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Enforcement of marine nature conservation Legislation: examining the scope for improvements

Building the evidence base for the Marine Bill

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Enforcement of Marine Nature Conservation Legislation – Examining the Scope for Improvements

CRO347 - Living Land and Seas Science Division

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Executive Summary

With increasing demands on coastal and marine resources over recent years, the issue of efficiency in marine management and enforcement mechanisms has come to the fore. There is recognition by stakeholders that existing marine nature conservation mechanisms need refining in order to ensure that an effective management and enforcement structure is provided. The recognition of the need to review marine nature conservation enforcement provisions has been recognised for some time and is well documented in a range of studies, most notably the Review of Marine Fisheries and Environmental Enforcement (Defra, 2004a) and the Review of Marine Nature Conservation (Defra, 2004b). The emerging requirements of the Offshore Marine Conservation Regulations (OMCR) and the Marine Bill also provide a driver to review enforcement provisions and an opportunity to enhance the mechanisms and structures which support such enforcement.

Royal Haskoning were commissioned by Defra to provide a review and assessment of the current range of marine nature conservation enforcement structures, roles and powers and to establish how the enforcement of marine nature conservation could be enhanced at the present time, and with direct regard to emerging marine management requirements. The primary aim of this research has been to complete a review of the current range of marine nature conservation enforcement structures, roles and powers and to establish how such structures and arrangements could be improved to address existing and emerging management requirements and issues. A further objective was to identify if and how such changes to enforcement arrangements could be used to deliver enforcement requirements under the OMCR and the nature conservation provisions proposed for the Marine Bill.

To meet these aims, existing information on enforcement responsibilities, provision and legislation has been collated, analysed and reported. Targeted consultation has also been undertaken to gather information relating to existing enforcement roles and practice, and to help determine and specify the actual issues which are assisting or impeding enforcement provision. From the analysis of data collated, a series of key issues have been identified which require resolution in order for an enhanced enforcement structure to be developed. The issues identified are the:

- co-ordination between enforcement agencies;
- spatially complex geographical coverage of enforcement powers (0-6 nautical miles (nm)/6-12nm/12+nm);
- enforcement powers and duties available to the relevant agencies;
- complexity of marine enforcement (legislation and roles and responsibilities);
- differences in approaches to enforcement of nature conservation legislation;
- problems relating to a reliance on terrestrially derived legislation;
- requirement to prove intent and evidence gathering;
- awareness amongst marine users regarding marine management;
- resourcing levels available to the relevant agencies; and
- accommodating emerging marine legislation.

Although direct assessment of available resourcing levels was not within the scope of this study, the remaining issues have been critically evaluated with a view to determining the options for enhancing existing structures, roles, duties and powers. The opportunities available under the Marine Bill and the OMCR have also been considered, as were the likely enforcement provisions that such instruments would require. This analysis has been provided with regard to the following classification which sought to focus option consideration towards solutions to address structural factors and matters relating to the roles and responsibilities of agencies within such a structure.

Regulatory Considerations

- structural Issues;
- spatial Issues;
- enforcement power and roles issues; and
- additional issues with the existing legislative framework.

Non-regulatory Considerations

- co-ordination issues; and
- awareness issues.

Additionally, a legal analysis has been provided with regard to the amendments to existing or emerging legislation which would enable key issues to be addressed more directly.

At the present time, levels of actual marine nature conservation enforcement in the UK are not well established. The key issues which need to be addressed to provide for an enhanced enforcement provision relate to the need to increase levels of co-ordination between agencies, so that existing enforcement powers are fully utilised and synergies realised. This issue is especially critical in the UK where the conservation agencies have limited marine enforcement powers and enforcement provision is, therefore, usually provided by agencies with a wider enforcement role (such as the Sea Fisheries Committees (SFC)). There is, as such, a critical need to ensure that any enhancement of enforcement structures provides for greater levels of co-ordination and the ability for nature conservation enforcement issues to be specifically targeted. In this respect, the findings of this report support an enhanced potential role for nature conservation agencies within the wider enforcement structure. Recommendations have been provided as to the form of possible enforcement structures and the role of conservation agencies within this.

A series of key legislative requirements have also been identified to ensure that enforcement agencies are provided with the powers to address emerging spatial shifts in enforcement requirements (such as the designation of offshore European marine sites). Further to this, where gaps in the powers of enforcement agencies have been identified, legislative provisions have been provided to address this.

As the UK embarks on a process of expanding its marine management provisions, it is hoped that the recommendations offered within this report, provide the substantive enforcement base that will be required to enable effective management of the UK's marine resources.

Acknowledgements

The efforts of officers of Defra, Natural England, Countryside Council for Wales, Scottish Natural Heritage, the Police, Marine Fisheries Agency, Sea Fisheries Committees (and the Association of Sea Fisheries Committees), Scottish Fisheries Protection Agency, Scottish Inshore Fishery Advisory Group, Maritime & Coastguard Agency, Marine Connections and the World Fund for Wildlife, are all acknowledged in the provision of this report. The efforts of these groups in workshops sessions and in the provision of enforcement questionnaires has been invaluable in establishing the range of marine nature conservation enforcement activity found in UK waters at the present time.

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1 Introduction

Background

- 1.1 The UK is approaching a pivotal moment in its management of the marine environment. The Department for Environment, Food and Rural Affairs (Defra) is currently developing policy in a range of areas that will lead to new legislation affecting the way human activities are managed in the marine environment.
- 1.2 Proposals for a Marine Bill are currently being developed under five main themes:
- managing marine fisheries;
 - planning in the marine area;
 - licensing marine activities;
 - improving marine nature conservation; and
 - the potential for a new marine management organisation.
- 1.3 The Marine Bill offers an opportunity to introduce marine nature conservation provisions (if deemed appropriate) for improved protection of marine biodiversity. Proposals under consideration to improve the conservation of marine biodiversity include:
- i. new mechanisms for the conservation of marine ecosystems and biodiversity (including marine protected areas (MPAs));
 - ii. marine ecosystem objectives;
 - iii. controls on unlicensed activities;
 - iv. species conservation; and
 - v. improvements to existing environmental enforcement.
- 1.4 For further information on Defra's Marine Bill consultation document see: <http://www.defra.gov.uk/corporate/consult/marinebill/index.htm>.
- 1.5 In accordance with the principles of better regulation, regulatory approaches should only be introduced where it is deemed necessary and there is no other reasonable alternative. As such, there is a need to build the evidence base to assess whether legislative provisions are required for the marine nature conservation proposals above, and if so, establish what these should consider.
- 1.6 The Marine Bill also offers an opportunity to improve the delivery of enforcement for existing nature conservation legislation in the marine environment.
- 1.7 Royal Haskoning were commissioned by Defra (Research Contract CRO347) to build the evidence base as to whether further legislative provisions (or changes to existing provisions) are required to deliver improvements to enforcement of nature conservation within the marine environment. In particular, this review is required to highlight any recommended changes to existing mechanisms, roles, arrangements, capabilities, powers and functions of enforcement bodies. The scope of this research is to also consider the delivery of both existing and future enforcement requirements

for marine nature conservation under the Marine Bill and the extension of the Habitats and Bird Directives beyond 12 nautical miles (nm).

- 1.8 Historically, marine enforcement activities have been developed to meet the needs of sectors operating in the marine environment in response to international, national and regional obligations. Existing enforcement of marine nature conservation legislation primarily relates to offences under the Wildlife and Countryside Act 1981 (and its amendments) (W&CA) and the Conservation (Natural Habitats, &c.) Regulations 1994 (hereafter referred to as the 'Habitats Regulations'). The latter legislation transposes the European Community (EC) Habitats Directive (92/43/EEC) into UK law.
- 1.9 Future marine nature conservation enforcement activities will also be required under the Offshore Marine Conservation (Natural Habitats, &c.) Regulations (OMCR) 2006 (to be transposed in 2007) which extends the requirements of the Habitats and Bird Directives beyond 12 nautical miles. Provisions being considered as part of the Marine Bill (i.e. MPAs, species protection and unlicensed activities) are also likely to require enforcement.
- 1.10 Enforcement in the marine environment has been recognised as both complicated and resource intensive because of the number of organisations with enforcement duties, each with differences in geographical extent, powers, functions and responsibilities (Defra, 2004b). The nature of the marine environment makes observation and evidence gathering difficult, especially when activities are taking place far from land.
- 1.11 It is acknowledged that the scope to improve enforcement of marine nature conservation has previously been considered in a number of reviews. The Review of Marine Nature Conservation (RMNC) Working Group, for example, recognised the difficulties of enforcement in the marine environment and provided a number of recommendations to ensure that mechanisms are in place to deliver enforcement arrangements capable of supporting any legislation underpinning a proposed marine nature conservation framework (Defra, 2004b). Additionally, the Review of Marine Fisheries and Environmental Enforcement (the Bradley Review) (Defra, 2004a), provided a commentary on organisational options which could support and enhance an enforcement framework.
- 1.12 The aim of this research document is to assess and further develop the scope for improvements and rationalisation of the existing enforcement arrangements to deliver current and future marine nature conservation requirements in an integrated manner. Changes to, or realignment of existing enforcement arrangements, powers, functions, responsibilities which could lead to efficiency savings and improved enforcement are all considered a primary objective. The overall intent of this exercise is to assess what further legislative provisions are required (if any), or if there is a need to amend existing arrangements or consider new arrangements for the delivery of enforcement for nature conservation in the marine environment.
- 1.13 Please note that this document extensively utilises the findings of the Bradley Review, outlining current enforcement activities and arrangements and an analysis of

opportunities to improve enforcement through changes to organisational arrangements, duties, functions and approaches.

Project Aims and Objectives

- 1.14 The principle focus of this research has been to undertake a review of the current enforcement activities and arrangements in the marine environment for the delivery of nature conservation legislation (current and future). The primary objective following the review is to develop options for improvement of enforcement arrangements for marine nature conservation provisions, specifying any legislative changes to ensure delivery.
- 1.15 The research aims and objectives are to:
- i. identify where there is scope for existing enforcement mechanisms and arrangements, capabilities, powers and functions to be strengthened or improved;
 - ii. identify where there are synergies between existing enforcement functions and where a realignment of roles, responsibilities, arrangements, powers, and functions could lead to efficiency savings and improved enforcement;
 - iii. consider if/how existing authorities responsible for the enforcement of wider marine legislation could be used to enforce marine nature conservation legislation, and provide recommendations; and to
 - iv. identify if/how changes to current or proposed enforcement arrangements could be used to deliver the likely enforcement requirements under the OMCR and the nature conservation provisions proposed for the Marine Bill.
- 1.16 The specified outcomes of this report are to provide:
- i. a review of marine biodiversity enforcement arrangements, their jurisdiction and responsibilities;
 - ii. a brief summary of incident and offence reporting with regards to marine nature conservation;
 - iii. an analysis of opportunities for improving the enforcement of existing nature conservation legislation through changes to organisational arrangements, duties, functions, approaches;
 - iv. case studies and examples of occasions where improvements to existing enforcement arrangements could lead to better delivery of enforcement objectives;
 - v. options to improve existing enforcement arrangements for delivery of current and future marine nature conservation provisions in the OMCR and Marine Bill, outlining changes to organisational arrangements, duties, functions and approaches; and to
 - vi. highlight any shortcomings the proposed changes will have in the delivery of future marine nature conservation enforcement arrangements.
- 1.17 The conclusions and options outlined in this report are intended to provide a reasoned approach as to how the existing enforcement suite in the UK could be amended, roles realigned or new structures created, which would provide the basis for potential changes to the existing enforcement system in UK waters.

Geographical Scope

- 1.18 The geographical scope of this review is Welsh territorial waters, English territorial waters and UK offshore waters.
- 1.19 Enforcement of licensed activities are excluded from the scope of this review, since enforcement will be provided in the licensing regime. A review of fisheries legislation was also excluded, with the exception of fisheries enforcement which may also be suitable for the delivery of marine nature conservation enforcement requirements.
- 1.20 The seaward edge of the study area for this research is 200 nautical miles (nm). Under the Continental Shelf Act (of which section 1(7) provides for orders to be made), the UK has jurisdiction of the seabed out to the edge of the continental shelf, (which off north-west Scotland is 350 nm), however, activities on the seabed are generally licensed (and, as such, outside the scope of this study).

Report Structure

- 1.21 The report is structured to provide an account of the existing enforcement structure, to determine key issues relating to the provision of existing and future nature conservation enforcement requirements and to then provide an analysis based account of how recommendations are derived on a regulatory and non-regulatory basis to address such issues. The following sections therefore:
- outline existing roles and responsibilities of enforcement agencies;
 - assess emerging nature conservation enforcement requirements;
 - provide an account of the reviews of previous studies and consultation to support this study;
 - offer an account of the analysis relating to the above; and
 - provide a suite of recommendations to ensure that existing and emerging enforcement issues are addressed.

2 Adopted Approach

2.1 A pragmatic approach was adopted to complete this review and the subsequent analysis of opportunities for marine nature conservation enforcement. A review of existing studies and reports was undertaken prior to the completion of a targeted consultation exercise. This information was then analysed to identify opportunities and options for consideration to improve existing enforcement, with a particular focus on changes to organisational arrangements, duties, functions and responsibilities.

2.2 The following sub-sections outline the approach adopted for this research.

Literature Review

2.3 As previously noted, numerous reviews have already been carried out to assess enforcement in the marine environment. A structured review of these key studies was undertaken to describe the current 'marine enforcement baseline' both in terms of its actual mechanisms, structures, roles, geographical extent, responsibilities, and to highlight opportunities for the rationalisation of existing arrangements.

2.4 Review focus centred on the following existing studies:

- Boyes, W., Warren, L. and Elliott, H. 2003. Regulatory responsibilities and enforcement mechanisms relevant to marine nature conservation in the United Kingdom. Report of the Institute of Estuarine and Coastal Studies, University of Hull to the Joint Nature Conservation Committee (JNCC);
- Boyes, S. and Elliott, M. 2003. Effectiveness and Weakness of Enforcement in the UK Marine Environment - Responses to Questionnaire. Report of the Institute of Estuarine and Coastal Studies, University of Hull to the JNCC;
- Boyes, S., Warren, L. and Elliott, M. 2003 Summary of Current Legislation Relevant to Nature Conservation in the Marine Environment in the United Kingdom (2003) Report to the JNCC;
- Defra 2002 Safeguarding Our Seas: A Strategy for the Conservation and Sustainable Development of our Marine Environment;
- Defra 2004a. Review of Marine Nature Conservation. Working Group Report to Government;
- Defra 2004a. Review of Marine Fisheries and Environmental Enforcement;
- Defra 2005b. Enforcement Policy Statement;
- Environmental Audit Committee 2004. Environment Crime: Wildlife Crime;
- Institute for European Environmental Policy (IEEP) 2005. Issues with Marine Wildlife Enforcement - A Report to CCW; and
- Partnership for Action Against Wildlife Crime (PAW) 2002. Enforcement of marine wildlife legislation - Responses to Marine Wildlife Enforcement Working Group Questionnaire. Input to Irish Sea Pilot.

Consultation

2.5 Consultation with key enforcement bodies was considered an important component of the review to:

- gather information on the likely scale of offences;
- identify case-studies of successful enforcement;
- highlight areas of overlap or co-ordination; and to
- ensure information collated on roles, responsibilities and jurisdiction were correct.

2.6 Key staff from (amongst others) Natural England (NE) (previously English Nature), the Countryside Council for Wales (CCW), the Environment Agency (EA), the Maritime Coastguard Agency (MCA), the Police and the Sea Fisheries Committees (SFC) were consulted via a short questionnaire (refer to Annex A). For a full list of consultees and their comments, please see the detailed comments list in Annex B.

2.7 Bespoke questionnaires were provided to each organisation in an effort to reduce the risk of 'nil' returns. Wherever possible, previous feedback obtained from agencies or organisations on enforcement was included in the organisation specific questionnaires.

Analysis

2.8 Feedback from the questionnaires and the critical evaluation of existing studies have been analysed to deliver the recommendations presented in this final report.

2.9 Possible solutions (in the form of legislative requirements and supporting non-regulatory measures) have been organised into options that could be fully or partially implemented. The intent has been to provide a range of options for consideration which will maximise the benefits of existing and emerging legislation, to provide UK waters with a coordinated, effective enforcement system to protect and enhance marine wildlife and habitat.

