LEGISLATIVE CONSENT MEMORANDUM

UK Marine and Coastal Access Bill

Legislative Consent Motion

1. The motion, which will be lodged by the Cabinet Secretary for Rural Affairs and the Environment, is:

   ‘That the Parliament agrees that the relevant provisions of the UK Marine and Coastal Access Bill introduced in the House of Lords on 4 December 2008, relating to the marine policy statement, marine planning, marine licensing, marine conservation zones and enforcement powers, so far as these matters fall within the legislative competence of the Scottish Parliament, or alter the executive competence of the Scottish Ministers, should be considered by the UK Parliament.’

Background

2. This memorandum has been lodged by Richard Lochhead MSP, Cabinet Secretary for Rural Affairs and the Environment, under rule 9B.3.1(a) of the Parliament’s standing orders. The UK Marine and Coastal Access Bill was introduced in the House of Lords on 4 December 2008. The Bill can be found at:

   http://www.publications.parliament.uk/pa/ld200809/ldbills/001/2009001.pdf

3. The main purpose of the UK Marine and Coastal Access Bill is to ensure sustainable economic development of the marine environment. The key elements of the Bill are:

   - To make provision for the development of a UK Marine Policy Statement which will detail the high level objectives for the marine environment and how it should be managed in order to enable sustainable development in the UK marine areas.
   - To apply the policy through a marine planning system which will allow a strategic approach to managing activities in the marine environment to ensure sustainable development in the UK marine area.
   - To create a Marine Management Organisation to deliver the marine functions in the waters around England and reserved or non-devolved functions in UK offshore waters.
   - To simplify the marine licensing system to allow as far as possible a one stop shop for all licensing and more effective decision making.
   - To designate marine conservation zones for the protection of important habitats and species taking into account environmental, social and economic criteria.
   - To strengthen the management of marine fisheries in England through the creation of Inshore Fisheries and Conservation Authorities.
• To modernise powers for the licensing and management of migratory and freshwater fisheries in England and Wales and allow for the introduction of a scheme to manage live fish movement.

• To streamline the enforcement powers so that there will be a single set of common enforcement powers covering fisheries, (other than in the Scottish zone) nature conservation and licensing.

• To introduce a marine enforcement regime through a civil sanctions scheme for licensing and nature conservation offences and an administrative penalty scheme for domestic fisheries offences.

• To secure a long distance route accessible to the public around the coast of England and Wales

4. The Scottish Ministers propose to introduce a Scottish Marine Bill for marine planning, licensing of marine activities, marine conservation, historic heritage, monitoring and enforcement within Scotland’s territorial limits of 12nm. The Scottish Ministers acknowledge the desirability to deliver a joined up system of activities within the marine environment in the UK marine area and seek to agree mechanisms which respect constitutional difference but deliver an effective management system. Scottish Ministers have also been seeking greater devolution of marine planning and nature conservation responsibilities in the waters around Scotland.

Provisions which relate to Scotland

5. The UK Marine and Coastal Access Bill will apply across the United Kingdom in line with the current devolution settlement but not all provisions will apply to Scotland. The UK Bill will legislate for the waters around England and for the UK offshore area from 12nm to 200nm. The following paragraphs detail the elements of the UK Marine and Coastal Access Bill in relation to which consent is being sought from the Scottish Parliament. This includes provisions relating to the role of the Scottish Ministers in consenting to the UK Marine Policy Statement and to the executive devolution of certain activities within the Scottish offshore zone of 12nm to 200nm.

UK Marine Policy Statement

6. Part 3 of the Bill refers to the Marine Policy Statement and marine planning. A Marine Policy Statement (MPS) will be created for the whole of the UK marine area. It will include a framework of high level objectives for the marine environment, and how it should be managed, in order to enable sustainable economic development to progress, within environmental limits.

7. The MPS will guide the marine planning which will influence marine licensing which in turn will be influenced by marine conservation.

8. Schedule 5 to the Bill details the procedures for developing, consulting on and agreeing the MPS. The Scottish Ministers will take part in this process of developing and agreeing the MPS and it is anticipated that it could take around two years to complete. If Scottish Ministers are content to adopt the final statement then both they and Scottish public authorities would have to follow the content of the MPS when carrying out their activities. Paragraph 11 of Schedule 5 permits the Scottish Ministers
to decline to adopt the MPS. In such circumstances, the Scottish Ministers could not adopt marine plans for the Scottish off-shore zone affecting reserved interests. This will not affect the powers of the Scottish Ministers in respect of their territorial waters, nor existing responsibilities.

