though such amendments should ideally form part of the Bill.]

[**Note re English Nature**: English Nature is referred to in square brackets throughout,

because of current uncertainty over its future under this name.]

34. Meaning of “nationally important marine site”

- (1) In this Part –
 - (a) “nationally important marine site” means a site designated by the Secretary of State or National Assembly for Wales in accordance with the procedures set out in sections 36, 37 and 38 of this Act; and
 - (b) in respect of Wales, in the exercising of its functions under this Part, the National Assembly for Wales may make such representations as it sees fit to the Secretary of State in respect of any functions of the Secretary of State that have not been transferred by virtue of the Government of Wales Act 1998, National Assembly for Wales (Transfer for Functions) Order 1999 or subsequent such Orders and
 - (i) on receipt of such representations it shall be the duty of the Secretary of State to exercise any of his functions to satisfy such representations, or
 - (ii) to give and publish reasons for not doing so.
- (2) A nationally important marine site may be designated in any part of the marine area.
- (3) In Wales, any targets, plans or objectives made under this Part shall be expressly included in any scheme made under section 121 of the Government of Wales Act 1998 and shall be subject to the provisions of that section.

35. General provisions

- (1) Nothing in this Part shall interfere with the right of freedom of navigation or the right of innocent passage or other rights under other applicable rules of international law.
- (2) Subsection (1) does not apply to Community vessels.
- (3) In the event of conflict between the need to protect a nationally important marine site under this Act and the need to protect a marine nature reserve or a site of special scientific interest, any decision on whether or not the protection of the nationally important marine site shall take priority shall be made on a case-by-case basis by the Secretary of State or National Assembly for Wales as appropriate after taking appropriate scientific advice.
- (4) In the event of conflict between the need to protect a nationally important marine site under this Act and the need to protect a European site or a European offshore marine site, the regime for the European site or the European offshore marine site shall prevail.

36. Selection, consideration and designation of first set of nationally important marine sites

- (1) The Secretary of State and the National Assembly for Wales as respects Wales shall, after taking appropriate scientific advice and within one year of the commencement of this section, prepare a list of sites to be considered for designation as nationally important marine sites (sites on such list being referred

to in this section as “section 36 sites”).

(2) The Secretary of State and National Assembly for Wales as appropriate shall select each section 36 site on the basis of—

(a) the presence within the site of one or more nationally important marine features, and

(b) the application of the site selection criteria in Schedule 1 to this Act,

having regard to the need to establish a coherent network of sites across the marine area, such network comprising areas sufficient in number, size and quality as will in conjunction with the measures set out in Part 4 meet the ecological requirements of nationally important marine features occurring within the marine area.

[Note on the purpose of the site network: The purpose of the site network has been adapted from the formulation in the Link paper on “Statutory Purpose and Duty of Care”. The Link paper refers to the ultimate goal of meeting the “ecological requirements” of the species etc. concerned. This term will require definition in the Bill. (The Habitats Directive instead refers to achieving “favourable conservation status” of the species etc., but the term “conservation status” is not used in the Bill.) The Bill provides for the site network to work in conjunction with the other management measures for nationally important marine features set out in Part 4 of the Bill. (Otherwise, there would be little need for the Part 4 management measures.) A reference to area “quality” is included (because this term is used in the Link paper). This term will also require definition; alternatively, the site selection criteria in Schedule 1 will shed light on what constitutes site “quality”. Restoration is not referred to because it is assumed that the site selection criteria in Schedule 1 will address that.]

(3) No social or economic consideration shall be taken into account—

(a) by [English Nature], the Countryside Council for Wales or the Joint Nature Conservation Committee during the preparation of the appropriate scientific advice referred to in subsection (1), or

(b) by the Secretary of State or National Assembly for Wales in preparing the list of section 36 sites.

(4) The Secretary of State and National Assembly for Wales as appropriate shall keep a copy of the appropriate scientific advice referred to in subsection (1) available for public inspection at all reasonable hours and free of charge.

(5) Where the Secretary of State or National Assembly for Wales as appropriate decides not to follow the appropriate scientific advice referred to in subsection (1) he shall prepare a written statement of the reasons for his decision not to follow such advice and shall keep a copy of the statement available for public inspection at all reasonable hours and free of charge.

(6) In respect of each section 36 site, the Secretary of State and National Assembly for Wales as appropriate shall indicate—

(a) the site’s name, location and geographical extent, and

(b) the reason for the site’s selection, by reference to—

(i) any nationally important marine feature present within the site, and

(ii) any site selection criteria in Schedule 1 to this Act met by the site, and

(c) those activities, either existing or foreseeable, that may adversely affect the integrity of the site.

- (7) The Secretary of State and National Assembly for Wales as appropriate shall—
- (a) in respect of each section 36 site, give written notice of the information referred to in subsection (6) and the scientific and any other advice he took into account in selecting that site, to—
 - (i) each competent authority with functions whose exercise may affect the site, and
 - (ii) so far as reasonably practicable, each person whose activities are likely to be affected by designation of the site, and
 - (iii) any other persons who in the opinion of the Secretary of State or National Assembly for Wales as appropriate should be notified,specifying the time (not being less than 12 weeks from the date of the giving of the notice) within which representations or objections with respect to it may be made, and
 - (b) if within the specified time a person making representations or objections so requires, give him an opportunity of appearing before, and being heard by, the Secretary of State or National Assembly for Wales as appropriate, or by a person authorised for that purpose, and
 - (c) take into account any representations or objections so made.

- (8) A person who has requested a hearing in accordance with subsection (7)(b) has the right to—
- (a) be represented by another person, and
 - (b) call persons to give evidence, and
 - (c) put questions to any person who gives evidence at the hearing, including any person who gives expert evidence.

- (9) In respect of each section 36 site, taking into account any representations or objections made under subsection (7), the Secretary of State or National Assembly for Wales as appropriate shall before 18 months after the commencement of this section—
- (a) decide not to designate the site as a nationally important marine site, or
 - (b) designate the site as a nationally important marine site, with no change to the information notified under subsection (6), or
 - (c) designate the site as a nationally important marine site, with a change to the information notified under subsection (6),

designation being effected by the placing of the site on the register referred to in section 40..

[Note re clause 36(9): The reference to 18 months means that the Secretary of State and the National Assembly for Wales have 6 months in which to consult and reach decisions following the initial selection of section 36 sites under clause 36(1).]

- (10) In respect of each section 36 site, the Secretary of State or National Assembly for Wales as appropriate shall give written notice of decisions made under subsection (9), and the reasons for them, to those authorities and persons previously notified under subsection (7)(a).

- (11) Nothing in this section shall be construed as preventing the Secretary of State or National Assembly for Wales as appropriate from prioritising, within the confines of the timetable established in subsection (9), the designation of sites in the light of—
- (a) the importance of the site for—

- (i) a particular nationally important marine feature, or
 - (ii) fulfilling the purpose of the network referred to in subsection (2),
- or
- (b) the threats of degradation or destruction to which those sites are exposed.

(12) Section 54 of this Act shall, with the appropriate modifications, apply in respect of section 36 sites at any point prior to the operation of subsection (9) of this section.

[Note on the purpose of clause 36(12): The purpose of this clause is to provide some protection to provisional sites, i.e. sites which have been selected under clause 36(1) but which have not yet been subject to the operation of clause 36(9). The protection provided to such sites is that available under clause 54, “with the appropriate modifications”. The protection provided to provisional sites by virtue of clause 36(12) is also available to equivalent sites under clauses 37 & 38.]

37. Selection, consideration and designation of second set of nationally important marine sites

[Note re clauses 36 & 37: Sites designated under clause 37 are intended to be no different in importance to those designated under clause 36. Thus sites covered by clause 37 are not intended to be lower priority. The reason for not seeking to cover all or most sites in one major initiative (under clause 36) is simply that some sites will be ready for consideration for designation straight away (on the basis that data are already available about them) while other sites may not be “revealed” as potentially meriting designation until further data about the marine environment are collected. The latter sites could be covered by a mere “mopping up” provision or they could instead be covered as a distinct second set of sites. The policy decision was taken by WWF to opt for a distinct second set of sites, but to still retain a mopping up provision in the form of clause 38 below for any other sites coming to light subsequently.]

(1) The Secretary of State and National Assembly for Wales shall designate a second set of nationally important marine sites.

(2) The provisions of section 36 of this Act shall apply in relation to the second set of sites referred to in subsection (1) subject to—

- (a) references to subsections of section 36 being construed accordingly, and
- (b) the substitution for the references to “section 36 sites” of references to “section 37 sites”, and
- (c) the substitution for the reference to “one year after the commencement of this section” in section 36(1) of reference to “three years after the commencement of this section”, and
- (d) the substitution for the reference to “18 months after the commencement of this section” in section 36(8) of reference to “42 months after the commencement of this section”.

[Note re clause 37(2)(d): The reference to 42 months means that the Secretary of State or National Assembly for Wales have 6 months, i.e. 42 months minus three years, in which to reach decisions following the initial selection of section 37 sites.]

38. Selection, consideration and designation of further nationally important marine sites

(1) After the Secretary of State or National Assembly for Wales as appropriate has

designated nationally important marine sites under the procedure set out in sections 36 and 37 of this Act, at any time, after taking appropriate scientific advice, any number of additional sites to be considered for designation as nationally important marine sites (such sites being referred to in this section as “section 38 sites”) may be selected.

- (2) The provisions of section 36(2)-(10) & 36(12) of this Act shall apply in relation to any site or sites selected in accordance with subsection (1) subject to—
- (a) references to subsections of section 36 being construed accordingly, and
 - (b) the substitution for the references to “section 36 sites” of references to “section 38 sites”, and
 - (c) the substitution for the reference to “before 18 months after the commencement of this section” in section 36(9) of reference to “within 24 weeks of the most recent notification referred to in subsection (7)(a)”.

