

# **ANNEXES**

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**ANNEX A - ENFORCEMENT QUESTIONNAIRE**

## MARINE NATURE CONSERVATION ENFORCEMENT QUESTIONNAIRE

Please return to:



Royal Haskoning  
Rightwell House  
Bretton  
Peterborough  
PE3 8DW

Thank you for taking the time to complete this questionnaire, the findings of which will be used to inform the report commissioned by Defra which seeks to explore the nature conservation enforcement requirements of the Marine Bill and future marine management.

Please could you bear in mind that the focus of this work relates to nature conservation enforcement provisions and is not intending to review other enforcement mechanisms (such as fisheries) unless it is considered that there is the potential to apply other mechanisms for nature conservation purposes.

Efforts have been made to include previous responses by your organisation, and these are included for reference in italics. Please amend or add additional comments as required. Please also add any additional comments on annotated sheets and if you wish to discuss the details of your response, please do not hesitate to contact Mat Cork at the above address.

This questionnaire is intended to take no more than 45 minutes of your time.

## **Details**

1 NAME:

2 ORGANISATION & ADDRESS:

3 PERSONAL ROLE/TITLE:

4 EMAIL:

## Agency Enforcement Activities

5 PLEASE SPECIFY THE GENERAL FOCUS OF THE MARINE ENFORCEMENT RESPONSIBILITIES OF YOUR AGENCY.

6 PLEASE SPECIFY THE SOURCE LEGISLATION OR SUPPORTING AGREEMENTS WHICH PROVIDE THE OBLIGATION AND HEAD OF POWER FOR SUCH ENFORCEMENT MECHANISMS.

Wildlife and Countryside Act 1981  
[Please specify relevant sections]

Countryside and Rights of Way Act 2000  
[Please specify relevant sections]

Conservation (Natural Habitats Act Regulations 1994)  
[Please specify relevant sections]

Customs and Excise Management Act 1974  
[Please specify relevant sections]

Control of Trade of Endangered Species (Endangered Species (Enforcement) Regulations 1997  
[Please specify relevant sections]

Salmon and Freshwater Fisheries Act 1968  
[Please specify relevant sections]

Sea Fisheries Act 1968  
[Please specify relevant sections]

Other – please specify:

- 7 PLEASE STATE YOUR GEOGRAPHICAL AREAS OF RESPONSIBILITY.
  
- 8 HOW MANY ENFORCEMENT PERSONNEL AND SUPPORT STAFF ARE EMPLOYED BY YOUR AGENCY (BY REGION IF APPROPRIATE)?
  
- 9 WHAT OTHER RESOURCES (VESSELS, VEHICLES, SIGNIFICANT ITEMS) DOES YOUR AGENCY USE IN ENFORCEMENT ROLES?
  
- 10 PLEASE SPECIFY WHERE YOUR ORGANISATION WORKS IN PARTNERSHIP WITH OTHER AGENCIES OR STAKEHOLDERS (FOR EXAMPLE COMMERCIAL OPERATIONS) IN THE PURSUIT OF ENFORCEMENT MECHANISM PROVISION.
  
- 11 WHAT ARE YOUR FUNDNG SOURCES AND ARE THERE ANY ISSUES IN OBTAINING ADEQUATE LEVELS OF FUNDING?

- 12 PLEASE SPECIFY ANY ACTIVITIES RELATING TO MARINE NATURE CONSERVATION ENFORCEMENT FOR WHICH YOUR AGENCY IS RESPONSIBLE.

**Offences**

- 13 PLEASE PROVIDE EXAMPLES OF THE TYPES OF OFFENCES FOR WHICH YOUR AGENCY PROVIDES AN ENFORCEMENT ROLE.

- 14 IF READILY AVAILABLE, PLEASE PROVIDE ANY INFORMATION IN REGARD TO THE LEVELS OF ENFORCEMENT ON AN ANNUAL BASIS (FOR EXAMPLE NUMBER OF RECORDED OFFENCES ETC).

- 15 DOES YOUR AGENCY RECORD OFFENCES? YES/NO  
IF SO HOW?



- 16 PLEASE LIST WHERE APPLICABLE OTHER NATURE CONSERVATION OFFENCES WHICH ARE KNOWN TO YOUR AGENCY, WHICH YOU ARE UNABLE TO ENFORCE & WHY.

**Enforcement Improvement**

- 17 ARE THERE ANY CRITICAL FACTORS WHICH LIMIT THE SUCCESS OF YOUR AGENCIES ENFORCEMENT OPERATIONS? – YES/NO

IF YES PLEASE SPECIFY

- 18 TO WHAT EXTENT DO YOU CONSIDER THAT EXISTING ENFORCEMENT MECHANISMS AND STRUCTURES ARE ADEQUATE FOR THE MARINE NATURE CONSERVATION ROLES OF YOUR AGENCY? PLEASE PROVIDE SPECIFIC EXAMPLES IF POSSIBLE.

- 19 DOES YOUR AGENCY CONSIDER THAT IT HAS ACCESS TO NECESSARY DATA SETS TO PURSUE YOUR ENFORCEMENT ROLES?

- 20 ARE YOU AWARE OF ANY DUPLICATION OF ROLES OR OVERLAP WITH OTHER AGENCIES IN MARINE NATURE CONSERVATION ENFORCEMENT?
- 21 PLEASE PROVIDE EXAMPLES OF WHERE YOUR AGENCY HAS DEVELOPED SUCCESSFUL, EFFECTIVE AND EFFICIENT ENFORCEMENT PROCEDURES OR STRUCTURES (EXAMPLES OF GOOD PRACTICE).
- 22 PLEASE SPECIFY ANY AREAS WHERE YOU FEEL ENFORCEMENT PROVISION COULD BE IMPROVED BY MEANS OF NEW ENFORCEMENT POWERS OR BY A RATIONALISATION OF ENFORCEMENT AMONGST EXISTING AGENCIES.
- 23 PLEASE PROVIDE DETAILS OF ANY SUGGESTIONS THAT YOU MAY HAVE REGARDING THE MANNER IN WHICH MARINE NATURE CONSERVATION ENFORCEMENT MECHANISMS OR STRUCTURES COULD BE IMPROVED OR RATIONALISED, EITHER IN TERMS OF EXISTING DELIVERY OR SUBSEQUENT TO THE LIKELY REQUIREMENTS OF THE MARINE BILL.
- 24 PLEASE SPECIFY WHAT YOU CONSIDER TO BE THE CRITICAL IMPLICATIONS FOR YOUR AGENCY IN REGARD TO MARINE NATURE CONSERVATION ENFORCEMENT UNDER THE PROVISION OF THE MARINE BILL AND THE OFFSHORE MARINE REGULATIONS.

**ANNEX B - FEEDBACK SUMMARY**

## **Roles and responsibilities**

Consultees specified a list of their roles and responsibilities which was used to identify existing role provision.

## **Levels of enforcement activity and resourcing**

Information relating to the actual numbers of staff involved in enforcement or the resources available (boats etc) relates to those agencies or organisations who have an active enforcement role or presence. It should be noted that the levels of staffing and resourcing (actual numbers) are not the significant indicator in regard to whether resourcing levels are adequate. This should be considered in the context of resourcing issues, which are addressed in the enforcement issues section below. Of the consultees who specified an active enforcement role, the following levels of enforcement activity or resourcing were reported:

### Sea Fisheries Committees (SFC)

At the last count (in 2004) the 12 SFC had 115 full time staff spread over the 12 SFC and 33 vessels, including Rigid Inflatable Boats (RIB). The primary source of funding comes from local authorities and is not considered adequate for the SFCs to pursue their traditional byelaw function. No specific nature conservation funding element exists.

