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The excessive complexity of national marine governance systems – Has this decreased in England since the introduction of the Marine and Coastal Access Act 2009?

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ABSTRACT

With successive Government restructuring and the introduction of the Marine and Coastal Access Act in 2009, this paper revisits a previous set of organograms created in 2006 indicating the government departments with responsibilities relating to the marine and coastal environment in England in 2014. The 2009 Act presented an opportunity to harmonise marine management by simplifying the complexity in England through a radical restructuring of marine governance; however this is apparently not the case with many overlapping responsibilities still existing. This paper provides an overview of the 2009 Act, discussing some of the significant changes like the creation of the Marine Management Organisation (MMO), examines the current structure of marine management in England following its enactment and highlights the continued overlaps in jurisdiction, responsibilities and complexity of the government agencies with a marine remit.

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1. Introduction

A holistic and integrated marine management framework implies that many sectors are managed, using many legal instruments which are implemented by many administrative bodies to represent and safeguard the interests of many types of stakeholders [1]. Given this, many countries appear to have an unnecessary complex marine legislation and administrative framework [2–7]. All countries have to respond to a whole suite of international, regional (e.g. European) and national policies, laws and agreements controlling many of the sectors such as fisheries, energy and conservation by a plethora of organisations and administrative bodies [8]. No single authority is responsible for the management of the marine environment, with activities regulated on the national, international, supranational and transnational levels, each with its own rules and policies and often with a sectoral basis. Hence, and especially on a national basis, marine activities such as marine spatial planning, tourism, oil and gas production and offshore wind parks are regulated mainly through different government departments, sometimes with ineffective communication and lack of coordination. This can lead to a diverse

range of conflicting marine activities being regulated by numerous pieces of legislation and policy [9].

In November 2009, the UK Marine and Coastal Access Act 2009 [10] (hereafter referred to as the 2009 Act) gained Royal Assent and provided the first statutory Act in the UK focused on improving the management and regulation protecting the marine and coastal environment by putting in place a more integrated effective management system. The 2009 Act aimed to ensure ‘clean healthy, safe, productive and biologically diverse oceans and seas, by putting in place better systems for delivering sustainable development of marine and coastal environment’. This recognised and responded to the view that England required an updated marine and coastal governance framework better suited to modern day challenges [11]. The legislation created the Marine Management Organisation (MMO) to oversee the functions and objectives of the Act, and reorganised several other key bodies to better manage the marine environment. Given that this new Act represented an opportunity to make major changes to the framework for marine biodiversity conservation and resource exploitation in England and Wales [12,13], it is now an appropriate time to question whether this has been achieved.

This paper provides an overview of the 2009 Act, and examines the current structure of marine governance in England in order to assess the effectiveness of the Act in simplifying the complexity of marine management described by Elliott et al. [7], Where necessary the situation in Scotland and Northern Ireland, as other

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countries within the United Kingdom, will also be discussed. Elliott et al. [7] presented the complexity of the marine management system in England in a set of organograms. These showed the number of government departments having responsibilities relating to the marine and coastal environments in England and the overlaps and complexities in the system. With successive Government restructuring and the introduction of new marine legislation which created new departments in 2009, this paper presents revised organograms depicting the roles of government organisations in order to provide lessons for other maritime states.

2. Marine and Coastal Access Act 2009

The 2009 Act aimed to provide a framework to regulate marine activities and sets out in legislation the proposals which were widely supported in *A Sea Change*, the UK Government's White Paper published in March 2007 [14]. A central aim of the 2009 Act is to provide a more coherent, and a simpler, legal regime through which an appropriate balance can be better secured and managed between: (i) economic and social marine activities, and (ii) the protection of the marine environment and marine biodiversity. In response to industry calling for a simpler marine licensing regime, amongst other things, the Act established the Marine Management Organisation (MMO) for English waters (Part 1 of the Act) to administer a new regime of marine licensing.

Although the United Kingdom is one maritime state, and a single state within the European Union, as a result of the devolution process in the UK, the 2009 Act is specific to England and Wales. The Government and the Devolved Administrations of Scotland and Northern Ireland have also implemented national legislation. The Scottish Government enacted the Marine (Scotland) Act (2010) with Part One of the Act creating Marine Scotland, an equivalent body to the MMO. The Marine Act (Northern Ireland) (2013) gained Royal Assent on 17 September 2013 giving the NI Department of the Environment the equivalent powers to the MMO.