39. De-designation or modification of designated nationally important marine sites

- (1) The Secretary of State and National Assembly for Wales as appropriate may at any time after designation of a nationally important marine site and after taking appropriate scientific advice—
- (a) subject to subsection (2), propose de-designation of that site, or
 - (b) propose modification of that site for the purpose of—
 - (i) changing the geographical position of the site’s boundaries, or
 - (ii) changing the reason for its designation, in terms of—
 - the nationally important marine features present within the site, or
 - site selection criteria in Schedule 1 to this Act met by the site.
- (2) De-designation may be proposed only if—
- (a) no nationally important marine feature for which the site was designated is any longer present within the site and no such feature is likely to become present again within the site by virtue of recovery judged against the criteria listed in Schedule 2 to this Act, or
 - (b) no site selection criterion in Schedule 1 to this Act for which the site was designated is any longer applicable and no such criterion is likely to become applicable by virtue of recovery judged against the criteria listed in Schedule 2 to this Act, or
 - (c) all nationally important marine features for which the site was designated are provided with equivalent or better protection in the same geographical area by one or more European sites or European offshore marine sites.
- (3) The Secretary of State and National Assembly for Wales as appropriate shall, in respect of any proposal to de-designate or modify a designated nationally important marine site, indicate—
- (a) the site’s name and location, and
 - (b) the nature of the proposed modification or de-designation, and
 - (c) the reason for the proposed modification or de-designation.
- (4) The Secretary of State and National Assembly for Wales as appropriate shall—

(a) give written notice of the information referred to in subsection (3) and the scientific and any other advice he took into account in respect of the proposed de-designation or modification, to—

- (i) each competent authority with functions whose exercise may affect a nationally important marine site, and
- (ii) so far as reasonably practicable, each person whose activities are likely to be affected by de-designation or modification of the site, and
- (iii) any other persons who in the opinion of the Secretary of State should be notified,

specifying the time (not being less than 12 weeks from the date of the giving of the notice) within which representations or objections with respect to them may be made to him, and

- (b) if within the specified time a person making representations or objections so requires, give him an opportunity of appearing before, and being heard by, the Secretary of State or National Assembly for Wales as appropriate or by a person authorised for that purpose, and
- (c) take into account any representations or objections so made.

(5) A person who has requested a hearing in accordance with subsection (4)(b) has the right to—

- (a) be represented by another person, and
- (b) call persons to give evidence, and
- (c) put questions to any person who gives evidence at the hearing, including any person who gives expert evidence.

(6) In respect of any proposal to de-designate a designated nationally important marine site, taking into account any representations or objections made under subsection (4), the Secretary of State and National Assembly for Wales as appropriate shall within 24 weeks of the most recent notification referred to in subsection (4)(a)—

- (a) decide not to de-designate the site, or
- (b) de-designate the site,

de-designation being effected by the removal of the site's entry from the register referred to in section 40.

(7) In respect of any proposal to modify a designated nationally important marine site, taking into account any representations or objections made under subsection (4), the Secretary of State and National Assembly for Wales as appropriate shall within 24 weeks of the most recent notification referred to in subsection (4)(a)—

- (a) decide not to modify the site, or
- (b) modify the site, with no change to the information notified under subsection (3), or
- (c) modify the site, with a change to the information notified under subsection (3),

modification being effected by the amendment of the site's entry in the register referred to in section 40.

(8) The Secretary of State and National Assembly for Wales as appropriate shall give written notice of any decisions made under subsections (6) and (7), and the reasons for them, to those authorities and bodies previously notified under subsection (4)(a).

(9) Section 54 of this Act shall, with the appropriate modifications, apply in respect of—

- (a) any geographical area which is subject to subsections (1)(b)(i), (3), (4)

and (5) of section 39 of this Act and which is not, prior to the exercise by the Secretary of State or National Assembly for Wales of powers under subsection (7) of section 39 of this Act, included within a nationally important marine site, and

(b) any marine important feature which is subject to subsections (1)(b)(ii), (3), (4) and (5) of section 39 of this Act and which is not, prior to the exercise by the Secretary of State or National Assembly for Wales of powers under subsection (7) of section 39 of this Act, listed in the site's entry in the register referred to in section 7 of this Act.

[Note on the purpose of clause 39(9): The purpose of this clause is to provide some protection to provisional areas or features, i.e. those areas described in clause 39(9)(a) or those features described in clause 39(9)(b). The protection provided to such areas or features is that available under clause 54, "with the appropriate modifications".]

40. Duty to compile and maintain register of nationally important marine sites

(1) The Secretary of State and, as respects Wales, the National Assembly for Wales shall compile and maintain, in such form as is thought fit, a register of designated nationally important marine sites.

(2) For each designated nationally important marine site, the register shall include—

- (a) the site's name, and
- (b) the site's co-ordinates, and
- (c) a chart illustrating the site's boundaries, and
- (d) the reason why the site has been designated, in terms of—
 - (i) which nationally important marine feature is present within the site, and
 - (ii) which site selection criterion in Schedule 1 to this Act has been met by the site, and
- (e) a list of those activities, either existing or foreseeable, that may adversely affect the integrity of the site.

(3) In the event of modification of a designated nationally important marine site in accordance with section 39 of this Act, the Secretary of State or National Assembly for Wales as appropriate shall amend that site's entry in the register.

(4) In the event of de-designation of a designated nationally important marine site in accordance with section 39 of this Act, the Secretary of State or National Assembly for Wales as appropriate shall remove that site's entry in the register.

(5) The Secretary of State and the National Assembly for Wales shall keep a copy of the register entries available for public inspection at all reasonable hours and free of charge.

41. Notification regarding register of nationally important marine sites

(1) The Secretary of State and National Assembly for Wales shall notify [English Nature], the Countryside Council for Wales, and the Joint Nature Conservation Committee as soon as practicable after-

- (a) including a site in the register, or
- (b) amending an entry in the register, or
- (c) removing an entry from the register.

- (2) Notification of the inclusion of a site in the register shall be accompanied by a copy of the register entry.
- (3) Notification of the amendment of an entry in the register shall be accompanied by a copy of the amended entry.
- (4) The Secretary of State and National Assembly for Wales as appropriate shall as soon as practicable after—
- (a) including a site in the register, or
 - (b) amending an entry in the register, or
 - (c) removing an entry from the register
- give notice to—
- (i) each competent authority with functions whose exercise may affect a nationally important marine site, and
 - (ii) those international organisations designated for this purpose by the Secretary of State, and
 - (iii) any other persons who in the opinion of the Secretary of State or National Assembly for Wales should be notified.
- (5) Where a site adjoins the seabed, subsoil or waters under the sovereignty or jurisdiction of another State, the Secretary of State shall in consultation as appropriate with the National Assembly for Wales, as soon as practicable after—
- (a) including the site in the register, or
 - (b) amending that site's entry in the register, or
 - (c) removing that site's entry from the register,

also give notice to the appropriate authorities of that State and any international organisations which in his opinion should be notified.

42. General duty of competent authorities

- (1) Any competent authority with functions whose exercise may affect a nationally important marine site shall exercise such functions in a way that is compatible with—
- (a) the achievement of the site's conservation objectives, and
 - (b) where appropriate, the purpose of the site network as set out in section 36(2).

This applies, in particular, to functions under the following enactments, in England and in Wales:

the Dockyard Ports Regulation Act 1865,
 section 2(2) of the Military Lands Act 1900 (provisions as to use of sea, tidal water or shore),
 the Whaling Industry (Regulation) Act 1934,
 section 34 of the Coast Protection Act 1949,
 the Crown Estate Act 1961,
 the Harbours Act 1964,
 the Continental Shelf Act 1964,
 the Prevention of Oil Pollution Act 1971,
 Part II of the Control of Pollution Act 1974,
 the Wildlife and Countryside Act 1981,
 Part II of the Food and Environment Protection Act 1985 (deposits in the sea),
 the Petroleum Act 1987,
 the Electricity Act 1989,

the Water Resources Act 1991,
 the Land Drainage Act 1991,
 the Sea Fisheries Acts within the meaning of section 1 of the Sea Fisheries
 (Wildlife Conservation) Act 1992,
 the Transport and Works Act 1992,
 the Radioactive Substances Act 1993,
 sections 128 and 129 of the Merchant Shipping Act 1995 (prevention of
 pollution from ships),
 the Petroleum Act 1998,
 the Pollution Prevention and Control Act 1999,
 the Energy Act 2004,
 the Environmental Assessment (Salmon Farming in Marine Waters)
 Regulations 1988,
 the Merchant Shipping (Prevention of Pollution) (Law of the Sea
 Convention) Order 1996,
 the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996,
 the Merchant Shipping (Oil Pollution Preparedness, Response and Co-
 operation Convention) Regulations 1998,
 the Offshore Petroleum Production and Pipe-lines (Assessment of
 Environmental Effects) Regulations 1999,
 the Environmental Impact Assessment (Fish Farming in Marine Waters)
 Regulations 1999,
 the Harbour Works Regulations,
 the Electricity Works (Environmental Impact Assessment) (England and
 Wales) Regulations 2000,
 the Electricity Act 1989 (Requirement of Consent for Offshore Wind and
 Water Driven Generating Stations) (England and Wales) Order 2001,
 the Offshore Chemicals Regulations 2002,
 the Offshore Installations (Emergency Pollution Control) Regulations 2002,
 the Water Environment (Water Framework Directive) (England and Wales)
 Regulations 2003,
 the Environmental Assessment of Plans and Programmes Regulations 2004,
 and
 the Environmental Impact Assessment and Habitats (Extraction of Minerals
 by Marine Dredging) Regulations [*not yet made*],
 the Government of Wales Act 1998, and
 this Act.

(2) The Secretary of State and National Assembly for Wales as appropriate may issue guidance to competent authorities for the purposes of subsection (1)(b) and the authorities concerned shall act compatibly with any guidance so issued in exercising their functions.

[Note on authorities in Northern Ireland and Scotland: The activities of authorities in Northern Ireland or Scotland could potentially impact on nationally important marine sites in the marine area covered by the Bill. The clauses do not address such potential impacts, though they should ideally be taken into account in the Bill.]

