

Across the waters

Implementation of the UK Marine and Coastal Access Act and devolved marine legislation: cross-border case studies

December 2009

The Solway Firth

This case study forms part of the Across the Waters series prepared for Wildlife and Countryside Link, Scottish Environment LINK, Northern Ireland Marine Task Force and Wales Environment Link. It was funded by the Esmée Fairbairn Foundation and The Tubney Charitable Trust.

Pam Taylor **Solway Firth Partnership**

The Solway Firth Partnership was established in 1994 to help bring together the many organisations, companies and individuals with interests in the Solway. The Partnership aims to ensure the long-term sustainability of the Firth's resources while protecting the distinctive character, wildlife and heritage of the area.

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Across the waters

New marine legislation is being introduced throughout the UK that will require coordinated implementation to achieve a consistent and coherent approach. The Across the waters project aims to raise issues and concerns from local stakeholders and highlight recommendations for managing the marine environment in cross-border areas. This report is one of a series of three. It focuses on the Solway Firth from the perspectives of the renewable energy, fisheries and conservation sectors. The report reflects views of members of the Solway Firth Partnership, with particular sources including Sustainable Seas For All: A Consultation on Scotland's First Marine Bill, Report on Consultation Event, 2008, and meetings of the Solway Firth Partnership Board of Trustees, Advisory Group and Working Group. This was supplemented by a series of face-to-face and telephone interviews to inform preparation of the report and to create recommendations for cross-border working.

The other reports investigate the North Channel, between Northern Ireland and Scotland, and the Severn Estuary / Bristol Channel.

New marine legislation



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This is an exciting time in the management of the marine environment with the production of legislation that will attempt to modernise, streamline and improve protection of our marine environment. The UK Marine and Coastal Access Act (hereafter referred to as the Marine Act) received Royal Assent in November 2009. It is important to note that timetables driving the processes of creating marine legislation are different throughout the UK. In Scotland, the Marine (Scotland) Bill was introduced to the Scottish Parliament on 29 April 2009 for its first reading. It is expected to receive Royal Assent by early 2010.

The Solway Firth

The range of landforms and habitats which make up the Solway Firth is outstanding, from the towering cliffs of the Mull of Galloway and St Bees Head to sand dunes and machair (low-lying fertile plain) around Luce Bay and Mawbray Bank and the extensive saltmarsh, sand and mudflats of the inner Solway. The Solway carries multiple national and international conservation designations including Special Areas of Conservation, Special Protection Areas, Sites of Special Scientific Interest and Ramsar wetlands, some of which span the national boundary. Perhaps the most iconic wildlife species is the barnacle goose, whose entire Svalbard population winters on the

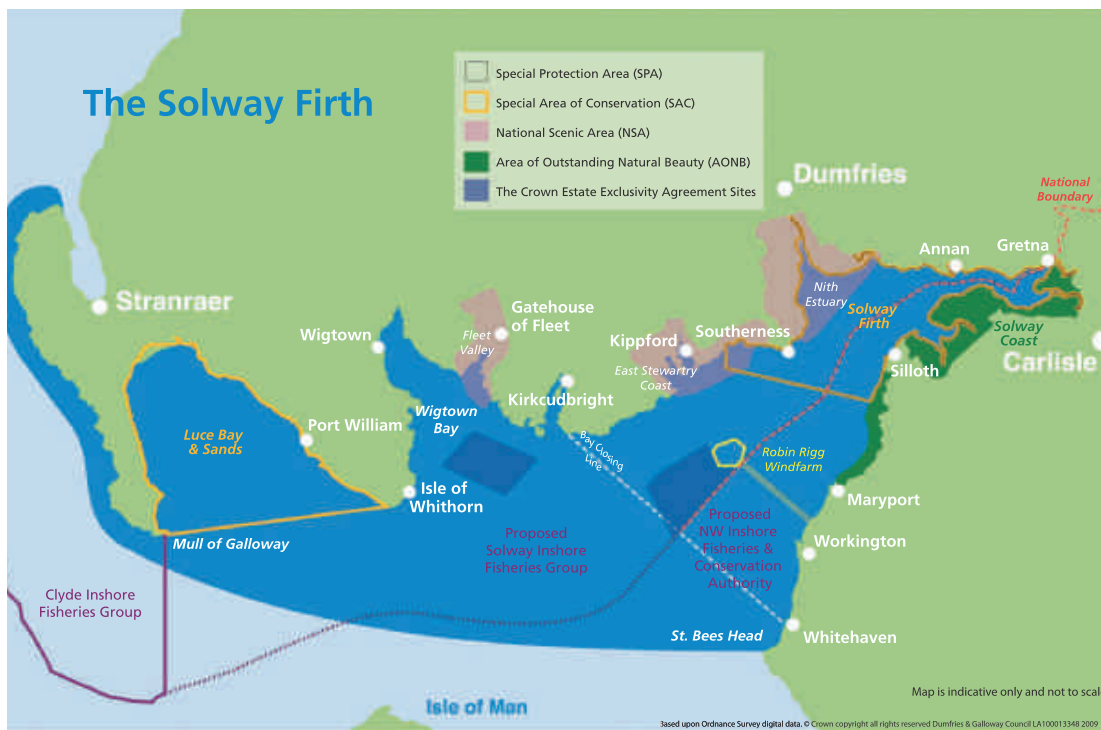
Solway. The importance of the Solway landscape is reflected in designations including the Solway Coast Area of Outstanding Natural Beauty and three coastal National Scenic Areas.

