



## **Marine Biological Association written submission supplied for Defra consultation, Environmental Principles and Governance after the United Kingdom leaves the European Union, May 2018.**

Written evidence submitted by Dr Matthew Frost, on behalf of the Marine Biological Association.

### General comments

1. The Marine Biological Association (MBA) is a Learned Society established in 1884 and incorporated by Royal Charter in 2013. The MBA has about 1500 members (including international members) and runs The Laboratory in Plymouth where approximately 90 scientific staff work. MBA members have been at the forefront of providing scientific information to support marine environment protection, management and education and a great amount of scientific information that underpins decision-making about environmental protection has come from work undertaken at the Laboratory.
2. The MBA membership is made up mainly of professional marine biologists who are regularly invited to provide input to consultations and on marine issues in general. The MBA therefore provides a 'clear independent voice to government' on behalf of the marine biological community. The following evidence follows this pattern in providing evidence submitted by MBA members on a number of the issues raised by the inquiry.
3. The MBA welcomes this bill, having highlighted the issue of marine environmental governance on numerous occasions (e.g. Environmental Audit Committee, Oral evidence: Marine Protection Areas Revisited, HC 597 evidence and Tenth Report of Session 2016–17; Marine Biological Association written submission supplied for Science and Technology Committee of the Commons Brexit science and innovation Summit inquiry, February 2018).

### Questions

#### **Statement of environmental principles**

- **Question 1: Which environmental principles do you consider as the most important to underpin future policy-making??**
4. The MBA strongly supports the ambition noted in consultation document points 1 & 9 “to leave the environment in a better state than that in which we inherited it”. This ambition is very important for the marine environment where there have been long-term changes and impacts at the national and global level<sup>1</sup>, and where ‘shifting baseline syndrome’ (whereby reference points are set against a baseline condition that itself is already significantly changed from a non-impacted state) is a well-known phenomenon<sup>2</sup>. **This ambition should go beyond a general statement however and be encapsulated in target conditions and plans for restoration of marine habitats and species as already allowed for in various legislative mechanisms** (e.g. ‘Maintain or restore natural habitats and species of Community interest to Favourable Conservation Status (FCS)’ under the Habitats Directive)
  5. The UK should seek to lead on environmental protection as outlined in the MBA / BES report on marine environmental protection after Brexit<sup>3</sup>.
  6. Points 13 & 14 in the consultation document on arrangements with the devolved administrations is very important for coasts and seas, as there is already a very complex array of agreements and institutions. This ‘coherence problem’ for UK seas was identified by a report of the UK Environmental Law Association “The state of UK environmental legislation in 2011: is there a case for reform?”<sup>4</sup>. Principle 7 of the Rio declaration is important (“States shall co-operate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth’s ecosystem”) for coasts and oceans, a vast, interconnected environment that needs to be considered holistically. Principle 7 should therefore be applied in consultation with the DAs and **an attempt made to simplify governance arrangements rather than add another layer of complexity.**
  7. In terms of key environmental principles, the most important for the marine environment are the:
    - a. **Precautionary Principle** (consultation document point 151): evidence gathering in the marine environment is expensive and often difficult (e.g. the deep sea environment). The application of the Precautionary Principle

<sup>1</sup> There are a wealth of national and international marine assessments available such as the UK’s Charting Progress (2010) State of UK seas.

<sup>2</sup> Pauly, D. (1995) Anecdotes and the shifting baseline syndrome of fisheries. *Trends in Ecology and Evolution*. 10 (10): 430.

<sup>3</sup> The marine environment after Brexit: the future for science and policy. Report available at <https://www.britishecologicalsociety.org/policy/reports-publications/event-reports/>. See also Frost, M (2016)

‘Brexit and the UK marine environment available at <http://www.mba.ac.uk/issue-7>.

<sup>4</sup> Available at <https://www.ukela.org/content/page/2957/Aim%205%20Interim%20report.pdf>.

should be used to prevent damage to vulnerable habitats and species where there is currently a lack of basic marine ecological knowledge to assess impacts. The UK is party to the OSPAR Convention on the protection of the marine environment and various international fishery agreements such as the FAO Code of Conduct for Responsible Fisheries (CCRF) and the Precautionary Principle is enshrined in these conventions. It is also an important 'concept' in the CFP<sup>5</sup> and should therefore be at the heart of future fisheries management at the national level.