### Scottish Fisheries Protection Agency (SFPA)

The SFPA currently have 283 staff, which includes 104 Coastal Inspectors and 130 Marine Officers and ratings. In support of these staff headquarters has 22 operations staff and 27 administrative staff. In regard to the enforcement of fisheries legislation, the SFPA have four offshore vessels, two aircraft and 18 British Sea Fishery Officers located in 18 ports around the Scottish coast. In addition to this the SFPA also have access to a satellite tracking system for fishing vessels over 24m.

### MFA

Land based enforcement is undertaken by Coastal Fisheries Inspectors which are based at 24 port offices located around the coast of England and Wales. At present there are 58 Coastal Fisheries Inspectors supported by 13 London based headquarter inspectors. Operational staff are also supported by 59 administrative staff.

Enforcement at sea is provided by a contractual agreement with the Royal Navy's Fishery Protection Squadron (RN FPS). The current levels of patrol are agreed at 850 patrol days (current financial year) at a cost of £7k per patrol per day. A minimum of two vessels are always on patrol (rising to four) in the summer months. In 2005 the RN FPS sighted 3,499 fishing vessels and inspected 1,465.

Aerial surveillance is carried out under contract (to a company called Directflight). At present the annual contract is for 1000 patrol hours covering the whole of Defra's element of British Fishery Limits. The current cost is approximately £2k per patrol hour. In 2005, the aerial surveillance resulted in 9,654 sightings of vessels. The information is passed on to the MFA and RN FPS and this system led to at least one prosecution in 2005.

Satellite Vessel Monitoring is operated through MFA headquarters and can track all vessels longer than 15m. This system can track all British and foreign vessels to an extremely high level of accuracy.

The primary source of funding is secured from Defra with some limited EU component. Existing levels of funding for enforcement were not considered adequate with the reason stated as Governmental budgetary restrictions.

#### Scottish National Heritage

Marine nature conservation in Scotland is generally carried out via other agencies, such as the Police.

#### Natural England (NE)

NE has two enforcement officers based at its Peterborough headquarters. These officers support area staff and lead on high profile enforcement cases relating to SSSI infringements. Additionally, NE have a series of framework agreements with investigating officers and legal support which can be utilised when required. These levels of enforcement provision do however relate to all SSSI (including terrestrial) and, as such, the enforcement provision for marine areas may be significantly less than this in real terms. NE also has site specific staff who have a role in enforcement, for example 1.5 wardens are employed on Lundy Island.

NE funding is sourced through Defra and was not considered adequate for the tasks and actions required.

#### Countryside Council for Wales (CCW)

CCW has two seconded Police wildlife liaison officers, located in north and south Wales. The reporting elements of conservation are provided by CCW Conservation Officers located around the country. Area officers are also supported by headquarters staff. In a similar fashion to NE, CCW has framework agreements for specialist legal advice if required. The two Police wildlife liaison officers are provided with a 4x4 vehicle and CCW has a patrol vessel which can be used when required (The Pedryn).

CCW are funded through the Welsh Assembly Government (WAG). Existing funding levels were considered adequate, with the caveat that this may change if additional enforcement roles were requested by Government.

#### Defra

Defra listed no active enforcement staff but specified their relationship with the agencies outlined in this section.

#### Marine and Coastguard Agency (MCA)

The MCA have one Principle Enforcement Officer and a range of area based enforcement officers, one for England and Wales and one for Scotland and Northern Ireland. These staff (which attend to the broader remit of the MCA) are supported by an assistant enforcement officer and an Investigate Support Officer. These staff are supported by an unspecified range of anti-pollution aircraft and four tugs.

MCA funding is provided through the Department of Transport. Funding was considered to be subject to normal bidding constraints.

### Police

No overall figure was available in regard to specific staff, since in theory all Constables could be involved in marine nature conservation enforcement. As an indicative figure, however, the North Wales Police indicated that a team of 20 divisional wildlife and environmental crime officers are available to carry out investigations as required. A range of vehicles and vessels were also identified as being available to respond to specific incidents, even if these resources were not expressly for that purpose.

Funding for wildlife crime is sourced as per any crime activity, from the Home Office and local authorities. North Wales Police did not see funding constraints as an issue for delivery.

### **Enforcement co-ordination**

One of the critical elements in understanding the strengths in existing marine enforcement structures is the degree to which agencies or organisations have developed informal or formal structures to coordinate their efforts with others. The identification of examples where co-ordination is working, or is required, is necessary to evaluate how the provision of enforcement can be enhanced. Consultees were asked to outline where they cooperated with other agencies or stakeholders and to comment on the effectiveness of this arrangement.

### Sea Fisheries Committees

The SFC's do on occasion work with NE and MFA staff, however, differences in the typical style of operation, culture and organisational differences were seen as a limiting factor in their success. The SFC considers the level of joint enforcement work to be very low, despite the occurrence of working groups to foster co-ordination. The SFC's have recently commenced on new liaison arrangements with the MFA and are progressively gaining access to the national marine fisheries surveillance system.

### Scottish Fisheries Protection Agency

The SFPA and Defra both have respective SFI's. The SFPA have suggested they enforce their areas and Defra enforce theirs. No other co-ordination was specified.

### MFA

The MFA provide coordinated patrols at sea with other nations (Netherlands, Belgium, Denmark, France etc). There is a concerted effort to expand this relationship.

The MFA have close working relationships with the enforcement authorities in Northern Ireland and Scotland. The SFPA (which cover the Scottish Part of BFLs) and the MFA (English and Welsh BFL areas), co-ordination is specified as being essential to ensure consistency nationwide. The actual mechanisms for this co-ordination is not specified.

The MFA also provide joint patrols with the SFCs in inshore waters and also with the Environment Agency (EA) in estuarine areas. The MFA outlined that a national liaison group has been established to foster co-ordination and this will be used to enhance future co-ordination and to develop more formal co-ordination arrangements. For example, the national liaison group is investigating arrangements where the MFA could charter SFC vessels (primarily inside 12nm, but possibly outside as well). Regional liaison groups are also being developed in order to foster greater co-ordination at the regional level.

#### Scottish National Heritage

Although SNH have no enforcement powers, they work with a range of agencies to secure nature conservation enforcement provision (liaison with the Police, SEPA, Local Authorities etc).

#### Natural England

NE staff liaise closely with other relevant authorities, such as the SFCs and Defra, in the management and enforcement of nature conservation legislation. NE also consult fishermen and fish farmers, port authorities, windfarm developers, aggregate industries etc, as well as other competent authorities and land owners (Crown Estate, Local Authorities, National Trust, etc) on management responsibilities.

As a matter of course NE look to work closely with other enforcement powers to pursue the best enforcement outcome.

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 demonstrates NE's commitment to work in partnership with the police nationally and at regional level to tackle SSSI and species crime. NE also sits on the PAW Steering Group and on their Marine Working Group. Regional partnerships are being established between NE and the police and will involve other partners, agencies and NGOs. These partnerships will focus predominately on NE's wildlife crime conservation priorities that were launched last year. Four marine priorities were identified; sea bird by-catch in fishing gear; harm to seals; disturbance to marine mammals and cliff nesting seabirds by boats and; collection of protected species for the aquarium trade.

