

Marine nature conservation and landscape protection

Recent years has witnessed the production of an increasing amount of legislation connected with nature and conservation, particularly at the European level, which is indicative of the mounting awareness of the need to conserve the natural environment. At the regional seas and international levels, attempts to conserve biological diversity have been pursued using treaty law. There are a number of international and regional conventions relating to nature conservation, covering subjects including trade in endangered species, migratory species, the marine environment, and biodiversity.

The development of European conservation law has partly been in response to international measures, but it has also responded to specific European concerns. For example, European Directives have concentrated on conserving species and habitats of European Community importance, and protecting aquatic ecosystems.

Nature conservation in the UK has traditionally relied upon both statutory and voluntary measures, some of which give indirect support to nature conservation objectives. This briefing paper identifies the key legislative instruments and addresses the main shortcomings of the current regulatory framework relevant to nature conservation in Wales.

INTERNATIONAL AND EUROPEAN LEGISLATION

There are a number of international and European targets relevant to nature conservation which the UK is obliged to meetⁱ, including:

- halting the decline of biodiversity across the EU by 2010 (EU 6th Environmental Action Programme);
- encouraging the ecosystem approach in marine management by 2010, and establishing representative networks of marine protected areas by 2012 (World Summit on Sustainable Development (WSSD), 2002);
- identifying and designating by 2010 relevant areas of the UK's seas as areas of marine protection belonging to a network of well managed sites (5th North Sea Conference and OSPAR Convention);
- maintaining or restoring natural habitats and species of wild fauna and flora to a favourable conservation status (EC Habitats Directive);
- preventing further deterioration in, and protect and enhance the status of aquatic ecosystems, including estuarine and coastal waters (EC Water Framework Directive).

Box 1 Key International, Regional and European legislation

International

1992 Convention on Biological Diversity

Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat 1971

Bern Convention on the Conservation of European Wildlife and Natural Habitats 1979

Bonn Convention on the Conservation of Migratory Species of Wild Animals 1979

Washington Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES) 1973

Regional

Convention for the Protection of the Marine Environment of the North East Atlantic - Annex V on the protection and conservation of the ecosystems and biological diversity of the maritime area

European

EC Directive on the Conservation of Wild Birds (79/409/EEC) – Birds Directive

EC Directive on the Conservation of Natural Habitats and of Wild Fauna and Flora (92/43/EEC) - Habitats Directive

EU Water Framework Directive (2000/60/EC) – see briefing paper 10

EC Directive on Environmental Impact Assessment (85/337/EEC) – EIA Directive – see briefing paper 12

EU Directive on Strategic Environmental Assessment (2001/42/EC) – SEA Directive – see briefing paper 12

UK NATURE CONSERVATION LEGISLATION

The main statutory protective designations for species and habitats remain the inter-related categories of National Nature Reserves (NNRs) and Sites of Special Scientific Interest (SSSIs). Both were originally introduced in the *National Parks and Access to the Countryside Act 1949*, which has been significantly amended by the *Environment Act 1995*.

Although the NNR powers remain substantially the same, the *Countryside and Rights of Way (CROW) Act 2000* has significantly strengthened the protection and management of SSSIs in England and Wales. However, it is assumed that SSSIs must be inside the areas of local planning authorities (LPAs) and therefore generally only extend to low water, although some SSSIs in Wales extend below low water mark (LWM). This lack of legal clarity is unsatisfactory and should be resolved by exploring further amendments to the SSSI regime with respect to its extension to coastal waters.

Originally conceived as the cornerstone of the UK's approach to marine nature conservation, to date only 3 Marine Nature Reserves (MNRs) have been formally established under the *Wildlife and Countryside Act 1981*ⁱⁱ. The reason for this apparent failure in the legislation may be attributed to the elaborate and prolonged designation procedure, and the lack of an obligation to establish a network of reserves. The legislative powers given to relevant authorities for the protection and management of MNRs have also been criticised, along with the ability to give any real effect to measures through effective enforcementⁱⁱⁱ.