- b. **Sustainable Development** (consultation document point 150). Agenda 21, Chapter 17 of the Johannesburg Plan of Implementation highlights the importance of sustainable development for Oceans and Seas. Sustainable Development Goal (SDG) 14<sup>6</sup> is part of the 2030 Agenda for Sustainable Development and aims to "*Conserve and sustainably use the oceans, seas and marine resources for sustainable development*". SDG 14 and the 10 associated targets underpin the United Nations Decade of Ocean Science for Sustainable Development (2021-2030), to which the UK will be a contributor through its marine science programmes. As stated by UK government "*The UK was at the forefront of negotiating the SDGs and will be at the forefront of delivering them*"<sup>7</sup>.
- c. **Polluter pays and Pollution prevention**: these principles are often listed together as key principles for the marine environment<sup>8</sup>. Pollution Prevention as a principle dates back to the Stockholm declaration (1972) where Principle 7 states that "*States shall take all possible steps to prevent pollution of the seas by substances that are liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea*". The Polluter Pays principle is one of the central guiding principles of the OSPAR Convention along with Best Available Techniques (BAT) and Best Environmental Practice (BEP). The latter means that use of **best available evidence from research** (in this case, marine scientific research) should also be a guiding principle.

### Legal basis and intended effect

- **Question 2: Do you agree with these proposals for a statutory policy statement on environmental principles (this applies to both Options 1 and 2)?**

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<sup>5</sup> Proelss A & Houghton, K. (2012). The EU Common Fisheries Policy in light of the precautionary principle. *Ocean Coastal Management*. 70: 22–30.

<sup>6</sup> <https://sustainabledevelopment.un.org/sdg14>

<sup>7</sup> <https://www.gov.uk/government/publications/implementing-the-sustainable-development-goals/implementing-the-sustainable-development-goals>

<sup>8</sup> Dzidzornu, D. M (1998) Four principles in marine environment protection: A comparative analysis, *Ocean Development & International Law*, 29:2, 91-123, DOI: 10.1080/00908329809546119

8. Yes. This will be an important subsidiary element of the bill.
- *Question 3: Should the Environmental Principles and Governance Bill list the environmental principles that the statement must cover (Option 1) or should the principles only be set out in the policy statement (Option 2)?*
9. There are long-standing and widely accepted environmental principles which have been embedded in international treaties, EU and some elements of national law (e.g. Precautionary Principle, Polluter Pays, Sustainable Development – see above). New scientific research is unlikely to make these principles obsolete so they should be on the face of the bill. Other additional principles however could be included only in the policy statement. This provides both certainty and commitment (as in option 1) in addition to a degree of flexibility (as in option 2). **A combination of both options 1 & 2 is therefore the preferred outcome.**

#### **Existing national mechanisms for environmental accountability**

- *Question 4: Do you think there will be any environmental governance mechanisms missing as a result of leaving the EU?*
10. There are currently a wide range of EU reporting mechanisms that lead to the requirement of assessments of progress against marine environmental targets at the national level. For example, reporting cycles for the Birds and Habitats Directives and the Marine Strategy Framework Directive inform progress against the condition of specific marine habitats and species as well as progress towards Good Environmental Status for regional seas. These assessments are currently delivered through the evidence groups of the UK Marine Monitoring and Assessment Strategy. **It is important that adequate official statutory marine reporting mechanisms are established at the national level** (e.g. through mechanisms such as the UK's Charting Progress reports). NGOs also produce assessments as noted in Table 1 row 2 of consultation document but there is no statutory requirement for these to be produced. The future body should have a wider remit than just assessing progress against the 25 Year Environment Plan as proposed in point 87 of the consultation document.
11. The MBA strongly supports point 75 in the consultation document on 'a clearer mechanism for dealing with complaints about government's implementation of environmental law'. There is also concern that there is not an equivalent to infraction proceedings that help ensure UK Government is complying with its own environmental obligations. Judicial review is an important mechanism and without it the EU Habitats Directive would only apply to the 12nm limit of UK Seas rather than 200nms (which is the correct interpretation of EU law and more desirable in terms of ambition for the marine environment)<sup>9</sup>. The noted

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<sup>9</sup> <http://news.bbc.co.uk/1/hi/sci/tech/506128.stm>

constraints in the use of Judicial review mean that mechanisms to allow individuals and organisations to play a role in holding government to account are vital.