9. If the Scottish Ministers adopt the UK MPS, they will have to act compatibly with it in the Scottish inshore zone (including in carrying out functions under the marine planning system proposed for the Scottish Marine Bill).

**Marine Planning**

10. A marine planning system will apply the MPS and high level objectives in more detail in specific areas. Marine planning will allow for strategic approaches to managing activities in the marine environment. The Scottish Ministers are responsible for marine planning up to 12nm. However, the UK Bill provides for marine planning functions from 12nm – 200nm in waters adjacent to Scotland to be executively devolved to the Scottish Ministers.

11. Plans prepared by the Scottish Ministers will need to be in conformity with the MPS and Ministers will also need to ensure compatibility with adjacent marine plan areas. Scottish plans if agreed by the UK Government will be binding on UK bodies and Departments exercising reserved functions. Further details on the MPS and Marine Planning are attached at **Appendix 1** of this Memorandum.

**Marine Licensing**

12. Part 4 of the Bill introduces measures to simplify the marine licensing process. These measures consolidate and modernise Part II of the Food and Environment Protection Act 1985 (FEPA) and Part II of the Coast Protection Act 1949 (CPA) to simplify and streamline the licensing process into a single consent process. Further details are attached at **Appendix 2** of this Memorandum.

13. The Scottish Ministers currently have the power under executive devolution to issue licences for deposits in the sea beyond 12nm to 200nm adjacent to Scotland under the FEPA requirements. The Scottish Ministers have to date only been required to issue one licence for deposits beyond 12nm. However, with the increasing interest in offshore renewable energy projects it is likely that the number of licences required will increase.

14. At the moment Scottish Ministers do not have executive devolution for CPA requirements beyond 12nm. However, the UK Bill provides for the issuing of new licenses to be executively devolved to Scottish Ministers for activities in the Scottish offshore seas from 12nm – 200nm. Clause 110 of the Bill defines the Scottish Ministers as the appropriate licensing authority for certain matters in the Scottish offshore region.

15. The Scottish Ministers as the licensing authority for the Scottish offshore region will also be the appropriate enforcement authority for this region. Breaching conditions of a licence could lead to an unlimited fine. However, the Bill also introduces a range of more proportionate enforcement sanctions. Statutory notices will be introduced for stop, emergency safety, compliance and remediation purposes. This will allow Scottish Ministers to stop an activity or to specify measures that have to be met. The Bill also provides for a scheme of civil sanctions for monetary penalties and voluntary undertakings.
Marine Conservation

16. Certain functions relating to marine nature conservation in the Scottish offshore zone will be executively devolved to Scottish Ministers.

17. Scottish Ministers will have the power to establish Marine Conservation Zones (called Marine Protected Areas) in the offshore zone. Final site proposals are subject to agreement by Scottish Ministers and the Secretary of State. These will complement the MPAs in the Scottish inshore zone which it is intended should be legislated for in the Scottish Marine Bill. Further details on marine conservation are attached at Appendix 3 of this Memorandum.

18. The UK Government will be under a duty to report to the Westminster Parliament on its progress in establishing an ecologically coherent network of protected sites, and for its interests in the Scottish offshore zone Scottish Ministers will be required to report to the Scottish Parliament. The advisory body to Scottish Ministers on nature conservation in the offshore area will be the JNCC.

19. As Scottish Ministers will fall within the definition of a ‘public body’ as defined in the UK Bill, they will be obliged to carry out their functions in the offshore zone in a manner that best furthers, or least hinders, the conservation objectives set for MCZs. This is in line with the duty on Welsh Ministers in Wales and the Secretary of State.

Migratory and Freshwater Fisheries

20. Part 7, Chapter 3 of the Bill amends legislation by which salmon, trout, eels and freshwater fisheries are managed in England and Wales. These measures extend to the River Esk in Scotland, but not the River Tweed in England, which is managed under Scottish legislation. This arrangement ensures that these two Border Rivers are managed on a catchment basis and is continued post devolution by means of an Order-making power under section 111 of the Scotland Act 1998. The Scotland Act 1998 (Border Rivers) Order 1999\(^1\) provides that functions relating to the management of salmon, trout, eels and freshwater fish in respect of the whole of the River Esk remain with UK ministers.