The Solway was the site of some of the earliest human habitation as well as some of the most bitter contests. Evidence of this history remains in a wealth of historical and archaeological sites including Hadrian's Wall World Heritage Site. Poets, writers and artists who have found inspiration in the area include Robert Burns, Sir Walter Scott and EA Hornell.

The growth of commercial shipping activity led to the development of the Cumbrian ports and harbours of Workington, Whitehaven and Silloth. Sea fisheries remain an important part of the rural economy with most of the local catch landed along the Cumbrian coast. Kirkcudbright is the main landing point on the Dumfries and Galloway coast.

The Solway coast is also an important focal point for tourism and leisure including recreational sea angling, sailing and bird-watching.

Robin Rigg, the largest offshore wind farm in Scottish waters is currently being constructed in the inner Solway and there are several other potential renewable energy projects under consideration.



Map data sourced from: The Crown Estate, Scottish Natural Heritage, The Scottish Government, Dumfries & Galloway Council, Alerdale Borough Council. The Solway Firth Partnership area is shown in dark blue.

Conservation



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Solway Firth European Marine Site

Areas of the Solway Firth are designated both as a Special Area of Conservation (SAC) under the Habitats Directive and a Special Protection Area (SPA) under the Birds Directive – collectively known as the Solway Firth European Marine Site (EMS). The Solway Firth SAC designation reflects the importance of the site's marine and coastal habitats including merse (saltmarsh), mudflats and reefs. The Upper Solway Flats and Marshes SPA designation recognises the large bird populations that these habitats support, particularly in winter. Important bird species include Svalbard barnacle goose, pink-footed goose, whooper swan and pintail as well as waders such as bar-tailed godwit, golden plover, oystercatcher, dunlin, knot, curlew and redshank. Luce Bay and Sands SAC in the outer Solway Firth has been designated principally for its seabed and dune habitats.

The estuary is also a Ramsar site, as it is an important wetland for overwintering birds and the rare natterjack toad, which is found here at the most northerly point in its range. The Solway Firth is important for the passage of migratory fish such as sea and river lamprey, as well as salmon and sea trout which the local angling economy depends upon. The Solway also provides an important nursery area for species including skates and rays.

Landscape designations

The Solway coastal lands are heavily influenced by the maritime conditions, creating unique and nationally important landscapes. On the south side of the Solway an area is designated as the Solway Coast Area of Outstanding Natural Beauty and on the north side there are three National Scenic Areas.

Summary of existing arrangements

Management schemes, plans and strategies

A Management Scheme has been in operation for the Solway Firth European Marine Site since 2000 and is used as a reference point in the development of related plans such as Shoreline Management Plans, SSSI Management Plans and the draft Solway Tweed River Basin Management Plan. Under regulations that transpose the Habitats Directive into national law, authorities must be informed of the conservation objectives for the European Marine Site. The Solway Firth Management Scheme includes information provided by Natural England and Scottish Natural Heritage (SNH) on the conservation objectives and operations or activities which may adversely affect wildlife and habitats and the evaluation of development proposals.