### Goal and objectives in creating a new environmental body

- *Question 5: Do you agree with the proposed objectives for the establishment of the new environmental body?*

12. Yes. The MBA would strongly support these objectives. There is a need however to consider objective 1 (point 79 in consultation document) in relation to the body being a “*well-evidenced voice for environmental protection*”. There is often an over-reliance on government bodies to provide this evidence and a lack of engagement with independent bodies. This can lead to a lack of ‘trust’ in decisions being made. The MBA for example maintains the Marine Life Information Network (MarLIN)<sup>10</sup> with the support of government agencies with the express purpose of having an ‘independent’ source of information on the marine environment. MarLIN has been crucial in supporting marine protection implementation under the Habitats Directive and other drivers by providing academic, independent, auditable and fully refereed information. Another example is the Marine Climate Change Impacts Partnership (MCCIP)<sup>11</sup>, which is also funded by government bodies and departments as an ‘independent’<sup>12</sup> source of information on the marine environment in relation to climate change. **It is vital therefore that an independent body has mechanisms for utilising the full range of independent scientific advice** and does not solely rely on its own executive agencies and NDPBs.

13. **Where government scientists are used to provide evidence for the new body, it is important that mechanisms for transparency and accountability are established.** An example of good practice is the monitoring, management and reporting of radioactivity in food and the environment (RIFE). The annual RIFE reports are coordinated by CEFAS, in partnership with the Environment Agency, the Food Standards Agency, Food Standards Scotland, Natural Resources Wales, the Northern Ireland Environment Agency and the Scottish Environment Protection Agency. The annual RIFE reports are considered to be of high quality with their extensive datasets (on CD ROM), being at the highest international standards of data acquisition. From RIFE-1, in 2002, the reports have been freely available to scientists, policy-makers and interested members of the general public. These high-quality reports contain essential data when considering the responses of the general public to, for example, nuclear discharge, nuclear

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<sup>10</sup> <https://www.marlin.ac.uk/>

<sup>11</sup> <http://www.mccip.org.uk/>

<sup>12</sup> Frost et al (2017). Reporting marine climate change impacts: Lessons from the science-policy interface. *Env. Sci. Pol.* Available as OA paper at <https://www.sciencedirect.com/science/article/pii/S1462901117307979>

accidents or the issues surrounding the construction of new nuclear facilities. Arguably, the UK RIFE reports are potentially more data-rich and informative than the equivalent documents from France provided by the Institut de Radioprotection et de Surete Nucleaire (IRSN), which have not been published openly as long as RIFE. Every effort should be made to retain, and strengthen, the world class RIFE-concept after the UK leaves the EU thereby contributing significantly to human, animal and environmental protection in the country and elsewhere across the globe as well as setting standards for the use of government scientists to provide evidence.

### **General scrutiny and advice**

- *Question 6: Should the new body have functions to scrutinise and advise the government in relation to extant environmental law?*

14. Yes. But paragraph 12 of this consultation response applies. Advice to government must be based on good independent science and evidence when assessing the implementation of environmental law.

- *Question 7: Should the new body be able to scrutinise, advise and report on the delivery of key environmental policies, such as the 25 Year Environment Plan?*

15. Yes, but scrutiny of delivery of environmental policy should not just be focused on the 25 Year Environment Plan. The new body could form a focus on reporting against marine environment targets as assessed by the UK Marine Monitoring and Assessment Strategy (see paragraph 10 of this consultation response), perhaps via the Marine Science Coordination Committee (MSCC)<sup>13</sup>, which already has ministerial accountability.

### **Responding to complaints**

- *Question 8: Should the new body have a remit and powers to respond to and investigate complaints from members of the public about the alleged failure of government to implement environmental law?*

16. No comment.

### **Enforcing government delivery of environmental law**

- *Question 9: Do you think any other mechanisms should be included in the framework for the new body to enforce government delivery of environmental law beyond advisory notices?*

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<sup>13</sup> <https://www.gov.uk/government/groups/marine-science-co-ordination-committee>

17. The MBA strongly supports the need for the new body to have powers of enforcement and would suggest that this needs to be stronger than just the ability to provide advisory notices. Powers of enforcement should include those proposed in the consultation document points 104 to 108.