[Note on private seabed owners: These clauses focus on competent authorities as the main players in the management and protection of sites (see below). However, in addition to competent authorities, there may be occasions when private persons who own seabed in some locations around England or Wales might also be able to contribute to site management and protection. These clauses do not address such

persons, though it is arguable that the Bill should ideally seek to do so.]

43. Conservation objectives

(1) As soon as possible after a nationally important marine site has been designated, the Secretary of State and National Assembly for Wales as appropriate shall, after taking appropriate scientific advice, establish conservation objectives for the site and provide written notification of such objectives to other competent authorities with functions whose exercise may affect the site.

(2) The conservation objectives referred to in subsection (1) shall—

(a) take into account the reason why the site has been designated, in terms of

(i) which nationally important marine feature is present within the site, and

(ii) which site selection criterion in Schedule 1 to this Act has been met by the site, and

(b) set out the desired conservation status to be achieved within the site for each of the nationally important marine features for which the site has been designated, and

(c) take into account the purpose of the site network as set out in section 36(2).

(3) As soon as possible after conservation objectives for a nationally important marine site have been established, the Secretary of State or National Assembly for Wales as appropriate shall, after taking appropriate scientific advice, provide written advice to other competent authorities with functions whose exercise may affect that site of any activities which may be incompatible with the achievement of that site's conservation objectives.

(4) The Secretary of State or National Assembly for Wales may, in response to modifications of the site under section 39 of this Act and after taking appropriate scientific advice, amend the conservation objectives for any national important marine site.

(5) Following any amendment of the conservation objectives for any national important marine site under subsection (4), the Secretary of State and National Assembly for Wales as appropriate shall—

(a) immediately provide written notification of the amended objectives to other competent authorities with functions whose exercise may affect the site, and

(b) as soon as possible, after taking appropriate scientific advice, provide written advice to other competent authorities which exercise functions in relation to the site of any activities which may be incompatible with the achievement of amended objectives.

44. Management schemes

(1) Within one year of the designation of a nationally important marine site, those competent authorities with functions whose exercise may affect that site shall establish a management scheme for that site.

(2) A management scheme shall—

(a) include the site's conservation objectives, and

(b) include a list of the activities which may be incompatible with the

- achievement of the site's conservation objectives, and
- (c) set out how the functions of the competent authorities establishing the scheme are to be exercised in a way that is compatible with the achievement of the site's conservation objectives, and
- (d) provide for monitoring within and, if appropriate, adjacent to the site in order to ascertain the extent to which the site's conservation objectives have been achieved.

[Note on monitoring: Though clause 44(2)(d) provides for monitoring at the site level, it will be still be necessary to clarify which body should be responsible for monitoring at the national level, e.g. monitoring of the network of nationally important marine sites.]

(3) Before establishing a management scheme for a nationally important marine site, and before amending such a scheme under subsection (7) below, the competent authorities concerned shall take appropriate scientific advice and shall make provision for the views of the public concerned to be taken into account.

(4) Competent authorities may, where appropriate, establish a single management scheme for two or more nationally important marine sites.

(5) Only one management scheme may be established for each nationally important marine site.

(6) The competent authorities concerned shall review that scheme from time to time as necessary and at least once in every five years.

(7) Subject to directions given by the Secretary of State or National Assembly for Wales under section 45 of this Act, the competent authorities concerned may amend the management scheme at any time.

(8) As soon as a management scheme has been established or is amended, a copy of it shall be sent by the competent authorities concerned to—

- (a) the Secretary of State or National Assembly for Wales as appropriate and
- (b) [English Nature] or Countryside Council for Wales, and
- (c) the Joint Nature Conservation Committee, and
- (d) the public concerned, and
- (e) any other persons which the Secretary of State or National Assembly for Wales directs, such direction being in writing.

(9) Where a management scheme has been established for a nationally important marine site under—

- (a) this section, or
- (b) in response to a direction given by the Secretary of State or National Assembly for Wales under section 45 of this Act,

any competent authority with functions whose exercise may affect that site shall exercise such functions in accordance with that scheme.

(10) In the event of conflict between a management scheme for a nationally important marine site under this Part and a management plan for a nationally important marine feature under Part 4 of this Act. *[there is scope here for providing, say, that the scheme for the nationally important marine site will always prevail or that specified factors may be taken into account to decide which scheme/plan prevails].*

45. Directions by Secretary of State or National Assembly for Wales regarding management schemes

(1) The Secretary of State or National Assembly for Wales as appropriate may give directions to the competent authorities with functions whose exercise may affect a nationally important marine site, or any one of such authorities, as to the establishment of a management scheme for a nationally important marine site.

- (2) The directions referred to in subsection (1) may, in particular—
- (a) appoint one of the competent authorities to co-ordinate the establishment of the scheme, and
 - (b) require management measures, including monitoring measures, specified in the direction to be included in the scheme, and
 - (c) set time limits within which any steps are to be taken, and
 - (d) provide that the approval of the Secretary of State or National Assembly for Wales is required before the scheme is established, and
 - (e) require any of the competent authorities to supply to the Secretary of State or National Assembly for Wales as appropriate such information concerning the establishment of the scheme as may be specified in the direction.

(3) The Secretary of State and National Assembly for Wales as appropriate may give directions to the competent authorities with functions whose exercise may affect a nationally important marine site, or any one of such authorities, as to the amendment of a management scheme for a nationally important marine site, either generally or in any particular respect.

(4) Any direction under this section shall be in writing and may be varied or revoked by a further direction.

46. Byelaw making powers for [English Nature] and the Countryside Council for Wales

(1) [English Nature] and the Countryside Council for Wales may, with the consent of the Secretary of State or National Assembly for Wales as appropriate, make byelaws for the protection of a nationally important marine site within the areas referred to in paragraphs (a) and (b) of the definition of the term “marine area”.

(2) The provisions of subsections (2)-(11) of section 37 of the Wildlife and Countryside Act shall apply in relation to byelaws made by virtue of section 46(1) of this Act subject to—

(a) the substitution for the references to “marine nature reserves” of references to “nationally important marine sites”, and

(b) the substitution for the references to “the Council” of references to “[English Nature] or the Countryside Council for Wales”, and

(c) subsections (5), (6) and (9) of section 37 of the Wildlife and Countryside Act being restricted in their application to England and Wales only.

(3) Nothing in the byelaws made by virtue of this section shall interfere with—

(a) the exercise of any of the functions of a competent authority, or

(b) any functions conferred by or under an enactment (whenever passed), or

(c) any right of any person (whenever vested).

[Note re clause 46(3)(a): The “functions of a competent authority” mentioned in clause 46(3)(a) impliedly include the duty under clause 44(9). The duty under clause 44(9) relates to the need to act compatibly with a management scheme. It is not intended that the implementation of such duty by a competent authority should in any way be affected by byelaws made under clause 46.]

47. Protection of nationally important marine sites

[Note re clause 47: WWF recognises that clause 47 (in association with clause 48) means that nationally important marine sites will enjoy a higher degree of protection than SSSIs. One argument to justify this is that damage to marine sites, particularly those further offshore in the marine area, will be far more difficult to repair than damage to terrestrial sites; hence a precautionary approach should be taken to decisions on whether or not plans or projects should be allowed to go ahead. WWF invites views on this argument.]

[Note re fisheries and the term “plan or project”: WWF considers that fisheries activities should somehow be covered by the term “plan or project”, but is still elaborating policy on this point.]

- (1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which—
- (a) is likely to have a significant adverse effect on a nationally important marine site (either alone or in combination with other plans or projects), and
 - (b) is not directly connected with or necessary to the management of the site,

shall evaluate the implications for the site in view of that site’s conservation objectives.

(2) A person applying for any such consent, permission or other authorisation shall provide such information as the competent authority may reasonably require for the purposes of—

- (a) determining whether an evaluation is required for a plan or project under subsection (1), and
- (b) the evaluation.

(3) The competent authority shall take appropriate scientific advice for the purposes of—

- (a) determining whether an evaluation is required for a plan or project under subsection (1), and

(b) the evaluation.

(4) The competent authority shall also, if it considers it appropriate, take into account the opinion of the general public; and if it does so, it shall take such steps for that purpose as it considers appropriate.

(5) Where the competent authority decides not to follow the appropriate scientific advice referred to in subsection (3)—

(a) the competent authority shall notify the Secretary of State or National Assembly for Wales as appropriate in writing of the reasons for its decision not to follow the appropriate scientific advice, and

(b) in any such case the Secretary of State or National Assembly for Wales may give directions in writing to the competent authority requiring it to follow the appropriate scientific advice.

(6) In the light of the conclusions of the evaluation, the competent authority shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the nationally important marine site.

(7) In considering whether a plan or project will adversely affect the integrity of the site, the competent authority shall have regard to—

(a) the manner in which the plan or project is proposed to be carried out or to any conditions or restrictions subject to which it proposes that the consent, permission or other authorisation should be given, and

(b) the effect of the plan or project in combination with other plans or projects.

[Note on the national network of sites: WWF would ideally like the evaluation that is made for each plan or project to somehow take into account the impact on the national network of sites (rather than just the impact on the specific site in question). WWF is in the process of developing policy on the national network in order to inform clauses on this point.]

48. Considerations of overriding public interest

(1) If it is satisfied that, there being no alternative solutions, the plan or project referred to in section 47 of this Act must be carried out for imperative reasons of overriding public interest (which may be of a social or economic nature), the competent authority may agree to the plan or project notwithstanding a negative evaluation of the implications for the site.

(2) Where a competent authority other than the Secretary of State or National Assembly for Wales proposes to agree to a plan or project under this section notwithstanding a negative evaluation of the implications for a nationally important marine site, it shall notify the Secretary of State and National Assembly for Wales as appropriate.

