

**REPORT
ON A WORKSHOP
TO REVIEW
THE EFFECTIVENESS OF
STATUTORY REGIMES FOR
MARINE NATURE CONSERVATION**

Report To
**EUROPEAN WILDLIFE DIVISION
DEPARTMENT OF THE ENVIRONMENT, TRANSPORT AND
THE REGIONS AND
REVIEW OF MARINE NATURE CONSERVATION WORKING
GROUP**

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Please Note

This report is a record of discussions at a Workshop held on 7th November 2000. It contains references to the Countryside and Rights of Way Bill and to some reviews and events which have since taken place. To maintain the context of the discussions these references have not been updated even though the Countryside and Rights of Way legislation received Royal Assent during the reporting stages. References to the Countryside and Rights of Way Bill should now be to the Countryside and Rights of Way Act 2000.

List of Acronyms Used in the Report

Glossary

CCW	Countryside Council for Wales
DETR	Department of Environment, Transport and the Regions
DTI	Department of Trade and Industry
EC	European Community
EIA	Environmental Impact Assessment
EN	English Nature
EU	European Union
FEPA	Food and Environment Protection Act, 1985
MAFF	Ministry of Agriculture, Fisheries and Food
MNR	Marine Nature Reserve
cSAC	(Candidate) Special Area of Conservation
SPA	Special Protection Area
SSSI	Site of Special Scientific Interest

REPORT ON A WORKSHOP TO REVIEW THE EFFECTIVENESS OF STATUTORY REGIMES FOR MARINE
NATURE CONSERVATION: REPORT: DEC 2000 FOR DETR

UK

United Kingdom

1. SUMMARY

- 1.1 The workshop and this report were commissioned on behalf of the Secretary of State by the European Wildlife Division of the Department of Environment, Transport and the Regions (DETR). The objective is to report on a workshop held to obtain expert views as to the effectiveness of statutory regimes for marine nature conservation. [Section 2
Context and
Project Brief]
- 1.2 The workshop was hosted by the DETR but independently facilitated and led by David Tyldesley and Associates, environmental planning consultants with the assistance of Browne Jacobson, Solicitors. The Workshop was held on 7th November and was attended by 29 people, 23 of whom represented 19 bodies with regulatory or statutory advisory functions in the marine environment. [Section 2
Context and
Project Brief and
Appendices A and
B]
- 1.3 There are five basic types of statutory regimes which potentially may affect or deliver marine nature conservation. These are: [Section 4
Statutory
Regimes]
- a] Specific Measures for Nature Conservation;
 - b] Control of Plans and Projects;
 - c] Duties to Have Regard to Nature Conservation;
 - d] Discretionary Powers to Help Nature Conservation; and
 - e] Protection of Natural Resources.
- 1.4 Specific measures for nature conservation are considered to be largely ineffective except for European Marine Sites. However, there were widely varying views as to the effectiveness of the Management Schemes for European Marine Sites. SSSIs were likely to be a more effective measure than they have been in the past if the changes proposed by the Government in the Countryside and Rights of Way Bill are enacted. They could be used more below mean low water. [Section 5
Specific Measures
for Nature
Conservation]
- Marine Nature Reserves were seen to be a failed initiative. They were over-bureaucratic and unrealistically relied on complete consensus before designation would be progressed; the legislation was too prescriptive.
Generally site designation approaches were not favoured, there was a recognition that obligations for nature conservation should extend throughout the marine environment.
- Species protection was not considered to be effective in the marine environment. It relied on a level of knowledge about the species that did not generally exist and on levels of enforcement that were unrealistic.
- Regulating trade in endangered species, however, was excluded from these criticisms.
- 1.5 Some controls over plans and projects in the marine environment were considered to be very effective, in particular the provisions of the Habitats Regulations in relation to European Marine Sites. However, some felt that the Regulations were over prescriptive and inflexible and there was inconsistency in their application by different bodies. Others commended the precautionary approach and felt this could be [Section 6
Control of Plans
and Projects]

more widely adopted in marine environmental controls.

The FEPA controls were also considered to work well. However, the effectiveness of other regimes for nature conservation was seen to be very variable, depending mainly on whether EIA was effective in identifying nature conservation issues. Generally, the EIA regime is seen as a good provision for nature conservation.

Key weaknesses in the regimes include the multiplicity of controls and consenting regimes, the number of regulators, the lack of a lead or coordinating regulator and overlapping jurisdictions.

There is evidence that some bodies and users of the marine environment take advantage of these weaknesses and interpret legislation to suit their own needs. Other bodies are extremely sensitive about the liability of legal challenge which can be fostered by the extent of uncertainty.

The inadequate level of knowledge about marine ecology and the effects of natural and induced change is seen as one of the biggest problems in delivering nature conservation. Many also believe that science is not being used in the most appropriate manner in the assessment and control of proposals.

There was a widespread concern about the lack of an overall framework, or guidance, in which activities can be assessed and decisions can be made about the marine environment.

Other problems identified related to the legislation being largely reactive and piecemeal.; the “least pain approach” adopted in UK for tackling EU legislation; ownership of the sea bed; devolution of government in Scotland and Wales; and the lack of Integrated Coastal Zone Management.