3 Existing Enforcement Arrangements

- 3.1 Enforcement duties in the marine area are carried out by a number of agencies in the UK, they include: NE, CCW, SFCs, Marine Fisheries Agency (MFA), MCA, the EA, Local Government and the Police.
- 3.2 Historically, marine management, legislation and enforcement has evolved in response to the sectoral management of marine resources. In comparison with marine nature conservation enforcement, fisheries legislation and management is more established and developed. Conservation provisions have generally been conceived and worded in terms of the terrestrial environment and subsequently applied to the marine environment. Whilst provisions for marine wildlife clearly exist, the overriding emphasis of existing wildlife conservation legislation in the UK is terrestrial in focus.
- 3.3 Current enforcement of nature conservation legislation in the marine environment pertains to offences under:
- The W&CA 1981 (and its amendments); and
 - The Conservation (Natural Habitats, &c.) Regulations 1994.
- 3.4 To date, nature conservation enforcement roles have been vested within largely terrestrial-based organisations (i.e. the Police and nature conservation agencies). The following sub-sections provide an account of existing marine nature conservation enforcement provisions, outline enforcement roles and responsibilities, the mechanisms used, the spatial extent of enforcement and the occurrence of any overlap of powers. A diagram to support the descriptions relating to agency provisions is provided in Figure 1.

Key Organisations and Roles

- 3.5 Key enforcement organisations have been grouped as follows:
- i. agencies with a primary legislative basis for marine nature conservation enforcement; and
 - ii. agencies with wider enforcement roles (for example fisheries) of which nature conservation is or could be a secondary role.
- 3.6 The following provides an account of these organisations (within these classifications) and identifies their roles and responsibilities.

Agencies with a Primary Focus on Marine Nature Conservation Enforcement

Statutory Conservation Bodies

Role

- 3.7 NE and CCW are statutory organisations with established roles and duties for nature conservation. They have duties for the provision of advice for nature conservation (in England and Wales respectively) to both central Government and other public

bodies. They also have the power in some circumstances to regulate and enforce activities which are likely to adversely affect nature conservation interests. However, the extent to which such actions can be taken in the marine environment is limited, both in law and in practice.

Spatial extent of responsibility

- 3.8 NE and CCW are able to exercise their functions relevant to marine nature conservation out to the 12nm limit, adjacent to their areas of respective territorial water. However, as outlined below, any enforcement action that may be taken is confined to matters affecting areas designated for their nature conservation interest.
- 3.9 NE and CCW only have a specific enforcement role under the W&CA where an area is notified as a site of Special Scientific Interest (SSSI), or under the Habitats Regulations where a site is a Special Area of Conservation (SAC) or Special Protection Area (SPA). The majority of SSSI's do not extend below Mean Low Water (MLW) although there are some notable exceptions (i.e. the Wash SSSI (England's largest SSSI) includes extensive subtidal areas and the Duddon Estuary also includes subtidal land within the boundaries of the SSSI designation). These sites, however, represent a small percentage of the overall SSSI suite.

Legislative basis for enforcement and offences

- 3.10 The enforcement role of NE and CCW is largely set out within the W&CA. There are several offences under Section 28P of the W&CA, as substituted by Schedule 9 to the Countryside and Rights of Way (CRoW) Act 2000 and further amended by the Natural Environment and Rural Communities (NERC) Act 2006. The first under Section 28P(1) applies to owners / occupiers of sites who undertake "operations likely to damage" a SSSI without the consent of NE or CCW. The second under Section 28P(6) applies to any person who 'intentionally or recklessly destroy or damage the special interest of a SSSI' and who knew the site was an SSSI.
- 3.11 Section 28P(6A), added by NERC, introduces an additional offence, attracting a lesser penalty, similar to that above but without the necessity to prove knowledge that an area damaged or destroyed was a SSSI
- 3.12 Under Section 28P(3) of the W&CA, it is an offence for a public body to carry out an operation likely to damage a SSSI without the consent of the relevant conservation agency or without satisfying other conditions set out in that sub-section.
- 3.13 NERC has introduced a further offence, where a public body fails to seek the conservation agency's advice when giving permission to others to carry out activities which may damage the special interest of a site or having taken that advice, decides to proceed against it without first satisfying the prescribed conditions.
- 3.14 Section 28R of the W&CA provides the power to make byelaws on any SSSI and to enforce such powers. At the present time, however, conservation agencies are waiting for government policy to emerge on byelaw provision.

- 3.15 Section 37 of the W&CA provides the power to make byelaws for the protection of an area designated as a Marine Nature Reserve (MNR) and to enforce provisions (refers back to Section 20 of the National Parks and Access to the Countryside Act 1949). Section 37 also specifically authorises prohibitions or restrictions on the following activities:
- entry or movement of persons or vessels;
 - interference with animals, plants or objects; and
 - depositing rubbish.
- 3.16 However, under the W&CA, there can be no restriction of the public right of navigation, except by pleasure boats in parts of a reserve at particular times of year. Nor may byelaws make unlawful any discharges from vessels, operations more than 30 metres below the sea bed, or anything done to safeguard a vessel, cargo or life; and nothing may be done that interferes with the functions of a "relevant authority" or with any private right. However, MNR designation is limited and there are only three MNRs in the UK: Lundy Island; Skomer and Strangford Lough.
- 3.17 The Conservation (Natural Habitats & c.) Regulations 1994 follow the legislative framework in place prior to the amendments introduced by CRoW. As such, the only offences which exist *per se*, which NE and CCW can enforce, are breaches by owner/occupiers and, in more limited circumstances, those not provided for by the W&CA.
- 3.18 Regulation 22 of the Habitat Regulations, however, provides the power (following NE/CCW application) for the Secretary of State to make a Special Nature Conservation Order (SNCO) to any land within a European site. It is then an offence for any person to carry out operations contained therein without the consent of the conservation agencies, which NE/CCW can then enforce. The procedure for providing SNCOs, which require ministerial sign-off is, however, lengthy and cumbersome and the use of SNCOs in response to management issues is limited (and so far as European sites that are also SSSI are concerned, no longer really necessary).
- 3.19 Regulation 36 of the Habitat Regulations provides the power to make byelaws for the protection of European marine sites (refers back to Section 37 of the W&CA and Section 20 of the National Parks & Access to the Countryside Act 1949). At the present time, however, as outlined above for SSSIs, conservation agencies are awaiting government policy to provide the scope for byelaw making powers.

Actual enforcement roles

- 3.20 Conservation agencies take responsibility for SSSI enforcement under the W&CA, including those SSSI which are designated for their coastal/marine interest features. Where a potentially unlawful activity has taken place, the conservation agencies may investigate. The enforcement route open to them will depend on a range of factors such as who has carried out the activity, whether it is on the list of operations likely to damage the site and whether notice has been given of intention to carry it out. As described below, conservation agencies use a range of mechanisms to deal with illegal activities.

- 3.21 Conservation agencies are also responsible for enforcing the provisions of an SNCO under Regulation 23 of the Habitats Regulations and breach of Regulations 36 and Section 37 byelaws.
- 3.22 Ultimately, the SSSI and Habitat Regulations legislation contains a range of offences for which NE/CCW can take enforcement action, which may lead to a prosecution. Under the SSSI legislation, the majority of offences are applicable to owners and occupiers of SSSI. In the marine environment, these provisions are unlikely to be relevant given the tenure of marine and coastal sites, which almost entirely rests with the Crown.
- 3.23 Therefore, the most relevant offences under the SSSI legislation for marine sites are the Section 28P(6) and Section 28P(6A) (W&CA) 'any person' offences. These offences allows conservation agencies to take enforcement action against those who neither own nor occupy the land in which they damage, disturb or destroy a special interest feature of the SSSI. The former offence requires conservation agencies to prove that a person knew that the activity they were carrying out was within a SSSI, and having this knowledge, they carried on to cause the damage in an intentional or reckless manner. In the case of the latter, offence knowledge does not have to be proved, but this 'lesser' requirement is reflected in the lower statutory maximum fine for this offence (£2,500) compared to the maximum of £20,000 at the Magistrates Court or an unlimited fine at the Crown Court for the former.
- 3.24 NE have had reports of incidents of illegal vehicle use (albeit on the Intertidal areas of coastal SSSI - either accessing sites for bait digging; cockling purposes or general 'joy-riding'); disturbance caused by boats and dredging of mussel beds. In the majority of these cases these are 'reports' of incidents following which it has been difficult to prove all the elements of the 'any person' offence that existed prior to NERC (in particular that a person had the requisite 'knowledge' that they were within a SSSI). Prior to the "any person" offence introduced by NERC, it would in most cases have been difficult to prove commission of an offence until the second time the activity was undertaken, assuming that the conservation agency sent them a warning letter after the first activity or it can be proven that they could have reasonably been expected to see a site notice as they accessed the SSSI. There is also the additional problem of actually catching people 'in the act' coupled with conservation agency staff not possessing any power to stop people and ask for names and addresses.
- 3.25 At the time of writing, to the knowledge of NE staff, no enforcement action for any breach of byelaws for incidents on marine SSSI has been taken.
- 3.26 NE has two Enforcement Officers based at its national office who provide enforcement advice to area team staff and, in addition, lead on high level enforcement action on all SSSI incidents. Over 80% of NE's enforcement action is undertaken by 22 area teams (through clear levels of delegation allowing them to do so). Incidents requiring enforcement may range from a technical offence (i.e. no notice or consent given but no damage) through incidents of minor damage to cases where damage of a more serious nature has occurred. Enforcement work undertaken at national and area team levels covers the whole range of the SSSI series, not just marine enforcement.

- 3.27 In addition, NE has framework call-off contracts for investigating officers and the provision of legal advice from solicitors.
- 3.28 NE also ultimately has the power to prosecute for offences under the above legislation and, therefore, uses a range of enforcement mechanisms to address different levels of offences. These can range from site notices, information leaflets, warning letters, formal investigations and cautions.
- 3.29 CCW also has a range of local and central office based enforcement staff and has call up contracts with two legal companies who provide advice and prepare cases for prosecution.
- 3.30 No figures are available for cautions and/or warnings etc from other organisation.
- 3.31 NE enforcement in the sense of active inspections of activities is unknown in marine locations.

The Police

Role

- 3.32 As primary law enforcement officers, the Police have some key responsibilities relating to species legislation in the marine environment (out to 12 nm). The police have a series of clearly defined marine nature conservation enforcement roles, which are described below.

Legislative basis for enforcement and offences

- 3.33 The police have responsibility for enforcing protected species legislation for the following legislation:
- W&CA – All Part 1 offences;
 - CRoW/NERC provisions - all sections relating to Part 1 of the W&CA;
 - Habitat Regulations - all sections relating to species protection (e.g. Section 39);
 - Control of Trade of Endangered Species (Endangered Species (Enforcement) Regulations 1997 - all sections;
 - Salmon and Freshwater Fisheries Act 1968 (powers as per fisheries Officers of EA); and
 - Conservation of Seals Act 1970 - all enforcement sections.
- 3.34 The police enforcement roles relate to the use of the above provisions as law enforcement officers (i.e. utilising their powers as constables).

Spatial extent of responsibility

- 3.35 Police Constables in England and Wales have powers in all areas (of England & Wales). Special Officers (as constables) have powers of enforcement in their home

force and forces which abut their home force. Additionally, they have enforcement powers out to 12nm.

Actual enforcement roles

- 3.36 The police engage in on-shore and water patrols using police vessels. Additionally, police respond to specific incidents and have a passive enforcement role in education and awareness raising. Total numbers of officers involved in marine nature conservation enforcement are not available; however, in North Wales 20 divisional wildlife officers are in place.

Overall consideration of Enforcement bodies and activities

- 3.37 Of the existing agencies responsible for marine conservation, only the conservation agencies have a primary nature conservation role. Other agencies have wider enforcement roles, which may include nature conservation. With regard to powers of key importance to nature conservation, the SFCs and the MFA have powers at their disposal, which can provide a statutory basis for nature conservation enforcement. However, the use of these powers is currently limited to a small number of sites (e.g. SFC powers linked to the regulation of fisheries for environmental needs). Other agencies such as the Police and the EA can enforce selective elements relating to species protection, but such enforcement actions are limited to this extent.
- 3.38 Based on the consultation responses (to this and other reviews), it would seem that the current range of nature conservation powers available are not being widely used and limited levels of focused co-ordination between agencies, coupled with a issues relating to role definition appears to be at the root of this problem. Despite the absence of any overarching strategy for enforcement provision, initiatives such as the PAW are actively seeking to provide a coordinated approach to enforcement, which is then applied at a regional level. These issues are discussed in detail in the analysis section of this report (Section 6).

Agencies with wider enforcement roles of which nature conservation is or could be a secondary role

- 3.39 The agencies listed below have an enforcement role which is primarily defined with regard to issues other than nature conservation. The agencies may, however, have a significant existing or potential key role to play in the enforcement of nature conservation in the pursuit of wider enforcement issues.

Sea Fisheries Committees (SFC)

Role

- 3.40 SFCs are statutory bodies created under the Sea Fisheries Regulation Act 1888 to manage fisheries within inshore waters. The committees are comprised of local authority members and other members who may be appointed by the Secretary of State for the Environment, Food and Rural Affairs or the Welsh Assembly Government (WAG). The SFCs are a distinct entity from the MFA, but they represent the basic unit of regulatory influence in relation to inshore fisheries management.

Spatial extent of responsibility

- 3.41 England and Wales are covered by twelve SFCs which are allocated a respective district which describes their jurisdiction. They apply to England and Wales only and have jurisdiction for inshore fisheries (up to 6 nm). Due to bay closing lines, in some instances, jurisdiction extends to over 25 miles from MLW.

Legislative basis for enforcement and offences

- 3.42 SFCs draw on a wide and complex range of Fisheries legislation to provide their enforcement powers. The main legislative tool of SFCs is byelaw making powers, as provided by the Sea Fisheries Regulation Act 1966, as amended by the Environment Act (1995). The Sea Fisheries Regulation Act provides the basis for fisheries management byelaw provision, whilst the Environment Act provides byelaws to address marine environmental matters. SFC byelaws are signed into law by either the Secretary of State (as above) or WAG and provide the requirement and basis for enforcement action.
- 3.43 The Sea Fisheries (Wildlife Conservation) Act 1992 requires SFCs to have regard to marine flora and fauna. This provision does not, however, provide any explicit statutory basis for SFCs to actually take enforcement action relating to any wildlife or nature conservation provision and, at present, it is difficult for SFCs to address this issue. This matter is discussed in detail in the analysis section (Section 6).

Actual enforcement roles

- 3.44 SFC enforcement roles relate to the enforcement of offences outlined in a wide range of national and international fisheries legislation and also of local SFC byelaws, relating to fisheries management issues. In this respect, offences and enforcement action will differ from area to area with regard to fisheries and environmental management issues. In the pursuit of enforcing byelaws, Sea Fisheries Officers have the powers of a constable. With respect to existing or potential nature conservation enforcement, the key element which is of relevance is that of byelaw provision. Byelaw provision offers the opportunity for SFCs to provide management and subsequent enforcement which can enable a uniform approach to fisheries and nature conservation enforcement. In contrast to the identified limitation in relation to the enforcement activities of the CA's, there is evidence of a far higher rate of enforcement activity by SFCs.
- 3.45 The process of enforcement is largely defined by specific regulations such as Police and Criminal Evidence (PACE) 1984 and other later legislation concerning disclosure and evidence gathering/surveillance.
- 3.46 The duties of SFCs are less than explicit in respect of a 'pure' nature conservation function, as opposed to defined fisheries management duties in the 1966 Act. Hence, SFCs can regulate fisheries to protect the environment but no other activities such as mineral extraction.
- 3.47 Some SFC Officers are also cross warranted with the EA and the MFA.

- 3.48 In the pursuit of its enforcement roles, the SFCs have an existing water based enforcement presence, with 33 existing patrol vessels. The SFCs operate by district to provide targeted surveillance and enforcement from the shore and on the water.

Environment Agency (EA)

Role

- 3.49 A questionnaire response was not received from the EA, and the details below were therefore obtained from the wider suite of documents which support this review. The EA provides a range of regulatory environmental functions in the marine and coastal environment. The EA has an enforcement role relating to pollution prevention, fisheries management and environmental monitoring. Much of its regulation and enforcement involves licensing and consents for potentially impacting activities and operations (EA memorandum). In this respect, the EA has a limited nature conservation role, restricted to where specific native fish species are considered to be wildlife, although the Agency's pollution control function may impact in marine conservation in an ancillary way.
- 3.50 With regard to fisheries, the EA is responsible for the management of migratory salmon, trout and eel stocks. They have the powers of an SFC in a number of coastal and estuarine areas including the Thames, Dee and Severn Estuaries, and the Isle of Wight. However, their management of sea fisheries is extremely limited with regard to legislation established in areas where they have the powers of a SFC.

Legislative basis for enforcement and offences

- 3.51 Under the Salmon and Freshwater Fisheries Act (1975), the EA is authorised to manage migratory salmon, trout and eel stocks. This includes the issuing of licenses and enforcement of license breaches and criminal offences relating to the Act.