(3) Having made notification under (2), the competent authority shall not agree to the plan or project before the end of the period of six weeks beginning with the day on which its notification was made, unless the Secretary of State or National Assembly for Wales as appropriate, having taken appropriate scientific advice, notifies it that it may do so.

(4) In any such case the Secretary of State and National Assembly for Wales as appropriate may give directions to the competent authority prohibiting it from

agreeing to the plan or project, either indefinitely or during such period as may be specified in the direction. This power is without prejudice to any other power of the Secretary of State or National Assembly for Wales in relation to the decision in question.

49. Review of existing consents etc.

(1) Where before the date on which a site becomes a nationally important marine site, a competent authority has decided to undertake, or has given any consent, permission or other authorisation for, a plan or project to which section 47 of this Act would apply if it were to be reconsidered as of that date, the competent authority shall—

- (a) as soon as reasonably practicable, or
- (b) upon the receipt of appropriate scientific advice that recommends review (whichever occurs sooner),

review its decision or, as the case may be, the consent, permission or other authorisation, and shall affirm, modify or revoke it.

(2) The competent authority shall for that purpose make an evaluation of the implications for the site in view of that site's conservation objectives; and the provisions of section 47 of this Act shall apply, with the appropriate modifications, in relation to such a review.

(3) Subject to section 50 of this Act, any review required by this section shall be carried out under existing statutory procedures where such procedures exist, and if none exist the competent authority shall determine the procedure to be followed and shall act compatibly with any guidance given by the Secretary of State or National Assembly for Wales.

(4) Nothing in this section shall affect anything done in pursuance of the decision, or the consent, permission or other authorisation, before the date mentioned in subsection (1).

[Note re clause 49: One additional idea would be for: (a) the Joint Nature Conservation Committee and [English Nature] / Countryside Council for Wales to have a power to provide advice to the Secretary of State / NAW regarding the need to subject any given consent, permission or other authorisation to review in accordance with subsection (1); and (b) the Secretary of State / NAW to have a power, on receiving such advice, to direct the relevant competent authority to carry out the review concerned (without prejudice to the generality of the duty in subsection (1)).]

50. Consideration on review

(1) The following provisions apply where a decision, or a consent, permission or other authorisation, falls to be reviewed under section 49 of this Act.

(2) Subject as follows, sections 47(6), 47(7) and 48 of this Act shall apply, with the appropriate modifications, in relation to the decision on the review.

(3) The decision, or the consent, permission or other authorisation, may be affirmed if it appears to the competent authority reviewing it that other action taken or to be taken by it, or by another competent authority, will secure that the plan or project does not adversely affect the integrity of the site and where that object may be attained in a number of ways, the competent authority or the competent authorities

concerned shall seek to secure that the action taken is the least onerous to those affected.

(4) The Secretary of State and National Assembly for Wales as appropriate may issue guidance to authorities for the purposes of subsection (3) as to the manner of determining which of different ways should be adopted for securing that the plan or project does not have any such effect, and in particular—

- (a) the order of application of different controls, and
- (b) the extent to which account should be taken of the possible exercise of other powers,

and the competent authorities concerned shall act compatibly with any guidance so issued in discharging their functions under that subsection.

(5) Any modification or revocation effected in pursuance of section 49 of this Act shall be carried out under existing statutory procedures where such procedures exist. If none exist the competent authority shall determine the procedure to be followed and shall act compatibly with any guidance given by the Secretary of State and National Assembly for Wales.

51. Co-ordination where more than one competent authority is involved

(1) The following provisions apply where a plan or project—

- (a) is undertaken by more than one competent authority, or
- (b) requires the consent, permission or other authorisation of more than one competent authority, or
- (c) is undertaken by one or more competent authorities and requires the consent, permission or other authorisation of one or more other competent authorities.

(2) The Secretary of State and National Assembly for Wales as appropriate may issue guidance to competent authorities for the purposes of sections 47, 48, 49 or 50 of this Act as to the circumstances in which—

- (a) any implication of a plan or project would be more appropriately assessed under sections 47 or 49 of this Act by one competent authority rather than by any other competent authority, or
- (b) a competent authority may or should adopt the reasoning or conclusions of another competent authority as to whether a plan or project—
 - (i) is likely to have a significant adverse effect on a nationally important marine site, or
 - (ii) will adversely affect the integrity of a nationally important marine site,

and the competent authorities involved shall act compatibly with any guidance so issued in discharging their functions under those sections.

(3) In the absence of guidance issued by the Secretary of State or National Assembly for Wales under subsection (2), a competent authority may not—

- (a) decide that any implication of a plan or project would be more appropriately assessed under sections 47 or 49 of this Act by any other competent authority, or
- (b) adopt the reasoning or conclusions of another competent authority as to whether a plan or project—
 - (i) is likely to have a significant adverse effect on a nationally important marine site, or
 - (ii) will adversely affect the integrity of a nationally important marine site,

site.

(4) In determining whether a plan or project should be agreed to under section 48 of this Act a competent authority other than the Secretary of State and National Assembly for Wales shall seek and have regard to the views of the other competent authority or authorities involved.

52. Compensatory measures

- (1) Where in accordance with sections 48 or 49 of this Act—
- (a) a plan or project is agreed to, notwithstanding a negative evaluation of the implications for a nationally important marine site, or
 - (b) a decision, or a consent, permission or other authorisation, is affirmed on review, notwithstanding such an evaluation,

the Secretary of State and National Assembly for Wales as appropriate shall secure that any necessary compensatory measures are taken to ensure that the overall coherence of the network referred to in section 36(2) of this Act is protected.

53. Co-ordinated protection and management of nationally important marine sites

The Secretary of State in consultation with the National Assembly for Wales may issue guidance to competent authorities for the purposes of section 44 of this Act in respect of the management of a nationally important marine site that adjoins or overlaps one or more European sites or one or more European offshore marine sites, and the authorities involved shall act compatibly with any guidance so issued in discharging their functions under those sections.

54. Intervention powers of Secretary of State and National Assembly for Wales

- (1) Where the Secretary of State or National Assembly for Wales is satisfied that anything done, being done or proposed to be done by a competent authority or pursuant to a consent, permission or other authorisation issued by any competent authority—
- (a) has had, is having, or is likely to have an adverse effect on the integrity of a nationally important marine site, and
 - (b) steps can be taken to avoid, reverse, reduce or eliminate that effect,

subject to subsections (3), (4) and (5), a direction may be given in writing requiring the competent authority or person to whom it is addressed to take such steps or refrain from taking such steps as may be specified in the direction.

- (2) Without prejudice to the generality of subsection (1), a direction given pursuant to this section may require within such period as may be specified in the direction—
- (a) the submission to the Secretary of State or National Assembly for Wales for approval of a plan of the steps to be taken, or
 - (b) the carrying out of a plan of the kind referred to in subsection (2)(a) which has been approved by the Secretary of State or National Assembly for Wales.

(3) Prior to any direction being given pursuant to this section the Secretary of State or National Assembly for Wales shall obtain appropriate scientific advice.

(4) Without prejudice to the generality of subsection (1), any direction given pursuant to this section may revoke or modify the terms and conditions of a consent,

permission or other authorisation.

(5) Subject to subsection (6), the Secretary of State or National Assembly for Wales shall not give a direction to any competent authority or person pursuant to this section unless—

- (a) that competent authority or person has been served with a copy of a draft of the direction proposed, and
- (b) that competent authority or person has been afforded a reasonable opportunity of making representations regarding the content of the proposed direction, and
- (c) the Secretary of State or National Assembly for Wales has taken into account any representations made by that competent authority or person.

(6) Subsection (5) shall not apply in a case of urgency where the Secretary of State or National Assembly for Wales is of the opinion that, in the interests of preventing or minimising any adverse effect on the integrity of a nationally important marine site, a direction should be given in the absence of the procedures set out in subsection (5).

(7) Any direction given pursuant to this section may be varied or revoked by a further direction.

55. Offences

(1) If any person, other than a competent authority acting in the exercise of its functions, without reasonable excuse, intentionally or recklessly damages, destroys or disturbs a nationally important feature for which a marine important marine site has been designated, he shall be guilty of an offence.

(2) A person guilty of an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) For the purpose of subsection (1) it is a reasonable excuse in any event for a person to do what is mentioned in subsection (1)—

- (a) if the conditions specified in subsection (4) are all met, or
- (b) if it is an action pursuant to, and in accordance with the terms of, a consent, permission or other authorisation for a plan or project to which section 47(1) of this Act applies, provided that such action was specifically foreseen and authorised at the time of the consent, permission or other authorisation.

(4) The conditions referred to in subsection (3)(a) are that—

- (a) it is an emergency action particulars of which, including details of the emergency, were notified to the Secretary of State and National Assembly for Wales as appropriate as soon as practicable after the start of the action, and
- (b) the action is taken to avoid danger to human life or health, and
- (c) the person takes all such steps as are reasonably practicable in the circumstances for minimising the extent of the destruction, damage or disturbance.

(5) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court must in particular have regard to—

- (a) any financial benefit which has accrued or appears likely to accrue to that person in consequence of the offence, and
- (b) the extent of any damage, destruction or disturbance to the nationally important marine feature concerned in consequence of the offence, and

(c) the extent to which the nationally important marine feature concerned is protected by other legislation.

(6) Where a person is convicted of an offence under this section, the court by which he is convicted may, in addition to dealing with him in any other way, make an order requiring him to carry out, within such period as may be specified in the order, such operations for the purpose of restoring the nationally important marine feature concerned to its former condition as may be so specified and are reasonably practicable.

(7) If, within the period specified in an order under subsection (7), any operations have not been carried out, the Secretary of State or National Assembly for Wales as appropriate may carry out those operations and recover from the person against whom the order was made any expenses reasonably incurred in doing so.

[Note re clause 55(6) & (7): These provisions are based on Regulation 26(1) & (6) of the 1994 Regulations (or section 33(1) & (6) of the Wildlife and Countryside Act 1981). Ideally, such provisions should be elaborated upon with some ancillary provisions (e.g. see Regulation 26(2)-(5) of the 1994 Regulations or section 30(2)-(5) of the Wildlife and Countryside Act 1981.]

