

**BRIEFING BY THE ROYAL YACHTING ASSOCIATION
ON THE MARINE AND COASTAL ACCESS BILL
JANUARY 2009**

Introduction


1. The RYA is the national body for all forms of recreational and competitive boating. It represents dinghy and yacht racing, motor and sail cruising, RIBs and sportsboats, powerboat racing, windsurfing, inland cruising and personal watercraft.
2. The RYA is recognised by all Government offices as being the negotiating body for the activities it represents. The RYA currently has over 100,000 personal members, the majority of whom choose to go afloat for purely recreational non-competitive pleasure on coastal and inland waters. There are an estimated further 500,000 boat owners nationally who are members of over 1,500 RYA affiliated clubs and class associations.
3. The RYA also sets and maintains an international standard for recreational boat training through a network of over 2,200 RYA Recognised Training Centres in 20 countries. On average, approximately 160,000 people per year complete RYA training courses.

Executive Summary

4. In general, the RYA supports both the underlying objective of the Marine and Coastal Access Bill (the “Bill”), being to provide the tools to support a more strategic approach to marine conservation, and the Government’s desire to improve the management of the UK’s marine environment.
5. However, the RYA has a particular concern to ensure that the public right of navigation over tidal waters is preserved wherever practicable. To that end, it resists any interference with the public right of navigation and any proposals for regulation which, in either case, unjustifiably interfere with the exercise of that right. The RYA is also concerned to ensure that the right of innocent passage through the UK’s territorial waters (pursuant to Article 17 of the 1982 United Nations Convention on the Law of the Sea) is not adversely affected by the proposals in the Bill.
6. The RYA’s principal concerns are therefore to ensure, firstly, that the Bill provides for appropriate levels of scrutiny, transparency, stakeholder consultation and accountability and, secondly, that navigational, economic and social interests are given due consideration and balanced with the environmental objectives envisaged in the Bill.



Marine Conservation Zones (“MCZs”)

7. We strongly believe that the provisions relating to the designation of MCZs should only authorise the appropriate authority to make an order designating an MCZ where there is a sound scientific evidential basis for making such an order. We also consider that the appropriate authority should be obliged to have regard to the navigational, economic or social implications of designating an MCZ and to ensure that provisions of such an order are proportionate, balancing the relative strength of the scientific evidence with the likely navigational, economic or social consequences. We therefore strongly believe that, in Clause 114(7), the word “may” in the second line should be deleted and replaced with the word “must”.
8. We also believe that, when designating an MCZ, the appropriate authority should be required to have regard for the public right of navigation and the right of innocent passage and, if the proposed order interferes with either of those rights, the appropriate authority must demonstrate that a voluntary arrangement has failed to achieve the desired conservation objective. 
9. We consider that the provisions of a conservation order made in relation to an MCZ should be objective and proportionate to the conservation objectives for the relevant MCZ.
10. We strongly believe that the powers to make byelaws (England) and orders (Wales) should contain express provisions to the effect that the appropriate authority must have regard for the public right of navigation and the right of innocent passage and, if the proposed order interferes with either of those rights, the appropriate authority must demonstrate, *inter alia*, why such interference is unavoidable in order to achieve the conservation objectives and also that alternative arrangements have proved unsuccessful.
11. We further believe that there should be express provision to the effect that there shall be no presumption that the benefit of creating an MCZ would be maximised by regulating activity within the MCZ instead of encouraging voluntary arrangements.
12. There is no sound reason for the inclusion of the word “recreational” in Clause 125(3)(b) and we therefore strongly believe that the word “recreational” should be replaced with the word “any”.
13. Several of the provisions of Part 5 of the Bill are expressed to be subjective whereas, in our view, such provisions should instead be objective. By way of example, issues such as the means of notification of a proposed order, the concept of “urgency” and the adequacy of publication of a confirmed order are expressed to be subject to what “the MMO thinks”. We consider that the expression “the MMO thinks” is nebulous and not open to adequate scrutiny, transparency, stakeholder consultation or accountability and should not therefore be included within the Bill.

14. We do not believe it to be appropriate that a breach of a byelaw or order made in relation to an MCZ is effectively a strict liability offence. We therefore consider that the offence should be qualified by providing a defence for a person who either has a reasonable excuse for committing the offence or, alternatively, takes all reasonable precautions and exercises all due diligence to avoid committing the offence.
15. In addition, as a matter of principle we do not believe it is acceptable for legislation to provide for someone to commit a criminal offence in relation to an MCZ where a byelaw or order has an impact on navigation and the relevant provisions of the byelaw or order are not properly marked by physical aids to navigation, by recording on the relevant navigational charts and, in the case of emergency and interim byelaws or orders, by publication as Notices to Mariners
16. We believe that Clause 137(4) unfairly and unreasonably prejudices UK and member State vessels and we therefore believe that Clause 136 should not apply to a person on board any vessel in relation to an MCZ located outside the UK's territorial sea.

Marine Management Organisation (“MMO”)

17. There are several instances in Part 1 of the Bill in which the Bill provides for the powers of the Secretary of State to be delegated by agreement. In our view, however, as a matter of principle the powers of the Secretary of State should be delegated by order rather than by agreement.
18. Given the nature of the powers that the Bill proposes to confer, we consider it to be essential that the exercise of those powers is subject to proper scrutiny, transparency, stakeholder consultation and accountability. We consider that a possible consequence of the Secretary of State's powers being delegated to the MMO (and, potentially, by the MMO to other organisations) is that the exercise of those powers would not be subject to an appropriate level of scrutiny, transparency, stakeholder consultation and accountability.
19. In particular, we consider that the Bill should incorporate provision for scrutiny, transparency, stakeholder consultation and accountability in relation to the Ministerial guidance and directions to be given to the MMO and also in relation to the potential agreements to delegate additional functions to the MMO.

Marine Licensing

20. We believe that small scale plough and water jet dredging (as commonly undertaken by marina operators and yacht clubs to maintain their facilities) should be activities that are exempted from requiring a marine licence by way of an order made under Part 4, Chapter 2 and we therefore seek assurances that such an order will be made as soon as possible after this part of the Bill comes into force.

Coastal Access

21. The proposals for granting coastal access as set out in the Bill make reference to the Countryside and Rights of Way Act 2000 (the “CROW Act”). In particular, the CROW Act excludes from its application “Excepted Land” as defined in Schedule 1 to the CROW Act. The definition of “Excepted Land” set out in this Schedule includes such areas as parks, gardens, golf courses and land within the curtilage of a building but it does not cover some other types of developed land. In particular, the definition does not include an area of land such as that used by a boating club for the storage of recreational boats if that area is separated from the club house. This omission will be of great significance if the CROW Act is to apply to the coastal margin, where many boating clubs are located. We therefore consider that the Bill should include a provision amending Schedule 1 to the CROW Act such that Part 1 of that Schedule includes “land used for, or associated with the use of, sporting facilities”.

Personal Watercraft

22. We were disappointed to see personal watercraft identified in the Government’s press release on the Bill. The vast majority of personal watercraft users behave responsibly and the RYA has worked in partnership with the British Marine Federation to produce a guide to managing personal watercraft, which promotes the safe and responsible use of personal watercraft and is an important tool for harbour authorities and local authorities wishing to manage their use.



We would be delighted to discuss our concerns in greater detail or answer any questions.

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