Spatial extent of responsibility

- 3.52 The EA regulates salmon, sea trout and eel fisheries in all inshore waters out to 6nm and, as outlined above, has regionally specific functions as an SFC in a small proportion of inshore waters.

Actual enforcement roles

- 3.53 EA fisheries enforcement activity is primarily focused on salmonid enforcement. Actual sea fisheries enforcement (when rarely conducted) is nearly always carried concurrently with salmonid or eel enforcement initiatives (Defra, 2004). The absence of specific sea fisheries legislation and powers within most coastal waters results in negligible sea fisheries management. Under the Salmon and Freshwater Fisheries Act (1975), warning and prosecution are the EA's normal enforcement procedures for criminal offences. As supplementary action, the EA are also able to seize fish, fishing instruments, vehicles or vessels as required (EA, 2006). In 2004, the EA had 26 small inshore vessels for this purpose, and also relied on significant numbers of foot and vehicle patrols along the foreshore.

- 3.54 The EA regulates the activities discussed in this section by licensing, permitting and consents. If conditions of these agreements are breached or legislation is not complied with, the EA has the power to issue enforcement, works and prohibition notices (where there is an imminent risk of serious environmental damage). They can also suspend or revoke environmental licenses, vary license conditions, or implement injunctions. In some instances, remedial action can be undertaken by the EA, the cost for which is charged to those responsible. In addition to these actions, criminal offences are enforced through a system of warnings, cautions and prosecutions. (EA 1998, 2006).

Marine Fisheries Agency (MFA)

Role

- 3.55 The MFA has responsibility for enforcing the Common Fisheries Policy (CFP) and National Sea Fisheries Regulations. The MFA coordinates a national programme of surveillance and enforcement further to the above, from its headquarters in London.

Legislative basis for enforcement and offences

- 3.56 The majority of MFA legislation relevant to enforcement relates understandably to fisheries management. Within this suite of legislation, however, specific elements do provide the scope for environmental and/or nature conservation roles to be addressed by the MFA.
- 3.57 The Sea Fish (Conservation Act) 1967 (Sections 1, 2, 3, 4, 4a, 5, 6, 11, 15, 16) provides Ministers with their main powers to regulate the commercial use of fishing for, and landing, of sea fish by UK vessels. The main provisions are size limits for fish, regulation of nets and other fishing gear, licensing of fishing boats, restrictions on fishing for sea fish, prohibition of landing sea fish caught in certain areas, penalties for offences, certain powers for BSFOs. Section 5(A) relates to environmental enforcement, Ministers are provided with powers to make prohibitions for marine environmental protection purposes under National fisheries legislation (e.g. Wash razor shells).
- 3.58 The Food and Environment Protection Act 1985 (part II) (FEPA) prescribes controls on deposits of articles or materials in the sea/tidal waters arising from construction or disposal activities in the marine environment. The primary objectives are to protect the marine environment and human health, and to minimise interference and nuisance to other marine users. The MFA are authorised to enforce FEPA.
- 3.59 Fishery Inspectors, whether they are in the Royal Navy or the MFA, are appointed by law as BSFO's under Sections 7 and 8 of the Sea Fisheries Act 1968. All Royal Navy Officers are by default BSFOs, but this function is only used once officers have been trained by the MFA. The MFA derive general enforcement powers from the Act and from other fisheries Acts and Statutory Instruments. This includes the power to detain fishing vessels to the nearest convenient port for further investigation. The MFA do not have powers to arrest fishermen.

Spatial extent of responsibility

- 3.60 The MFA's responsibility extends to the whole of UK waters for the surveillance and enforcement of all fishing vessels and anywhere outside those limits for British vessels.

Actual enforcement roles

- 3.61 The MFA have powers to enforce national prohibition orders for inshore SACs made under Sections 3 or 5A of the Sea Fish (Conservation) Act 1967 (e.g. The Razor shells, Trough shells and Carpet shells (Specified Sea area) (Prohibition of Fishing) Order 1998).
- 3.62 The MFA also have the potential to enforce any EC closed areas established for marine conservation purposes via the EC Technical Conservation Regulation 850/98. At present, this power has only been used for the Darwin Mounds in Scottish waters.
- 3.63 The MFA enforce a range of closed area and restricted access measures under EC and national fisheries regulations. These are purely for the conservation of juvenile and spawning fish.
- 3.64 Enforcement on land is carried out by coastal fishery inspectors based at port offices. There are currently 21 port offices around the coast of England and Wales which are manned by 58 coastal fishery inspectors and 13 London HQ based fishery inspectors. Inspectors undertake investigations and prosecutions, where appropriate, when breaches of the fisheries and FEPA regulations are identified.
- 3.65 Aerial and seaborne surveillance activities are coordinated from the Operations Room in the MFA headquarters to ensure that adequate levels of enforcement surveillance for British Fishery Limits all year round. This includes the compilation of weekly tasking schedules which identify patrol areas for the ships and aircraft.
- 3.66 Enforcement at sea is carried out under a contractual agreement with the Royal Navy's Fishery Protection Squadron (RN FPS). Additionally, a minimum of 2 Royal Navy Fishery Protection Vessels (FPVs) are at sea on patrol each day. A Satellite Vessel Monitoring System (VMS) is operated through the MFA Operations Room. Using the VMS system, the MFA can track the position of all fishing vessels over 15 metres long.

Maritime and Coastguard Agency (MCA)

Role

- 3.67 The MCA (an agency of the Department for Transport), is responsible for implementing the Government's maritime safety policy throughout the UK. Their responsibility covers three main areas: shipping safety; pollution prevention; and search and rescue. Their overall policy being safer lives, safer ships, cleaner seas.

Spatial extent of responsibility

- 3.68 For enforcement which may relate to nature conservation in the wider sense, the MCA are the competent authority responsible for pollution prevention from ships in UK waters. This responsibility extends to 200nm.

Legislative basis for enforcement and offences

- 3.69 Powers of enforcement for the MCA come from the Merchant Shipping Act 1995. This Act authorises MCA officers to inspect vessels and respond to pollution incidents.

Actual enforcement roles

- 3.70 Appointed surveyors are allowed to inspect UK and foreign vessels whilst in UK waters to assess compliance with health, safety and pollution prevention standards. In addition, appointed inspectors are able to enter any premises in the UK or board any UK ship in international waters for inspection if considered necessary. Inspectors may issue improvement or prohibition notices in relating to unsafe practices.

- 3.71 Currently the following enforcement staff are employed by the MCA:

- 1 principal Enforcement Officer;
- 2 Enforcement Officers to cover England & Wales;
- 1 Enforcement Officer to cover Scotland and Northern Ireland;
- 1 Assistant Enforcement Officer; and
- 1 Investigative Support Officer.

- 3.72 Further resources available for enforcement operations include anti-pollution aircraft and 4 tugs.

Existing overlap and/or co-ordination

- 3.73 As Figure 1 illustrates, the spatial distribution of enforcement roles is generally well defined by existing legislation. The critical element relates to the need for coordination between agencies to ensure that respective enforcement powers are used in an integrated manner. In October 2005, NE, CCW and the Association of Chief Police Officers (and supported by PAW) signed a Joint Statement of Intent in relation to wildlife crime. This initiative represents a significant step forward in attempts to work in partnership with the Police to provide a coordinated approach to wildlife crime. In addition to this, the conservation agencies are also members of the PAW steering group and are actively supporting the creation of regional partnerships through PAW.

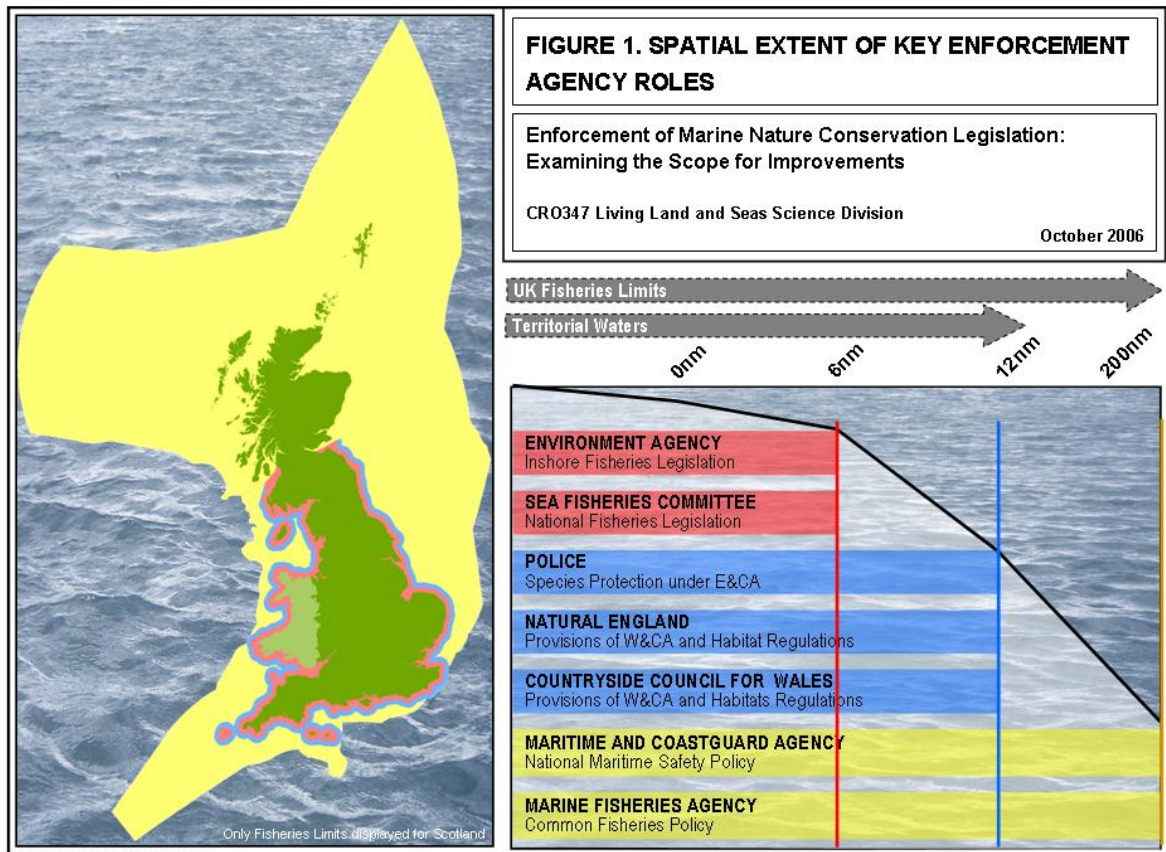


Figure 1: Spatial Extent of Key Enforcement Roles

- 3.74 NE also occasionally liaises with the police with regard to marine species protected under the W&CA.
- 3.75 CCW has two seconded police wildlife liaison officers who work in North and South Wales respectively. Reporting is completed by CCW Conservation Officers across Wales, whilst the investigations are carried out by the police wildlife liaison officers.
- 3.76 Conservation agency staff liaise with SFC and other agencies in the management and enforcement of nature conservation legislation. Both NE and CCW have provided examples of where they have worked with other enforcement agencies in the marine environment to provide the tools required for a specific enforcement issue. The SFCs work in a coordinated manner with other agencies in relation to local management issues. Some SFC Officers hold limited or full British Sea Fisheries Officer (BSFO) status, however, MFA or Royal Navy Officers do not benefit from SFC warrants.
- 3.77 The SFCs have also worked in partnership with NE to enforce byelaws aimed at restricting fishing (as a nature conservation function in the Lundy No Take Zone (NTZ)) and are present on various regional and local initiatives to foster more coordinated approaches to enforcement. The SFCs have reported in the questionnaire response to this report, however, that levels of joint enforcement work is currently highly localised. The SFCs have also reported that they are unaware of

NE or CCW enforcement structures or mechanisms, which may currently limit opportunities for co-ordinated enforcement with conservation agencies.

- 3.78 The MFA, SFCs and the EA are currently seeking to formalise their liaison with arrangements through a national liaison group. This process of increased co-ordination is reflected in an increase in the amount of joint MFA and SFC, or EA seaborne enforcement activity within 6nm. The scope of future liaison is expected to see the EA and SFCs undertake an increasing share of MFA enforcement patrols out to 12nm (and potentially beyond). The SFCs and MFA have, also commenced a process for the SFCs to obtain access to the national marine fisheries surveillance system. This system is currently present on three SFC vessels.
- 3.79 The MFA also operate in partnership with other member states on a regular basis. Additionally, the MFA has a contractual agreement with the RN FPS for 850 patrol days in the current 2006-2007 financial year.
- 3.80 The EA undertake regulation and enforcement of fisheries responsibilities in conjunction with the local SFCs and the MFA. To meet responsibilities for protection of marine sites and species, the EA work in association with Police wildlife liaison officers to identify and prevent wildlife crime (JNCC, 2003), as do the SFCs. The EA works in association with many other enforcement organisations including the Police, the MFA, SFCs, nature conservation agencies and local authorities. In situations where the EA and another enforcement body both have the power to prosecute, the EA will liaise to ensure effective co-ordination, to avoid inconsistencies, and to ensure that any proceedings instituted are for the most appropriate offence (EA 1998).
- 3.81 In pursuit of enforcement, the MCA works in partnership with the Police, the Health and Safety Executive (HSE), the EA, Her Majesty's Custom & Excise, Defra, harbour authorities, and commercial and private operators of ships and aircraft.

Reporting of Incidents and Offences

- 3.82 All agencies identified a mechanism for reporting offences. The MFA record offences and activities under their monitoring and control surveillance system, the SFCs all record offences within each SFC area, and the Police have just introduced a series of national standards for incidents reporting (which provides recording under 8 key headings). The Police do not however have a specific mechanism for recording marine offences within this. Similarly, both NE and CCW record offences on a national enforcement data base, however no marine specific category is provided. Clearly for marine enforcement provision to be monitored and assessed, with a view to targeted efficiency, there is a need to provide a specific data set for marine nature conservation offences. This factor is discussed in further detail in Section 6 of this report.

4 Emerging Nature Conservation Enforcement Requirements

- 4.1 Two emerging legislation instruments will affect the scope and delivery of marine nature conservation in UK waters, namely the OMCR and the proposed Marine Bill. Draft provisions for the OMCR were published earlier this year. The Marine Bill is less advanced but a consultation document outlining potential proposals under consideration was published in March 2006.

Offshore Marine Conservation Regulations

- 4.2 The Habitats Regulations currently apply to waters out to 12nm. The OMCR will transpose the Habitat and Bird Directives beyond UK territorial waters so it can be applied to the UK sector of the Continental Shelf and to any waters within British fishery limits. The OMCR will enable the designation of 'European offshore marine sites' beyond 12 nm (marine SAC and SPA) and protect species listed within the annexes of the Habitats Directive. All reference to the OMCR relates to the regulation numbering as drafted in the March 2006 Consultation Document. It is important to note that all reference to the regulations in the OMCR in this document relates to the March 2006 consultation document. As such, and as the regulations are developed, regulation numbering is likely to change.

Part 2 Conservation of Natural Habitats and Habitats of Species

- 4.3 Regulation 29 pertains to offences on European Offshore Marine Sites (EOMS). Regulation 29(4) specifies which activities constitute an offence and includes intentional or reckless damage of Annex I habitat within such sites. This offence is restricted to intentional disturbance with regard to Annex II native species or birds species under the Wild Birds Directive. Regulation 29(4) also adds the additional specification that a person is guilty of an offence if he knew, or ought reasonably to have known that what he disturbed was within an EOMS.

Part 3 Protection of Species

- 4.4 Regulations 30 to 43 provide a range of regulations relating to the protection of birds, other wild animals and plants. In contrast with Part 2 above relating to Habitats, the provisions of these regulations only relate to actions that are deliberate and not reckless.

Part 4 Enforcement and Supplementary Provision Relating to Criminal Offences

- 4.5 Authorised officers - Regulation 44 provides the power for the Secretary of State or a competent authority (with the Secretary of States approval), to appoint any person as an authorised officer. Competent authorities are defined in Regulations 5 and 6. The powers for authorised officers are described as follows:
- i. Powers of boarding, entry and inspection - Regulation 45(1) provides the powers (for the purposes of ascertaining whether an offence under the Regulations is being committed) for an authorised officer to board any British

vessel, other vessel in UK waters and/or offshore marine installations..
Regulation 45(2) then extends this power to any premises in the UK (when supported by a warrant).

- ii. Powers to collect evidence - Regulation 47 provides the powers for authorised officers to collect evidence insofar as this relates to a sample from a dead organism or a live organism. Regulation 48 provides the authorised officer with the powers to request, take and remove any documentation which may provide evidence under the Regulations.
- iii. Powers to stop and board vessels - Regulation 49 provides the powers to (1) stop and board a vessel and (2) detain the vessel or direct its master to take it to port.
- iv. Powers to use reasonable force and assistance - Regulations 50 and 51 provide authorised officers with the power to use reasonable force and assists in the pursuit of their functions.
- v. Offences relating to the activities of authorised officers - Regulation 53 provides the basis for provisions which ensure that any actions which impede the duties of an authorised officer are an offence liable to prosecution.
- vi. Regulations 54 to 56 further define the scope of offences under the regulations.