Box 2 Key UK primary legislation

National Parks and Access to the Countryside Act 1949

Wildlife and Countryside Act 1981

Wildlife and Countryside (Amendment) Act 1985

Food and Environment Protection Act (FEPA) 1985 Part II

Environmental Protection Act (EPA) 1990

Sea Fisheries (Wildlife Conservation) Act 1992

Environment Act 1995

Countryside and Rights of Way (CROW) Act 2000

Protection of individual species

The main protection of individual species of animals and plants is provided in the *Wildlife and Countryside Act 1981*, Part I, although the *Conservation (Natural Habitats &c.) Regulations 1994*^{iv} have made some changes to ensure compliance with the Habitats Directive. The provisions of the 1981 Act extend out to 12nm. Under the Act, offences against protected species are limited to *demonstrable* actions of intent, despite greater risk to species from adverse incidental acts arising as a result of other activities such as fishing. The CROW Act 2000 attempted to address this shortcoming in relation to the offence of disturbance of cetaceans and basking sharks, but no amendment was made to the more serious offences of killing, injuring or taking of protected species. Similar weaknesses apply to the wording of the 1994 Regulations. These shortcomings should be addressed in existing species protection legislation or additional legislation may be required to confer greater protection upon specific species.

Secondary legislation

The *Conservation (Natural Habitats &c.) Regulations 1994*, which implement the provisions of the Habitats Directive in England and Wales up to the 12nm limit of the territorial seas, apply to the "European Sites" which include candidate and designated Special Areas of

Conservation (SACs) and also Special Protection Areas (SPAs). The principal protection provided by the 1994 Regulations is through the existing SSSI and town planning mechanisms, upon which were grafted the additional protections required by the Habitats Directive. However, in the general absence of planning and SSSI controls below LWM, these provisions have not been adequate to ensure full implementation of the Directive.

Box 3 Marine landscapes

Identification and mapping of marine landscapes

The Irish Sea Pilot demonstrated that the identification and mapping of marine landscapes using geophysical and hydrographical data is practicable at the Regional Sea scale. The Pilot successfully identified and mapped 18 coastal and seabed marine landscape types, and 4 water column marine landscape types.

The approach is particularly useful because it uses data which are currently available to enable spatial planning and development of management strategies for the marine environment. In coastal and estuarine waters, the approach could also be used to complement that taken under the Water Framework Directive (with reference to standards), and incorporate work undertaken for the UK Biodiversity Action Plan (BAP) to identify nationally-important marine features.

The draft *Offshore Marine Conservation (Natural Habitats &c.) Regulations 2003* are expected to remedy this shortcoming. However, the Habitats Directive currently only lists 8 coastal and marine habitat types in Annex I as requiring SAC designation, compared with 18 marine landscapes identified by the Irish Sea Pilot for the regional sea. It is evident, therefore, that the current Regulations can only contribute to the establishment of a network of nationally important areas, and not deliver its entirety^v.

Other potential shortcomings in the 1994 Regulations include ambiguity over what is included in the term “plan or project”, and whether the term has general applicability or is limited to certain consenting regimes. This is significant because plans or projects attract a more precautionary measure of control than most other activities.

Box 4 Offshore Natura 2000^{vi}

The notion that the provisions of the Habitats Directive did not extend beyond the 12nm limit of the territorial sea to the UK continental shelf was successfully challenged in the High Court in November 1999. Consequently, the proposed *Offshore Marine Conservation (Natural Habitats &c.) Regulations 2003* set out the proposed regulations to apply the Habitats and Birds Directives to the UK Continental Shelf and waters beyond 12nm from the baselines over which the UK exercises sovereignty. The Regulations will afford protection to species listed by the Directives, as well as requiring SACs and SPAs to be identified and protected.

All protected sites currently lie within territorial waters and are attached to the coast. A further stage of Natura 2000 site selection has now commenced to select sites beyond coastal waters and fully detached from the coast. JNCC, in partnership with the country conservation agencies, is leading on the selection of sites beyond territorial waters. The identification and proposal of SACs which are fully detached from the coast but lie in territorial waters remains with the relevant country conservation agency.