Schedules

Schedule 1: criteria for selection of nationally important marine sites

[Note re Schedule 1: Let us imagine that the basking shark is a nationally important marine feature. Schedule 1 might, for example, include a criterion whereby for a nationally important marine site to be proposed in order to protect basking sharks, the area in question must regularly host more than [x]% of the total population of basking sharks in the marine area.]

Schedule 2: criteria against which to judge the recovery of nationally important marine features

PART FOUR
NATIONALLY IMPORTANT MARINE FEATURES

[Note re amendment of Town and Country Planning legislation: Some interaction is likely to arise between Town and Country Planning (TCP) legislation and the following clauses of the Bill, perhaps necessitating some amendment to the former. These clauses do not address amendments to the TCP legislation, though such amendments should ideally form part of the Bill.]

56. Meaning of nationally important marine features

the (1) In this Part, nationally important marine features means those marine features for marine area identified by the Secretary of State, and National Assembly for Wales as respects Wales, by means of a list and in accordance with the procedure set out in this Part.

(2) In respect of Wales, in the exercising of its functions under this Part, the National Assembly for Wales may make such representations as it sees fit to the Secretary of State in respect of any functions of the Secretary of State that have not been transferred by virtue of the Government of Wales Act 1998, National Assembly for Wales (Transfer for Functions) Order 1999 or subsequent such Orders and

- (i) on receipt of such representations it shall be the duty of the Secretary of State to exercise any of his functions to satisfy such representations, or
- (ii) to give and publish reasons for not doing so.

(3) In Wales, any targets, plans or objectives made under this Part shall be expressly included in any scheme made under section 121 of the Government of Wales Act 1998 and shall be subject to the provisions of that section.

(4) Nationally important marine features may be identified in any part of the marine area.

57. Identification of nationally important marine features

(1) The Secretary of State, and National Assembly for Wales as respects Wales, shall consult with the [advisory body] and select marine features identified by the advisory body as nationally important.

(2) The Secretary of State and National Assembly for Wales shall issue guidance to assist in the selection of nationally important marine features.

(3) For the purposes of this Part nationally important marine features means those marine landscapes, habitats and species located in the marine area and identified by the Secretary of State, or by the National Assembly for Wales as respects Wales, as of special importance or threatened or declining.

(4) Without prejudice to the generality of any guidance to be established, features of special importance shall include those that are recognised as special because of their rarity (either nationally or globally) or because of the high proportion of those features within the marine area.

(5) Marine features shall be considered ‘threatened or declining’ if there is an observed, estimated, inferred or suspected –

- (a) significant decline in numbers;

- (b) significant decline in the extent or quality of a marine landscape, habitat or species;
- (c) significant decline in the life history parameters of the species, throughout the marine area, or at a regional or global level.

[Note: It is intended that the guidance shall provide criteria for the selection of nationally important marine features. WWF-UK is aware that following the RMNC an expert group is producing a set of criteria and it would be the intention for the Bill to take such criteria into account for these purposes. It is also anticipated by WWF-UK that the development of criteria and selection processes will be open to stakeholder engagement. It is recognised that the application of criteria to identify NIMFS, including species, may lead to the generation of a substantial list and management action may need to be prioritised.]

58. Review of statutory guidance

- (1) The Secretary of State and National Assembly for Wales shall review guidance published in accordance with section 57 (2) from time to time and at a period of not less than 5 years.
- (2) For the purpose of any review the Secretary of State and National Assembly for Wales shall take the advice of the [advisory body] and any other competent authority whom they consider necessary to consult as to any necessary changes.
- (3) Any review by the Secretary of State or National Assembly for Wales shall have regard in particular to the following-
 - (a) species which occur in internationally or nationally important numbers in the marine area;
 - (b) habitats whose quality has been negatively affected to the extent that there has been a change of their typical or natural components over a significant part of the marine area based on change from natural conditions caused by human activities;
 - (c) the loss of a habitat's typical or natural components in several sub-regions.
- (4) For the purposes of this section a 'sub-region' requires further clarification.

59. Publication of lists

- (1) The Secretary of State and, as respects Wales, the National Assembly for Wales shall, in consultation with the [advisory body] and taking a precautionary approach, publish a list of nationally important marine features in whatever form is seen fit.
- (2) Any list published in accordance with subsection (1) shall include those habitats and species that are the subject of section 74 of the Countryside and Rights of Way Act 2000.
- (3) A list of nationally important marine features under this section shall include the publication of any data, reports, statistics, charts, maps, plans and documents used in the compilation of such a list.
- (4) For each nationally important marine feature the published list shall include—
 - (a) the co-ordinates of the marine feature;
 - (b) the reason why the marine feature has been identified in accordance with this Part; and

(c) a list of any activity, either existing or foreseeable, that may adversely affect the typical or natural components of the marine feature.

(5) A copy of the published list shall be kept on a register available for public inspection at all reasonable hours and free of charge.

60. Revision of list

(1) The Secretary of State and as respects Wales, the National Assembly for Wales shall in consultation with the [advisory body] –

- (a) keep under review any list published under this Part;
- (b) make such revisions of any such list from time to time as appear appropriate; and
- (c) publish any list so revised.

(2) The Secretary of State and National Assembly for Wales shall only propose a revision of the published list of nationally important marine features if-

- (a) so advised by the advisory body, and
- (b) the nationally important marine feature shows no sign of recovery despite the establishment of management measures, or
- (c) the nationally important marine feature no longer meets any of the criteria contained within any statutory guidance made in accordance with section 57(2).

(3) In the case of any revision in accordance with subsection (2) (b) the Secretary of State and National Assembly for Wales shall only propose a revision of the published list where the advisory body has considered all appropriate action in addition to the existing management measures for the restoration and recovery of the feature.

61. Management plans

(1) The Secretary of State and as respects Wales, the National Assembly for Wales shall in consultation with the [advisory body] develop a management plan for the management of nationally important marine features.

(2) A management plan made under subsection (1) shall –

- (a) establish targets for the protection, conservation, management and recovery of marine features;
- (b) establish periodic assessments of the quality of marine features;
- (c) establish monitoring for general conformity with the targets in (a) above;
- (d) take into account management schemes established for nationally important marine sites.

(3) Without prejudice to the generality of subsection (2) the Secretary of State or National Assembly for Wales as appropriate may make provision by way of regulation for further matters as they see fit to be included within any management plan.

(4) A management plan made under this section shall also make provision for the further development (where appropriate) of lists of habitats and species compiled in accordance with section 74 of the Countryside and Rights of Way Act 2000.

(5) The Secretary of State or National Assembly for Wales shall by way of regulation make provision for the appointment of the [advisory body] to exercise functions for

the purposes of the implementation of any management plan made under subsection (1) of this section.

[Note: It should be noted that there is a difference in approach to management plans for NIMFS and management schemes for NIMS. The scheme for NIMFS requires plans to be established by the SoS / NAW upon the advice of an advisory body (undefined) and the establishment of a single body to carry out the plans, whereas the scheme for NIMS requires management schemes to be developed by competent authorities. It was thought that there may be a difference in the type of functions being carried out in relation to the two schemes, for instance, for NMFS there may be less requirement for a competent authority to carry out any management actions, and management may become more a matter of monitoring, whereas for site protection there is an obvious need for the competent authority to carry out some management action including monitoring.]

62. Directions by Secretary of State and National Assembly for Wales regarding management plans

(1) The Secretary of State and as respects Wales, the National Assembly for Wales may give directions to the [advisory body] concerning any management plan made under section 61.

(2) The directions referred to in subsection (1) of this section may, in particular –

- (a) set time limits within which any management measures are to be taken; and
- (b) provide for the Secretary of State’s or National Assembly for Wales’ approval as appropriate before the carrying out of any such measures; and
- (c) provide for amendments and/or modifications to any management plans either generally or in any particular respect.

(3) Any direction under this section shall be in writing and may be varied or revoked by a further direction and any direction given under this section shall be published in the London Gazette or, in respect of Wales, in any Welsh or Welsh language publication as the National Assembly for Wales may prescribe

63. Co-ordination of management measures and plans

(1) Where measures taken pursuant to any management plan form, or are likely to become part of, an existing management scheme undertaken by one or more competent authorities the Secretary of State or respects Wales, the National Assembly for Wales, shall issue guidance to competent authorities and the advisory body as to the circumstances in which one authority may or should adopt the measures or plan of another authority or body.

(2) The Secretary of State or National Assembly for Wales as appropriate shall make provision by way of regulations to ensure -

- (a) that competent authorities (including the advisory body) take account of any guidance issued under subsection (1) when discharging their functions;
- (b) that competent authorities consult with other competent authorities or [advisory body] before discharging their functions.

(3) In the event of conflict between the need to protect a nationally important marine site under this Act and the need to protect a European site or a European offshore marine site, the regime for the European site or the European offshore marine site

shall prevail.

[NOTE: No decision has been made for this document concerning the interplay between the management scheme to be established under the scheme for nationally important features and the scheme for establishing nationally important sites.]

64. Notice

- (1) The Secretary of State or, as respects Wales, the National Assembly for Wales shall give notice, in so far as reasonably practicable, of any management plan or directions made under section 61 or 62 to-
 - (a) any competent authority likely to be concerned with a management plan for nationally important marine features;
 - (b) each person whose activities are likely to be affected by any management plan;
 - (c) any other persons who in the opinion of the Secretary of State or National Assembly for Wales should be notified.
- (2) Such notice shall be made by way of published notification in a relevant national or regional newspaper or other relevant journals as may be prescribed for the purpose.
- (3) Any notification under subsection (1) shall specify the time (not being less than 12 weeks from the date of giving notice) within which, and the manner in which, representations and objections with respect to it may be made.
- (4) The Secretary of State and National Assembly for Wales shall consider any representations or objection duly made.
- (5) Any notification under subsection (1) shall specify-
 - (a) the reasons for any management plan ; and
 - (b) any operations or activities which in the opinion of the Secretary of State or National Assembly for Wales as appropriate are likely to negatively impact upon marine features.
- (6) Where a notification under subsection (1) has been given, the Secretary of State or National Assembly for Wales as appropriate may within the period of 24 weeks beginning with the date on which the notification was served give notice to the competent authorities and persons mentioned in subsection (1) either-
 - (a) withdrawing the notification; or
 - (b) confirming the notification with modifications.
- (7) A notification shall cease to have effect on the giving of notice of its withdrawal under subsection (6)(a) to any of the persons mentioned in subsection (1).