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|-----|--|--|
| 1.6 | Provisions imposing duties to have regard to nature conservation were considered to be of limited effectiveness for nature conservation because many bodies would do so anyway. Those that would not be inclined to do so would find the duty was very easily discharged and it was not an effective requirement. | [Section 7
Duties to Have
Regard to Nature
Conservation] |
| 1.7 | Discretionary powers to help nature conservation are considered to be of limited effectiveness. The Minister of Agriculture, Fisheries and Food has used some powers to restrict certain types of fishing in the Wash. However, other bodies with these powers rarely if ever have used them because they would rely on Byelaws, which are seen as cumbersome, expensive and difficult to enforce; or resources that are not available for discretionary projects. | [Section 8
Discretionary
Powers to Help
Nature
Conservation] |
| 1.8 | On the whole, controls to protect fish stocks and prevent pollution are considered to be quite effective in achieving their purposes but they are difficult to enforce at sea. The multiplicity of regulation and regulators is, again, a limiting factor in effectiveness. In 2002 the | [Section 9
Protection of
Natural
Resources] |

Common Fisheries Policies will be amended so that environmental considerations will be a prime objective. International shipping law is considered to work relatively well. The EC Directives “bite hard” and all contribute to the health of the seas.

- 1.9 In looking for solutions, there is a need to define “nature conservation” and decide whether it needs to be distinguished from general environmental conservation. There is a need to consider marine biodiversity as a whole, not least because it is an important indicator of the health of the seas.

[Section 10
Opportunities and
Solutions]

There is a need for a Vision and to set Objectives through a clear statement by government, nationally, as to what we are trying to do for nature conservation. This should be supported by comprehensive, strong and clear policy guidance, perhaps in a form similar to the Planning Policy Guidance Notes.

- 1.10 The vision and strategy could:
- a] set goals for stakeholders, programmes and plans for change - including a framework in which development has a positive role and activities can continue without unnecessary restriction;
 - b] include the international, national and regional perspectives;
 - c] mesh the devolved administrations;
 - d] address the need for better education and understanding about the marine environment;
 - e] provide a clear context and justification for legislative change;
 - f] provide the context for deciding what processes / procedures were necessary to deliver the strategy and thus how existing ones may need to be changed.

A “duty of care” could be introduced for all sea users but it would need to bite more effectively than the duties “to take account” of nature conservation (see para 1.6 above).

- 1.11 A coordinating body was needed, capable of overseeing the processes regulating and changing the marine environment, enforcing the statutory provisions and encouraging all parties to contribute to the implementation of the strategy in an integrated way. It should be a multi-disciplinary body with an understanding of the activities as well as the environment of the sea. It could take responsibility for identifying the environmental information needed and available. It could coordinate monitoring and the acquisition of new information. It could provide a pool of expertise on the marine environment available to all parties and an advisory service in respect of environmental impact assessment.

[Section 11
Opportunities and
Solutions]

- 1.12 However, there was a wide range of views as to how that body should be created, including a division of DETR or MAFF, a merger of existing DETR and MAFF teams, a separate statutory agency or an independent scientific organisation. Others rejected the idea of a single coordinating body and felt that more should be done to make existing systems work better before more widespread change was contemplated.

- 1.13 There was considerable discussion in the groups as to whether a designations approach was the most appropriate means of achieving nature conservation in the marine environment. Two potential alternatives to this were suggested which are closer to a complete zoning, or English Nature's "Natural Areas" approach, moving towards Integrated Coastal Zone Management.
-

2. CONTEXT AND PROJECT BRIEF

- 2.1 The marine environment is governed by an extensive list of statutes and a large number of regulators, including central government, national agencies and statutory undertakers. This complexity, some overlapping of jurisdictions and, in other cases, perceived gaps in legislative controls, have been seen to create confusion, uncertainty and misunderstanding. Moreover, there is concern from a number of bodies that many of the statutes which are either specifically designed for, or may be used for, nature conservation in the marine environment are not being effective in achieving their goals.
- 2.2 The consultation initiated by the Government in 1998, '*Sites of Special Scientific Interest - Better Protection and Management*' [1], contained a proposal to set up a working party to look at options for improving protection of marine nature conservation interests. That Working Group was established in September 1999.
- 2.3 The Group is charged with, inter alia,
- a] evaluating the success of previous statutory and voluntary marine nature conservation measures between Highest Astronomic Tides and the 12 mile limit of UK territorial waters;
 - b] identifying examples of current best practice and existing barriers to successful implementation of marine conservation objectives;
 - c] considering recent developments in marine nature conservation thinking; and
 - d] putting forward practical and proportionate proposals for improving marine nature conservation in England, which may also inform separate proposals for marine conservation in Wales.
- 2.4 In order to inform the debate of the Working Group, the Department of the Environment, Transport and the Regions, European Wildlife Division commissioned this research project on behalf of the Secretary of State. It involved a Workshop to which all the relevant statutory regulators and advisors working in the marine environment were invited. Those attending the Workshop were able to contribute their expertise and experience and to review the effectiveness of statutory regimes for marine nature conservation.
- 2.5 Although the Workshop was hosted by the Department, it was independently organised, facilitated and led by a consultancy team from David Tyldesley and Associates, environmental planning consultants, with the assistance on the day from Browne Jacobson, Solicitors. The consultancy team was also responsible for preparing this report.
- 2.6 Thus, the aims and objectives of this project were defined as follows:

“To establish a workshop to evaluate the success of statutory regimes of relevance to nature conservation in the marine environment, either directly or substantially in an indirect way, in delivering their aims.