21. The key elements of the proposals in Part 7, Chapter 3 are to formally separate licensed and authorised fisheries, to enable the Environment Agency to introduce byelaws in short order to deal with emergency situations and to create a framework power for the introduction of a new live fish movements scheme in England, Wales and the Scottish River Esk. A legislative consent motion is required because these provisions will extend to the River Esk in Scotland.

22. In addition, the management framework will be extended to lamprey, smelt, and (for byelaw making powers only) shad. The Bill amends section 111 of the Scotland Act 1998 to include these species in provisions which may be made by Order under that section. The intention is that the management framework in relation to these further species will take effect on the Scottish River Esk upon the introduction of a new Border Rivers Order under the amended powers in section 111 of the Scotland Act, which will require consideration by both the UK and Scottish Parliaments. The amendment to

\(^1\) S.I. 1999/1746.
section 111 of the Scotland Act will not require a legislative consent motion as it is not within the competence of the Scottish Parliament to amend section 111. Further details on the Migratory and Freshwater Fisheries provisions are attached at Appendix 4 of this Memorandum.

**Common Enforcement Provisions**

23. The UK Bill provides for common enforcement powers in the offshore zone, including the Scottish offshore zone. Enforcement functions are executively devolved to Scottish Ministers in the Scottish offshore zone in relation to enforcement of MCZs. Common enforcement powers will be available to officers appointed by Scottish Ministers to carry out inspections and investigate offences under nature conservation and licensing provisions.

24. Common enforcement powers will include powers for the pursuit and investigation of suspects from Scottish waters into other zones and reciprocal arrangements.

**Miscellaneous**

25. The Scottish Ministers wish to take this opportunity through the UK Marine and Coastal Access Bill to address redundant fisheries legislation. A summary of the Acts to be repealed or partially repealed can be found at Appendix 5. These Acts date back to the eighteenth and nineteenth century and are no longer in use.

**Reasons for seeking a legislative consent motion**

**UK Marine Policy Statement and Marine Planning**

26. The UK Marine and Coastal Access Bill introduces a UK framework for marine planning and management., This would allow the UK Government and the devolved administrations to cooperate to produce joined up marine management. However it does not impose a UK approach, respecting devolved competence. Executive devolution of marine planning would allow the Scottish Ministers to create plans for both the inshore and offshore area of the seas around Scotland. The Scottish Ministers believe that this is the most effective and practical way of improving the management of the seas around Scotland and the UK.

27. Agreeing to the UK Parliament legislating in this way will allow the Scottish Ministers to produce marine plans for the Scottish inshore and offshore waters. The Scottish Ministers therefore recommend that the Parliament agrees to the Bill’s provision regarding the MPS and that the Scottish Ministers as a policy authority for the Scottish offshore region will be guided by the MPS when producing marine plans for that area.

**Marine Licensing**

28. The UK Marine and Coastal Access Bill introduces measures to simplify and streamline the process of getting a licence. As well as consolidating and modernising FEPA and CPA to provide a single consent process, the Bill also defines the Scottish Ministers as the licensing authority for the Scottish offshore region. The Scottish Ministers agree with this principle of simplification and the creation of a one stop shop and thus more effective decision making in the licensing process. Scottish Ministers have proposed a similar approach in the recent consultation on the proposed Scottish Marine Bill.
29. Agreeing to the UK Parliament legislating in this way ensures that many licensable activities within Scottish waters will be dealt with by the Scottish Ministers. Businesses requiring a licence within Scottish inshore or offshore waters will have an assessment of their application carried out by Scottish Ministers. The monitoring and enforcement of these licensing activities will also be carried out by Scottish Ministers. The Scottish Ministers therefore recommend that the Parliament agrees to the Bill’s provision that the Scottish Ministers are the licensing and enforcement authority for most matters in the Scottish offshore region.

**Marine Conservation**

30. In the offshore area there is a key interaction between the Scottish fishing industry and conservation. Ministers believe that this interaction should be managed in Scotland close to key stakeholders rather than in London.