NE also occasionally liaise with the Police in regards to marine species protected under the Wildlife and Countryside Act.

#### CCW

CCW specify that most of their enforcement work is pursued in partnership with other agencies. As outlined above, CCW are a joint signatory to the PAW Joint Statement of Intent in regard to wildlife crime, which provides a clear framework to foster coordinated approaches to nature conservation crime. Additionally, CCW highlighted their efforts in cross border co-ordination with NE and the EA.

#### Marine and Coastguard Agency

The MCA regularly liaise with the Police, HSE, NE, Customs and Excise, Defra, Harbour Authorities, Immigration and commercial and private operators. The EA

have the opportunity at present to liaise with the MCA for nature conservation purposes.

#### Police

The police also stressed that their efforts were co-ordination based and pointed to the PAW arrangements above. The PAW partnership was highlighted as the key partnership in relation to wildlife crime. North Wales police pointed to the fact that liaison with the EA and CCW is actively pursued with the secondment of an officer to those organisations.

#### Conservation Groups

The Marine Connection stressed their role in coordinating with key organisations such as Wildlife and Countryside link and the PAW.

#### **Enforcement and Offences**

All agencies relating to fisheries enforcement provided detailed figures in regard to prosecutions, number of vessels boarded, sighted etc. With regard to fisheries, enforcement information on incidents and offences is well recorded, in a targeted manner. In regard to nature conservation enforcement, NE, CCW and SNH all provided a record of incidents relating to SSSI offences, on an enforcement database. Actual figures relating to offences or incidents specifically 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 suggests 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 in regard to the marine environment.

At present, it seems that recording of incidents and offences for wildlife crime occurs across the UK but is not specific regard to levels of marine wildlife crime.

#### **Enforcement Issues**

Consultees were asked to specify areas where they knew of marine nature conservation enforcement incidents or requirements, but were unable to take any action. The intent being to identify areas where enforcement issues were not being addressed by stakeholders.

#### Sea Fisheries Committees

The SFCs reiterated that fact that they have no statutory base to enforce nature conservation, other than where fisheries legislation touches on this. The SFCs consider that they could police and enforce provisions under the W&CA, but this would require Government to clearly state this and resource action.

#### Marine Fisheries Agency

The MFA said that there were unable to enforce conservation offences under the W&CA, CITES and COTES. The MFA stated that there was a lack of appropriate powers, training and resources to address enforcement.

#### Scottish National Heritage



SNH said that they were unable to enforce all fisheries legislation due to a lack of resources and legislative base. They also commented on a lack of awareness regarding what constitutes a marine offence.

### Natural England

NE provided a list of situations in which it is difficult to enforce conservation legislation. A critical overriding matter to address related to the need to ensure that third party offences could be addressed within the marine environment. Other issues identified were:

- the translocation of species between areas, the example being of species being introduced for commercial gain to an area, where it is almost impossible to prove who introduced the species. The example provided is Manila clam in the Solent;
- vessels fishing in areas excluded for selective fisheries, the example being given of areas with selective fishing restrictions, so that some fishing activity is allowed, but not all, leading to confusion and difficult enforcement;
- any fishing offence due to the high evidentiary requirement;
- the ability to close areas for vessels of a specific size is difficult to enforce and tracking vessels under 15m which do not carry a vessel monitoring system is impossible;
- FEPA and CPA are listed as being forgotten elements of the MFA;
- the lack of cross warrantation for Sea Fisheries byelaws offences; and
- any prosecution under the W&CA and marine mammal harassment (under CRoW) are extremely difficult to prosecute due to the level of evidence required.

### Countryside Council for Wales

CCW reported that it is hard to prosecute any third party damage to Intertidal SSSIs, as 'wilful damage' needs to be shown. This issue is considered to be fairly widespread (ploughing, bait collecting, beach driving etc), but only one UK prosecution (ploughing in Strangford Lough) could be cited as an example.

Offences by fishing vessels are also considered difficult to enforce because of the lack of obligation for the sea fisheries enforcement agencies to enforce nature conservation. The matter of the difficulty in providing an evidentiary basis for such enforcement was also stated.

### Marine and Coastguard Agency

The Water Resources Act 1991 was cited as difficult to enforce, but a Memorandum of Understanding (MoU) between the MCA and the EA exists which clearly defines roles. It was not clear from the answer provided if the MoU would or could resolve this issue.

### Police

Part 2 offences under the W&CA are difficult to enforce. SNCO's were identified as being responsible to enforce this, but have limited abilities to do so. Part 2 offences, which relate to habitat, were seen as being clearly linked to impacts on species.

The police are aware of many strands of legislation where there may be environmental or wildlife offences occurring, however at present it is difficult to address the enforcement of such offences, since the police may not be the lead agency, which in turn leads to issues of prioritisation.

### Conservation Groups

The conservation groups identified that it is hard to enforce the uncontrolled recreational use of foreshore areas and these can have severe impacts on biological communities. This is compounded by recreational use of water craft which can harm or disturb marine life.

Marine Connection have suggested that relevant sections of the W&CA are provided with clauses that are specific to marine species. This should be supported by new provisions in legislation to protect marine biodiversity out to 200 nm.

### **Limitation to Success of Enforcement Operations**

Consultees were asked to identify critical factors which may limit the success of their agencies enforcement operations.

### Sea Fisheries Committees

Funding issues was identified as a limitation, especially where an SFC is funded by a number of local authorities. In this situation, one local authority pulling out can lead to severe financial implications for SFC activity. Lack of funding has implications for the level or service that the SFC can provide and the extent to which equipment can be provided and maintained.

The SFC's believe that there is an imperative need to revise the Sea Fisheries Regulation Act 1966 to clearly express SFC roles and responsibilities. The example is provided of cockle fisheries, where SFCs are traditionally required to issue permits to all applicants. This expectation leads to a situation where any control must be via a Regulating Order, which can take up to five years to establish. Impediments such as this make it very difficult for the SFCs to comply with environmental legislation.

Another limitation identified was that membership of SFC's often includes nominees who have no fisheries or marine management background. Also, the overall complexity of the marine management system in the UK does not aid enforcement.

Other limitations identified were associated with unrealistic expectations. The first of these was that there is an unrealistically high expectation regarding the degree of evidence required to secure a prosecution and that penalties for these offences are not severe enough to act as any deterrent. The second was that conservation agencies have unrealistic expectations regarding the enforcement abilities of the SFC. The SFCs pointed out that they can only 'do' what parliament requires and are not autonomous. Also, there is a lack of consistency, within conservation agencies, with regional advice often conflicting with advice from National teams.

### Marine Fisheries Agency

The MFA stated resourcing and manpower issues as limitations to the success of initiatives. In addition, the actual complexity of managing within complex legal

structures and the high degree of evidentiary proof required to secure convictions can also limit success.

#### Natural England

Lack of powers to control the innocent right of passage and the issues relating to the public right to fish can make conservation legislation difficult to enforce. The reliance on Regulatory Orders to close areas (in regard to the above) make it a difficult process as these are hard to establish and take a long time to finalise.

Another limitation is that NE is reliant on other bodies for much of its enforcement and it can be difficult to impress on bodies (who have a mandate different to NE) the importance of nature conservation interests.

