



June 2009

Parliamentary Briefing

Marine and Coastal Access Bill Amendment

The general offence and sea fishing defence (Clause 141(4))

The organisations listed above have been closely engaged in the Marine & Coastal Access Bill process from the outset. We are also members of Wildlife and Countryside Link's Marine Task Force¹, which has been campaigning for several years for the legislative tools to deliver improvements in marine conservation and management.

Background

Wildlife and Countryside Link (Link) welcomes the idea of a "general offence" of damaging the protected features of a Marine Conservation Zone (MCZ). We were pleased to see the scope of the general offence expanded by amendments accepted during the Report stage in the House of Lords to cover reckless as well as deliberate damage. However, the proposed statutory defence at clause 141 (4) is still cause for concern.

There is a statutory defence at clause 141 (4) which specifies that a person cannot be guilty of the general offence if the act involved was done whilst fishing and the effect of that act on the protected feature could not reasonably have been avoided. In many instances it is fishing that has created the parlous situation that needs rectifying by this Bill. Moreover, it is very easy, in waters where the sea bed cannot be seen, to claim that damage caused by nets, lines, trawls or dredges could not reasonably have been avoided.

It has been suggested that this clause is necessary in Common Fisheries Policy (CFP) waters. However, by the same argument, there is no need for this blanket defence in waters where non-UK vessels have no fishing rights (i.e. in the 0-6nm zone and in those parts of the 6-12nm zone where there are no historic European fishing rights). Given the importance of fishing as a damaging activity, Link believes that it is entirely counterproductive for this defence to exist in waters fished only by UK vessels.

One way to resolve this issue would be to remove 141(4) altogether. However, we recognise the difficulties with this. We would not want to encourage any inconsistency in how UK vessels are treated in comparison with other European vessels in CFP waters. As such, our amendment below simply amends 141(4) so as to specify that the defence only applies where it is relevant, and that within the

¹ Wildlife and Countryside Link is a coalition of the UK's major environmental organisations working together for the conservation and protection of wildlife, the countryside and the marine environment.

0-6nm zone, and the 6-12nm zone where no historic European fishing rights apply, the general offence can apply to damage caused as a result or consequence of sea fishing activity by UK vessels.

We look forward to hearing more about Government's thinking on this issue as the Bill passes through the Commons, and urge Government to reconsider the wording of the clause. We feel that applying this blanket defence for sea fishing activities in waters fished only by UK vessels creates an unnecessary loophole that we would like to see removed.

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Annex – Amendment

Marine & Coastal Access Bill House of Commons Committee Stage, June 2009

Clause	Clause 141 Exceptions to offences under section 139 or 140
Amendment	Page 96, line 10. Insert new sub-clause as follows: “b) the act occurred on the seaward side of the 0-6 nautical mile fisheries zone in a location where European vessels have fishing rights, and