The Solway Coast Area of Outstanding Natural Beauty and the three National Scenic Areas are designated principally for their landscape qualities and there are Management Plans or Strategies for all of these sites. The quality of these areas is dependent on their wider landscape and seascape context. The vast intertidal areas of the inner Solway blur the transition between land and sea, creating an inseparable relationship between one and the other.

Water quality: planning for the whole Solway

The Solway Firth is part of the Solway Tweed River Basin Management Planning unit for the purposes of implementing the Water Framework Directive. This places a duty on the Scottish Environment Protection Agency (SEPA) and the Environment Agency to work together to jointly prepare a River Basin Management Plan for the Solway as a whole. The process is supported by a Solway Area Advisory Group comprising partners from Scotland and England, including the Solway Firth Partnership. This provides a useful example of a statutory planning process which spans the national boundary and addresses water quality in terms of the Solway as a whole.



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Environmental data and research

In common with most other areas, environmental data gathering and research in the Solway has been led by a wide range of bodies. Information is held in different places and has been collected in a range of formats.

Management issues and opportunities

MCZ and MPA programmes

In English waters, work is under way to identify Marine Conservation Zones (MCZs) which will be designated under the UK Marine and Coastal Access Act, according to their importance in protecting species, habitats and geological features of national importance. In Scottish inshore waters, the proposal in the Marine (Scotland) Bill is for the creation of Marine Protected Areas (MPAs) which can be designated for nature conservation, demonstration and research or historical reasons. There is the possibility that MPAs/MCZs could overlap within existing European Marine Sites. European Marine Sites (SPAs and SACs), MCZs and MPAs are together intended to form an ecologically coherent network of protected areas across all UK seas.

A government commitment has been made to ensure that these projects and their outcomes align with one another, but it is unclear how this will be achieved in the Solway estuary. There is a risk that MCZ and MPA projects could not be well coordinated across the national boundary in the Solway. Opportunities to address this could include ensuring integration of research work. For example, surveys of many marine species or habitat types in the inner Solway Firth could be carried out most accurately and efficiently Solway-wide. Consultation on any proposed new sites, or changes to the designations of existing sites, should also be carried out for the Solway as a whole, supporting the streamlined approach which is integral to the aims of both the UK Marine Act, and those of the Marine (Scotland) Bill. This type of approach has been adopted by Scottish Environment Protection Agency and the Environment Agency in developing the Solway Tweed Draft River Basin Management Plan.

Cross-border mechanisms

The process of creating the Solway Firth European Marine Site Management Scheme involved the bringing together of topic groups comprising all the competent and relevant authorities and other key interest groups. Monitoring its implementation has subsequently passed to the Solway Firth Partnership whose management structure supports input from a range of bodies across the border although it should be noted that this is on a voluntary basis.

Given north/south differences in proposals for future marine management, there is a risk that the structure supporting this type of joint working will be weakened and may ultimately collapse. The Solway Firth Partnership has experienced increased pressure over recent years, arising from reduced support as a result of changing priorities within organisations such as Scottish Natural Heritage (SNH) and competing demands on local authority resources. However, there is no provision in the UK Marine Act or Marine (Scotland) Bill for any alternative arrangement to take its place.



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Local stakeholders believe there is a need to ensure the continuation of a cross-border body to support cooperation and that this should be adequately resourced. Ideally, stakeholders would like to see a cross-border organisation preparing a single Marine Plan for the Solway which incorporates, integrates and rationalises sectoral demands. If it is impossible to get agreement on a single plan, then it should still be possible for the relevant stakeholders and authorities to agree the overall objectives for the Solway. These could then feed into complementary marine plans under the Scottish and English systems.

In the absence of properly integrated cross-border marine planning in the Solway, there is a risk of over-reliance on reactionary mechanisms such as Environmental Impact Assessments as a means of delivering environmental protection. There is a likelihood that this would lead to a continuation of piecemeal, disjointed marine planning and would not foster the proactive, strategic and integrated approach the UK Marine Act and Marine (Scotland) Bill seek to establish.