The Marine Bill

4.6 The proposed Marine Bill aims to assist in the delivery of the UK Government's strategy for sustainable development. The main policy areas where legislative changes are being considered in relation to improving nature conservation are:

- Marine Ecosystem Objectives (MEO's);
- MPA's;
- controls on unlicensed activities;
- species conservation; and
- enforcement.

4.7 Policies likely to require enforcement are MPAs, unlicensed activities, species conservation and marine ecosystem objectives. MEOs may be achieved through policy guidance, changes to marine management regimes or a statutory duty.

4.8 As MEOs are not sufficiently developed for likely enforcement requirements to be identified, they have not been considered in this report.

Marine Protected Areas (MPA)

4.9 The Marine Bill is looking to establish a mechanism for the designation and management of MPAs from areas of minimal restriction through to highly protected marine reserves. MPAs will include, but will not be restricted to, sites which benefit from protection under the Habitats Directive. They could, for example, also form part of the network of MPAs identified by the Oslo and Paris (OSPAR) Commission. The consultation document offers a range of options for MPA designation, which are still to be agreed. The associated enforcement mechanisms will be influenced by final decisions, especially in relation to the following.

- 4.10 The consultation document proposes an MPA mechanism for conserving and promoting the recovery of species, habitats, feature and processes. Further options extend this purpose to include protection of historic sites, seascapes, physical features of geological or geomorphological interest, and spawning and nursery areas. If the wider purpose is accepted, there are likely to be new enforcement implications as the current MPAs (through the Habitats Regulations) are more limited in scope. The establishment of MPAs for commercial fish stocks, for example, will require an agreement over enforcement roles with fisheries enforcement bodies.

Site protection mechanisms

- 4.11 The consultation document provides two scenarios (Section 10.67) for site protection: direct mechanisms, where the MPA mechanism itself prohibits activities; and indirect mechanisms, where existing legislative mechanisms are used to meet MPA objectives. The recommendations for improving enforcement made in this report will be relevant to both scenarios either as amendments to existing legislation or as guidance for new enforcement provisions.

Boundaries and links with the SSSI regime

- 4.12 Potential boundaries for the landward extent of MPAs are described in the consultation document. In all cases there would be a degree of overlap with some existing SSSIs. The appropriate enforcement provisions will therefore need to be linked to those for SSSIs.

Species Conservation Measures

- 4.13 The consultation poses the question of whether additional legislative protection is required for marine species and whether changes to domestic species legislation should be made through the Marine Bill. The options set out in the consultation are to maintain existing coverage in UK waters, to extend species protection legislation for domestically listed species throughout the waters for which the UK is responsible or to repeal existing species legislation for the marine area if other measures (existing and proposed) are considered adequate.

Control of Unlicensed Activities

- 4.14 A number of activities are currently unregulated in the marine environment. Those cited in the Marine Bill consultation document include: whale watching, water-based activities, recreational fishing, the intense use of recreational craft, bait digging and other fishing activities, education and research activities. If the Bill was to result in such activities coming within the scope of regulation, either directly or by enabling byelaws, this is likely to require a new suite of enforcement provisions and supporting mechanisms for implementation.

Conclusions and Summary

- 4.15 The most significant emerging requirement for future enforcement in marine conservation is the requirement to establish EOMS under the OMCR, and the likely provision for domestic MPA under the Marine Bill. Assuming that a higher level of protection will be afforded in such areas, the range of activities which could

potentially adversely affect such sites will need to be appropriately regulated, and these regulations enforced.

- 4.16 With regard to species and wider habitat protection, the species protection elements of the OMCR will require enforcement to the 200nm limit. The Marine Bill may or may not provide similar protection for species considered of UK importance (i.e. in addition to European protected species). However, given the requirement to enforce European protected species provisions, enforcement of provisions for UK protected species may have little additional resource requirements. Given the current status of the Bill, it is difficult to establish the likely enforcement requirements at the present time, or to ascertain the roles allocated to agencies to address such requirements.

5 Reviews and Consultation

Recommendations from Previous Studies

- 5.1 A number of reviews on a range of studies have been evaluated which either relate explicitly to marine nature conservation enforcement, wider marine enforcement or marine management. The focus of this review has been fourfold:
- i. To critically evaluate the legislative drivers, mechanisms and structures for marine nature conservation;
 - ii. To evaluate the identified issues relating to marine nature conservation;
 - iii. To identify emerging marine management mechanisms and structures; and
 - iv. To evaluate key recommendations where appropriate.
- 5.2 The findings of these reports have been used as the basis for identifying key issues, as set out in Annex E.
- 5.3 Of the reports which made significant recommendations regarding nature conservation enforcement, two reports (in particular) have been evaluated regarding the measures which they propose: the Review of Marine Nature Conservation (Defra, 2004b); and the Review of Marine Fisheries and Environmental Enforcement (Defra, 2004a).

Review of Marine Nature Conservation (Defra, 2004b)

- 5.4 This report recommends that Government ensures mechanisms are in place to deliver enforcement arrangements capable of supporting any marine nature conservation legislation. This is clearly not in dispute. Section 11 of the report, relates to enforcement, with recommendation 14 containing a series of recommendations specific to enforcement provision. The report suggests that effective enforcement needs to meet the following criteria:
- i. The responsibility for the enforcement of marine nature conservation legislation needs to be made explicit;
 - ii. The authorities responsible for the enforcement of marine nature conservation legislation need to have requisite powers of stop, search, seizure and arrest, and the necessary vessels and equipment to carry out that enforcement, or need to have ready and sufficient access to others having access to those powers and resources;
 - iii. Where a number of different organisations have responsibility for various aspects of the enforcement of nature conservation related legislation; and
 - iv. measures should be taken to ensure the necessary level of collaboration and coordination.
- 5.5 Similar issues have been identified in the production of this document, particularly the identification of the need to address points i to iii, which are seen as being critical to provide effective levels of marine nature conservation enforcement. Recommendations to address these issues are provided in the conclusions section of this report (see Section 7).

5.6 The following supporting recommendations were also made in the Review of Marine Nature Conservation:

- i. *'The responsibility for the enforcement of marine nature conservation legislation away from near-shore locations should be placed with those already undertaking the enforcement of fisheries legislation in UK waters;*
- ii. *At the present time, based on existing legislative provisions and enforcement activity, there appears to be a rational basis for nature conservation; enforcement. The matter of whether this approach remains the most appropriate mechanism, with regard to emerging legislation, or long-term changes is, however, in doubt. There are benefits to be gained from providing enforcement roles with nature conservation bodies. (This issue is discussed in more detail in Section 5 of this document.);*
- iii. *In near shore areas, authorities acting under existing jurisdiction should coordinate their activities and secure compliance with marine nature conservation legislation;*
- iv. *Where a number of different organisations are involved in carrying out marine nature conservation enforcement, new collaboration, co-ordination and training measures should be developed and put in place. A coordinated national system for recording offences, incidents and prosecutions in relation to marine nature conservation should be put in place; and*
- v. *Government should investigate what level of enforcement action is necessary to implement existing and any proposed new marine nature conservation legislation, and the logistics needed to support it.'*

5.7 The findings of this report substantiate and concur with the above recommendations i to v, of the Defra report (2004b). However, recommendation i (above) needs further consideration given that the enforcement requirements for nature conservation away from inshore areas are likely to change with regard to the Marine Bill and OMCR. This matter is addressed in the analysis section of this report (Section 6), where the principle of divorcing nature conservation enforcement from conservation agencies is addressed. The extent to which conservation agencies are able to provide an enforcement role, the potential to expand such a role, and its spatial expression are outlined (Section 6). There are a variety of factors which need to be considered, before it is concluded that nature conservation enforcement should be provided by fisheries agencies away from the coast in isolation of conservation agency roles. This is a matter for further consideration and a marine nature conservation role for conservation agencies should not be discounted.

Review of Marine Fisheries and Environmental Enforcement (Defra, 2004a)

5.8 The key recommendation within the Defra (2004a) report relates to the updating of the organisational structure for marine management, regulation and enforcement. The report identifies a single marine management agency as the primary goal to be pursued, although they state that it is premature to make specific recommendations for such an agency at the time of writing. The role of such an agency (in the guise of the Marine Management Organisation (MMO)) is further investigated in the analysis section of this report (see Section 6), and there are definite merits of providing a singular agency. It is agreed that the actual role of a potential MMO is difficult to determine at the present time, since its provision has not yet been confirmed.

- 5.9 The findings provided in Section 5 this (current) report, identify a series of key roles for a potential MMO. The most notable role would be to provide a key function in ensuring that enforcement is co-ordinated and focused. As a central reference point for enforcement strategy and guidance, the use of a potential MMO is therefore considered likely to provide a wide range of significant benefits to enhance existing and emerging enforcement provision. The findings of both the Defra (2004a) and this report therefore concur that a lead role by a potential MMO would bring significant benefits to nature conservation enforcement.
- 5.10 In the interim period, a national agency is suggested, this would combine the role of the Sea Fisheries Inspectorate (SFI, now MFA) with the regulatory and enforcement role of the SFCs. Should a national agency not be pursued, alternative recommendations include giving the SFI agency status (thereby leaving MFA as it stands) and updating and modernising the SFCs. This suggestion does recognise that there is a critical current need to provide a coordinated basis for enforcement and this concurs with the findings of this (current) report. The use of the SFCs and MFA to deliver this, in absence of conservation agencies is not however supported by the findings of this (current) report. For the reasons raised in response to the review of the (Review of Marine Nature Conservation above) this (current) report, recommends careful consideration of the options available under emerging legislation, before the role of conservation agencies in an active enforcement role is discounted.

Conclusions and Summary

- 5.11 The findings of this (current) report and that of previous studies and reports has identified a range of similar issues which are considered critical to address in order to enhance the provision of marine nature conservation enforcement. This report, supports the findings of previous reports (see above), but cannot support any recommendation to divorce the conservation agencies from providing nature conservation enforcement in the marine environment. As will be discussed later in this report (see Section 5), there are numerous benefits to be gained from providing nature conservation enforcement powers with agencies which have a leading nature conservation role. The extent to which conservation agencies could, or should provide such a function depends on emerging legislative requirements and management issues. It would therefore seem prudent to provide the ability to conservation agencies to offer such a role, so that such roles and powers could be used in response to emerging issues.

Consultation Responses

Questionnaire and Workshop feedback

- 5.12 Sixteen responses were received from the targeted questionnaire (see Annex A). In addition to these questionnaires, two workshops were held on the 11th July 2006. The morning workshop was attended by a range of stakeholders (see delegate listing in Annex D) and the afternoon workshop coincided with the national meeting of the SFC.

- 5.13 At the workshops, delegates were presented with a series of questions to stimulate debate on the extent of existing marine nature conservation enforcement and the issues relating to enforcement provision. The key messages that emerged from the Workshops were as follows:
- the need for greater co-ordination in the approach to UK marine nature conservation; and
 - the need to provide a clearer legislative basis on which to develop this.
- 5.14 The workshop findings were incorporated into a table which is provided in Table 1 - Annex E. This table provides a comprehensive account of the issues that have been outlined with regard to marine nature conservation enforcement.
- 5.15 The questionnaire sought to establish a range of views with regard to factors which were limiting enforcement action, or were contributing towards effective enforcement provision. The feedback provided by the questionnaire included a wide range of views in relation to the factors that are limiting the provision of marine nature conservation enforcement, however, a series of themes were readily identifiable which provided a clear account of the critical factors which need to be addressed in order to enhance the marine nature conservation structure nationally. It should be recognised at this stage that the feedback provided illustrates the current situation where the extent of marine nature conservation is extremely limited.
- 5.16 The remainder of this section provides a summary of the feedback provided by the consultees (either at the workshops or from questionnaire responses), especially where it relates to the actual reasons why marine nature conservation is, or is not, being successfully pursued, where this relates to areas of overlap, or where synergies can be pursued in regard to joint or complimentary enforcement action.

Existing Enforcement Co-ordination

- 5.17 Consultees were asked to outline where they cooperated with other agencies or stakeholders and to comment on the effectiveness of this arrangement. The emerging themes related to the fact that whilst most organisations can cite examples of coordinated enforcement initiatives, such co-ordination is generally developed in response to area specific issues. This has the benefit that agencies seem to work well together with regard to specific issues (bespoke co-ordination), but equally demonstrated limited national co-ordination. At the present time, the MFA and SFCs are actively pursuing a process to foster liaison between enforcement agencies, however, this work is currently at a formative stage. The PAW provides a readily identifiable effort to foster coordinated approaches to marine nature conservation nationally, however, despite the excellent work of this group, existing structures and agency activities could not be said to be truly coordinated, integrated or used in an extensive manner.

Areas of Overlap in Terms of Responsibilities

- 5.18 Spatial areas of overlap (areas where agencies provide enforcement roles in the same area), are well defined and were clearly expressed in the questionnaire

feedback. This was also reflected in the detail provided on the respective Roles and Responsibilities of the consultees.

- 5.19 The conservation agencies currently provide an enforcement role for a limited number of marine sites and, as such, there is limited overlap in areas below the MLW mark with other agencies, such as the SFCs and the EA. Of the agencies with a wider enforcement role (see Figure 1), there is a spatial overlap relating largely to the seaward extent of their enforcement jurisdiction. The MCA and MFA overlap with all other agencies by virtue of their powers which are provided out to the 200nm mark. Other users such as the SFCs have powers out to 6nm, whilst the Police can enforce out to 12nm. The responses received illustrated areas of overlap, however, the roles specified by agencies relate to different enforcement functions, and as such, examples of actual overlap, where agencies were enforcing the same legislation in the same spatial area were not identified in responses received.

Enforcement and Offences

- 5.20 Fisheries enforcement agencies provided detailed figures relating to prosecutions, number of vessels boarded, sighted etc. As such, with regard to fisheries enforcement, information for incidents and offences is well recorded in a targeted manner. With regard to nature conservation enforcement, NE and CCW provided a record on incidents relating to SSSI offences on an enforcement database. Actual figures relating to offences or incidents in the marine environment were not provided, but could in theory be established. This raises the issue of whether levels of marine nature conservation offences are actually viewed in isolation from other offences at all, and would suggest that there is not a perceived need to report this information on an annual basis. Similarly the police record all wildlife incidents on a national database, but do not report this specifically with regard to the marine environment.
- 5.21 Currently, in summary, it would seem that the recording of incidents and offences for wildlife crime is provided for across the UK, but this data is not refined in specific regard to levels for marine wildlife crime.

Enforcement Issues

- 5.22 Agencies provided accounts of the factors which were preventing the provision of effective marine conservation enforcement, or matters which needed to be addressed to enhance or fully utilise the potential of existing provisions. The results of this feedback are included in Annex E and explained in detail in the analysis section (Section 6).
- 5.23 The central issues that emerged, however, were that existing enforcement structures and mechanisms have the potential to provide an effective enforcement suite for nature conservation, however, this was not witnessed in actual enforcement provision. The MFA and SFC suggested that existing inshore provisions work well for fisheries management and enforcement, but may not work well for nature conservation (for example byelaw provision). The MFA considered that existing enforcement regulations may be adequate to enforce nature conservation but this would require enhanced powers, roles and resourcing. The actual absence of a 'duty' to provide enforcement by fisheries agencies was specified as being central to

limiting widespread nature conservation enforcement provision, even though this is possible under existing fisheries legislation for both the SFCs and the MFA.

- 5.24 Conservation agencies specified insufficient enforcement powers and SFC resourcing for nature conservation purposes as a key enforcement issue. The conservation agencies pointed to issues relating to the need for the ability to address third party offences in the marine environment, since most SSSIs (which can address third party offences under the W&CA) stop at MLW, and European Marine Sites rely on the cumbersome mechanism of SNCO to address third party offences. Other consultees specified limited co-ordination (and co-ordination requirements) as the critical area missing from existing enforcement provisions.
- 5.25 Duplication of roles was not considered a critical issue. Whilst duplication may occur in relation to jurisdictional or spatial overlap, agencies reported that in practice working operational arrangements have generally prevented this becoming an issue.