65. Biodiversity Stop Orders

- (1) Where it appears necessary for the furtherance of the conservation purposes of this Act with regards any nationally important marine feature the Secretary of State or National Assembly for Wales may issue a biodiversity stop order (BSO).
- (2) As respects Wales, where the National Assembly for Wales considers a BSO is required under this section, but the activities to be subject to the BSO are not activities in respect of which the Secretary of State's functions have been transferred to the National Assembly of Wales by virtue of the Government of Wales Act 1998 or National Assembly for Wales (Transfer of Functions) Order 1999 or subsequent

such Orders, the National Assembly for Wales shall make representations to the Secretary of State in receipt of which he must either promptly –

- (a) issue the BSO as requested by the National Assembly for Wales; or
- (b) publish his reasons for not doing so.

(3) A BSO shall require the person served, or any competent authority, not to commence or, if commenced, to stop the carrying out, authorisation or permission of any of the activities specified in the order.

(4) A BSO may prohibit any human activity that is considered to be affecting the quality of any marine feature to the extent that there has been a change of its typical natural components over a significant part of the marine area or has caused or is assessed as likely to cause the loss of its typical or natural components over several sub-regions.

(5) A BSO shall be served upon any person, or competent authority, carrying out, permitting or authorising, or proposing to carry out, permit or authorise any such activity specified within the BSO and shall be published in the London Gazette and as respects Wales in any Welsh or Welsh language publication as the National Assembly may prescribe.

(6) A BSO shall not be served where the nationally important marine feature is included within a nationally important site designated in accordance with Part 3 of this Act and where the Secretary of State or National Assembly for Wales has issued a direction in accordance with section 21 of that Part.

[Note: There may be some inconsistency here with section 21 of NIMS, but time has not allowed the further elaboration of these clauses.]

(7) The Secretary of State or National Assembly for Wales may make provision by way of regulation for the publication of any BSO by the United Kingdom Hydrographic Office by way of Mariner's Notice in accordance with the Merchant Shipping (Safety of Navigation) Regulations 2002.

(8) No person or competent authority shall carry out, or permit or authorise to be carried out any operation or activity specified within the BSO for the duration of the BSO.

(9) Any person aggrieved by any decision to make a BSO under this Section may request a review of the BSO by the Secretary of State or National Assembly for Wales as appropriate and such a review shall be conducted and its determination published within 28 days of any such request being served.

66. Rights of navigation

[Note: this section requires further consideration].

67. Contents of BSOs

(1) A BSO under section 65 must–

- (a) identify the activity or operation in respect of which it is imposed
- (b) specify the date on which it is to come into force, or the means by which the date is to be determined.

(2) In addition to those matters listed in subsection (1) a BSO may–

- (a) prohibit the carrying on of specified activities in the area made the subject of the BSO;
- (b) provide for the imposition of such prohibitions;
- (c) permit vessels to carry on prohibited activities, or for the grant of such permissions;
- (d) confer discretions on such persons, or competent authorities, as may be specified or described in the BSO;
- (e) modify or revoke a previous BSO.

(3) A BSO shall cease to have effect when the Secretary of State or National Assembly for Wales withdraws the BSO.

68. Review of existing consents etc.

(1) The Secretary of State and, as respects Wales, the National Assembly for Wales may direct those competent authorities whose functions are affected by any BSO, before the date on which a BSO is withdrawn, to review those functions with respect to the grant of any consent, permission or other authorisation.

(2) Upon such direction the competent authority shall, as soon as reasonably practicable, and upon the receipt of appropriate scientific advice, review its decision or, as the case may be, the consent, permission or other authorisation, and shall affirm, modify or revoke it.

(3) The competent authority shall for that purpose carry out an environmental assessment of the implications for the nationally important marine feature of its decision.

(4) Any review required by this section shall be carried out under existing statutory procedures where such procedures exist, and if none exist the competent authority shall determine the procedure to be followed, having regard to any guidance issued by the Secretary of State and National Assembly for Wales in accordance with section 69(4).

(5) Nothing in this section shall affect anything done in pursuance of the decision, or the consent, permission or other authorisation, before receipt of any direction.

69. Consideration on review

(1) The following provisions apply where a decision, or a consent, permission or other authorisation, falls to be reviewed under section 68 of this Act.

(2) Subject as follows, sections 14(6), 14(7) and 15 of this Act shall apply, with the appropriate modifications, in relation to the decision on the review.

(3) The decision, or the consent, permission or other authorisation, may be affirmed if it appears to the competent authority reviewing it that other action taken or to be taken by it, or by another competent authority, will secure that the plan or project does not adversely affect the integrity of the nationally important feature.

(4) The Secretary of State and National Assembly for Wales as appropriate may issue guidance to authorities for the purposes of subsection (3) as to the manner of determining which of different ways should be adopted for securing that the plan or project does not have adverse effects, and in particular—

- (a) the order of application of different controls, and

(b) the extent to which account should be taken of the possible exercise of other powers,

and the competent authorities concerned shall have regard to any guidance so issued in discharging their functions under that subsection.

(5) Any modification or revocation effected in pursuance of section 68 of this Act shall be carried out under existing statutory procedures where such procedures exist. If none exist the competent authority shall determine the procedure to be followed, having regard to any guidance given by the Secretary of State or National Assembly for Wales.

70. Compensation for loss due to BSO

(1) Where a BSO is served under section 65 compensation may be payable under this section in respect of a prohibition contained in the BSO for any loss or damage directly attributable to the prohibition contained in the BSO.

(2) The amount of payment under this section is to be determined by the Secretary of State and National Assembly for Wales in accordance with published guidance.

(3) A claim for compensation under this section shall be made to the Secretary of State or National Assembly for Wales as appropriate within the prescribed period and in the prescribed manner.

(4) Except in so far as may be otherwise provided by any regulations made under this Part, any question of disputed compensation shall be determined by way of appeal to the High Court within six weeks of any determination by the Secretary of State or National Assembly for Wales.

[Note: WWF-UK would prefer that there is no provision made for compensation. However, the matter of whether the Bill should provide compensation will fall to be determined in the light of the Human Rights Act 1998 and whether the removal of this clause is compliant with the European Convention of Human Rights].

71. Offences

(1) If any person or competent authority fails to comply with the contents of a BSO once served or published in accordance with section 65 he shall be guilty of an offence.

(2) It shall be an offence for any person, other than a competent authority acting in the exercise of its functions, without reasonable excuse to intentionally or recklessly damage, destroy or disturb any nationally important feature included within a published list made under section 59 of this Part.

(3) For the purpose of subsection (5) of this section it is a reasonable excuse if-

- (a) it is an emergency, and where details of the emergency, were notified to the Secretary of State and National Assembly for Wales as appropriate as soon as practicable after the start of the action; and
- (b) action is taken to avoid danger to human life or health, and
- (c) the person takes all reasonably practicable steps to minimise the extent of any destruction, damage or disturbance, or
- (d) if it is an action pursuant to, and in accordance with the terms of, a consent, permission or other authorisation for a plan or project to which

section 68 applies, provided that such action was specifically foreseen and authorised at the time of the consent, permission or other authorisation.

- (4) A person guilty of an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding level [*insert amount*] on the standard scale.
- (5) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court must in particular have regard to—
- (a) any financial benefit which has accrued or appears likely to accrue to that person in consequence of the offence, and
 - (b) the extent of any damage, destruction or disturbance to the nationally important marine feature concerned in consequence of the offence, and
 - (c) the extent to which the nationally important marine feature concerned is protected by other legislation.
- (6) Where a person is convicted of an offence under this section, the court by which he is convicted may, in addition to dealing with him in any other way, make an order requiring him to carry out, within such period as may be specified in the order, such operations for the purpose of restoring the nationally important marine feature concerned to its former condition as may be so specified and are reasonably practicable.

[Note; Further work concerning enforcement is required.]

72. Codes of conduct

- (1) The Secretary of State and, as respects Wales, the National Assembly for Wales shall introduce codes of conduct for the purposes of regulating human interaction with the marine area that has the potential to disturb, destroy, damage or harm nationally important marine features.
- (2) The Secretary of State and National Assembly for Wales shall so prepare codes of conduct setting out recommendations, advice and information relating to commercial and leisure activities for the furtherance of the conservation purposes of this Act.
- (3) Without prejudice to the generality of subsection (2) the Secretary of State and National Assembly for Wales shall specifically include measures in any code of conduct addressed at the mitigation of possible disturbance, destruction, damage or harm to features, species and habitats in the marine area.
- (4) The Codes may in particular contain information on-
- (a) activities which are likely to disturb marine wildlife;
 - (b) the circumstances in which marine wildlife may be approached; and
 - (c) the manner in which marine wildlife may best be viewed with the minimum disturbance.
- (5) The Secretary of State and National Assembly for Wales shall review the codes from time to time and may, following such review, revise them.
- (6) The Secretary of State and National Assembly for Wales shall-
- (a) before preparing codes, and
 - (b) when reviewing them consult such persons appearing to have an interest in marine conservation and such other persons as is thought fit.

- (7) The Secretary of State and National Assembly for Wales must-
- (a) publish the codes and any revision to them in such manner (including on the internet or other electronic means) as is thought fit, and
 - (b) promote awareness and understanding of the codes and any revision to them.