Integrated data management

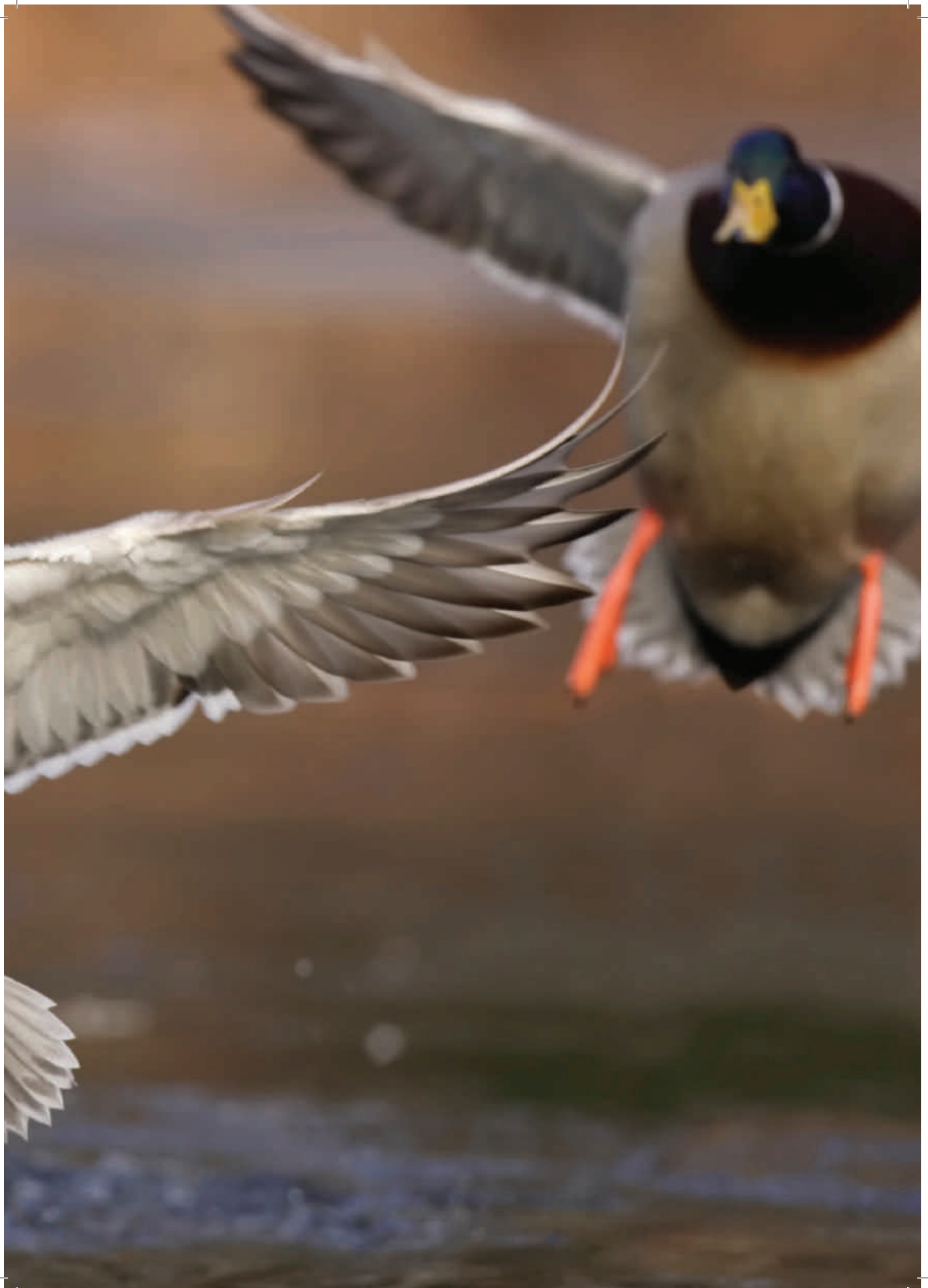
Previously, data has been collected in an ad hoc fashion and on a sectoral basis. The UK Marine Act and Marine (Scotland) Bill will allow for a marine spatial planning system, which could be supported by GIS data. This would provide a major opportunity for improved integration of survey and monitoring work and greater accessibility to data in the future. For optimum effectiveness, such a system should operate on a Solway-wide basis and allow interoperability between as many of the key bodies with an interest in the area as possible.