**Migratory and Freshwater Fisheries**

31. Generally, management of salmon, trout, freshwater fish and eel fisheries in Scotland (which would include so much of the River Esk as lies in Scotland) is devolved; the Scottish Parliament has legislative competence in this respect, and functions are exercisable by Scottish Ministers except where provision has been made under section 111 of the Scotland Act 1998, as in the Scotland Act 1998 (Border Rivers) Order 1999. This includes the licensing of fisheries, the prohibition of certain practices and byelaw making powers. However, the current English legislation, which is amended by the Bill, extends to the River Esk in Scotland, as the relevant Scottish legislation extends to the River Tweed in England.

32. Agreeing to the UK Government’s proposals which require a legislative consent motion will ensure that migratory and freshwater fisheries on the Border Rivers will continue to be managed comprehensively, as the amendments to legislation in the Bill will extend to Scotland on a similar basis to the extent already provided for in the legislation.

**Common Enforcement Provisions**

33. To ensure the proper exercise of the new licensing and conservation powers it is essential that Scottish Ministers also have the powers to deliver compliance monitoring and enforcement activity.

**Consultation**

34. The Scottish Ministers launched a consultation on Scotland’s first marine bill ‘Sustainable Seas for All’ in July 2008. The consultation document can be found at:

[http://www.scotland.gov.uk/Publications/2008/07/11100221/0](http://www.scotland.gov.uk/Publications/2008/07/11100221/0)

Within this consultation document, Figure 1.3 ‘Scotland’s seas: boundaries and responsibilities’ illustrated the current responsibilities of Scottish Ministers. The Scottish Ministers also indicated in the consultation document that they were pursuing further devolution of marine planning and conservation (Point 29, p23). Question 4 of the consultation document was ‘Scottish Ministers believe there are strong practical reasons for further discussion with the UK Government on the allocation of responsibilities around the seas of Scotland. Do you agree with this approach?’ Of those who responded 86% agreed with this approach while 3% did not. The UK
Government launched their consultation on the UK Marine and Coastal Access Bill on 3 April 2008 and the Government’s response to the pre-legislative scrutiny and public consultation can be found at:


The view is that further consultation is not necessary.

Financial Implications

35. Scottish Ministers are continuing to discuss the financial implications of the change in responsibilities with the UK Government. The costs of marine planning in the offshore zone will be met from resources for the Scottish National Marine Plan. The main costs for marine conservation will be the costs of setting up and maintaining Marine Protected Areas. For 9 additional sites in the offshore zone it has been estimated to cost around £1m a year.

36. The costs to Scottish Ministers for executive devolution of the issuing of licences should be minimal. The Scottish Ministers issue around 200 FEPA and 170 CPA licences a year in their territorial waters and the average processing cost of FEPA licences is £1100 and CPA licenses £500. A new charging regime will be introduced for the single licensing consent and any charges levied should cover the cost of assessing and issuing the license and related compliance monitoring and enforcement activity. However, the charge set should be at such a level that it is not a disincentive to new businesses.

37. The new integrated regulatory regime for marine management should enhance the development of the marine economy. It is difficult to cost benefits precisely, however a 1% increase in value of the marine economy would over a 20 year period amount to an estimated £294m. £5.5 m of this would be from more rapid approval of marine energy production.

Conclusion

38. The UK Marine and Coastal Access Bill provides for greater devolution to Scotland of important responsibilities in the off-shore zone and for an integrated framework within the UK for marine planning and management. This should enable Scottish Ministers to manage Scotland’s seas in an holistic manner to deliver for Scottish stakeholders and meet wider obligations, including international commitments.

Scottish Government
December 2008
Background

1. There is currently no statutory provision for marine planning in the UK Marine Area. The UK Marine and Coastal Access Bill introduces a marine planning system to enable a strategic approach to managing activities in the seas. Effective planning will be important for securing the maximum sustainable benefits within environmental limits.

Marine Policy Statement

2. A MPS will be created for the whole of the UK waters. The MPS will detail the high level objectives for the marine environment. These can be found at:


The UK Government and the devolved administrations will work together on the statement, and agree it jointly. This will not affect the rights of the Scottish Ministers to opt out of participating in the statement or their powers in respect of territorial waters.