(8) For the purposes of this Part the term 'disturb' shall mean any act that causes any significant change or prolonged interruption to normal behaviour, including but not limited to, breathing rates, maternal care, social behaviour, breeding, feeding, resting or sheltering.

[Note: Guidance is required on the definition of disturbance in the context of nature conservation. At present it is very widely defined. The Oxford English dictionary defines the word to mean 'interfere with the arrangement of, break the rest or privacy of, or make anxious.' The above definition would seem to provide a higher threshold and it may be preferable to allow the Courts to give the word its ordinary meaning.]

73. Miscellaneous Amendments to the Wildlife and Countryside Act, 1981 etc...

(1) The following sections of the Wildlife and Countryside Act 1981 (as amended by the CROW Act 2000) shall be amended-

(2) After 'intentionally' insert 'or recklessly' into the following sections;

'Section 1(1)'

'Section 3 (1)'

'Section 9 (1)'

'Section 13 (1) (a) and (b)'

(3) Section 9 (4)(a) Wildlife & Countryside Act 1981 (W&CA) shall be amended '(a) damages or destroys, or obstructs access to, any structure or place which any wild animal included in Schedule 5 uses for shelter or protection;' by adding after the words 'protection' 'or uses for any area considered important for stages of their life cycle'.

(4) Section 39 (1) (d) of the Conservation (Natural Habitats, &c.) Regulations 1994 shall be amended from 'to damage or destroy a breeding site or resting place of such an animal' by adding after 'animal' 'or any area considered important for stages of its life cycle'.

(5) After section 9 (4) (A) (b) Wildlife and Countryside Act 1981 'a basking shark (*Cetorhinus maximus*) add the words 'or, (c) a marine turtle'.

(6) In section 27 (1) 'Interpretation of Part 1' Wildlife and Countryside Act 1981 in section (d) after the words 'aviculture' add 'disturb' in this Part shall include any act that causes a persistent change or prolonged interruption to normal behaviour, including but not limited to breathing rates, parental care, social behaviour, breeding, feeding, resting or sheltering and 'disturbance' is to be given the same meaning.

(7) In section 2 'Interpretation and application' of the Conservation (Natural Habitats, etc.) Regulations 1994 after the word 'competent authority' and before the word 'destroy' add 'disturb' in relation to section 39 of this Part shall include any act that causes a persistent change or prolonged interruption to normal behaviour, including but not limited to breathing rates, parental care, social behaviour, breeding, feeding, resting or sheltering and the word 'disturbance' is to be given the same meaning'.

(8) In section 3 ‘Areas of special protection’ of the Wildlife and Countryside Act 1981 after section 5(c) add new section 6 (a) ‘The Secretary of State may make an order under this section directing a review by the competent authority of any permission or consent for operations or activities with a view to revocation where such operations or activities would be an offence but for the exceptions set out at sections 4(2)(c), 10 (3) (c) and 13 (3)’. New subsection (b) shall read ‘any Order may require competent authorities to take into account upon any review the need for conditions or further conditions to be attached to any permission or consent, such conditions to apply in particular to-

- (i) monitoring the level of incidental killing or disturbance; and
- (ii) allowing for observers; and
- (iii) allowing for certain steps to be taken to reduce the level of killing or disturbance as advised.

(9) In section 3 ‘Implementation of Directive’ of the Conservation (Natural Habitats, &c.) Regulations 1994 at subsection (3) after ‘Habitats Directive’ add the words ‘this includes a requirement to direct a review of any permission or consent for operations or activities with a view to revocation where such operations or activities would be an offence but for the exceptions set out at sections 40(3)(c) and 43 (4) of Part II’. New subsection (3) (A) shall read ‘any review may take into account the need to attach conditions or further conditions to any permission or consent, such conditions to apply in particular to-

- (i) monitoring the level of incidental killing or disturbance; and
- (ii) allowing for observers; and
- (iii) allowing for certain steps to be taken to reduce the level of killing or disturbance as advised.

[Note: WWF-UK is concerned about the defences contained in the Wildlife and Countryside Act 1981, sections 4(2)(c) and 10 (3) (c) and under the Conservation (Natural Habitats &c) Regulations 1994. The above amendments have been made as one way in which legal protection to species may be improved. However, alternative defences have been proposed in two new pieces of draft legislation (i) the Nature Conservation (Scotland) Bill and the Offshore Marine Conservation (Natural Habitats &c) Regulations, 2003⁴ and it is proposed that these drafts may be considered as suitable replacements to the current defences contained in the above legislation.]

⁴ The Nature Conservation (Scotland) Bill states:

- ‘(a) that the unlawful act was the incidental result of a lawful operation or other activity;
- (b) that the person who carried out the lawful operation or other activity-
 - (i) took reasonable precautions for the purpose of avoiding carrying out the unlawful act, or
 - (ii) did not foresee, and could not reasonably have foreseen, that the unlawful act would be an incidental result of the carrying out of the lawful operation or other activity; and
- (c) that the person who carried out the unlawful act took, immediately upon the consequences of that act becoming apparent to the person, such steps as were reasonably practicable in the circumstances to minimise the damage or disturbance to the wild animal, or the damage or obstruction to the structure or place, in relation to which the unlawful act was carried out.’

The Offshore Marine Conservation (Natural Habitats, &c) Regulations 2003 reads:

- ‘A person shall not be guilty of an offence by reason of any act made unlawful if he shows that-
 - (a) the act was the incidental result of a lawful operation and could not reasonably have been avoided; and
 - (b) he was not aware, and could not reasonably have been expected to be aware, of the effect of his act on an animal of a European protected species.’

74. Marine recreational facilities

- (1) Section 3(1) of the Countryside and Rights of Way Act 2000, (CROW) shall be repealed.
- (2) Section 1(2) CROW shall be amended so that the definition of ‘open country’ includes a new subsection (c) adding the words ‘ is coastal land and waters’.
- (3) Section 3 (3) CROW shall be amended to add to the definition of ‘coastal land’ after subsection (b) the words ‘(c) any waters of any channel, creek, bay or estuary, internal waters and inland water landward side of the baseline from which the breadth of territorial waters is measured’.
- (4) Section 3 (1) CROW shall be amended to read after subsection (b) (ii) with the insertion of ‘ (c) to protect marine wildlife or safeguard human life.’
- (5) A direction by any relevant authority under section 26 (1) CROW may include a direction excluding or restricting the access to the foreshore and coastal waters by those carrying out marine recreational activities including, inter alia, the activities of motorised marine leisure vessels and fishing vessels.
- (6) Section 26 CROW shall be further amended with the insertion of new subsection (3) (A) to read ‘Where access is excluded or restricted to any foreshore or coastal waters under this section the area designated shall be-
 - (a) defined with reference to clearly identifiable natural features or fixed buoys;
 - (b) recorded on maps published by the relevant authority; and
 - (c) clearly identified on weather resistant copies of such maps, which shall be placed at appropriate launch points and other sites suitable for public information together with an appropriate explanation of the purposes and meaning of the designation.
- (7) Section 26 (6) (a) CROW shall be amended by the insertion after the words ‘subsection 3 (a)’ with ‘or subsection 3 (c)’.
- (8) Section 26 CROW shall be amended to include the insertion of subsection (7) after subsection (6) to read ‘The relevant advisory body advise any relevant authority when making a direction under subsection 3 (c) of the following:
 - (a) to take into account other relevant plans which relate to the coastal area involved;
 - (b) to consider whether the direction may be integrated into any existing management plan for any part of the coastal area involved, including the provision of regional plans on land and sub-regional plans for the marine area;
 - (c) to have regard to the risk of displacing motorised leisure boat activity to adjacent sensitive parts of the coast or to the neighbouring authorities;
 - (d) to consult with relevant local authorities, any competent authority, harbour authorities and other statutory undertakers so as not to prejudice or interfere with their functions (except by agreement with the bodies concerned);
 - (e) to consult with the Secretary of State and National Assembly for Wales concerning any relevant Private Acts.
- (9) Schedule 2 CROW shall be amended to include in Section 1 after subsection (t) add ‘(u) engages intentionally or recklessly in any activity with a motorised marine

leisure vessel which has the effect of damaging, destroying or disturbing any protected marine habitat or species or any wild animal's breeding site or resting place or any area considered important for stages of its life cycle'.

(10) For the purposes of this section 'motorised marine leisure vessel' means a motorised water craft used for leisure purposes and includes mechanically powered pleasure craft propelled by water or air jets'.

(11) In Schedule 2 of the National Assembly for Wales (Transfer of Functions) Order 1999, as amended, and any subsequent such Order, any reference to:

(a) the Wildlife and Countryside Act 1981

(b) the Countryside and Rights of Way Act 2000

(c) the Conservation (Natural Habitats etc) Regulations 1994

means those Acts or Regulations as amended by this Act

75. Artificial sound in the marine environment

Any competent authority granting permission or consent for operations in the marine environment or any commercial or leisure activity in the marine environment that has the effect of introducing artificial sound or noise into the marine environment shall be required to follow guidance introduced by the Secretary of State or National Assembly for Wales for that purpose and relevant legislation shall be amended accordingly.

[Note: WWF-UK would wish to introduce legislative measures for the Secretary of State / NAW to provide guidance to competent authorities so that the use of artificial sound in the marine area can be monitored and controlled.

The purpose of such guidance would be to mitigate potential effects upon species that are vulnerable to disturbance resulting from human-induced noise, vibration or movement.

Comments are invited as to how far such legislation should or could extend. For instance, whether it is appropriate to extend regulation to include, wherever legally possible, noise from Ministry of Defence sources and shipping activities.

No attempt has been made to further draft this section until the extent of legislation that may require amendment is further defined.

It has been suggested that any review would need to take into account all noise producers in the marine environment so that which activities require guidance can be identified.

WWF-UK also consider that it will be necessary to monitor noise producing activities using independent observers and report back to enable assessments to be made of the impacts of activities on marine wildlife and also the effectiveness of any guidance provided.].