### Scope and range of application

- *Question 10: The new body will hold national government directly to account. Should any other authorities be directly or indirectly in the scope of the new body?*

18. The MBA would support the new body having a remit and powers directly applicable to public bodies as described in consultation document point 117b. The Marine Management Organisation for example (MMO) (consultation document point 112) should be held to account by this body rather than indirectly via engagement with central government. This would allow more speed and flexibility in responding to concerns, provided that the new body is adequately resourced. This would be particularly useful for the marine environment when issues such as exploitation of the seabed (marine planning and consents) or fisheries can require fast intervention and decision-making. Every effort should be made to have a strong 'marine component' to this new body in terms of expertise and remit and the MBA supports the body having a remit to oversee fisheries and marine related elements as stated in consultation document point 132, unless a subsidiary body is created (see paragraphs 20 and 22 of this consultation response). Further work will be required to ensure that proposals for this body are integrated with delivery of the outcomes from the Fisheries white paper 'Sustainable fisheries for future generations new white paper on fisheries'<sup>14</sup>.

- *Question 11: Do you agree that the new body should include oversight of domestic environmental law, including that derived from the EU, but not of international environmental agreements to which the UK is party?*

18. The MBA agrees with the proposal in consultation document point 123 that the new body will be most effective by having a remit considering new and current domestic environmental legislation. In terms of environmental law, it does not make sense for the new body to duplicate existing mechanisms under international conventions and treaties or in oversight of domestic legislation into which much of the international law is transposed.

19. International law is however a challenging, controversial and dynamic area (e.g. disagreements over UNCLOS or jurisdictions of international courts). There are

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<sup>14</sup> <https://www.gov.uk/government/consultations/fisheries-white-paper-sustainable-fisheries-for-future-generations>

also issues of ratification of international law (e.g. the UKs delay in ratifying the Ballast Water Management Convention). There are also uncertainties over the representation of the UK on international fora (Convention on the Conservation of Antarctic Living Marine Resources; Regional Fisheries Management Organisations; UNCLOS) where the UK has previously been part of an EU delegation. **The MBA therefore disagrees with point 124 in the consultation document and suggests that the new body DOES have a remit for international environmental agreements in terms of monitoring UK participation and engagement and highlighting inadequacies in this aspect of governance** (but not having enforcement powers where these overlap with those that already exist as the international level). This is also important as application of international environmental agreements will supersede the application of EU law in terms of importance. This issue is particularly important for the marine environment where the UK has many responsibilities and activities in areas under international jurisdiction.

20. There is also a need to ensure that the new body considers reporting and obligations to Overseas Territories (OTs). Although the responsibility for environmental management in the UKOTs is devolved to the UKOTs' governments, it is recognised that the UKOTs need additional support in protecting the environment<sup>15</sup>. For example it has been pointed out that the UK may need to help UKOTs to ensure they become party to international conservation frameworks outside the EU umbrella<sup>15</sup>.

#### **Enforcing government delivery of environmental law**

- *Question 12: Do you agree with our assessment of the nature of the body's role in the areas outlined above?*
21. The MBA strongly supports the body having a remit to oversee fisheries and marine related elements (see also this consultation response paragraph 18) or suggests consideration might be given to a subsidiary or sister body in recognition of the importance and uniqueness of the marine environment.
- *Question 13: Should the body be able to advise on planning policy?*
22. The new body should have an oversight role e.g. ensuring delivery of marine planning by the MMO (see this consultation response paragraph 18). It would not therefore duplicate functions in terms of coordination, delivery and assessment of marine planning but could hold the MMO to account where necessary.

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69483/pb136\\_86-overseas-territory-environment.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/69483/pb136_86-overseas-territory-environment.pdf)

### Part 3: Overall environmental governance

- *Question 14: Do you have any other comments or wish to provide any further information relating to the issues addressed in this consultation document?*

23. The marine environment is a large and complex part of the UK's natural environment and is unique in terms of requirements for evidence, monitoring and oversight. The new body should have a very clear and strong remit for marine issues or a subsidiary or sister body should even be considered with a specific marine remit.