3. The MPS will bring together policies for a range of different marine issues and it will address EU and international commitments. The Bill sets out clear procedures for developing, consulting on, prior to the publishing and adoption of the MPS. As the marine environment is never static there is also the facility to review and amend the MPS as necessary.

Marine Planning

4. The MPS and high level objectives are delivered by marine planning. The Bill refers to different ‘planning authorities’ being responsible for different parts of the UK waters.

5. The Scottish Ministers intend to bring forward a Bill concerning Scottish territorial waters (to 12nm) but the UK Government intend that marine planning from 12nm – 200nm will be executively devolved to the Scottish Ministers. The Scottish Ministers when drawing up their plans must be guided by the MPS, if they have agreed it. They will be able to plan on reserved matters (but the UK Government must agree these plans). To ensure a joined up system of planning the Scottish Ministers believe that the application of the MPS from 0-200nm in Scottish seas is the most appropriate approach, if agreement has been reached.

6. The Bill requires that adjacent planning authorities take into account adjacent plans so that there is compatibility. The plans are to be monitored to assess how well they are achieving their objectives and reported on at least every three years. Plans and hence the MPS may be amended should objectives not be met.

7. The Bill allows planning authorities to seek advice from various bodies to help develop plans effectively. This will allow key stakeholders to be involved in the planning
process. When plan options are prepared the planning authorities must carry out an appraisal of the sustainability of the options and their likely environmental, social and economic effects and whether they meet the requirements of EU legislation.

8. The draft marine plans created will be open to public scrutiny. This is in line with Scottish Ministers’ proposals as set out in the consultation on a Scottish Marine Bill. The Scottish Ministers will seek the UK Government’s agreement for its marine plans. Where agreement is reached on a Scottish plan which extends to reserved matters, this will bind all UK public authorities.
Background

1. Marine licensing and the conditions put into licences promote economic and social benefits while minimising adverse impacts on the environment and navigational safety or other legitimate uses of the sea. However, the licensing system is complex with a number of licences which appear to protect against similar things being delivered by a range of different bodies.

2. The UK Marine and Coastal Access Bill introduces a simplified licensing system with a one stop shop for each project. This will allow for more effective decision making while reducing costs for applicants and Government through the reduction in multiple applications for the same project.

Licensing

3. The main change to the licensing regime is the consolidation and modernisation of Part II of the Food and Environment Protection Act 1985 (FEPA) and the Coast Protection Act 1949 (CPA).

4. Part II of FEPA provides the statutory means to meet the UK’s obligations under both the OSPAR (1992) and London (1972) Conventions which address the prevention of marine pollution from dumping at sea. The licensing authority in deciding whether to issue a licence must have regard to the protection of the marine environment, human health and other legitimate uses of the sea. Part II of CPA is about ensuring that marine works are carried out in a way that ensures the safety of navigation.

5. The UK Bill will make dredging a licensable activity, and will create an appeals process for the UK Marine Bill licence. The UK Bill will also create a revised enforcement system with a range of measure from court fines to civil sanctions and undertakings to ensure compliance with the licences issued or penalties and remediation where licences are not complied with.
UK MARINE AND COASTAL ACCESS BILL: LEGISLATIVE CONSENT MEMORANDUM – DETAILS OF MARINE CONSERVATION

ESTABLISHMENT OF AN ECOLOGICALLY COHERENT NETWORK OF SITES

1. The draft UK Bill provides the tools needed to designate and protect a network of sites – Marine Conservation Zones (MCZs) – which will provide protected areas for certain habitats and species in UK seas. This will include the inshore English and Welsh zone and the offshore zone including the Scottish offshore zone. The Bill makes provisions for MCZs to be called Marine Protected Areas in the Scottish offshore zone.

2. MCZs may be used to protect areas that are important to conserve the diversity of rare, threatened and representative habitats and species such as the rare fan shell (*Atrinafragilis*), the ocean quahog clam (*ArcticaIcelandica*), seagrass (*Zostera*) and maerl beds.