The sheer size and scale of many SSSI's and marine areas makes enforcement and the resourcing to patrol and enforce byelaws etc. extremely difficult. The lack of any powers for NE staff to stop activities as they witness them, limits enforcement. Also, when an offence is witness, the requirement to provide proof that an individual was actually aware that they were in a protected area (SSSI etc) can make enforcement difficult.

#### Countryside Council for Wales

A limitation identified was the lack of obligations on SFCs to enforce marine wildlife issues and other agencies to address marine wildlife enforcement generally.

Lack of resourcing and a lack of awareness and/or willingness on the part of other organisations to take enforcement seriously in the intertidal further limits success of enforcement.

#### Marine and Coastguard Agency

Lack of resourcing to address enforcement issues and defects in legislation are both considered limitations to enforcement operations by the MCA.

#### Police

Several limitations to enforcement were identified by the police, these were:

- the fact that Police powers are limited out to 12 nm;
- lack of accountability to ensure that the Police attach adequate priority to marine wildlife crime;
- limited marine capability of most police forces and lack of resourcing for marine work in all bar a few Police forces;
- lack of awareness amongst the public regarding what wildlife crime really is;
- problems of collating evidence;
- lack of consistent and coordinated legislative base; and
- lack of understanding amongst other agencies and organisations regarding the police role.

#### **Adequacy of existing enforcement mechanisms**

Consultees were asked to explain whether existing enforcement mechanisms and structures were adequate for the marine nature conservation roles of their agency.

Where possible they were asked to provide examples. Their responses are as follows.

#### Sea Fisheries Committees

The SFCs answered that the marine conservation byelaws work relatively well for fishery matters, but do not lend themselves well to nature conservation enforcement.

For other 'nature conservation tasks' the SFCs are simply neither funded or provided with dedicated resources to do the work; or required at law to do the work.

#### Marine Fisheries Agency

The MFA stated that many of their requirements for enforcing fisheries regulations would be appropriate in the context of marine nature conservation, particularly regarding the regulation of fishing operations. However, consideration would need to be given to provide appropriate powers to enable the MFA to enforce marine nature conservation regulations in relation to non-fishing activities.

#### Scottish National Heritage

The lack of any systematic approach to recording marine nature conservation offences has a knock on effect on the provision of resources for enforcing these offences. They also identify that there is a lack of awareness of marine nature conservation offences, the responsibilities of different organisations and enforcement procedures.

#### Natural England

NE has only a limited role in enforcement and therefore stated that they are probably adequately resourced for this. However, they went on to say that in terms of enforcement, the SFCs are critically under resourced, and limited to operations within only 6nm. The EA are also under-resourced and limited in their capacity for enforcing fisheries and nature conservation legislation where they act as the SFC. Ability to address third party offences and provide byelaws were cited as major incumbents to enforcement.

#### Countryside Council for Wales

In order to safeguard the marine environment, CCW stated that greater enforcement capabilities are required across all agencies generally. It is considered that existing levels of enforcement for nature conservation seem extremely limited. There is a need to provide better co-ordination, recording of offences and prosecutions and to raise awareness of roles and responsibilities.

CCW also identify that there is a need to integrate marine nature conservation and fisheries with enforcement.

#### Defra

Defra identified that the Fisheries Conservation Act 1967 only relates to fishing from vessels, therefore this central legislation cannot be applied to hand gatherers.

#### Marine and Coastguard Agency

MCA thought that existing provisions are considered adequate, but could be improved by resourcing for additional surveillance.

### Police

The Police responded stating that there is a lack of any multi-organisational approach to enforcement, and no coherent mechanisms and structures. The PAW does provide the potential to address this, if powers for enforcement were extended via legislation.

### **Duplication and Overlap of Enforcement Roles**

This section aimed to identify where the roles and responsibilities of marine nature conservation organisations and agencies overlapped. Consultees were asked if they were aware of any duplication or overlap in roles with other agencies concerning enforcement.

### Sea Fisheries Committees

The EA, Defra/MFA, NE and WAG were identified by the SFCs as organisations which all have roles which sometimes overlap and sometimes leave gaps. SFCs seek to coordinate this via the use of instruments such as cross warranting.

The perception of the SFCs is that nothing much is being done in regards to marine wildlife enforcement and that everybody is expecting the SFCs to address this, without resourcing or powers.

### Scottish Fisheries Protection Agency

For the SFPA, in practice cross boundary issues rarely arise.

### Scottish Inshore Fisheries Advisory Group

The SIFAG were not aware of any duplication in their role with other agencies.

### Marine Fisheries Agency

The MFA were not aware of any significant overlap in roles, although they thought that overlap may be possible between SFCs and the MFA in regard to fisheries enforcement.

There is also the possibility that some overlap may occur in regards to marine nature conservation within 6 nm. SACs may fall within the remit of SFCs and the MFA, if the SFCs have been given the necessary powers.

### Scottish National Heritage

SNH were not aware of any duplication.

### Natural England

NE were aware of some duplication between the MFA and SFCs in regard to nature conservation enforcement. However, SFCs are considered to have limited BSFO powers and the MFA have limited boat availability.

### Countryside Council for Wales

CCW stated that there is a lack of understanding in regards to roles between the EA, CCW, SFCs and local authorities. A specific example regards access to the foreshore, where the Police, landowners and the local authority could all enforce access matters to some degree. This may lead to an overlap or duplication.

### Marine and Coastguard Agency

For the MFA, various MoUs address any overlap issues.

### Police

No overlap or duplication was identified by the police, because no other agency is directly involved in marine nature conservation issues. Although they stated that there is a lack of understanding regarding roles, which could lead to some possible overlap.

### Conservation Groups

No overlap or duplication, although the conservation groups considered that with varying levels of enforcement being provided, a central coordinating role is necessary.

### **Good practice and enhancement of existing practice**

To examine examples of good practice in marine nature conservation enforcement, consultees were asked to provide examples of where their agency had developed successful, effective and efficient enforcement procedures or structures. Their examples are as follows.

### Sea Fisheries Committees

The Devon SFC have, via liaison with NE become actively involved in the management of Lundy Island (marine reserve, SSSI and SAC). The controls in this reserve have been introduced by Devon SFC through byelaws (e.g. the provision of a no take zone). NE has also worked with the SFC in Devon to manage the Exe estuary via byelaw provision.

In Morecombe Bay, a Joint Liaison Group was established which won a Police award for its contribution towards integrated enforcement.. The group worked with all key stakeholders to provide a clear structure of management and roles.

The North Western and North Wales SFC has worked with NE on certain features to regulate fisheries and provide protection. Similar work has also been provided in Wales with CCW in regard to scallop dredging.

In Cornwall the SFC has worked with the Royal Society for the Protection of Birds (RSPB) to provide byelaw protection for roosting birds from net fisheries.

Some SFC;s have developed codes of practice for working intertidal fisheries, and have worked to make the Police and Criminal Evidence (PACE) rules work in operating in the marine environment.

In terms of general enforcement, specialist inshore enforcement vessels have been developed.

### Marine Fisheries Agency

The MFA identified the following:

- the MFA has an operations room for the tasking and deployment of aircraft and RN Fisheries protection vessels;

- deployment of land based staff is based on MFA intelligence and risk based enforcement plans;
- successful operations using satellite vessel monitoring and aircraft patrols; and
- development of forensic accounting skills.

#### Scottish National Heritage

In Shetland, a marine code was developed and supported by Regulation 33 packages etc. The Shetland Shellfish Regulating Order was also the first regulating order in Scotland.