ADMINISTRATION

The differences in administrative and regulatory arrangements brought about by devolution in Wales are more structural and procedural than substantive in relation to nature conservation, reflecting that many new laws are the result of EC or international influences, which apply to the UK as a whole. Defra has responsibility to ensure

overall compliance with EC law or any international obligations, and negotiates these on behalf of the UK. Nevertheless, devolution has shifted responsibility for most matters in this area to the Welsh Assembly Government (WAG), with the implication that there is scope for the WAG to alter the terms of secondary legislation to take account of national concerns.

Box 5 Current regulatory responsibilities

Defra / WAG	Designating European Marine Sites Establishing Marine Nature Reserves Listing species on protected schedules Licensing relating to protected species Licensing release on non-native species Licensing of waste disposal and construction activities under FEPA 1985
CCW / English Nature	Advising on habitat and species protection Dissemination of knowledge Designation and oversight of SSSIs Selection and management of NNRs Making byelaws for NNRs, MNRs and European Marine Sites Statutory consultee on planning decisions and pollution consents

The Countryside Council for Wales (CCW) is the Government’s statutory advisor on nature conservation issues in Wales, with day-to-day responsibility for the implementation and enforcement of nature conservation law and policy. However, the Habitats Regulations 1994 places legal obligations on a number of other “relevant” and “competent” authorities, other than the nature conservation agencies, who are required to have regard to the requirements of the Habitats Directive in exercising their functions. However, there is no clear lead agency for the management of SACs in the UK, and each SAC can have a different lead authority as part of its Relevant Authorities Group (e.g. Sea Fisheries Committee, harbour authority, conservation agency). In Wales, CCW is taking the lead in implementing and managing SACs.

ISSUES ARISING

Marine nature conservation is complicated by the plethora of international, regional, European and national regulations, and the differing impact of each layer of legislation. The interim report of the Review of Marine Nature Conservation (RMNC)^{vii} argued that there has not been a systematic and co-ordinated approach to marine nature conservation in the UK, with the result that existing measures do not always offer the level of protection required. The RMNC also noted:

- lack of a comprehensive inventory of nationally important marine habitats and species as a basis for consistent decision-making;
- variations in the interpretation of environmental powers and duties, leading to inconsistencies in the application of conservation objectives;
- duplication of powers and confusion over what consents are required for different developments;
- gaps in regulation, filled in an ad-hoc manner without reference to any overall framework.

The final report of the RMNC^{viii} concluded that the current system for marine conservation is not fit for purpose. In particular the report states that, “*It does not provide the means to apply the ecosystem approach*

which is central to the marine stewardship process^{ix} and fundamental to delivering the Government's vision for the marine environment of 'clean, healthy, safe, productive and biologically diverse oceans and seas'. Nor will it allow Government to meet its international obligations". The report proposes a package of measures informed by a strategic policy framework for the management of the sea at a number of spatial scales which, when taken as a whole, are intended to address the shortcomings in the current arrangements for marine nature conservation.

Box 6 Key recommendations of the RMNC^x

- Government should finalise and apply the overarching UK policy framework of strategic goals, objectives, targets and indicators (Key recommendation 1).
- Government should promote Regional Seas with other countries in the NE Atlantic biogeographical region and take action to identify and adopt a series of Regional Seas (Key recommendations 2-5).
- Government should undertake a trial of marine spatial planning at the Regional Sea scale to determine the suitability of implementing such an approach across all UK waters (Key recommendation 7).
- An ecologically coherent and representative network of marine protected areas should be identified and established, and appropriate and proportional measures applied to ensure their conservation needs are met (Key recommendation 8).
- Government should introduce the necessary measures, including policy and legislation as appropriate, to underpin the application of the marine nature conservation framework throughout UK waters (Key recommendation 9).
- Government should ensure that mechanisms are in place to deliver enforcement arrangements capable of supporting any legislation underpinning the framework (Key recommendation 14).