Good Practice and Enhancement of Existing Enforcement

- 5.26 Examples were sought of good practice, where agencies or groups had worked to develop effective enforcement structures or mechanisms. The examples given (provided in detail in Annex B) relate to either structures which encourage liaison or co-ordination or the provision of guidance or advice. Encouragingly, this demonstrates that agencies have actively sought to address two of the key critical issues in marine nature conservation: awareness of roles; and co-ordination and integration. The examples provided have been developed as possible solutions in the final section of this report (Section 7).
- 5.27 In response to a request for specific areas where agencies felt that there was a need to improve existing enforcement structures or mechanisms, the responses received covered a wide variety of approaches to the issues identified above. The core specified requirements were as follows:
- clarification of spatial roles of enforcement agencies;
 - clarification on actual roles of enforcement agencies;
 - provision of a 'duty' to enforce nature conservation by fisheries agencies;
 - simplification of marine enforcement legislation;
 - enhanced enforcement powers (stop and search powers, foreshore enforcement powers etc);
 - the need for effective provisions to address third party offences in the marine environment;
 - resourcing for nature conservation enforcement;
 - provision of powers to secure cross-warrantation;
 - reduction in evidence required to secure prosecutions;
 - greater co-ordination between agencies;
 - provision of adequate resourcing; and
 - actions to increase awareness and understanding regarding legislation and marine management/enforcement.
- 5.28 In addition to the above, there was a stated need to provide an overall marine enforcement strategy which could address the following issues:

- increase and maintain adequate enforcement presence;
- promote voluntary compliance;
- benefit from technological advancements (i.e. vessel monitoring);
- strengthen partnerships;
- consider improved enforceability;
- consider boundary and sighting considerations for improved enforceability;
- improve prosecution of MPA enforcement actions; and
- meet science and information needs.

Summary and Conclusions

- 5.29 The themes that emerged from consulting with a wide variety of organisations are remarkably consistent. The issues identified are also consistent with those expressed in other studies, notably, the University of Hull (Boyes et al, 2003a,b,c) and IEEP (IEEP, 2005) Reports, which were reviewed within the scope of this study. The IEEP report, in particular provided a comprehensive account of existing enforcement issues in Wales, which provided a key focus to the identification and classification of marine nature conservation enforcement issues. As has been stated elsewhere in this report, the overall message is that the basic foundation for a marine nature conservation enforcement system already exists, however, few examples can be found which demonstrate the actual provision of marine nature conservation enforcement action. A series of key issues has been identified which represent the factors which are actively preventing the use of this basic foundation to provide significant levels of effective, efficient enforcement.
- 5.30 At the present time, marine nature conservation enforcement provision is limited due to the limited conservation agency powers to enforce third party offences in the marine environment, and the absence of any duty for fisheries agencies to use their powers for nature conservation purposes.
- 5.31 A national strategic approach to marine enforcement or marine nature conservation enforcement, was considered essential to ensure that existing powers are used in a coordinated and efficient manner. What is now required is a series of measures to build on the foundation of existing legal provisions to ensure that their strengths are fully realised. This is considered in the following sections of this report.
- 5.32 The feedback obtained from the consultation broadly concur with the findings of the key studies which were reviewed within this exercise. To varying degrees, the studies identified a series of key enforcement issues (of particular note is the IEEP study) which need to be addressed to establish effective marine nature conservation enforcement and the agencies consulted here, outlined the same suite of issues. The limiting factors have therefore been consistently identified and will be addressed in the following sections of this report.

6 Analysis and Discussion

Issues Identified

- 6.1 The previous two sections have identified a series of issues which are of direct relevance to improving the enforcement of nature conservation legislation which were identified as part of this review. The identification and analysis of such issues is essential if recommendations are to be provided (see Section 7) on how to improve existing enforcement provisions and/or provide an enhanced system of enforcement in response to emerging legislation. Understanding these issues is central to ensuring that enforcement is effective and synergies between agencies are maximised and focused.
- 6.2 The issues identified which fall within the scope of this exercise relate to:
- i. co-ordination between enforcement agencies;
 - ii. spatially complex geographical coverage of enforcement powers (0-6nm/6-12nm/12+nm);
 - iii. enforcement powers and duties available to the relevant agencies;
 - iv. complexity of marine enforcement (legislation and roles and responsibilities);
 - v. differences in approaches to enforcement of nature conservation legislation;
- 6.3 Communication and the need to raise awareness amongst users regarding marine management was also identified.
- 6.4 In order to provide focus and clarity to the analysis, issues have been grouped together in this section based on whether they need to be considered on a regulatory or non-regulatory basis. Additionally, issues have been described as relating to the actual type of enforcement problem which they represent. The structure for this section, is as follows:
- 6.5 Regulatory Considerations
- structural Issues;
 - spatial Issues; and
 - enforcement power and roles issues.
- 6.6 Non-regulatory Considerations
- co-ordination issues; and
 - awareness issues.
- 6.7 The identification of how enforcement provisions can be enhanced is both assisted and complicated by emerging marine legislation (the Marine Bill and the OMCR). Whilst such legislation provides opportunities and a mechanism to enhance marine nature conservation enforcement, the uncertainties regarding the actual provisions of the bill makes any analysis complex as it needs to consider the range of options provided in such instruments. As such, analysis and subsequent recommendations are made with regard to likely options which may emerge. Where opportunities exist to address enforcement issues with respect to the development of the OMCR and Marine Bill, a commentary is provided.

- 6.8 Issues relating explicitly to resourcing levels are not considered within the scope of this report.

Regulatory Considerations - Structural Issues

Complexity of Marine Enforcement (Legislation and Roles and Responsibilities) and Inconsistency in Approaches to Enforcement in Marine Legislation

- 6.9 Marine enforcement legislation has evolved on a sectoral basis, primarily relating to fisheries issues and habitat and species conservation. The resultant range of marine management legislation has therefore evolved into an extremely complex marine management structure.
- 6.10 Any consideration of the merits or problems within the existing enforcement structure are critically and fundamentally dependent on an understanding of the wide range of issues that were identified above. If any structural changes are to be provided for existing or emerging provisions, then the key focus should relate to the resolution of these issues.
- 6.11 Difficulties in the enforcement of marine nature conservation legislation at the present time is not the result of role duplication or the absence of overall enforcement powers in the marine environment (as based upon consultee responses and previous review reports). The key restricting factor, relates to coordination and the resolution of key legislative issues (this is addressed in the latter stages of this section).
- 6.12 The potential exists for nature conservation enforcement to be provided for specific management problems as they arise, but this is dependent on the provision of a structure and legislative base to ensure that enforcement between agencies is coordinated and integrated. A national approach to enforcement, and a duty for wider enforcement agencies (such as the SFC and MFA) to address marine nature conservation, would offer enhanced levels of marine nature conservation enforcement.
- 6.13 Further issues compound the problems in enforcement provision, and for current enforcement structures and provisions to be enhanced, a considered, focussed approach to resolving such issues is required. The provision of new marine legislation may provide the opportunity to offer a simplified, singular suite of marine powers for marine enforcement, with all enforcement activity relating to such provisions within the Marine Bill. A similar exercise for coastal and marine legislation was undertaken in Queensland, Australia, with their Integrated Planning Act (see case study box 1). The bill could then include all the existing provisions described within this document, in a singular legislative source. Whilst this would be a complex task, it would provide the unique opportunity to address the issues relating to complexity in the marine environment and provide a consistent basis for enforcement and management across all sectors. The scope of the Marine Bill is such that an exhaustive consolidation of marine legislation is not likely, however, opportunities do exist to simplify the structure relating to marine nature conservation enforcement.

Case Study Box 1

Australia - The Great Barrier Reef Marine Park (GBRMP) – a multi-agency nature conservation enforcement structure.

The GBRMP is partially managed by the Australian Federal Government and the Queensland Parks and Wildlife Service (QPaws). The areas of the GBRMP which fall outside of State waters are managed by the (Federal) Great Barrier Reef Marine Park Authority (GBRMPA). Areas within State waters are managed by the Marine Parks Section of QPaws. Additionally, some management and enforcement roles are devolved to fisheries agencies.

Overall, park management is determined by GBRMPA in a coordinated effort with the QPaws. Enforcement provisions are offered under the scope of a Memorandum of Understanding (MoU) between the Federal and State government, and a structured legal basis to provide truly integrated enforcement. Additionally, the overriding purpose of the park, the conservation of its ecological values, is at the centre of all management and provides a clear focus for enforcement staff, whose powers and roles are sourced in environmental legislation. Coastal and foreshore management provisions are now being integrated into wider marine management in Queensland through the Integrated Planning Act 1997, which seeks to provide a unified base for permitting and enforcement.

The enforcement programme of the GBRMP provides clear lessons which can be learnt, with regard to providing a nature conservation enforcement structure managed and enforced by conservation agency staff.

Organisational Arrangements

- 6.14 Many of the issues raised within this report are relevant to enforcement functions in the OMCR but one of the most important is capacity: and the specification of roles for enforcement agencies and the actual enforcement structure provided to implement marine nature conservation enforcement. The OMCR present a significant enforcement suite and the Marine Bill provides a range of possibilities for new provisions. The key issue here relates to who should provide this enforcement for the provisions of the OMCR or the emerging requirements of the Marine Bill. The regulations are not specific on this point, and provide the power to enforce with a range of agencies, who can define authorised officers. A range of options for the provision of a enforcement structure have therefore been provided below. with regard to the structures which should support emerging legislation, the following options are recommended for consideration:

Option 1 - An enforcement structure based on the lead enforcement role of conservation agencies

- 6.15 The merits of conservation agencies providing a lead in an enhanced enforcement structure relate to the ability to directly link organisational management responsibilities and enforcement provision. In this respect, the conservation agencies would be able to take a holistic approach to management from policy provision to enforcement. Conservation agency staff also have an inherent understanding of nature conservation issues and a singular focus on all aspects of conservation. At the present time, however, with limited defined nature conservation issues in inshore and offshore waters, the provision of enforcement through the use of other agencies (such as the MFA and SFC) does provide a pragmatic, if not ideal approach to enforcement provision where issues exist.

- 6.16 As marine nature conservation responsibilities increase (with the possible provision of MPAs and an extended Natura 2000 marine network), there will be an accompanying increase in the requirement for enforcement to address marine nature conservation issues. The merits of providing such enforcement, by conservation agencies or with conservation agencies in a leading enforcement role, are then likely to be appropriate. This will critically depend on the degree to which emerging provisions are applied. The development of a major network of MPAs in inshore waters, in locations with complex management issues, would clearly benefit from a lead role of conservation agencies. The provision of such a role nationally, would depend on a major resourcing, staffing and training requirement to support this.
- 6.17 In the interests of unifying management and enforcement, this may be appropriate but it is clearly a matter of scale. For the provision of a small number of MPAs, it may still be possible to provide enforcement for such areas via agreements with SFCs etc. Even in this scenario, however, it would be essential to ensure that conservation agency staff are not isolated and divorced from enforcement provision. Direct experience of marine issues for conservation agencies has the benefit of ensuring that management is informed by first hand experience of actual issues. The spatial application of this option would also need to be fully considered as enforcement requirements emerge. Clearly the provision of resourcing for an MPA suite in inshore areas would require an entirely different resourcing approach to the management of sites under the OMCR in offshore areas.
- 6.18 The nature of the actual threats to marine wildlife and habitat also need to be considered. If the primary threat for offshore areas, for example, is from commercial fishing, then a more significant role for other agencies such as the MFA would need to be considered. This is clearly dependent on the recognition of issues based on emerging legislative requirements under the Marine Bill and the OMCR. The provision of a lead role for nature conservation agencies could have the disadvantage that nature conservation enforcement could become isolated from wider enforcement provisions. It would, therefore, be essential to ensure that nature conservation enforcement and wider enforcement operate under the scope of mechanisms which actively foster coordinated, consistent enforcement from a strategic basis (see later discussion on coordination). Conservation agencies also have extremely limited marine enforcement expertise at the present time and in this respect, this option could suffer from issues relating to a limited levels of in-house expertise in actually providing enforcement on the water. As stated above, ultimately the requirement for conservation agencies as the primary providers of nature conservation enforcement will depend on the scale of implementation of emerging legislative provisions and the issues which develop in this respect. At the present time, this is an unknown factor.

Option 2 - An enforcement structure based on mixed enforcement roles
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- 6.19 The enforcement structure under Option 2 would relate to the provision of actual enforcement powers to the agencies described within Section 3 of this report. Within this option, a strategic approach would be taken to the provision of enforcement roles, with all agencies having access to a range of core enforcement powers. This option is critically dependent on the development of a national strategic approach to enforcement provision where organisational roles and responsibilities are clearly

expressed, whilst ensuring that there is an inherent flexibility to provide targeted enforcement for specific areas or issues.

- 6.20 The basis of this option would be for the provisions of enhanced roles and powers for agencies to be based on the spatial application of existing enforcement provisions. All agencies would be provided with an enhanced suite of enforcement powers (as described in this report in response to enforcement issues). Clearly for conservation agencies this would represent a significant increase in their powers in marine areas.
- 6.21 This option offers the flexibility of providing enforcement using a range of agencies in a coordinated manner to address a wide range of emerging requirements or issues. This option could be provided under national strategic guidelines and could then respond to localised enforcement issues. It is still considered that it would be essential to ensure that conservation agencies are not divorced from enforcement, but in this option the use of mixed enforcement roles, with conservation agencies central to decisions relating to enforcement provision, would provide this (see Case Study Box 1). This option has the potential to maximise the synergies which can be accrued from the use of multi-agency enforcement, providing the potential for an efficient enforcement structure which can respond to management issues on the basis of providing the best agreed suite of enforcement roles for a given site or issue.
- 6.22 Such an option does, however, have some potential drawbacks. The use of agencies who have a wider enforcement role, may provide issues where there is conflict between their primary enforcement role and that of marine nature conservation. Additionally, the enforcement regime from a national and local basis could appear to be complex and inconsistent. The resolution of these issues could, however, be addressed by the provision of a nationally strategic approach to enforcement and the use of approaches to increase awareness relating to enforcement.

Option 3 - An enforcement structure based on either of the above, with an overall responsibility of a potential MMO for the co-ordination of marine enforcement (with nature conservation as a core element).

- 6.23 The role of a potential MMO to provide an overall focus to marine enforcement and nature conservation enforcement has the potential to bring benefits to either option described above. A potential MMO could provide the overall strategic focus and direction which is critical to either option, but is of particular importance to Option 2. Strategic guidance could be developed via a range of means, which are discussed later in this document, to actively foster coordination and integration within enforcement provision. A MMO could also provide the ideal mechanism for the consideration of the 'best fit' approaches to enforcement obligations and issues as they emerge. In this respect, enforcement could be provided on a nationally consistent basis but with respect to the particular issues faced in specific locations.
- 6.24 At the present time, given the shifting nature of the Marine Bill and its provisions, specific advice is not possible with regard to enforcement responsibility, since there may or may not be a MMO etc. The actual emerging enforcement requirements will be determined in response to the extent to which the various provisions of the bill are implemented and subsequent management issues. It is essential that this factor is

recognised in developing an enforcement structure in order to meet emerging requirements. The location, scale, scope and intent of MPA designation, for example, will ultimately determine what enforcement provisions are required to support MPA management. Any ultimate recommendation, therefore, needs to have regard to this. As such, it is recommended that Option 2 and 3 are used as the basis for any emerging nature conservation enforcement structure, based on a range of mixed enforcement roles, possibly supported by a potential MMO. Such a framework would provide the flexibility to ensure that enforcement provision can be provided to support management requirements which are not yet known. A recommendation to support this is provided in the final section of this report (Recommendation 1).

Regulatory Considerations - Spatial Issues

Enforcement provisions and their spatial extent (0-6nm/6-12nm/12+nm)

- 6.25 The critical issue here relates to whether the existing spatial application of enforcement powers and the roles of particular agencies is adequate at the present time and in response to emerging marine management provisions. The agencies discussed in this report have a defined spatial extent to their powers. With regard to the conservation agencies, the provision of powers relates to the protection of sites and species under the Habitats Regulations and the W&CA. Principally, the critical issue relates to the provisions under the Habitats Regulations, since SSSIs designated under the W&CA are only generally designated to the LWM. JNCC currently only advise government on nature conservation matters outside 12nm, whilst NE and CCW also do not have powers outside 12nm. As emerging legislation provides increased enforcement roles for marine nature conservation, the enforcement of nature conservation interests in such areas will need to be addressed.
- 6.26 The enforcement powers of the Police are currently limited to the extent of national waters, which leaves a significant area of UK waters where Police enforcement of species protection is not available. The EA are equally limited to the extent of territorial waters and no clear reason has been identified to extend this further offshore. SFC spatial boundaries are usually defined as out to 6nm, however, this is due to the application of their source legislation which is not clear on this point. It could be desirable, therefore, to extend the powers of SFCs formally out to 12nm, which would enable SFCs to provide a more complete area of jurisdiction to support nature conservation enforcement for national conservation agencies.
- 6.27 Since enforcement roles are largely determined by legislative provisions, the spatial extent of enforcement powers or jurisdiction of enforcement bodies/officers is important. Section 30 of the Police Act 1996 limits the powers of police constables normally to within territorial waters. This may need to be addressed by primary legislation if the police are to have a role in species protection beyond 12nm and out to 200nm. The position of the conservation agencies is rather less clear with no specific legal provisions which define their jurisdictional authority. It may be argued cogently that they are limited to 'England' and 'Wales' respectively and may be limited either to the LWM or more likely to territorial waters. In any event, such a position of uncertainty is unsatisfactory. Clearly enabling the conservation agencies to exercise enforcement functions without legal obstacle is essential. What changes

would be needed is dependent on the judgment about the actual role of the various agencies in nature conservation enforcement (discussed below). Measures to address the key spatial issues above, have been provided in the following section, (see Recommendation 2).