#### Natural England

NE have internal enforcement guidance which provides clear options for enforcement and provides clear delegations in regard to specific levels of damage to interest features etc. This provides a national focus to enforcement and secures consistency of approach.

NE have also published a formalised Enforcement Policy, which specifies to the public and other agencies what can be expected from NE.

Partnership working is also central to NE's activities generally as is raising awareness of nature conservation issues to the public.

#### Countryside Council for Wales

CCW was involved in the Marine Code of Conduct produced by the PAW.

#### Marine and Coastguard Agency

Signatory to the Director General's agreement between prosecuting agencies.

#### Police

The Police service has provided MoUs with a number of key statutory agencies such as the EA, but none as yet relate specifically to marine nature conservation enforcement.

The Police role on the PAW is seen as an excellent example of the Police working with, and bringing agencies together. The PAW has also provided the Marine Code of Conduct etc.

#### **Improvement of enforcement provision**

Consultees were asked to specify areas in which they felt enforcement provision could be improved, either by means of new enforcement powers or by a rationalisation of enforcement across existing agencies.

#### Sea Fisheries Committees

The SFCs have provided two papers relating to improvements which have been endorsed by the English Inshore Fisheries Group in regards to the structure for management required for better marine management and the roles of all agencies. These documents are currently with Defra, and the SFCs understand that the Minister has approved them.

### Scottish Inshore Fisheries Advisory Group

As the enforcement of marine conservation is a devolved issue from 0-12nm, but is a UK responsibility from 12-200nm, the manner in which these issues are addressed in Scotland differs from England and Wales. The Police have some powers in England, but the SFPA have the power to protect flora and fauna under the Inshore Act 1984 and will enforce closures in 0-12nm. It is considered that the provision of clarity and consistency in management across these areas is essential for successful enforcement.

### Marine Fisheries Agency

MFA recommended a simplification of fisheries legislation and enhancement and standardisation of existing MFA powers. Additional powers required include the ability to haul static fishing gear.

### Scottish National Heritage

Since enforcement coverage in Scotland is sometimes patchy, SNH recommend an evaluation of the resourcing required for enforcement provision. They also suggest the introduction of mechanisms to raise awareness of marine management and enforcement.

### Natural England

The power for NE staff to stop and request details from possible offenders would be an improvement from the existing system.

NE also recommend that they should have powers to obtain restoration without the need to gain a successful prosecution (and apply to the Court for a restoration order).

Also suggested was provision of agreed approaches to cross-warrantation.

### Countryside Council for Wales

CCW specified several areas in which they felt enforcement provision could be improved:

- provision of the power to enforce any activities that occur on intertidal designated sites. An improvement of nature conservation enforcement measures and integration of this into fisheries management/enforcement.
- repeal the right to fish.
- a body should be identified with responsibility for enforcing marine nature conservation legislation. CCW consider the fisheries enforcement agencies as the most appropriate enforcement body.
- enforcement authorities should be provided with adequate resources and tools to carry out its functions. Practical changes that would contribute to this include increasing penalties for infringements (consideration should be given to the revoking of a fisheries licence) and requiring satellite tracking devices to be fitted to all fishing vessels.
- improvement of the provision of information to sea users, authorities and the general public on the location, importance, sensitivity of important marine features and ensure that they are aware of any restrictions on human activities in relation to these features.



- too often cases of infringement are not pursued due to lack of will or resources. CCW believe a tougher stance should be taken on enforcing legislation after infringements. High profile cases would act as a deterrent against further infringements.
- it would be particularly important to ensure the adequate enforcement of exclusions relating to HPMA's because many of the benefits that we expect from these sites would take time to become apparent – an incidence resulting in the site being damaged could set-back the recovery of the site significantly.
- in Wales, compliance monitoring, investigation and enforcement should be undertaken by the most appropriate authority. In intertidal and immediately adjacent coastal waters there may be a role for CCW. CCW recommend that one body has responsibility to oversee the work, possibly the appropriate fisheries enforcement agency. Where bodies are required to take on further duties, sufficient resources must be allowed for these roles.
- provision of clarity in the role of different enforcement agencies in respect of marine licensing. It will require substantial resources to be effective.
- the lack of resources available to fund current enforcement regimes is one of the key reasons that it is ineffective. Whilst penalties do exist for infringement of regulations, they are rarely actively enforced and thus do not act as a deterrent.
- the Government's response to RCEP's report says the cost of applying Vessel Monitoring Systems (VMS's) to all vessels above 8m is prohibitive, the use of VMS should be required for vessels operating marine protected areas – this approach has been adopted within the Great Barrier Reef marine park. Requiring VMS on vessels operating within MPAs would be a very useful form of deterrent.

#### Defra

In terms of areas for improvement, Defra state that the working relationships with various agencies will be looked at in developing the role of SFCs and providing them with a suite of powers to implement the Marine Bill.

#### Police

Police specify co-ordination of enforcement powers and agencies as the key issue.

#### **Suggestions**

This section enabled the consultees to detail suggestions which they have regarding the manner in which marine nature conservation enforcement mechanisms or structures could be improved or rationalised, either in terms of existing delivery or subsequent to the likely requirements of the marine bill.

#### Sea Fisheries Committees

The SFCs suggest that UK marine law needs entirely rethinking and rationalised.

#### Marine Fisheries Agency

The MFA would like to see issues regarding proof in marine crime addressed.

#### Natural England

NE suggests issues to deal with include providing intent and appropriate penalties to act as a real deterrent.

### Countryside Council for Wales

CCW recommend the integration of enforcement into a focussed coordinated manner. Priority to date appears to be given to the consenting and licensing of new applications whilst compliance and enforcement appears to receive much less time and attention. Problems include:

- the emphasis being on consenting and licensing new developments and renewals of existing licenses;
- the absence of a system feeding back relevant experience and results from monitoring undertaken as conditions that could ease subsequent consent applications and records compliance;
- the lack of adequate resourcing; and
- large numbers of personnel changes.

CCW's experience suggests there can be problems with enforcing conditions placed on a marine development consent because they are often vague and in practice unenforceable.

CCW's experience is that even though conditions have been attached to a consent, they are not always followed. The reason for attaching consents may be so that the impact of the development can be reviewed at a later stage should subsequent consents be required - without the agreed monitoring package having been carried out, this cannot happen. A better understanding of the actual impacts of a development would enable informed decisions to be made with respect to similar developments. The regulator should be clearly responsible for ensuring that conditions attached to a licence are met and there should be feedback to CCW or others if conditions are not followed.

In addition, licence conditions must clearly identify what is required by the developer and the Regulator needs to take responsibility for a workable monitoring package being developed. Frequently, the condition attached to a licence includes a statement to the effect that 'monitoring will be carried out to the satisfaction of CCW'. Clearly such conditions are difficult to enforce and are likely to lead to confusion and disputes between the developer, CCW (as a statutory consultee) and the regulator.

CCW consider that clear lines of command/delivery are needed. At the moment it is not clear who is responsible for enforcement of different activities in the intertidal/marine. Marine designated sites need site 'wardens' (with a mix of powers currently held by bodies such as WAG, Defra, EA, the police SFC, and CCW) who have more powers than the current Relevant Authority Groups (for SACs) or CCW (for SSSIs) to be able to manage the sites for nature conservation.

They also recommend that the Environmental Liability Directive may have enforcement obligations that should be borne in mind when examining enforcement of marine nature conservation obligations.