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Fisheries



Overview

The Solway, as with most other parts of the Irish Sea, supports a diverse mixed fishery, resulting in local fishermen targeting a wide range of fish and shellfish species. There are currently around 90 commercial (registered and licensed) fishing boats based in Cumbria and smaller numbers working out of Kirkcudbright, Annan and Isle of Whithorn on the Scottish Solway coast. The Solway is also fished by boats from further afield including the Isle of Man, Ireland and larger ports to the north and south such as Girvan and Fleetwood. As well as commercial sea fishing, cockle, mussel and winkle fisheries also operate on the Solway shores.

Total landings in the Solway are estimated at £4-5 million a year. Fish processing businesses are estimated to employ in the region of 1,500 people around the Solway; this includes large processing businesses at Annan and Kirkcudbright, as well as smaller smokehouses on the Galloway coast. The fisheries sector is a very important part of the rural economy for the communities of Dumfries and Galloway and Cumbria.

Summary of existing arrangements

Sea Fisheries Committees

Sea Fisheries Committees (SFCs) have existed in England and Wales since the late 1800s and aim to protect, develop and manage fisheries and the inshore marine environment. They will be replaced by Inshore Fisheries and Conservation Authorities (IFCAs) under the UK Marine and Coastal Access Act. Currently, Cumbria SFC jurisdiction extends north to the national boundary in the Solway. Its responsibilities include making and enforcing byelaws for the management and conservation of fish and shellfish stocks, and conserving the wider marine environment. In addition to enforcing its own byelaws, the Cumbria SFC also has duties for aspects of national and European fisheries and conservation legislation.

Inshore Fisheries Groups

In Scotland, regulation of fisheries is carried out by the Scottish government through divisions of Marine Scotland. Inshore Fisheries Groups (IFGs) are being established with the aim of improving fisheries management and giving commercial inshore fishermen a voice in wider marine management, although unlike IFCAs these will not be statutory bodies. It is unclear how the Solway will fit into these arrangements; options to establish a Solway IFG or to amalgamate the Solway with the Clyde IFG have been proposed. The southern boundary for both options would be the national boundary with England or six nautical miles seaward. Establishment of IFGs is not dependent on enactment of the Marine (Scotland) Bill.

A tailored approach

Special fishery management arrangements which recognise the unique cross-border situation in the inner Solway include the Scotland Act 1998 (Border Rivers) Order 1999 which 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. This provision enables an offence under the Order to be prosecuted by either English or Scottish courts without regard to the side of the border on which the offence was committed. Also, the Salmon and Freshwater Fisheries Act 1975 gives the Environment Agency water bailiff powers in Scottish parts of the inner Solway.



Marine legislation: possible issues and opportunities

Sharing common objectives

It is recognised that the anticipated IFCAs and IFGs will work in different ways. This could make it more challenging to achieve a coordinated and unified approach to fisheries management in cross-border areas. It is essential that these organisations work together towards shared objectives in an area such as the Solway. Both organisations will produce plans for fisheries management and this could be a potential mechanism to secure a joined-up approach. Other opportunities to support this approach include IFCA representation on the Solway IFG and vice versa. There is a clear need to develop and support, wherever possible, common objectives. Compatible objectives should be developed and supported, which take full account of likely impacts on neighbouring and nearby fishery areas.

Considering knock-on effects

As well as ensuring coordination between fisheries management groups for the Solway itself, it is important to recognise that the Solway is connected to the Irish Sea, which has a complex interlinked jigsaw of Welsh, English, Manx, Irish and Scottish waters. Regulatory differences between areas such as variations in minimum legal landing size, minimum mesh size, restrictions on gear type and closed periods can lead to displacement of activity from one area to another. Failure to develop adequately integrated systems could lead to disjointed management of the Irish Sea and could lead to further concentration of effort in areas with the weakest regulation. There is an opportunity to develop networking and cooperation between fisheries management groups in English, Scottish, Manx, Welsh and Irish waters and for all to actively contribute to the development of marine plans for the areas in which their members have fishing interests.

Delivering effective enforcement

There is an opportunity to improve integration of systems for enforcement of fisheries regulation. Good governance of the inner Solway Firth would include exploring opportunities for further delegation of enforcement duties to one side or the other to maximise efficiency and minimise public cost. At the very least, there is an opportunity for much closer working relationships between enforcement bodies on the north and south Solway.

Renewables



Overview

Robin Rigg offshore wind farm

The Robin Rigg offshore wind farm is currently being constructed by E.ON Climate and Renewables in the Solway Firth. When completed, it will be the largest offshore wind farm in Scottish waters. The wind farm is approximately 14km from the nearest land at Balcary Point in Dumfries and Galloway.