- 6.28 At the present time, capability to provide some degree of enforcement for nature conservation is possible within UK waters in regard to the spatial application of various agency powers identified in Section 3 of this report. The Bradley Review (Defra, 2004a) recommended that, away from inshore waters, nature conservation should remain the role of agencies currently providing wider enforcement roles. At the present time, this would appear to provide a pragmatic approach to role definition, since conservation agencies (who have a primary role in nature conservation) do not have the current capacity, powers or resourcing to provide enforcement in the marine environment. The issues identified in the workshops and questionnaires which support this study, did not highlight a need to provide any radical role revision in enforcement at the present time, the critical issue related to ensuring that there was coordination between agencies (see below) and that agencies had adequate powers to provide enforcement. The conservation agencies have, however, raised issues relating to their powers in marine areas adjacent to the coast, and these specific issues are discussed below as enforcement roles and power issues. The OMCR and the Marine Bill will, however, provide enhanced nature conservation enforcement requirements in inshore and offshore areas. The consideration of potential spatially defined roles under these instruments is considered in the section below on enforcement roles.

Regulatory Considerations - Enforcement power and roles issues

Definition of Marine Nature Conservation Enforcement Roles

- 6.29 Currently, approaches to nature conservation enforcement are provided on a practical basis depending on the issue at hand. Whilst this may be an effective approach to enforcement on a site specific basis, in the absence of any strategic approach to enforcement, it does not foster nationally consistent roles within nature conservation enforcement. Whilst agencies have clearly defined nature conservation roles for their primary function, this does not always translate to a clearly defined role for nature conservation enforcement. Conservation agencies have limited enforcement powers, but a clearly defined nature conservation role, whilst fisheries enforcement agencies have a more complex role (which relates to the ability provided to them legally to enforce nature conservation in legislation), with no actual 'duty' to do so. This matter is central to the definition of fisheries agencies roles in nature conservation enforcement. The SFCs and the MFA are currently actively seeking to coordinate their efforts with other agencies, and the SFCs have (as the case study for Lundy Island demonstrates – see Case Study Box 2) provided a nature conservation enforcement role at the request of NE. The absence of a duty to address nature conservation clearly limits the extent to which the SFCs and the MFA can prioritise such initiatives and accommodate nature conservation within their programme of works. The provision of a duty on the SFC and the MFA to address nature conservation could address this issue.

- 6.30 With respect to the provision of enforcement duties, the legislative approach in recent years has been to provide statutory agencies with a clear role or brief which enables them to identify their role, purposes and functions and to be accountable to the public for them. Recent examples of this include the statutory framework for the EA in the Environment Act 1995 and the new framework for the NERC Act. It would be desirable to strengthen the explicit nature of the nature conservation roles of the SFCs (where the current statutory framework of roles, purposes and functions is particularly weak) and to consider in one form or another placing the MFA on a statutory footing with a range of purposes. The NERC Act provides an example of how this may be done in relation to biodiversity.

Case Study Box 2

Lundy Island - Statutory No-Take Zone (NTZ)

Lundy Island represents the UK's first statutory MNR and is managed by NE pursuant to powers under the W&CA. The marine areas around the site are richly diverse in terms of fauna and flora and the area also hosts significant underwater cultural heritage in the form of wrecked shipping. It is, therefore, a popular destination for many recreational uses. To this end a zoning scheme is in place to ensure that the effects of recreational or other uses of the area are mitigated.

In 2003, a byelaw was passed following a proposal from the Devon SFC and advice from NE, establishing an NTZ on the eastern side of the island. The designation of the NTZ has been seen as an opportunity to develop enforcement techniques, through SFC byelaw provision for nature conservation purposes. At the present time, however, there has been no recorded enforcement activity, despite anecdotal reports that some illegal 'potting' has taken place. Difficulties now lie in the evidentiary issues involved in the monitoring and identification of vessels and gear used in the area. This example demonstrates that opportunities do exist for co-ordinated enforcement, however, the success of such initiatives is equally dependent on the need to ensure that provisions are available to secure enforcement action.

- 6.31 Given the complexity of enforcement roles, it is necessary to consider the roles and powers of nature conservation agencies and those agencies with a primary focus on other issues.

Enforcement Powers for Conservation Agency Staff

- 6.32 Conservation agency staff currently have limited powers to take an active role in marine enforcement. Fisheries agencies and the Police have a range of powers open to them, which have been fully described in this report, which provides the mechanism for an effective enforcement role to be provided. Conservation agency staff, however, are not provided with these powers and rely on other agencies such as the SFCs to provide enforcement functions for nature conservation initiatives, where such measures are related to a fishing activity. The limited level of enforcement powers prevents officers of conservation agencies from providing an effective active enforcement role, a factor that is especially critical in coastal sites, where officers are likely to be on their own and not in the presence of officers from fisheries agencies. Reliance on non-nature conservation agencies to provide nature conservation, divorces enforcement from lead agencies, and carries a risk that nature conservation will not be afforded a high priority by enforcement providers. Provisions are therefore required to ensure that conservation agency officers are provided with a legislative basis to offer an active enforcement role, as opposed to relying on the use of agencies with wider enforcement roles.

6.33 Currently the powers of conservation agency officers are defined in Section 51 of the W&CA (powers of entry to land for a variety of purposes including enforcement and including powers to take samples from the land and anything on it). The Habitats Regulations do not add to these powers. Obviously for terrestrial sites this makes sense, since SAC sites will also hold SSSI status by virtue of the duty in Section 28 of the W&CA. For marine sites this is not the case and so a range of powers relating to search and seizure are desirable. These powers are addressed in relation to the offshore marine environment by the draft OMCR. However, this leaves the potential for marine sites operating outside the OMCR (i.e. not offshore) lacking these enforcement powers. Amendments to the Habitats Regulations are currently occurring which are intending to resolve this issue. The OMCR provides significant powers for Authorised Officers under Part 4 of the regulations. The powers offered would provide existing enforcement officers with powers specific to nature conservation and would also enable conservation agencies to designate officers with the enforcement powers that they currently require (see discussion below relating to general enforcement powers).

Enforcement Powers for agencies with a wider enforcement role

6.34 The widespread provision of nature conservation enforcement by wider enforcement agencies is currently constrained by existing legislation which governs the activities of such agencies and the absence of a defined duty to address nature conservation. The marine based enforcement activities of the MFA, SFC, and EA have a primary focus on fisheries management. The MCA has a focus on health and safety of the shipping industry in addition to a fisheries enforcement role. Although all agencies, in their questionnaire responses, demonstrated an understanding of the need for marine nature conservation enforcement, there are specific failings with regard to legislation which are preventing such agencies providing a significant contribution to marine nature conservation enforcement initiatives. Agencies such as the SFC and the MFA, collectively, have an existing shore, water or air based range of enforcement capabilities, which are at an advanced state. By contrast, nature conservation enforcement is currently extremely limited. The potential for such agencies to provide a rapid expansion of site and species based enforcement for nature conservation is, therefore, significant. Additionally, whilst the Police have the potential enforcement role, this is currently restricted by resourcing issues.

6.35 In the case of the SFCs, Sections 5 and 5A of the Sea Fisheries Regulation Act 1966 (for marine environmental purposes) provide powers for SFCs to make byelaws and enforce them via appointed fisheries officers (Section 10 Sea Fisheries Regulation Act 1966). This power has been used in specific locations (for example Lundy Island), however, the power to provide such byelaws is not specified as a 'duty' of the SFCs. As such, in prioritising their workload, SFCs understandably concentrate on their specified statutory duties.

6.36 For SFCs to provide an enhanced role in nature conservation enforcement, there is a need for SFC legislation which constitutes and underpins SFCs (i.e. Sea Fisheries Regulation Act 1966) to provide a clear expression of nature conservation requirements expected of such agencies, or the provision of clear government direction on this matter. In this respect, SFCs will be able to take an active role in

nature conservation enforcement in partnership with the relevant conservation agency. The role of SFCs in this respect has the potential to enable enhanced marine nature conservation enforcement, using existing resources, from the coast out to the 6nm limit. Indeed, Section 1 of the 1966 Act permits the constitution of SFCs up to all territorial waters of England and Wales, as defined by the Territorial Sea Act 1987.

- 6.37 The MFA have enforcement powers out to 200nm but their primary focus relates to enforcement of the CFP, with nature conservation remaining a low priority. The MFA do have the powers to enforce EC closed fisheries areas for nature conservation purposes, however, to date, this has only been used in the case of the Darwin Mounds. The actual enforcement of the closure of this area will, therefore, clearly be dependent on the activities of the MFA (supported by the Royal Navy and the MCA). At the present time, in a similar manner to the SFCs, the MFA do not have a 'duty' to provide nature conservation enforcement, simply a mechanism to achieve this. The provision of such a duty, therefore, has the potential to ensure that the enforcement capabilities of the MFA, with regard to its land, sea and aerial surveillance, and enforcement powers, are made available for marine nature conservation.
- 6.38 The issues relating to the MFA are complicated by its non-statutory basis. For the MFA to be assigned specific roles and responsibilities, it would need to be provided with a statutory basis, rather than its current role to carry out the instructions of Ministers. The provision of a statutory basis could be provided through the Marine Bill, but this would then require a full analysis of its wider roles, and not just nature conservation. In this respect, the provision of a formalised role for the MFA could provide benefits in ensuring that marine nature conservation enforcement is provided beyond 12nm out to 200nm. The actual specifics of this would, however, need to be determined within the scope of the additional roles of the MFA, should a statutory basis and specified responsibilities be determined within the Marine Bill. At the current time, therefore, nature conservation enforcement of offshore areas is largely restricted to the MFA, who do not have any formal duty to attend to this.
- 6.39 The Police have enforcement powers relating to a variety of species legislation, however, nature conservation enforcement remains a lesser priority to overall police functions. The realisation of police enforcement powers is generally achieved via liaison with other agencies, for example with officers hosted by agencies such as CCW. Nevertheless, the powers of police officers as constables, and their expertise in enforcement of criminal law and species legislation, has the potential to provide a significant role in marine nature conservation enforcement in England and Wales. Although the number of prosecutions for marine nature conservation is currently minimal, the reasons behind this appear to relate to difficulties in collecting a significant evidentiary base to secure prosecutions.
- 6.40 At present, as described above, Police powers are limited to 12nm. It could, therefore, be advantageous to extend the range of this power out to 200nm, so that Police species protection measures can be undertaken anywhere within UK waters. This enhanced spatial role, would enable the Police to address species enforcement issues in offshore areas. For this to be effective, however, the enhancement of police powers would need to be accompanied by enhanced staffing and resourcing.

6.41 The matter of a duty to enforce needs detailed consideration, since this appears to be the limiting factor to the SFC and MFA providing a high priority to this work and obtaining subsequent resourcing. In general, and as has been noted above, it would be unusual for the duties of an agency to include enforcement. However, it is important to ensure that the agencies which have responsibility for marine nature conservation enforcement have an appropriate legislative framework of duties and functions which will inform their strategic priorities and policy making. It is suggested that each of the agencies tasked with nature conservation responsibilities should be subject to a statutory framework of purposes and functions which make specific reference to conservation. A number of options exist for this framework.

Option 1 - Rely on the current framework of responsibilities, purposes and functions

6.42 The difficulty with this approach is that, assuming a range of agencies are tasked with marine nature conservation responsibilities, some agencies (e.g. NE) will be subject to a statutory framework which relates to nature conservation and others (e.g. SFCs) will not. This appears unsatisfactory but the Marine Bill provides a good opportunity to address this.

Option 2 – Framework based upon NERC

6.43 For each of the agencies with nature conservation responsibilities, the creation of a framework of purposes based on Sections 2(2)(a), 33 and 40 of the NERC Act 2006 could be established. It may be desirable to make specific reference to the marine environment as well as the general purposes of conservation, contributing to biodiversity and sustainable development. Option 2 has the advantage of creating a clear framework for each of the agencies involved in nature conservation enabling them to develop their strategy and to be accountable for their work in marine nature conservation. Assuming an option for agency responsibility (which includes agencies responsible for other matters, such as fisheries) is accepted, then it is expected that each set of purposes and functions would have to differ for each agency. Otherwise the nature conservation purposes and functions will be outside of the wider context. This option would require primary legislation to amend the Sea Fisheries Regulation Act 1966 for SFCs and/or legislation to create a statutory basis for the MFA.

Option 3 – Option 2 with specific regard to nature conservation legislation

6.44 This option would utilise Option 2 (above) and develop it further by making specific reference to the function of enforcement within the provisions of the relevant nature conservation legislation for each agency, from the W&CA, the Habitats Regulations, the OMCR and miscellaneous nature conservation provisions (e.g. Conservation of Seals Act 1973). This would be unusual in UK environmental legislation, where enforcement as a specific role is normally implicit within the wider functions (e.g. of promoting conservation of species). This would have the effect of creating very particular accountability and emphasis on the enforcement role.

Option 4 – Statutory duty to enforce identified legislation

- 6.45 This would build on option 2 but would create a statutory duty to enforce identified legislation. Duties to enforce are very unusual in environmental law in the UK and beyond. It would have the effect of requiring enforcement action or maybe consideration of enforcement action. Enforcement would have to be defined and this would constrain the exercise of discretion by agencies over when to take enforcement action. It is suggested that this option is fraught with legal difficulties and is likely to make the agency task more difficult. In many cases, including overseas (e.g. Canada), this is addressed by clear and explicit enforcement policy.

Option 5 – Agency developed enforcement policy

- 6.46 This would build on option 2 or 3 and would then require each agency to develop an enforcement policy. However, given the potential for agencies to overlap, these policies would need co-ordination and consistency. This might be achieved ultimately by powers of ministerial direction to the agencies if they have failed to develop a satisfactory policy (e.g. Section 40 of the Environment Act 1995).
- 6.47 In summary, there is a clear case for adopting the approach in Option 2 alongside Option 5. There is also a case (based on the particular challenges of enforcement in the marine environment) for considering Option 3 but on balance, given the desirability for consistency with the current legislative arrangements for other environmental protection agencies, the recommendation is for the Marine Bill to be used as a vehicle to implement Option 2 and the legal aspects of Option 5. This approach is suggested in Recommendation 3 (see Section 7).

Non-regulatory Considerations - Co-ordination issues

Co-ordination between Enforcement Agencies

- 6.48 A universal theme which emerged from the workshops and questionnaires, and within other studies (such as the IEEP Report) relates to limited levels of coordination between agencies in marine enforcement generally, but with specific regard to nature conservation enforcement. As the case study on the Great Barrier Reef highlights (see Case Study Box 1), coordinated approaches are critical to multi-agency enforcement structures. Whilst national examples of coordination do exist, both at a national level (for example, the PAW) and in regard to local initiatives (for example the MFA/SFC local and regional groups), such initiatives cannot provide an overarching strategic approach to marine nature conservation enforcement provision. Attempts to ensure that marine nature conservation enforcement is coordinated at the present time are confined to measures which consolidate good practice, for example the use of memorandum of understanding (MoU) arrangements (see Case Study Box 3) to provide a cohesive relationship between agencies. This, however, could be supported by the provision of a range of measures which are focused at enhancing co-ordination and maximising synergies between agencies.
- 6.49 The examples which have been provided in the case study boxes collectively all address co-ordination issues to some degree. The Lundy Island example provides an example of where co-ordinated enforcement between NE and the SFCs has occurred (Case Study Box 2), whilst the example of the GBRMP illustrates how a formal multi-agency structure can be devised in regard to legislative provision (Case

Study Box 1). Non-regulatory measures are also critical in this process. The reliance of policy in providing a framework for co-ordinated enforcement in Canada, provides an example of where non-regulatory measures are providing a strategic focus to enforcement provision (Case Study Box 4).