### Police

The police state that marine nature conservation enforcement is widely seen as having failed, it is considered, however, that this is likely to be due to the lack of

awareness and understanding regarding legislation and the identification of clear roles. The actual legislation may not be to blame.

It is considered imperative, by the police, to raise awareness amongst agencies and the public regarding marine nature conservation.

### Conservation Groups

Enforcement or “the application of a set of legal tools both informal and formal, designed to impose legal measures to ensure a defined set of requirements is complied with” is considered a key determinant by conservation groups in the successful implementation of species and habitat protection.

Marine Connection identify that enforcement within the marine realm can be difficult due to an unlimited number of entry points and often incomplete information on the status of marine resources. In the United States, enforcement of MPAs and their associated restrictions have been difficult to enforce due to variations at federal, state and local levels. In 2000, an Executive Order was issued which gave a common definition of an MPA and provided a statutory requirement for all agencies to work together. Marine Connection believe that a central co-ordinating agency is essential in the implementation and enforcement of a network of MPAs in the UK.

Marine Connection believes that enforcement issues should be addressed at the very start of planning and law enforcement representatives should remain involved in the process from start to finish.

Any regulation should be compatible with existing patterns and practices as near as possible, the greater the difference and/or the more restrictive – the greater the incentive will be to violate the restriction. It is often assumed that low levels of compliance result from inadequate enforcement, however compliance with regulations is often down to a range of influences, including:

- the potential economic gain from illegal activity;
- the perceived risk of detection;
- the severity of any penalty.

Therefore to increase compliance with any regulations an improved understanding of compliance behaviour is required. Research has shown that most are more likely to make a decision on whether or not to commit a violation based on perceptions of legitimacy (regulations, procedural fairness and self interest).

Marine Connection believes that any enforcement strategy should:

- 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

- meet science and information needs

Marine Connection is pleased that the Marine Bill consultation suggests that the UK Government is committed to providing effective enforcement arrangements. Marine Connection believes a duty to enforce marine protection measures should be placed on the appropriate competent marine authorities, whether they be existing authorities, such as the Royal Navy and the Maritime and Coastguard agency, or a new marine enforcement body. Particularly, where more than one authority is involved, there should also be a requirement to work together and share information through a central system for recording.

**ANNEX C - CASE STUDIES**

## Lundy Island Statutory No-Take Zone –

The Lundy Island MNR in the Bristol Channel represents the UK's first statutory marine nature reserve and is managed by NE pursuant to powers under the Wildlife and Countryside Act 1981. 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. As a result the demands placed on the area are significant. To this end a zoning scheme<sup>1</sup> 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 a no take zone on the eastern side of the island. Indications that the measure is contributing positively to marine conservation are cautiously optimistic<sup>2</sup>, and stocks are recovering. In relation to the early views the Fisheries and Marine Minister heralded the use of 'closed areas' reflecting their importance in marine environmental management<sup>3</sup>. Otherwise the designation of the NTZ has been seen as an opportunity to develop enforcement techniques<sup>4</sup>, although at the present time there has been no recorded enforcement activity, despite anecdotal reports that some illegal 'potting' has taken place. Difficulties here lie in the evidentiary issues involved in the monitoring and identification of vessels and gear used in the area.

Relatively good publicity of the NTZ, stakeholder agreement and consistent monitoring by a range of bodies has contributed to the overall success of the area itself, although the enforcement mechanisms have not seriously been put to the test. It does however, provide an example of partnership working, between the Devon SFC and NE, and also demonstrates the importance of the educative and awareness-raising roles that such sites bring with them. So far as the anecdotal reports of illegal fishing within the NTZ is concerned, Devon SFC confirmed that pots were removed from the NTZ and lodged with the Lundy warden for the owner to collect. So far they have not been<sup>5</sup>.

### Overseas case studies/ lessons to be learnt

Successful enforcement measures taken in other jurisdictions may provide examples of good practice which may be utilised in a UK context. The wider and more effective use of MPA's, in their widest sense, is a characteristic of many of the non-UK approaches. Clear zoning, prohibitions, and licensing of permitted activities enable a more coherent approach to enforcement, enabling better targeting of resources thereby contributing to conservation benefits. The UK is committed to the

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<sup>1</sup> See, for example, <http://www.lundy.org.uk/inf/zone.html>

<sup>2</sup> See for example: Sitalines, Issue 52 summer 2005 available at: <http://www.english-nature.org.uk/pubs/publication/PDF/SL52.pd>; WWF-UK News, 22 July 2005, [http://www.wwf.org.uk/news/n\\_000001751.asp](http://www.wwf.org.uk/news/n_000001751.asp);

<sup>3</sup> See English Nature Press release: <https://www.english-nature.org.uk/news/story.asp?ID=745>

<sup>4</sup> It was noted that the Lundy statutory NTZ was important practice for policing NTZs as 'effective enforcement was crucial to their long term success and credibility'. Cornwall SFC minutes 25 April 2003

<sup>5</sup> Devon SFC, personal communication 1 August 2006

establishing of MPA's by virtue of international obligations already highlighted in this report<sup>6</sup>.

### **Australia - The Great Barrier Reef Marine Park (GBRMP)**

The GBRMP represents the largest world heritage site and offers protection to a range of eco-systems. Detailed research and mapping of the area, undertaken in order to identify threats to eco-system types and to provide a basis for protection, has resulted in the establishing of different types of management zoning. The effect, as reported by the RCEP<sup>7</sup>, has been to ensure an integrated management plan that enables multiple uses. The management plan enables a co-ordinated enforcement response and integrates a series of functions, such as the fact that federal and state police are also Marine Park inspectors<sup>8</sup> supplementing the Queensland Parks and Wildlife Service (QPWS). Resource and information sharing between agencies involved in enforcement has improved the enforcement response in the area.

The GBRMP Authority notes that alongside education, enforcement and prosecution are important tools for the QPWS which has boats and aerial surveillance capacity. Additionally the Queensland boating and fisheries patrol carries out specialist surveillance in areas where illegal fishing has been identified and aids the enforcement process. Customs also share information with the Authority through the vehicle of Coastwatch, as is other information from aerial surveillance carried out by other government departments. High level promotion of the rationale and policies of the GBRMP has assisted in engaging the public to report illegal activities more effectively and is encouraged<sup>9</sup>.

Legislation<sup>10</sup> establishes the powers of the GBRMP inspectors: currently those inspectors who are also police officers are granted a power of arrest for example. Any prosecutions are brought by the Director of Public Prosecutions, although should this office choose not to proceed the GBRMP Authority reserve the right to issue written warnings.

A clearly presented set of enforcement priorities, combined with relatively high financial penalties and an integrated structure of enforcement personnel appears to offer a useful model, addressing certain of the identified deficiencies in the UK's rather more fragmented, current, approach.

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<sup>6</sup> OSPAR, Ramsar, CBD for example

<sup>7</sup> RCEP 25<sup>th</sup> report, Turning The tide: addressing the impact of fisheries on marine conservation, December 2004, Box 8A, p 186.