Solway energy gateway

The Solway Firth has been assessed as a potential site where tidal energy can be captured. Schemes of different scales and form have been proposed but to date economic, environmental and cultural issues have always prevented them from being implemented. A Solway Energy Gateway feasibility study is currently under way to explore opportunities including a tidal barrage scheme.

Initial modelling work suggests that the construction of a barrage between Annan and Bowness-on-Solway utilising a two-way generation system could potentially generate 300MW of renewable energy. It is anticipated that the most economic and least technically challenging connection route would be via the primary substation at Chapelcross nuclear decommissioning site.

Offshore wind exclusivity agreements

In January 2009, The Crown Estate awarded two exclusivity agreements for the development of offshore wind farms in the Scottish waters of the Solway. These exclusivity awards allow developers to begin initial survey and consultation processes for their proposed sites while the Scottish Government conducts a Strategic Environmental Assessment for offshore wind within Scottish territorial waters.

UK and Scottish context

The UK Climate Change Act (2008) sets legally-binding targets for reduction of carbon dioxide emissions: 26% by 2020 and 80% by 2050 compared to 1990 levels. The Scottish government has set a more challenging target of 42% by 2020 through its Climate Change (Scotland) Act. The Scottish Government also has a target of meeting 50% of electricity demand from renewables by 2020, whilst the UK Government has a target of 15% by 2020.

Summary of existing arrangements

Development and planning

In the Solway, it is particularly difficult for prospective renewable energy developers to know who they should contact for guidance on potential development sites due to the increased number of regulatory bodies around the site and the differences across the border.

Assessing environmental impact

An Environmental Impact Assessment (EIA) considers the natural, social and economic effects a proposed project may have. The Robin Rigg wind farm development incorporates environmental protection measures such as offshore oil sensors and an active oil capture system on the offshore substation as a result of the EIA. The Habitats Regulations also require the project to undergo an Appropriate Assessment (AA) of the potential impacts on the conservation objectives of the European Marine Site. Any Solway Energy Gateway proposal would also be subject to AA procedures.



Wider impacts

There has been controversy about the landscape impact of the Robin Rigg development and there are wide ranging views about the effects of the project on tourism and quality of life for local communities. Although an extensive public consultation on the development was carried out on both sides of the Solway, a feeling of dissatisfaction about the process remains among a proportion of people in local communities. The delay between consent and development created uncertainty and led to criticism from local communities about lack of information.

Marine legislation: possible issues and opportunities

MCZs and MPAs

Renewable energy developers are unclear about the implications of MCZs and MPAs on future renewable energy developments. For example, the approach to social and economic factors in site designation differs between the UK Marine Act and the Marine (Scotland) Bill. The UK Act indicates that socio-economic factors may be taken into account in site designation, whereas the Scottish Bill states that, for nature conservation MPAs, these factors should only be considered when two or more sites are of equal value. Developers feel that there should be greater clarity and consistency on the procedure for recognising the socio-economic benefit of renewable developments. They recognise the need for protected areas and would welcome provision of clear and consistent guidance on the implications of these areas for renewable energy schemes.

Streamlining procedures

The marine planning systems that will be introduced under the UK Marine Act and the Marine (Scotland) Bill in UK waters will, for the first time, allow developers to know which activities can happen where and should lead to greater efficiency and cost-effectiveness. This should reduce uncertainty for both developers and other stakeholders and allow greater information exchange. However, the benefits of marine planning will not be realised unless there is consistency and coordination across borders. Reporting timelines for marine planning should also be coordinated across borders.

Developers welcome proposals for streamlining of licensing and consenting procedures under the UK Marine Act and Marine (Scotland) Bill. Differences in systems and proposed licensing and appeals processes for the north and south sides of the Solway will dilute this benefit on the Solway.

There is a clear need for cross-border coherence otherwise this could create a weakness in the planning and regulatory system leading to poor decision-making and a failure to accurately evaluate developments in a Solway-wide context.

There is an opportunity to support a coordinating body to minimise the burden on cross-border developers, provide links with regulatory bodies on both sides and ensure that clear information is being provided in compliance with the requirements of both the UK Marine Act and the Marine (Scotland) Bill.