3. There will be a duty on the UK Government to exercise their MCZ designation powers to contribute to a network of sites that will assist in the conservation or improvement of the marine environment in the UK marine area. There will also be a duty on the UK Government to report to the Westminster Parliament on its progress in establishing an ecologically coherent network of protected sites. This network will make use of both the MCZ designations and existing or new Natura designated sites. Scottish Ministers will be required to report to the Scottish Parliament on the extent to which the MCZs designated in the Scottish offshore zone, taken together with other MCZs and any European marine sites that have been established in the UK marine area, form an ecologically coherent network of protected sites.

4. The UK Government has asked Natural England, the Joint Nature Conservation Committee and the Countryside Council for Wales to develop programmes to enable designation of MCZs by the end of 2012. For the Scottish offshore zone, the Scottish Government will be responsible for designating sites, with relevant scientific advice being provided by JNCC. The final decision on a designation will be subject to the agreement of the Secretary of State. Sites will be selected on the best available evidence, with consideration of social and economic consideration integrated into the decision making process. Early and full engagement of stakeholders is expected to help shape the recommended network of sites.

5. MCZs will have conservation objectives set out in the designating order. In most cases these will allow sustainable and benign activities to take place, but there will be scope to set stringent conservation objectives in some case.

6. All public bodies – and this includes the UK Government, Welsh Government and Scottish Government, will have a duty to exercise their functions in ways which further – or at least do not hinder – the conservation objectives set out for MCZs. In most cases this is expected to take place through the exercise of planning, licensing and fisheries functions. The duties are framed in a way which will best enable MCZs’ conservation objectives to be achieved, whilst allowing an appropriate degree of flexibility – with safeguards – where it is considered that development needs to proceed in the public interest.
UK MARINE AND COASTAL ACCESS BILL: LEGISLATIVE CONSENT MEMORANDUM – DETAILS OF MIGRATORY AND FRESHWATER FISHERIES PROVISIONS

1. The Marine and Coastal Access Bill amend three Acts which apply a regulatory framework to fisheries for salmon, trout, eels and freshwater fish\(^2\) (The Salmon and Freshwater Fisheries Act 1975, the Water Resources Act 1991 and the Environment Act 1995). The clauses extend the regulatory framework to smelt, lampreys, and (in respect of byelaw-making powers) shad, and empower the Ministers to add any other kinds of fish to the regulatory framework. There are also a number of other miscellaneous changes.

EMERGENCY BYELAWS

2. The Environment Agency will have the power to make emergency byelaws to tackle problems such as those caused by serious drought, collapse in numbers of returning fish, high temperatures (leading to de-oxygenation of the water) or water pollution. There will be no formal consultation on emergency byelaws, but Ministers will be obliged to revoke or amend them when they are no longer necessary to protect fisheries.

LICENSING OF FISHERIES

3. Licences will be available only for fishing by rod and line and certain other methods specified by Ministers. These methods will, in general, be less intensive ways of fishing. Those who wish to fish by a method for which a licence is not available will need to apply to the Environment Agency for an authorisation. The Agency will then assess those fisheries for their effects on both fish stocks and the aquatic environment before granting an authorisation. The Agency will not grant an authorisation if the method causes significant levels of exploitation or harm; or they may choose to place restrictions on the authorisation, such as the times and methods of operation.

MOVEMENTS OF LIVE FISH

4. The introduction of fish, whether native or alien, into inland waters can pose a risk to local and national biodiversity through predation, competition or damage to habitats. To complement a recently introduced European regulation controlling the use of alien (non-native) species in aquaculture, the UK government intends to introduce a new scheme that will regulate the keeping, release and removal of native species of live fish (together with certain non-native kinds of fish which are not regulated through European Community law).

5. The key provision shall be an authorisation scheme; each authorisation would be a detailed consolidated consent setting out what species may be kept, stocked, or removed at a particular site. The UK government is aiming to better protect biodiversity as well as significantly reduce current regulatory burdens through the long-term consenting framework.
EFFORT LIMITATION

6. The Environment Agency is able to limit effort in fisheries (other than by rod and line) targeting salmon and trout through Net Limitation Orders (NLOs), which limit the number of licences that may be issued each year for a maximum ten year period. This power will be extended to cover eel fisheries to contribute to European measures to address the dangerously low level of the eel stock, and to other fisheries so that the Agency can control effort properly. These powers will not be extended to rod and line fisheries.