<sup>8</sup> See for example: [http://www.gbrmpa.gov.au/corp\\_site/management/who\\_participates.html](http://www.gbrmpa.gov.au/corp_site/management/who_participates.html)

<sup>9</sup> A more detailed examination of the roles and functions is provided at:

[http://www.gbrmpa.gov.au/corp\\_site/management/ddm.html](http://www.gbrmpa.gov.au/corp_site/management/ddm.html)

<sup>10</sup> The Great Barrier Reef Marine Park Act 1975

## Marine Environmental Enforcement – Some Comparative Studies

### Policy led Enforcement - Canada

Marine environmental enforcement in Canada has some complexity as appears to be the case in most jurisdictions. Responsibilities are split between Fisheries and Oceans Canada and Environment Canada with some responsibilities in establishing marine protected areas falling to Parks Canada – see [http://www.dfo-mpo.gc.ca/canwaters-eauxcan/infocentre/publications/docs/fedmpa-zpmfed/part9\\_e.asp](http://www.dfo-mpo.gc.ca/canwaters-eauxcan/infocentre/publications/docs/fedmpa-zpmfed/part9_e.asp). What is of interest in the Canadian example is the use of enforcement policies – one relating to habitat protection and pollution prevention under the Fisheries Act (jointly shared between Environment Canada and Fisheries and Oceans Canada) and an Environment Canada policy relating to wildlife protection legislation. The policies have the following objectives:

- To enable fair, consistent and predictable enforcement;
- to provide clear information to everyone who shares responsibility for the marine environment (governments, industry and individuals) what is expected of them; and
- to explain the role of regulatory officials.

A number of features in the policies are worthy of noting:

- The complex interrelationship between responsibilities of Environment Canada and Fisheries and Oceans Canada with federal, provincial, terrestrial and municipal governments whose actions may have significant impacts on fishery resources and on habitats. One way in which this issue is addressed in Canada is by designating enforcement officials in these other government agencies as having enforcement powers under the Environment Canada and Fisheries and Oceans Canada i.e. federal legislation. Similarly for wildlife legislation some members of the Royal Canadian Mounted Police, Customs officers and conservation officers of local and provincial governments are designated as wildlife legislation enforcement officers.
- The policies provide a framework for the setting up of inter agency/departmental agreements/memoranda. For example there are inter agency agreements with Parks Canada and the Royal Canadian Mounted Police and Revenue Canada (equivalent of Customs).
- Enforcement officers powers are set out in the legislation and policy and include e.g. inspections including opening containers, examining fish or any other thing and taking samples, conducting any tests or taking any measurements, require any person to produce records or documents for examination, use or cause to be used any data processing system etc. In addition there are powers of entry, search, seizure of anything believed to have been used during the commission of the offence as well as seizure of evidence. There are powers of arrest and duties to assist enforcement officers.
- A policy requiring that education and information dissemination is part of the overall enforcement strategy including for example the development of guidelines and codes of practice.



- Policy concerning the development of scientific and technical expertise and transfer of technology to partners also concerned with marine enforcement.
- Information on the use of formal enforcement mechanism and the factors which will be used by the regulatory agencies in deciding whether to use a particular mechanism e.g. fishery inspections will be used on compliance history and risk to the environment. In addition the policy addresses how alleged violations will be considered including a duty to investigate these.
- Responses to violations are also detailed in the policy with factors to be considered in deciding which approach to take.

These policies raise important issues about how a policy framework can improve inter agency working and the enforcement approach of agencies. This would seem to be borne out by the experience in England and Wales with the National Rivers Authority and Environment Agency policies on prosecution and enforcement. It also provides some insight into particular measures which may help in the marine context. For example developing the appropriate toolbox of enforcement powers and the designation of officers across a range of organisations to share responsibility for enforcement within one enforcement policy. This also enables enforcement effort to be maximised.

### **Multi-agency Working - Memoranda of Understanding**

Memoranda of Understanding are well known within the United Kingdom to cover inter agency working including enforcement even in the marine context (e.g. Health and Safety Executive and Maritime Coastguard Agency and Marine Accident Investigation Board). Obviously MoUs will be used to define areas of responsibility at different stages of enforcement often the lead role organisation. This note simply draws together one or two important features from an overview of some overseas MoUs in the marine environment context:

The USA has developed an MoU between the Department of Transport and Commerce and the Department of Defence which includes provision for the timely passing on of any intelligence/information relevant to the marine functions of the Department of Transport and Commerce. The passing of information in a quick and effective way between agencies will be a significant help in meeting the surveillance challenges which exist outside the coastal fringe.

Canadian MoUs between Transport Canada and Oceans Canada have a couple of interesting features. First the setting up of Joint Marine Advisory Councils to monitor the operation of the MoU and secondly an issue resolution procedure for disputes which may arise under the MoU.

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 done in California.

## ANNEX D - ENFORCEMENT MEETING DELEGATE LIST

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<b>Officer</b>	<b>Representing</b>
Jo Myers	Defra
Andy Tully	Defra
Nick Williams	Defra
Colin Penny	Defra
Trevor Hutchings	Defra
Jane Sandall	Scot. Inshore Fish Adv.
Clare Eno	CCW
Nevin Hunter	D&C Police
Neil Wellum	MFA
Juliette Parker	MFA
Sam Walmsley	WWF-UK
Lindsey Richardson	Environment Agency
Jo Wharam	WDCS
Peter Winterbottom	SFC
John Tait	Scottish Executive
Liz Sandeman	Marine Connection
Sue Gubbay	Independent Consultant
Jason Lowther	Plymouth University
Mat Cork	Royal Haskoning

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**ANNEX E – ENFORCEMENT ISSUES AND POTENTIAL SOLUTIONS**

**Table One - Enforcement Issues and Potential Solutions (Table One)**

	<b>Specific problems</b>	<b>Possible Solutions and Options</b>
<b>STRUCTURAL ISSUES</b>		
Levels and provision of powers of enforcement	<p>Existing enforcement role for conservation agencies</p> <p>Limited provisions and capacity for conservation agency staff to take enforcement action on intertidal areas,</p> <p>Lack of powers to stop/search/seize/arrest for appropriate enforcement staff</p>	<p>A legislative review and rationalisation of enforcement roles to provide a centralised singular legislative basis/point of reference for all marine enforcement staff. Provision of enforcement powers to all staff identified in site based marine management.</p> <p>As above, and the interim stage of providing conservation agency staff with enforcement powers on intertidal areas.</p> <p>As above.</p>
Awareness levels (amongst agencies and the public of marine management and marine nature conservation offences)	<p>Members of the public and enforcing agencies have a poor level of awareness of the marine environment, and also of marine nature conservation offences. Marine species identification is difficult and there are not sufficient resources to enable enforcement of current rules for protection of fish species listed for protection.</p>	<p>Provision of a “users guide” for agencies working in the marine environment, providing easy reference, in regard to marine provisions and jurisdiction.</p> <p>Provision of specialist wildlife enforcement training for enforcement agencies.</p> <p>Creation of a national focus group for enforcement and marine management to foster understanding and consistency (possible enhanced role for PAW). This group could assist in developing a greater understanding amongst agencies of roles and management.</p>