Marine planning is one of the main functions of the MMO, who are currently preparing marine plans in accordance with the policies and objectives set out by the UK Government in its Marine Policy Statement (MPS) [15]. The 2009 Act also made provision for designating a network of conservation sites called Marine Conservation Zones (MCZs), the management of inshore fisheries through new bodies called Inshore Fisheries and Conservation Authorities (IFCAs), the management of marine and freshwater fisheries, enforcement powers for managing licensing, and nature conservation and fishing in the marine area. There were also new powers to extend recreational access to the English coast and to enable the creation, as far as is possible, of a continuous route around the coast sufficiently wide to allow unconstrained passage on foot and recreational space. As such, the MMO will be the regulator for most, but not all, activities in the marine environment.

3. Marine governance in England

The marine environment in the UK has a complex system of management that has developed in order to deal with various political and sectoral issues which have arisen over many years [16]. Figs. 1 and 2 show the organograms of government departments in 2014 having responsibilities relating to the management of the coast and marine environment in England. These have been revised since the 2006 paper (Elliott et al., 2006) [7] based on legislative changes (2009 Act) and the transferral of responsibilities/remits between departments through Government restructuring.

In May 2006, the Department for Communities and Local Government (DCLG)² was created succeeding the Office of the Deputy Prime Minister but taking on the same responsibilities of the Local Authorities and Planning Inspectorate. A new executive non-departmental public body (NDPB) of the DCLG was also created called the Major Infrastructure Planning Unit; its aim was to provide an integrated planning body and its role to independently examine applications for nationally significant infrastructure projects which include large wind farm developments (> 100 MW), power stations, harbour and port developments and sewage treatment works occurring in or affecting the marine environment. The Department of Energy and Climate Change (DECC)³ was created in October 2008, to bring together energy policy (previously with the Department for Business, Enterprise and Regulatory Reform (BERR), which is now the Department for Business Innovation and Skills (BIS)) and climate change mitigation policy (previously with the Department for Environment, Food and Rural Affairs (Defra)). The two main goals of DECC are firstly to propose policies to tackle climate change and secondly, to regulate both renewable energy and non-renewables under various legislations (Petroleum Act 1998, Energy Act 2008, 2010 and 2011, and Climate Change Act 2008) reflecting the fact that climate change and energy policies are inextricably linked. DECC retains its responsibilities for licensing, exploration and regulating oil and gas developments on the UK continental shelf.

Shipping, navigation, pollution prevention from vessels and emergency response at sea still remain the remit of the Department for Transport (DfT),⁴ with protected wrecks and the protection of the historic marine environment resting with English Heritage,⁵ an Executive Non-Departmental Public Body (NDPB) under the Department for Culture, Media and Sport (DCMS).⁶ The 2009 Act now enables English Heritage, for the first time, to advise a regulatory body about licensable activities at sea to ensure the protection of the marine environment which is of historic or archaeological interest. The remits of the Ministry of Defence (MoD) and the Crown Estate remain unchanged by the government restructuring.

With the exception of the responsibilities discussed above, the remainder of the management of the marine environment falls within the remit of the Executive Agencies and Executive NDPBs of Defra.⁷ The epithet Executive refers to the fact that the bodies are managed by an independent Board and Chairperson rather than via a Minister or Secretary of State linked to a government department. Together with the more detailed roles described for each body in Fig. 2, Natural England⁸ remains the government's statutory conservation body advising government and industry on marine conservation and seascape issues in English territorial waters (out to 12 nautical miles). Their remit as stated in the Natural Environment & Rural Communities Act 2006 is to 'ensure that the natural environment is conserved, enhanced and managed for the benefit of present and future generations, thereby contributing to sustainable development'. Amongst other things, Natural England is responsible for recommending Marine Conservation Zones (MCZs) introduced through the 2009 Act, combining the new zones with existing designated areas to provide an ecologically coherent network of marine protected areas (MPAs) within territorial waters.

² <http://www.communities.gov.uk/corporate/>.

³ <http://www.decc.gov.uk/>.

⁴ <http://www.dft.gov.uk/>.

⁵ <http://www.english-heritage.org.uk/>.

⁶ <http://www.culture.gov.uk/>.

⁷ <http://www.defra.gov.uk/>.

⁸ <http://www.naturalengland.org.uk/>.

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