PART 5

GENERAL INTERPRETATION

76. General interpretation

In this Act –

‘adaptive management’ means the evaluation of the most favourable first step towards an agreed goal, adopting such step and monitoring the outcomes;

“1994 Regulations” means the Conservation (Natural Habitats, &c.) Regulations 1994;

“200[x] Regulations” means the Offshore Marine Conservation (Natural Habitats &c.) Regulations [*yet to be made*];

“advisory body” means the Agency appointed by the Secretary of State and National Assembly for Wales to form an Integrated Government Agency for the purposes of advising on a framework of marine spatial planning and which may be considered an “appropriate body” for these purposes;

“appropriate body” means the Agency appointed by the Secretary of State or National Assembly for Wales to form an Integrated Government Agency for the purposes of advising on biodiversity, natural resource protection and marine landscape issues, including matters concerning coastal England and Wales [recognising that this is dependent on the outcome of the Government’s review of consents];

“appropriate conservation body” means—
as respects England, [English Nature] and as respects Wales, the Countryside Council for Wales;

“appropriate scientific advice” means—

(a) in the case of a nationally important marine site located in that part of the marine area referred in parts (a) or (b) of the definition of “marine area”, scientific advice from [English Nature] and Countryside Council for Wales, and

(b) in the case of a nationally important marine site located in that part of the marine area referred to in parts (c), (d), (e) or (f) of the definition of “marine area”, scientific advice from the Joint Nature Conservation Committee;

“biological diversity” has the same meaning as in the United Nations Environmental Programme Convention on Biological Diversity 1992;

“coastal waters” includes –

(1) rivers, any waters of any channel, creek, bay or estuary, transitional waters and coastal waters, and includes any “coastal waters” as defined under UNCLOS..

(2) ‘rivers’ means a body of inland water flowing for the most part on the surface of the land but which may flow underground for part of its course.

(3) ‘transitional waters’ means bodies of surface water in the vicinity of river mouths which are partly saline in character as a result of their proximity to coastal waters but which are substantially influenced by freshwater flows.

(4) surface water on the landward side of a line, every point of which is at a distance of one nautical mile on the seaward side from the nearest point of the baseline from which the breadth of territorial waters is measured, extending where appropriate up to the outer limit of transitional waters;

“cultural heritage” means –

all traces of human existence having a cultural, historical or archaeological character which have been partially or totally under water, periodically or continuously, such as:

- (a) sites, structures, buildings, artefacts and human remains, together with their archaeological and natural context;
- (b) vessels, aircraft, other vehicles or any part thereof, their cargo or other contents, together with their archaeological and natural context; and
- (c) any other trace of human existence having the required character;

“community vessel” means—

- (a) a British ship within the meaning of section 1 of the Merchant Shipping Act 1995, or
- (b) a ship flying the flag of a Member State of the European Community other than the United Kingdom;

“competent authority” includes—

- (a) any Minister, government department, public or statutory undertaker, public body of any description or person holding a public office, and
- (b) any person exercising any function of such an authority;

“conservation” in relation to a living organism or type of habitat, includes the restoration, recovery or enhancement of a species population or habitat;

“conservation objectives” has the meaning given in section 43 of this Act;

“ecosystem” means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit;

“ecosystem approach” means the comprehensive integrated management of human activities based on best available scientific knowledge about the ecosystem and its dynamics, in order to identify and take action on influences which are critical to the health of marine ecosystems, thereby achieving sustainable use for ecosystem goods and services and maintenance of ecosystem integrity;

“environmental assessment” means any assessment in compliance with EC Directive 85/337/EEC (as amended) or EC Directive 2001/42/EC of 27 June 2001, or both

“European offshore marine site” means a site which is included in the register maintained by the Secretary of State under the 200[x] Regulations;

“European site” means a site which is included in the register maintained under the 1994 Regulations;

“functions” includes powers and duties;

“habitat” has the same meaning as in the United Nations Environmental Programme Convention on Biological Diversity 1992;

“Harbour Works Regulations” means—

- (a) the Harbour Works (Assessment of Environmental Effects) Regulations 1988, and
- (b) the Harbour Works (Assessment of Environmental Effects) (No.2) Regulations 1989, and
- (c) the Harbour Works (Assessment of Environmental Effects) Regulations 1992, and
- (d) the Harbour Works (Assessment of Environmental Effects) (Amendment) Regulations 1996, and
- (e) the Harbour Works (Environmental Impact Assessment) Regulations 1999, and
- (f) the Harbour Works (Environmental Impact Assessment) (Amendment) Regulations 2000;

“in combination with other plans or projects” means in combination with any other plan or project for which consent, permission or other authorisation has already been given, irrespective of its nature or location;

“joint board” and **“joint committee”** mean—

- (a) a joint or special planning board constituted for a National Park by order under paragraph 1 or 3 of Schedule 17 to the Local Government Act 1972, or a joint planning board within the meaning of section 2 of the Town and Country Planning Act 1990, and
- (b) a joint committee appointed under section 102(1)(b) of the Local Government Act 1972;

“local authority” means a county council, district council or London borough council, the Common Council of the City of London, the sub-treasurer of the Inner Temple, the under treasurer of the Middle Temple or a parish council, and in Wales, any authority as defined by section 113(7) of the Government of Wales Act 1998;

“marine area” means—

- (a) any waters in or adjacent to England and Wales which are seaward of the baselines from which the breadth of the territorial sea is measured up- to a distance of twelve nautical miles, and any land or seabed covered intermittently or continuously by such waters, or
- (b) any tidal waters in or adjacent to England and Wales which are landward of the baselines from which the breadth of the territorial sea is measured, and any land or seabed covered intermittently or continuously by such waters, or
- (c) any area to which British Fishery limits extend in accordance with section 1 of the Fishery Limits Act 1976, except any area comprised within the territorial sea, or
- (d) in relation to the seabed or subsoil thereof, any area designated in accordance with section 1(7) of the Continental Shelf Act 1964, or
- (e) in relation to the waters superjacent to the seabed, the areas of sea defined in the Schedule to the Merchant Shipping (Prevention of Pollution) (Limits) Regulations 1996, or
- (f) in relation to the seabed or subsoil thereof, and in relation to the waters superjacent to the seabed, any area designated in accordance with section 84(4) of the Energy Act 2004

(2) ‘Wales’ for the purposes of the ‘marine area’ means the sea adjacent to Wales out as far as the seaward boundary of the territorial sea and for the purposes of the definition of Wales shall be construed in accordance with s.155 Government of Wales Act 1998 and Orders in Council made thereunder.

superjacent to the seabed, any area designated in accordance with section 84(4) of the Energy Act 2004;

“**marine environment**” means the physical, chemical, geological and biological components, conditions and factors which interact and determine the productivity, state, condition and quality of the marine ecosystem, the waters of the seas and oceans and the airspace above those waters, as well as the seabed and subsoil thereof;

“**marine landscapes**” means the classification of medium to small scale marine habitats by means of geophysical and hydrographical information, including any known biological data;

“**marine nature reserve**” means an area designated under section 36 of the Wildlife and Countryside Act 1981;

“**nationally important marine feature**” has the meaning given in Part 4 of this Act;

“**nationally important marine site**” has the meaning given in Part 3 of this Act;

“**precautionary principle**” means, when applied to the marine environment, including the coastal zone, where there is a threat of a significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimise such a threat;

“**public body**” includes—

- (a) any local authority, joint board or joint committee, and
- (b) any advisory body or regional body established for the purposes of a framework of marine spatial planning;

“**the public**” means one or more natural or legal persons and their associations, organisations or groups (including, *inter alia*, non-governmental organisations promoting environmental protection);

“**the public concerned**” means the public affected or likely to be affected by, or having an interest in, the establishment or amendment of a management scheme as referred to in section 44;

“**public office**” means—

- (a) an office under Her Majesty, or
- (b) an office created or continued in existence by a public general Act of Parliament, including by the National Assembly for Wales,
- (c) an office the remuneration in respect of which is paid out of money provided by Parliament;

“**site of special scientific interest**” means a site of special scientific interest as provided for in Part II of the Wildlife and Countryside Act 1981;

“sustainable development” means improving the quality of all human life while living within the carrying capacity of supporting ecosystems. In this context, **“carrying capacity”** means the capacity of an ecosystem to support healthy organisms, while maintaining productivity, adaptability, and capability of renewal;

“the Convention” means the United Nations Environmental Programme Convention on Biological Diversity 1992;

“tidal waters” means waters whose landward limits are defined by the limits of the highest tide and, in the case of the waters of any river or watercourse, by the fresh-water limit of the river or watercourse.

[Miscellaneous – possible clause on shipping under Part 4- section 66]

- (1) Where the Secretary of State or National Assembly for Wales issues a BSO against any particular activity at the same time a declaration made be made under this section as respects rights of navigation in so far as it is necessary for carrying out the conservation purposes of this Act.
- (2) Any declaration made under this section shall not impede the innocent passage of foreign vessels save to the extent allowed under article 21 of the United Nations Convention on the Law of the Sea.
- (3) A declaration made under this section may only be made in respect of a specified area or areas of water around or immediately adjacent to the place of the nationally important marine feature that is the subject of the Order and only to the extent of the breadth of English and Welsh territorial waters.
- (4) A declaration under this section is one declaring that the rights of navigation specified or described in it are-
 - (a) suspended for the period that is specified in the declaration;
 - (b) suspended until such time as may be determined in accordance with provision contained in the declaration; or
 - (c) exercisable subject to the restrictions or conditions, or both, as set out in the declaration.
- (5) Before making a declaration under this section the Secretary of State or National Assembly for Wales shall first consult with the [advisory body] and any other competent authority as he deems appropriate.
- (6)The Secretary of State or National Assembly for Wales shall have the power to make provision by way of regulations for the giving of notice to mariners of any declaration and their publication.
- (7)Any declaration shall include a map including the co-ordinates of the marine feature.

End.