Case Study Box 3
Multi-agency Working - Memoranda of Understanding

MoUs are well known within the UK as a tool to address inter-agency working (e.g. HSE, MCA and Marine Accident Investigation Board MOU). A good example has been developed in the USA, where a MoU has been established between the Department of Transport and Commerce and the Department of Defence, which includes provision for the exchange of intelligence/information relevant to the marine functions of the Department of Transport and Commerce. The exchange of information in a quick and effective way between agencies provides significant help in meeting the surveillance challenges which exist outside the coastal fringe.

Some MoUs could include non-government bodies in the enforcement process and this may be worth considering in the marine context to increase enforcement capacity (e.g. this is the case in California).

Case Study Box 4
Canada – The provision of policy led enforcement

Like the UK, Canada has a complex and sectorally based marine management structure. Canadian enforcement is provided under the terms of an enforcement policy suite. The objectives of the policies are consistent with the issues that need to be addressed in the UK in terms of (co-ordination, consistency, awareness raising etc.). This case study highlights an interesting reliance on policy, rather than legislation. In the absence of a national marine body (such as the MMO suggested in the Marine Bill), the use of a policy base may provide the focus for enforcement provision, that the UK currently requires. Current initiatives to foster liaison between the MFA, SFCs and other agencies could be supported by the development of a national strategy similar to the Canadian example.

6.50 The matter of enhancing co-ordination could, therefore, be resolved by means of non-regulatory measures which actively seek to foster co-ordination at an inter-agency level. A consolidation of existing efforts to foster liaison amongst enforcement agencies, and the nature conservation focus of the PAW, could be instrumental in securing this. Additionally, the management structures which may emerge out of the Marine Bill may provide opportunities to focus enforcement activity and enhance co-ordination. The possible development of a MMO, for example, could play a critical role in ensuring that nature conservation has a national central focus. A central body such as an MMO could also be ideally placed to develop a national marine enforcement strategy which could include a range of measures to address the need to increase agency co-ordination. Measures which are available include:

- the development of a National Marine Nature Conservation Enforcement Strategy;
- the creation of a marine 'Users Guide';
- the development of a marine nature conservation marine management framework;
- the creation of a national marine enforcement focus group; and
- use of structured approaches to officer secondment.

- 6.51 The measures above, are not mutually exclusive and would provide synergies if developed together in a structured manner. The key elements of each measure are described below.

Development of a National Marine Nature Conservation Enforcement Strategy

- 6.52 A National strategy for marine nature conservation enforcement could be developed which would seek to provide a nationally agreed series of principles, objectives and models for co-ordinated enforcement. Such a strategy could be developed through an existing national forum (for example the PAW) and be endorsed by the lead agencies identified within this report. Any strategy, would need to focus on addressing key enforcement issues by maximising the benefits and synergies which can be obtained from a focused strategic approach to enforcement provision. In the wider context, the strategy for marine nature conservation enforcement could itself sit within a wider marine enforcement strategy, to ensure that all enforcement has a basis for coordinated structured provision.

Provision of a Marine ‘Users Guide’

- 6.53 The provision of a “users guide” for agencies enforcing nature conservation in the marine environment, identifying easy reference for marine nature conservation provisions and jurisdiction. This guide would need to be developed to provide easy reference for users to establish their roles and powers, where and when they are applicable, and the roles of other enforcement agencies.
- 6.54 This option would provide clarity as to roles for marine nature conservation officers and would also foster a consistent approach across the UK. The ‘users guide’ could enhance awareness of roles and provide understanding, without the need to simplify legislation. The issue here stems from the fact that for coordinated enforcement to occur, agencies need to understand the context of the actions of other agencies. In this respect, the development of a management framework could reduce the confusion amongst agencies and provide clarity as to complex marine management structures and legislation.

Creation of a National Marine Enforcement Focus Group

- 6.55 The creation of a national focus group for enforcement and marine management has the potential to foster understanding and consistency amongst agencies and to improve co-ordination efforts. Two options for the group are available:
- i. to provide a nature conservation enforcement focus (possible enhanced role for PAW); and
 - ii. to provide an marine enforcement focus.
- 6.56 A marine nature conservation only focus would be simpler to establish, but would not benefit from the potential to address integrated enforcement with other agencies. Based on a national focus group, regional or area focus groups could also be provided to ensure co-ordination at strategic and site/area levels. Focus groups also have wider benefits, such as fostering enhanced relationships between agencies and

can be the catalyst for innovative approaches to specific enforcement issues. Clearly, a potential MMO would also be an ideal body to provide this function.

Structured Approaches to Officer Secondment

- 6.57 The example of seconding Police officers in North and South Wales to CCW provides a clear illustration of the benefits that can be achieved by temporary and permanent secondment of staff. The use of seconding staff into other agencies can provide greater inter-agency relationships and, therefore, encourage co-ordination at officer level in an active manner. Secondment of officers is an extremely useful and cost effective enforcement tool which could help to improve co-ordination, since host agencies can benefit from enhanced powers which hosted officers bring and the process fosters understanding between agencies with regard to practical enforcement issues. Any programme to encourage the secondment of officers from agencies would, however, need to be driven from a national source. In this respect, the national marine enforcement strategy, outlined previously, may provide the ideal vehicle for this.
- 6.58 The measures listed could be developed at the present time and have the potential to address one of the core issues which is restricting the provision of national levels of marine nature conservation enforcement. Additionally, the role of a potential MMO in developing the above options could be extremely significant. Recommendations relating to the provision of the measures above have been included in the final section of this document, with and without the provision of an MMO (Recommendation 5).

Non-regulatory Considerations - Awareness issues

Awareness Amongst Marine Users Regarding Marine Management and Enforcement

- 6.59 Many offences in the marine environment relate to a claimed lack of awareness amongst marine users of actual offences which they may be unwittingly committing. This issue is a critical enforcement consideration, insofar that a lack of awareness may situate a perpetrator beyond the reach of the law as they would be able to claim ignorance of the designation. As a result, enforcement initiatives should be coupled with educational measures to ensure that users are fully aware of any restriction or conditions placed upon their activities. The provision of an adequate educative element is critical in moving forward a greater enforcement effort as it would be likely to improve the effectiveness of anything attempted. Widening the knowledge base would be likely to include more stakeholder involvement and provide assistance to the regulatory authorities. Educational based enforcement is a critical enforcement activity. This issue also relates to the matter of *mens rea* flagged above, as a concern, which clearly affects the level of successful prosecution. The difficulty in proving the necessary 'mental element' of an offence may be related to the absence of enforcement activity recorded, and as such perhaps deserves greater attention. The more widespread the dissemination of information, the less able the perpetrator to claim ignorance of the status of the area that they were in, and therefore the nature of the 'offence' committed. Where actual prosecutions are reliant on offenders being aware that their actions constituted an offence. Lack of awareness is therefore

a key contributory factor to generating marine offences, since many offences occur through ignorance. A range of targeted non-regulatory approaches are available to address this matter. Lessons can be learned from the Great Barrier Reef Marine Park and Channel Islands Marine Reserves in California, where resources are allocated to provide maps or other literature which provides simple yet comprehensive information regarding restrictions in marine areas. Also, awareness raising initiatives are not limited to spatially defined marine areas and national approaches could be developed for specific issues. For example, specimen collecting in coastal SSSIs or small boat interaction with cetaceans.

- 6.60 The need for awareness raising initiatives is dependent on conservation agencies and wider enforcement agencies providing a focused approach to communicating with marine users as to the nature of regulatory control that is applicable in UK waters. A national strategy for enforcement (described above) could provide the ideal vehicle for this, by actively drawing upon agency awareness of national and local issues and providing joint informed responses to this.
- 6.61 In addition to the issue of awareness raising being a key theme within a National Marine Nature Conservation Strategy, the provision of a public awareness campaign (nationally and locally) to alert the public and marine users to the restrictions of marine management is also recommended. A targeted marine nature conservation awareness campaign could be developed with the explicit aim of ensuring that all marine users and agencies are provided with a succinct and focused account of marine management and enforcement initiatives insofar that this relates to nature conservation.
- 6.62 The Highway Code is a good example of such a campaign which is well understood by road users with regard to the rules and regulations of moving on a highway. A similar model could be provided, albeit at an appropriate scale for the marine environment. The code could clearly highlight what can and cannot be done in general and specific areas of the foreshore and marine environment. Additional measures could relate to more conventional measures such as the provision of pamphlets and posters in foreshore locations and interpretation boards at key locations.
- 6.63 It is considered, however, that attempts to increase public awareness should be supported by a nationally considered strategic approach to this matter, to establish what tools are most appropriate and cost effective. It is, therefore, recommended that a national marine nature conservation awareness raising campaign is provided which would include a national strategic approach to this task. Nested within this campaign would be a series of regional or local campaigns which follow similar principles with regard to specific issues or areas. This campaign could be managed by a joint conservation agency partnership, the PAW group or by a potential MMO. A recommendation to this effect is provided in the following section (Recommendation 6).
- 6.64 There is also a need to ensure that there is awareness between agencies and a key element of this relates to the recording of offences, where it is critical to ensure that agencies record and report offences and make this information available to other agencies. As highlighted in this report, enforcement agencies record incidents and

offences, but this information is either not made readily available to other agencies, or is not recorded in a focused manner with regard to marine offences. Good communication between enforcement agencies will improve enforcement actions, for example by highlighting links and opportunities for collaboration. The collation of marine enforcement information in a central database where all key agencies pool statistics on their enforcement actions would provide this and it is, therefore, recommended that this mechanism is pursued as an immediate task. Although this task is specified as non-regulatory, this role should ideally be written into the statutory duties of a key enforcement agency. Legislation could provide for the creation of a public register of key information on marine nature conservation and enforcement. This would have a statutory basis and a statutory list of information would be entered on the register following the model of other environmental public registers. Accordingly, the provision of a statutory requirement to record and report offences would benefit from being a statutory requirement of all enforcement agencies. Issues of enforcement are perhaps not given the gravitas that they demand within agencies tasked to that function in situations where there is no systematic means by which they are able to be recorded. The recording of offences enables a better understanding of the range and frequency of those committed, for example seasonal trends, as well as potentially offering profiling information on the offence and offender. It also enables the agency to demonstrate activity, where it is tasked to undertake it, or where its performance is measured against it. It is therefore recommended that:

- Basic data in relation to types of offences is recorded. This might relate to the nature of the offence, the agency involved and the outcome of any enforcement action. A requirement to do this could be written into any legislation tasking an enforcement activity. There may be implications for data protection should the information involve the identity of any person to whom the enforcement relates.
- Such data be shared between relevant agencies. A database to record, otherwise unrecorded, incidences of wildlife crime per se has been developed through the PAW secretariat. Adopting a similar model in the marine environment – or ensuring that agencies pass information to that body would be desirable, and workable. Currently the requirement to notify the Home Office of offences generally requires that they are indictable offences, or at least triable either way. For the majority of relevant offences here this is unlikely.
- Information protocols be developed inter-agency to enable data collection as above. The launch of the National Wildlife Crime Unit (18 October 2006) (NWCU) provides a further opportunity to ensure that provision is made for offence recording, specifically in instances where the offences relate to any potential ‘serious or organised’ (defined in the NCIS Threat Assessment) criminal involvement.

Summary

6.65 The analysis provided above has been specifically targeted to ensure that the issues identified have been actively considered and addressed. Options have been considered which have sought to ensure that any scope for existing mechanisms or structures can be strengthened and improved. Additionally, attempts have been made to ensure that the potential of existing enforcement roles and powers are maximised and synergies between powers or agencies, identified and realised.

- 6.66 This analysis has been structured so that any subsequent recommendations can be provided as clear regulatory provisions or well defined non-regulatory measures. It should be noted that many of the critical enforcement issues identified need to be addressed by a combination of regulatory and non-regulatory means. Regulatory provisions alone will not provide for an effective marine nature conservation network, and equally, non-regulatory measures need to be supported by the enhanced powers and provisions identified within this report.
- 6.67 It is not appropriate at this time, however, to provide an overall definitive recommendation regarding absolute roles and structures which will be appropriate to the current status of the OMCR and the Marine Bill. Enforcement responds to management issues and these are not known at this time. Recommendations have been provided, however, to ensure that wider enforcement agencies and conservation agencies are provided with a range of powers which will be flexible enough to accommodate emerging requirements. It is the conclusion of this report that as enforcement requirements emerge, the conservation agencies are provided with the potential to offer an integral and effective role within an overall enforcement nature conservation enforcement structure.

7 Recommendations and Conclusions

7.1 The following section identifies the recommendations that have been developed in the light of the information and analysis contained within this report, namely a:

- review of existing and emerging provisions and requirements (Sections Three and Four);
- examination of the recommendations from recent previous studies (as outlined) and outcomes from the targeted consultation with the key enforcement agencies (Section Five); and a
- consideration of the key issues that need to be addressed identified (Section Six).

7.2 Recommendations for change to current enforcement arrangements are outlined below along with non-regulatory approaches which will further improve enforcement provision in the marine environment. The recommendations have been provided in two component parts, regulatory and non-regulatory with respect to the critical enforcement issues which have been identified within this study.

Regulatory Considerations - Structural Issues

Complexity of Marine Enforcement (Legislation and Roles and Responsibilities) and Inconsistency in Approaches to Enforcement in Marine Legislation

RECOMMENDATION 1

Due to the uncertainty regarding future marine nature conservation requirements and issues, it is recommended that any provisions for nature conservation enforcement (under the OMCR) and the Marine Bill), are provided based upon the current enforcement activities of respective wider enforcement agencies and that the conservation agencies are also provided with a central, defined enforcement role. It is anticipated that this role would be limited to an advisory capacity at the present time (away from coastal areas), but may require an enhanced active enforcement role depending on the extent to which marine nature conservation management is expanded in UK waters, the form of such an expansion, and the issues which emerge. The intent of the above is to provide the flexibility for enforcement structures to respond to emerging management requirements and enforcement issues. Additionally, if an MMO is developed under the Marine Bill, it is recommended that such an organisation is provided with a central role in the co-ordination of national marine nature conservation enforcement. The measures relating to the provision of a 'duty' for wider enforcement agencies to address marine nature conservation, are specified in Recommendation 3. It is considered that the implementation of Recommendation 3 is critical to the success of this structure. Enforcement up to the continental shelf limit may become an issue post OMCR and as such there may be opportunities to use the new regulations as a vehicle to ensure that there is a better demarcation of function and to make the relevant conservation agency(ies) competent in jurisdiction terms up to the 200nm limit. Obviously, if an MMO is to be created, then the effect and role of such a body would need to be fully considered with respect to the above recommendation.

Regulatory Considerations - Spatial Issues

Enforcement provisions and their spatial extent (0-6nm/6-12nm/12+nm)

RECOMMENDATION 2

7.3 There are identified concerns with regard to the spatial extent of powers and jurisdiction relating to marine environmental enforcement. As such, it is suggested that:

- Section 30 of the Police Act 1996 to be amended to reflect the power of constables to 200nm;
- the constitutional legislation for each of the conservation bodies be amended to make avoid confusion and to make it clear, for the avoidance of doubt that each agency has jurisdiction to 200nm (unless the conservation agencies are to be discounted for marine nature conservation enforcement). This would require amendments to the NERC Act 2006 and Environmental Protection Act 1990.
- in respect of SFCs it is considered desirable particularly in the light of s 5A of the Sea Fisheries Regulation Act 1966 to extend their jurisdiction to 12 nm by amendment of that Act or recasting of the whole provisions relating to SFCs within a wider Marine Bill (this may be desirable if other amendments to SFCs are to be made).

Regulatory Considerations - Enforcement power and roles issues

Definition of Marine Nature Conservation Enforcement Roles

RECOMMENDATION 3

7.4 A suite of options relating to duties is provided in paragraph 6.42 - 6.46, the recommendation is for the Marine Bill to be used as a vehicle to implement Option 2 and the legal aspects of Option 5 (see below). It is, therefore, recommended that the general purposes attributed to NE under parts I and II of NERC are applied to other agencies tasked with a nature conservation function within the marine environment, with amendment of the definitions of scope to include the marine environment explicitly. A duty to include an enforcement policy as an aspect of the wider nature conservation responsibility would add weight and focus, and provision should be made for a centralised (ministerial) co-ordination to avoid gaps or overlaps.

Option 2 – Framework based upon NERC

For each of the agencies with nature conservation responsibilities, the creation of a framework of purposes based on Sections 2(2)(a), 33 and 40 of the NERC Act 2006 could be established. It may be desirable to make specific reference to the marine environment as well as the general purposes of conservation, contributing to biodiversity and sustainable development. This option has the advantage of creating a clear framework for each of the agencies involved in nature conservation enabling them to develop their strategy and to be accountable for their work in marine nature conservation. Assuming an option for agency responsibility (which includes agencies responsible for other matters, such as fisheries) is accepted, then it is expected that each set of purposes and functions would have to differ for each agency. Otherwise the nature conservation purposes and functions will be outside of the wider context.