7. The UK Government also proposes to empower the Environment Agency to make NLOs to protect the marine and aquatic environment when fisheries have a significant impact. Whilst byelaws can provide a level of protection, there may be circumstances when limiting a fishery is the only viable option.

8. A public enquiry is automatically triggered if there is a single objection from a (relevant) existing licence holder, even if the licence holder fishes only on a part-time or occasional basis. This adds significantly to the cost and time taken to reduce effort. Also, NLOs may not be confirmed if any person, who had held a relevant licence during the previous year and whose livelihood depends on fishing, will be excluded from the fishery. The relative importance of commercial over recreational fisheries has declined since the introduction of NLOs, and these now give too much emphasis to commercial fisheries rather than conservation of biodiversity. The current obligation to hold a public enquiry will be replaced with a power to do so, and the bar on making NLOs in certain circumstances will be removed.

COMPENSATION

9. The current obligation to pay compensations has, in the past, discouraged the Environment Agency from proposing a byelaw or an NLO necessary for the conservation of fish stocks. The obligation to pay compensation in certain circumstances will be removed and replaced with a power for the Environment Agency to consider paying. There may be circumstances in which compensation of fishery owners for the effects of a byelaw or an NLO might be justifiable, but the UK government considers that compensation should not be paid in those situations when increases in stocks will ultimately benefit fishery owners.

REFORM OF LAW ON CLOSE TIME BYELAWS

10. The Environment Agency has some limited powers to set close seasons for salmon, trout, and freshwater fish. These will be replaced with a general power for the Agency to set close periods based on the local evidence and advice.

USE OF ILLEGAL INSTRUMENTS

11. The Marine and Coastal Access Bill will ban the use gaffs and tailers, and empowers Ministers to prohibit the use of other such implements or equipment that might be developed which has the potential to critically injure fish.
APPENDIX 5

UK MARINE AND COASTAL ACCESS BILL: REDUNDANT FISHERIES LEGISLATION

The following pieces of redundant sea fisheries legislation are to be repealed in full or in part:

**Full repeals**

1. **White Herring Fisheries Act 1771** - This Act provides for fishermen employed in the white herring fisheries to operate in the foreshore with free access to all ports, harbours, shores, and forelands in GB and its isles. Most provisions in this Act have been repealed by other legislation, except for sections 11 and 12. Those sections no longer serve any useful purpose.

2. **Seal Fishery Act 1875** - This Act establishes a closed period for the seal fishery in seas adjacent to the eastern coasts of Greenland waters and an Order in Council can be made to prohibit the killing or capture of seals by any person belonging to a British ship or any British subject. The provisions of this Act have no practical application since there is no longer any prospect of a UK seal fishery in the seas adjacent to eastern Greenland.

3. **North Sea Fisheries Act 1893** – This Act carried into effect an International Convention respecting the “Liquor Traffic” in the North Sea. HMRC have advised us that the subject matter (supplying, exchanging or otherwise selling spirits at sea) is now covered wholly by their legislation.

4. **Seal Fisheries (North Pacific) Act 1895** and **Seal Fisheries (North Pacific) Act 1912** – These Acts regulate the seal and sea otter fisheries of the Behring Sea and adjacent parts of the North Pacific. We want to take this opportunity to repeal both of these Acts.

**Partial repeals**

5. **Fisheries Act 1891** - Section 13 of this Act is a freestanding provision that allows persons to take legal proceedings to enforce an Act or byelaw relating to Salmon and Freshwater Fisheries. This provision has no practical effect and, in any event, such prosecutions are no longer considered to be appropriate. Accordingly, section 13 should be repealed.

6. **Behring Sea Act 1894** – We want to repeal all bar section 1(5) and Schedule 2 to this Act. The latter relate to merchant shipping provisions the responsibility for which lie with the Department for Transport.

---

3 C.31.
4 C.18.
5 C.17.
6 C.21.
7 C.10.
8 C.37.
9 C.2.
7. The remainder of the Act makes it an offence to “kill, capture or pursue” fur seals within 60 miles of the Pribiloff Islands and further creates a season for the taking of fur seals North of 35 degrees North in the Pacific Ocean. It also prohibits the use of nets in fishing for fur seals. The Act originally provided for carrying into effect an arbitration award between “Her Majesty the Queen and the United States of America” but that purpose is long since unnecessary and the partial repeal is now appropriate.