Recommendations

The Marine Management Organisation (MMO) will be established in April 2010 and will be the strategic delivery body for marine management in English and offshore UK waters and for non-devolved matters. In Scotland, Marine Scotland was established in April 2009 as a division of the Scottish government and will be the lead body for marine management in Scottish waters.

Recommendation 1: The MMO and Marine Scotland must identify clear working arrangements (e.g. through Memoranda of Understanding) to ensure they are able to deliver integrated management of the Solway.

The different marine legislation on the two sides of the border will mean that the Solway Firth, a high quality and well defined ecosystem unit, will be split into two separate planning and management systems. Coordination between the two planning systems is essential and could be achieved through a similar system to the Solway Tweed River Basin Management Planning unit, which is in place to implement the Water Framework Directive.

Recommendation 2: Ideally the Solway Firth would be treated as a single area for marine planning. Coordination between planning systems must ensure that in a practical sense the Solway Firth is regarded by sea users and stakeholders as a single marine planning unit.

There has been cross-administration agreement on High Level Marine Objectives and there is the intention, though not an obligation, to create a jointly agreed Marine Policy Statement. This UK-wide statement should help to coordinate the vision and strategy for all the administrations but must contain sufficient detail to ensure its effectiveness.

Recommendation 3: There should be full sign-up to a UK-wide Marine Policy Statement that coordinates the aims and objectives of the administrations.

There is a clear desire among Solway Firth Partnership members for local people to be enabled to participate in the planning process. There is a danger that a marine plan created for the Solway by a centralised planning body without an understanding of local issues and the involvement of local people may be unsupported. It is important that networks exist at appropriate scales to enable stakeholders and communities to engage.

Recommendation 4: Ensure an inclusive and transparent approach to marine planning that enables engagement by local stakeholders and results in greater understanding and compliance.

Reporting on marine plans under the Scottish Bill is proposed at least every five years while, under the UK Act, reporting is proposed every three years. Additional six-yearly requirements are placed on each marine plan authority under the UK Act to lay a report before the appropriate legislature. The legislation in Scotland is still going through Parliament and it will be essential, therefore, to align the reporting processes from the start.

Recommendation 5: Timescales for reporting on marine plans should be aligned to support cross-border marine planning.



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There are differences in licensing arrangements under the UK Marine and Coastal Access Act and proposed Marine (Scotland) Bill which affect potential developments including renewable energy schemes, aquaculture and harbour works. This includes differences in the consenting and appeals processes.

Recommendation 6: Establish a single point of contact for cross-border licensing enquiries to minimise the burden on applicants and ensure clear information is provided in compliance with licensing requirements under both the UK Act and the Scottish Marine Bill.

There are differences in the criteria for establishing Marine Conservation Zones (under UK legislation) and Marine Protected Areas (under Scottish legislation), as well as the management arrangements which can be made and the means of addressing related offences.

Recommendation 7: Foster links between the MCZ and MPA programmes to support a coherent approach to site selection and management across borders.

The proposed North West IFCA and the proposed Solway IFG will be set up and will operate in different ways.

Recommendation 8: Foster integration of the proposed North West IFCA and the proposed Solway IFG to support a coherent approach to fisheries management in the Solway.

The UK Act and Scottish Marine Bill propose different marine enforcement systems for the north and south sides of the Solway. This could lead to gaps in management and will require coordination to ensure best practice and information sharing.

Recommendation 9: Explore opportunities for marine enforcement officers to coordinate operations and share resources in border areas.

The definition of the Scottish marine area does not include waters closed by a lock “or other artificial means against the regular action of the tide”, while these areas are included in the UK Act. This could create difficulty in interpreting the way in which legislation should apply upstream of any tidal barrage on the Solway.

Recommendation 10: Standardise the near-shore boundary definition of marine areas.

The Wildlife and Countryside Link Marine Task Force*, the Scottish Environment LINK Marine Task Force, the Northern Ireland Marine Task Force and the Wales Environment Link Marine Working Group work together on a joint campaign to improve the protection and management of the marine environment. This work is supported by the Esmée Fairbairn Foundation and The Tubney Charitable Trust.

* The following members of Wildlife and Countryside Link support this document: Marine Conservation Society, The National Trust, RSPB, The Wildfowl & Wetlands Trust, The Wildlife Trusts and WWF.



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