This option would require primary legislation to amend the Sea Fisheries Regulation Act 1966 for SFCs and/or legislation to create a statutory basis for the MFA.

Option 5 – Agency developed enforcement policy

This would build on option 2 (above) and would then require each agency to develop an enforcement policy. However, given the potential for agencies to overlap, these policies would need co-ordination and consistency. This might be achieved ultimately by powers of ministerial direction to the agencies if they have failed to develop a satisfactory policy (e.g. Section 40 of the Env

RECOMMENDATION 4

- 7.5 To require the collection and sharing of enforcement data between relevant enforcement agencies; and where appropriate the passing of such information to the National Wildlife Crime Unit (NWCU).). The Marine Bill could be used as a method of amending Section 37 of NERC to include as an incidental power that of collecting and disseminating relevant information in relation to marine enforcement. An additional recommendation would relate to Section 9 NERC being amended and used as a template for NE and/or other agencies to impose a duty on them to publish or provide information between themselves in relation the general purpose of enforcing within the marine environment. This could include the production of an enforcement policy as well as incidences of enforcement that have occurred.

Non-regulatory Considerations - Co-ordination issues

Co-ordination between Enforcement Agencies

RECOMMENDATION 5

- 7.6 It is recommended that consideration is given to the provision of the following mechanisms to foster greater and more focused levels of co-ordination between conservation agencies and agencies with a wider role in marine enforcement:

- the development of a National Marine Nature Conservation Enforcement Strategy;
- the creation of a marine ‘Users Guide’;
- the development of a marine nature conservation marine management framework;
- the creation of a national marine enforcement focus group; and
- use of structured approaches to officer secondment.

Additionally, it is recommended that any potential MMO should have a primary role in developing the mechanisms listed above.

Non-regulatory Considerations - Awareness issues

Awareness Amongst Marine Users Regarding Marine Management and Enforcement

RECOMMENDATION 6

- 7.7 It is recommended that a national marine management public awareness campaign is provided which seeks to raise the profile of marine management issues and management provisions. This campaign should be based on a nationally agreed approach with the support of all marine management agencies. Localised campaigns should also be provided within this approach for areas where key enforcement issues are known to exist and/or where sites or resources are vulnerable from the negative impacts of recreational or commercial activities. This campaign should be managed as a joint conservation agency exercise, by an appropriate group such as the PAW, or by a potential MMO.

Conclusions

- 7.8 The specific regulatory mechanisms recommended in this report are considered for inclusion within the Marine Bill to provide a singular source to address the issues relating to enhancing marine nature conservation structure and mechanisms, and to provide for greater levels of co-ordination with regard to enforcement. Specific recommendations concerning the Marine Bill (beyond what this report states with regard to the MMO and MPAs) are made in this context.
- 7.9 Firstly, the Marine Bill represents an unusual opportunity to have Government primary legislative time devoted to marine issues. Secondly, obviously this opportunity can also be used for the amendment and repeal of existing legislation (and a number of recommendations have been made which relate to the W&CA 1981 and/or the SFRA 1966). Thirdly, the Bill might be used to create a new framework of legislation. For example, if it is accepted that SFCs should retain a marine environmental role and it is also accepted that they should be reformed and placed within a new framework of purposes and functions, then the Marine Bill is an excellent opportunity to do this, either by radical reform of the 1966 Act or a new statutory framework in the Marine Bill.
- 7.10 In light of this, this report has not sought to identify a list of provisions for inclusion in the Marine Bill - all of the legal change recommendations made in this report will require either primary or secondary legislation and the Marine Bill offers the opportunity to implement a range of recommendations. In addition to this, the non-regulatory recommendations provided are considered to be critical measures which are required to ensure that future marine nature conservation structures and mechanisms actively address the issues identified in this report. In this respect, the recommendations should be considered as a whole, to ensure that the maximum benefits of the measures provided here are obtained. Non-regulatory measures which seek to foster greater levels of co-ordination etc. are of paramount importance to ensure that the benefits of existing and emerging legal provisions are fully realised.
- 7.11 It is anticipated that the recommendations provided above will provide the regulatory basis and supporting non-regulatory measures which are essential to provide a

marine nature conservation structure and range of mechanisms which will offer the flexibility to respond to emerging enforcement issues in a truly effective and responsive manner.

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9 Abbreviations

AELERT	Australasian Environmental Law Enforcement and Regulators Network
BSFO	British Sea Fisheries Officer
CA	Conservation Agency
CBD	Convention on Biological Diversity
CCW	Countryside Council for Wales
CFP	Common Fisheries Policy
CRoW	Countryside and Rights of Way Act
Defra	Department for Environment, Food and Rural Affairs
DETR	Department of the Environment, Transport and the Regions
EA	Environment Agency
EC	European Community
EIA	Environmental Impact Assessment
EHS	Environment and Heritage Service of Northern Ireland
ECJ	European Court of Justice
EN	English Nature
EOMS	European Offshore Marine Site
EU	European Union
FEPA	Food and Environment Protection Act
FPV	(Navy) Fisheries Protection Vessels
FRS	Fisheries Research Service
GBRMP	Great Barrier Reef Marine Park
HSE	Health and Safety Executive
ICZM	Integrated Coastal Zone Management
IEEP	Institute of European Environmental Policy
JNCC	Joint Nature Conservation Committee
LWM	Low Water Mark
MCA	Maritime and Coastguard Agency
MFA	Marine Fisheries Agency
MLW	Mean Low Water
MNR	Marine Nature Reserve
MMO	Marine Management Organisation
MoU	Memorandum of Understanding
MPA	Marine Protected Area
MSP	Marine Spatial Planning
NE	Natural England
NERC	Natural Environment and Rural Communities Act
Nm	Nautical Miles
NTZ	No Take Zone
OMCR	Offshore Marine Conservation Regulations
OSPAR	Oslo Paris Convention for the Protection of the Marine Environment North-East Atlantic
PACE	Police and Criminal Evidence
PAW	Partnership Against Wildlife Crime
PO	Producer Organisation
QPWS	Queensland Parks and Wildlife Service
RIB	Rigid Inflatable Boat
RMNC	Review of Marine Nature Conservation
RN FPS	Royal Naval Fishery Protection Squad

RSPB	Royal Society for the Protection of Birds
SAC	Special Area of Conservation
SCI	Sites of Community Importance
SEA	Strategic Environmental Assessment
SEPA	Scottish Environment Protection Agency
SFC	Sea Fisheries Committee
SFPA	Scottish Fisheries Protection Agency
SI	Statutory Instrument
SNCO	Special Nature Conservation Order
SNH	Scottish Natural Heritage
SPA	Special Protection Area
SSSI/ASSI	Sites of Special Scientific Interest/ Area of Special Scientific Interest
UNCLOS	United Nations Convention on the Law of the Sea
VMS	Vessel Monitoring System
W&CA	Wildlife and Countryside Act

10 Glossary

Given the diverse range of reports that have been produced on marine management, enforcement and nature conservation, it is necessary to define some critical terms which are used in this document, to ensure that the context in which they are used is fully understood and is not confused with other terms and descriptions used in other reports.

Baseline

Point from which the Territorial Sea, fishery limits and the exclusive economic zone are measured. The United Nations Convention on the Law of the Sea (UNCLOS) states that the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast but it can be measured from a bay closing line where the bay's headlands are separated by less than 24nm.

Bern Convention

The Convention on the Conservation of European Wildlife and Natural Habitats – also known as the Bern Convention came into force on 1 June 1982. The principal aims of the Convention are to ensure conservation and protection of all wild plant and animal species and their natural habitats (listed in Appendices I and II of the Convention), to increase cooperation between contracting parties, and to afford special protection to the most vulnerable or threatened species (including migratory species) (listed in Annex III).

Birds Directive

The Birds Directive is the primary European legislation for the protection of birds. It is enacted under Council Directive 79/409/EEC on the Protection of Wild Birds and was adopted in 1979. Special Protection Areas (SPA) are designated by Member States which are designed to conserve the 182 birds listed in Annex I of the Birds Directive as well as migratory birds.

Common Fisheries Policy

The Common Fisheries Policy (CFP) provides the framework for the management of the European Union (EU) fishery sector, including all marine fisheries within 200 miles of member states' baselines.

Competent Authority

An authority that has the statutory powers to introduce byelaws or other regulations that may be necessary to meet national obligations towards EU legislation, but particularly for the Habitats Directive (e.g. Ministers, Government Departments and Sea Fisheries Committees (SFC)).

Ecosystem-Based Approach

The pursuit of a simultaneous understanding of the dynamics of all the populations in an ecosystem and their interactions with each other and their environment.

Effort Control

A system of fishery management that focuses on limiting the quantity of fishing gear or the duration of its deployment rather than limiting the quantity of catch that can be taken.

Enforcement

In the context of this report, 'enforcement' has been defined, in its broader context, to include a range of activities which support the implementation of spatially applied policy and legislation. In this regard, enforcement has been defined to include:

- formal legal enforcement mechanisms such as confiscation/seizure, prosecution and cautioning, and licence removal;
- informal legal mechanisms such as warnings;
- use of ancillary powers to enforcement such as entry/boarding, seizure of evidence, interviewing under caution, formal legal notices requiring information, arrest etc;
- education and awareness raising exercises;
- codes of conduct and voluntary approaches to ensuring a degree of self compliance; and
- organisational approaches which pursue or foster compliance (such as partnerships and working groups etc).

This broader definition is essential in order to ensure that the approaches advocated for future enforcement, draw upon the full range of tools that are essential if both generic and site/subject/issue specific enforcement mechanisms are to be effectively utilised.

Enforcement Drivers

Enforcement drivers relate to any external pressures that create the need for enforcement. Drivers primarily relate to legislative obligations or statutory roles, but could equally include political will or stakeholder campaigning.

Enforcement Mechanisms

Enforcement mechanisms are simply the actual range of actions which agencies or organisations can use in the pursuit of marine nature conservation enforcement. For example, mechanisms include specific provision for enforcement under legislation or specific activities which are enforcement based (such as initiatives to raise awareness etc.).

Enforcement Structures

Enforcement structures relate to any management organisational framework or defined roles which can be either statutory or informal. An enforcement structure is simply a management based, organised response to a given driver. For example, defined management roles for the SFC under legislation, are a management structure, as are partnerships such as the Partnerships for Action Against Wildlife Crime (PAW). Enforcement structures are simply the way in which agencies or organisations respond to marine enforcement issues.

Environment Impact Assessment (EIA)

A detailed assessment submitted by developers as part of the planning application process, of the likely environmental (built and natural) impact of the proposed development.

Financial Instrument for Fisheries Guidance

A European fisheries grant scheme providing funds for a variety of fisheries projects, made available in England through the relevant government department.

Habitats Directive

The Habitats Directive (EC Directive on the Conservation of Natural Habitats and of Wild Fauna and Flora; 92/43/EEC) came into force on 21 May 1992. It is intended to provide member states with a mechanism to meet their obligations under the 1979 Bern Convention and to complement the provisions of the 1979 Birds Directive. It requires member states to designate sites based on species and habitats in the Directive's Annexes, and existing designations from the Birds Directive. Once agreed by the European Commission, these sites become part of a European network, Natura 2000.

Member states must take measures to maintain in 'a favourable condition', the habitats and species for which the sites have been selected, or, where necessary, take action to restore them. Natura 2000 sites are SPA, classified under the Birds Directive, or Special Areas of Conservation (SAC), designated under the Habitats Directive.

Historic Access Rights

The right that certain nation's fishing vessels have to fish within the 6-12nm band of the UK territorial sea.

Inshore Sector

There is no generally accepted definition of the inshore sector. As such, it can be defined in a number of ways:

- geographically – e.g. distance from baseline, 6 or 12 mile limit;
- by fishing practice – e.g. gear type;
- by size of vessel – e.g. under 10m; and/or
- biologically – e.g. type of species caught.

Integrated Coastal Zone Management (ICZM)

The co-ordination of all activities, regulatory and management functions to safeguard all natural resources and processes found in and affecting the coastal zone.

Lacuna

A blank space; a missing part or an omission.

Natura 2000

European Union-wide network of nature conservation sites to be established under the Habitat Directive.

Mens Rea

A guilty mind and refers to the state of mind of the accused at the time the [actus reas](#) (act of the crime) is committed. Mens rea and actus reus must exist at the same time. Cases that don't require mens rea are known as [strict liability](#) offences.

Plan or Project

A broad term including both construction works and other interventions in the natural environment.

Polluter-pays Principle

The operator should bear the full costs of any measures required to protect the environment as a result of their actions.

Prima Facie

Evidence that is sufficient to raise a presumption of fact or to establish the fact in question unless rebutted.

Precautionary Principle

Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation (Principle 15 of the Rio Declaration on Environment and Development).

Producer Organisation (PO)

Associations of individuals, companies and other bodies within the fishing industry intended to optimise supply and increase efficiency of marketing. Some PO also manage the quotas awarded, under licence, to members' boats.

Regulatory Impact Assessment

A policy tool which assesses the impact in terms of costs, benefits and risks of a proposed regulation. Produced by government departments and agencies that exercise statutory powers and make rules with a general effect on others

Relevant Authority

Any public body that has a function or duty in relation to a marine area but particularly a site designated under the provisions of the Habitats Directive.

Review of Marine Nature Conservation

A Review of Marine Nature Conservation (RMNC) was established in 1999, by DETR, to examine how effectively the UK system for protecting nature conservation in the marine environment is working and make proposals for improvements.

Regulatory Reform Order

A statutory instrument under the Regulatory Reform Act 2001 for the purpose of making changes aimed at lifting burdens imposed by existing legislation.

Sea Fish Industry Authority

A Non-Departmental Public Body, established in 1981, which works across all sectors of the UK seafood industry to promote good quality, sustainable seafood. Sponsored by the four UK government fisheries departments and funded by a levy on seafood.

Shellfish Licensing Scheme

The shellfish licensing scheme is designed to limit the targeting of shellfish (lobsters, certain types of crab and crawfish) using pots or nets. It does this by limiting the

amount of shellfish that a vessel without a shellfish entitlement can land to a maximum of 5 lobsters and 25 crabs a day. There is also a bycatch limit (currently 5%) for trawlers.

To get an entitlement, vessel owners had to provide evidence of having landed at least 200kg of lobsters or 750kg of crabs caught with pots or nets between 1998 and 2002 (inclusive). There were also pipeline provisions for those without the necessary track record but who had irrevocable financial commitments to purchase boats and/or licence entitlements.

Special Area of Conservation (SAC)

Article 3 of the Habitats Directive requires the establishment of a European network of important high-quality conservation sites that will make a significant contribution to conserving the 169 habitat types and 623 species identified in Annexes I and II of the Directive. Each Member State is required to prepare and propose to the EC a national list of sites, which will be evaluated in order to form a European network of Sites of Community Importance (SCIs). These will eventually be designated by the Member States as SAC.

Special Protected Area (SPA)

One of the key provisions of the Birds Directive is the establishment of an internationally coordinated network of protected areas. Article 4 of the Birds Directive requires Member States to identify and classify in particular, the most suitable territories in size and number for rare or vulnerable species listed in Annex I, and for regularly occurring migratory species. Member States are also required to pay particular attention to the protection of wetlands, especially wetlands of international importance. These sites have become known throughout the Member States as SPA. Within SPA, Member States are obliged to take necessary steps to avoid deterioration of natural habitats and disturbance of the species, where this disturbance would be significant having regard to the objectives of the Directive.

All of the marine birds which breed in the UK are already partially protected by SPA. However, this protection is currently limited in the main to land above mean low water. Three types of marine SPA are being developed in the UK (for both inshore and offshore waters):

- extensions to SPA breeding colonies;
- inshore areas used by birds in the non-breeding seasons (divers, grebes & seaduck); and
- marine feeding areas.

Marine SPAs are being considered for 56 bird species which are either on Annex I of the Birds Directive or are migratory species which regularly occur in UK waters.

Site of Special Scientific Interest (SSSI)

An area notified under the Wildlife and Countryside Act (W&CA) (1981) as being of special nature conservation or geological or physiographic interests. Sites are notified by the appropriate nature conservation agency.

Statutory Instrument (SI)

A document bringing into force, usually as a result of an Order in Council, a variation to existing legislation without the need for Parliament to amend the primary legislation. The laws made through these powers are also known as secondary legislation (the parent act is known as primary legislation) or delegated legislation.

Strict liability

In the criminal sense this means that there is no mental element required, thus it does not matter that the defendant was neither intending the action or was reckless in relation it. Mere commission of the 'act' is sufficient to establish liability, although there may be a defence available.

Water Framework Directive

Requires all inland and coastal waters to reach "good status" by 2015. It will do this by establishing a river basin district structure within which demanding environmental objectives will be set, including ecological targets for surface waters. The Directive came into force in 2000.