	<b>Specific problems</b>	<b>Possible Solutions and Options</b>
		Provision of a public awareness campaign Nationally and locally, to alter the public and marine users to the restrictions of marine management. The interpretation and information efforts relating to the Great Barrier Reef Marine Park provide a good model for this.
Information levels and access to information	<p>The level of recording incidents and offences for fisheries crime is high. The actual recording of enforcement action by the conservation agencies and incidents by the Police is also high, but this is not explicitly provided for the marine environment.</p> <p>The lack of data for the marine environment prevents any meaningful analysis of levels of enforcement for nature conservation. The provision of this data may also be a simple task that simply requires a centralised reporting system for the UK, to provide that requirement.</p> <p>The relative lack of a permanent presence in the marine environment can lead to many offences going unnoticed. In the terrestrial environment, a high level of enforcement action is triggered by third party complaints.</p>	<p>Collation of marine enforcement information in a central database accessible to all parties. Conceivably relevant parties could be required to populate such a database under legislation or through a Memorandum of Understanding. The content of the database would be confined to indicators of numbers of incidents and offences and not the actual details of offenders.</p> <p>Requirement for all agencies to report annually on offences and incidents in the marine environment.</p> <p>Increased use of remote sensing and surveillance techniques.</p>
Integration of agencies in enforcement action (agencies working	There is a need for national co-ordination of enforcement. Examples of good practice have emerged between the Police, SFCs and the conservation agencies etc, but such examples have	Secondment of North Wales Police Wildlife Liaison Officers to the CCW has resulted in improved co-ordination, understanding and liaison. Such cross-fertilisation approaches should be considered more

	<b>Specific problems</b>	<b>Possible Solutions and Options</b>
together)	developed in response to local issues and there is a need for a nationally consistent coordinated approach, see below in co-ordination section.	widely.  The need for a clear definition of all enforcement roles across the UK and a specification of principles for their application via a simple UK marine enforcement policy Part of this strategy could relate to a programme of enabling integration between agencies. This could be provided at a national level, in terms of legal provisions and MoUs and also at a local level in regard to specific issues.
Co-ordination of agencies in enforcement action (agencies working in a structured, informed manner)	<p>The most consistent message of the consultation was the lack of, and need for, a nationally coordinated approach to marine wildlife enforcement. Initiatives such as the PAW have made significant progress in this respect, but the task remains to provide a clear account of the overall intent of marine nature conservation enforcement and a specification of the roles of all agencies.</p> <p>Currently there is no requirement for organisations involved in enforcement of legislation or management in the marine environment to cooperate or share information. This leads to inconsistencies and prevents development of best practice.</p>	<p>A new MFA/SFC National Liaison Group has recently been established, with some progress having been made on co-ordination and sharing of resources. This could provide the basis for a singular management focus of marine enforcement. Creation of a national focus group for enforcement and marine management to foster understanding and consistency (possible enhanced role for PAW)</p> <p>The need for a clear definition of all enforcement roles across the UK and a specification of principles for their application via a simple UK marine enforcement policy. This policy could provide the basis for active co-ordination of enforcement roles, via agency agreements, suggested legal provisions and MoUs.</p> <p>Provision of legal provision under the Marine Bill and Offshore Marine Regulations to require agencies to</p>

	<b>Specific problems</b>	<b>Possible Solutions and Options</b>
		work in a coordinated manner via role specification and protocol provision.
Duplication of roles	Duplication of roles was not seen as a major issue, but may occur through lack of co-ordination in a situation where agencies, unknowingly pursue similar objectives.	The need for a clear definition of all enforcement roles across the UK and a specification of principles for their application via a simple UK marine enforcement policy. This policy could, via a rationalised assessment of existing roles avoid any duplication of roles.
Supporting for structure of marine spatial planning.	There is currently no planning system relating to the use of the marine environment to cater for the needs of different users. Demands from commercial and recreational activity are placing increasing pressure on marine sites, and as a system of marine spatial planning emerges, this will be accompanied by a range of enforcement roles.	The provisions of the Marine Bill and Offshore Marine Regulations are likely to see the provision of a more structured approach to marine management. It is imperative therefore that any such management has enforcement, and the manner in which enforcement will be provided, as a high priority in any subsequent management initiatives.
<b>ENFORCEMENT MECHANISM ISSUES</b>		
Inconsistency and complexity in enforcement	<p>The application of fisheries, environmental and nature conservation law in UK marine waters is incredibly complex, with most agencies only having a working knowledge of their own core legislation.</p> <p>The interaction between agencies in providing enforcement is also extremely complex nationally, and has generally emerged on an ad hoc basis.</p> <p>The actual degree of complexity makes enforcement and management solutions difficult to identify and is a constraint on multi-agency work</p>	<p>Provision of a “users guide” for agencies working in the marine environment, on marine provisions and jurisdiction specifically relating to marine nature conservation.</p> <p>Creation of a national focus group for enforcement of marine nature conservation provisions to foster understanding, exchange of information and consistency (possible enhanced role for PAW).</p> <p>Simplification of the legislative provisions for enforcement through the Marine Bill. All existing enforcement roles to be addressed via single source</p>

	<b>Specific problems</b>	<b>Possible Solutions and Options</b>
	<p>Due to the complex suite of legislation relating to marine enforcement, there is also a legacy of inconsistency between legal provisions and the terminology applied. This has led to confusion, and been a constraint to coordinated management.</p>	<p>legislation.</p> <p>Review of marine legislation, to provide common terminology and consistency. This could be partially addressed via the ‘users guide’, but will ultimately require a legal review and statutory adoption.</p>
Definition of enforcement roles	<p>Clarification regarding enforcement roles in regard to existing and emerging requirements is required.</p> <p>Clear direction regarding the specific roles and expected roles of particular agencies is needed (for example the role of the SFCs does not appear to be universally understood). Whilst this is in part an issue of awareness, it also relates to the degree to which all agencies are provided with clearly defined roles.</p> <p>No overarching strategy or account of UK wide enforcement roles and expectations of agencies and organisations relating to marine nature conservation</p>	<p>The need for a clear definition of all enforcement roles across the UK and a specification of principles for their application via a simple UK marine enforcement policy.</p> <p>Provision of a “users guide” for agencies working in the marine environment, on marine provisions and jurisdiction specifically relating to marine nature conservation.</p> <p>The need for a clear definition of all marine nature conservation enforcement roles across the UK and a specification of principles for their application via a simple UK marine enforcement policy.</p>
Utilisation of available enforcement tools	<p>No national overall enforcement strategy so limited utilisation of the range of mechanisms (education, interpretation, codes of practice etc) that are available to encourage compliance and support enforcement.</p> <p>Various mechanisms (such as cross-warranting etc) were raised as tools that could be applied, and would be useful, but to date have been limited in their use. In order for overall enforcement to be efficient and</p>	<p>The need for a clear definition of all marine nature conservation enforcement roles across the UK and a specification of principles for their application via a simple UK marine enforcement policy.</p> <p>The need for a clear definition of all marine nature conservation enforcement roles across the UK and a specification of principles for their application via a simple UK marine enforcement policy.</p>



	<b>Specific problems</b>	<b>Possible Solutions and Options</b>
	effective, there is a need to ensure that existing tools are fully utilised. This can only happen in a coordinated, structured manner.	
<b>SPATIAL ISSUES</b>		
Spatial inconsistencies in legislation provision.	Variations in application of domestic legislation from 6-12 nm, and lack of application outside 12nm means that conservation of marine species and sites is difficult anywhere but close to shore.	New legislation should ensure that any protection for species or sites is uniformly applicable in all UK waters up to 200nm
Devolution issues	The current situation regarding devolution needs careful management to avoid further jurisdictional confusion and inconsistency.  WFD provisions will apply to 1nm in England and Wales but to 3nm in Scotland	Provision of a simple UK-wide statement on devolution and marine management, describing devolved and reserved powers and specifying areas of difference and commonality in relation to marine nature conservation enforcement  As above

Table derived and expanded from the IEEP Report for CCW "Issues with Marine Wildlife Enforcement" (IEEP 2005).