Legislation

- The Habitats Directive does not necessarily provide a comprehensive nature conservation framework in the marine environment, due to significant gaps in coverage of marine habitats and species by the Directive, reinforced by shortcomings and gaps in existing measures for species conservation and for management of the wider marine environment.
- The selection criteria for marine habitats and species under the Habitats Directive will need to be reviewed along with their interpretation and application in the offshore environment. The current prescriptive site criteria are not sufficient to deliver the ecologically-coherent network of marine protected areas required under OSPAR and WSSD.
- There are uncertainties over the way in which European marine sites will be managed and the legal basis for safeguarding sites below LWM, and how these will interact with other areas of European competence e.g. fisheries^{xi}.
- Other shortcomings in the provisions of the Habitats Directive include uncertainty over the extent of assessment of "in combination" effects, difficulties in dealing with habitats on mobile coasts, the general lack of information on which to base decisions, and perceived weaknesses in supporting legislation.

Enforcement

- Mechanisms for enforcing environmental regulations in the marine context are, in general, severely lacking.

- The main limitation is the lack of bodies with appropriate powers, or dependence upon those bodies whose major concerns are terrestrial or relate to other matters. There is also a lack of co-ordination between these enforcement bodies.
- Legislation often does not explicitly define the geographical limits of its scope and competence, consequently enforcement agencies are unclear of the extent of their powers.

Governance

- As the management and consenting regimes for potentially damaging activities are largely sectoral, environmental considerations are predominantly secondary to the principal considerations of the regulating body.
- Marine nature conservation efforts are hampered by the absence of a coherent system of development control below LWM. There is a need for a single authority to take the initiative in strategic planning in the marine environment.
- The current Defra Review of Marine Fisheries and Environmental Enforcement^{xii} outlines the attractions of a single marine management agency with a remit beyond enforcement. The idea of a single marine agency should be pursued and its scope determined through further work based on the findings of the RMNC and the Department for Transport's (DfT's) Regulatory Review of Development in Coastal and Marine Waters (also known as the Review of Consents).

References

- ⁱ Vincent, M.A. *et al.*, (2004) *Marine nature conservation and sustainable development – The Irish Sea Pilot*. Report to Defra by the JNCC, Peterborough, p.98.
- ⁱⁱ Lundy Island (1986); Skomer, off the Pembrokeshire coast (1990); and Strangford Lough, Northern Ireland (1995). A fourth in the Menai Straits has been under discussion for many years.
- ⁱⁱⁱ Jones, P.J.S. (1999) Marine Nature Reserves in Britain: past lessons, current status and future issues. *Marine Policy*, **23** (4/5), p.375.
- ^{iv} SI 1994/2716 (amended by SI 1997/3055 and 2000/192).
- ^v *op cit.* ref (i), p.125.
- ^{vi} SACs and SPAs make up the *Natura 2000* network of protected areas throughout the European Union.
- ^{vii} Defra (2001) *Review of Marine Nature Conservation – interim report*. Defra, March 2001.
- ^{viii} Defra (2004) *Review of Marine Nature Conservation*. Working Group Report to Government. July 2004.
- ^{ix} On 6 March 2001 the Prime Minister announced the Government's intention of strengthening marine conservation measures, including the preparation of a series of marine stewardship reports, the first of which – *Safeguarding our Seas: a strategy for the conservation and sustainable development of our marine environment* – was published by Defra in 2002.
- ^x *op cit.* ref (viii), p.64-71.
- ^{xi} Boyes, S. *et al.* (2003) *Deficiencies in the current legislation relevant to nature conservation in the marine environment in the UK*. Report to JNCC. Institute of Estuarine and Coastal Studies, University of Hull.
- ^{xii} www.defra.gov.uk/corporate/consult/fish-env/consultation.pdf

This briefing is one of twelve which forms part three of *Legislative Reform for the Welsh Marine Environment*. The full report can be downloaded from www.wwf.org.uk/cymru
WWF is calling for a UK Marine Act with complementary devolved legislation. This Act would set a strategic legislative framework, and rationalise existing marine legislation concerned with management of the sea. It would also address specific concerns relating to the plethora of existing consents procedures in the marine environment.