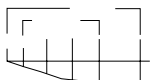
The workshop should:

- (I) bring together the key bodies with duties or powers relevant to nature conservation in the marine environment;*
- (ii) evaluate the effectiveness of existing legislation in delivering marine nature conservation; and,*
- (iii) produce a report to the Review of Marine Nature Conservation Working Group on the outcome of discussions at the workshop.”*

2.7 The Workshop was held on Tuesday 7th November 2000 at Ashdown House, Victoria Street, London. It ran from 10am until 4pm and was well attended by representatives of the organisations listed in Appendix A. A more detailed explanation of the way the Workshop operated is presented in Appendix B.

3. HISTORICAL PERSPECTIVE AND OVERVIEW OF STATUTORY REGIMES IN THE MARINE ENVIRONMENT

- 3.1 As an introduction and context to the discussions in the Workshop, an historical perspective of statutory regimes in the marine environment was presented. This is a consultant's personal overview and is not necessarily the views of the Department or any of the Workshop participants.
- 3.2 Historically, fewer people have been directly involved in marine nature conservation than in terrestrial nature conservation. There has been a lack of political interest in the past and the subject has not received the same wide public attention as that enjoyed by nature conservation on land.
- 3.3 Apart from occasional, obvious major accidents and other major incidents, environmental problems tend to be less evident in the sea and therefore less likely to be the subject of public attention. Compared to terrestrial ecology, there has been a much lower level of survey and monitoring of the marine environment. Many animal species are highly mobile and their habitats and ecosystems are far less well understood. There is therefore considerable scope for improved knowledge and understanding needed to inform marine nature conservation.
- 3.4 Statutory regimes are often narrow in remit, complex in operation and require high levels of expertise to understand. As the diagram below illustrates there are many different boundaries to statutory jurisdictions, which in some cases can be uncertain. Interrelationships between key players are very complex and there has often been a lack of adequate coordination and consultation.



- 3.5 Since ownership of the sea bed has generally been vested in the Crown, in the past there has also been a perception in government that there is less need for regulation.
- 3.6 To date, marine nature conservation has been carried out largely on a voluntary basis. Site designations and statutory provisions have rarely been used. Only recently has marine nature conservation begun to attract a wider public and political debate, such that the need to review the effectiveness of its statutory basis has led to the establishment of the Working Party.

4. THE STATUTORY REGIMES

- 4.1 There are five basic types of statutory regimes which potentially may affect or deliver marine nature conservation. These are:
- a] Specific Measures for Nature Conservation;
 - b] Control of Plans and Projects;
 - c] Duties to Have Regard to Nature Conservation;
 - d] Discretionary Powers to Help Nature Conservation; and
 - e] Protection of Natural Resources.
- 4.2 These five areas form the basis for the presentation of the outcomes of discussions at the Workshop. Leading on specific measures for marine nature conservation tends to be in the remit of the nature conservation agencies - CCW, English Nature and the JNCC. However, all the marine authorities, regulators or advisors which were present at the Workshop could be “relevant authorities” under Regulation 33 of the *Conservation (Natural Habitats Etc) Regulations* 1994, in respect of the management of European Marine Sites. All have one or more primary function or duty regarding activities in, on, over or under the sea. Most have a duty to have regard to nature conservation in the exercise of those functions. Parliament has given some bodies discretionary powers to help or promote nature conservation. All, potentially, could be restricted by certain regulations, when undertaking or regulating projects, particularly in respect of marine candidate Special Areas of Conservation (European Marine Sites), because of the statutory duties under the Regulations of all competent authorities.
- 4.3 Self evidently, the Workshop discussion groups comprised representatives of a wide range of bodies with an equally wide range of duties and functions and experience of nature conservation. The groups included project promoters and statutory undertakers, regulators, scientific advisers and statutory nature conservation bodies. Consensus of opinion on all the issues was never likely. The object of the Workshop was to capture and explore the range of opinion and experience, not to seek a common view about either the effectiveness of the regimes, or the solutions to problems that may be perceived. Nevertheless, there was a significant degree of common ground in identifying weaknesses in the regimes and, to a lesser extent, in solutions. The fact that the present regimes are not effective in delivering practical nature conservation in the marine environment was a virtually unanimous opinion.

5. SPECIFIC MEASURES FOR NATURE CONSERVATION

5.1 The specific statutory measures for nature conservation in the marine environment are summarised in Table 1 below.

Table 1 Specific Measures for Marine Nature Conservation	
Source Legislation	Topic / Issue
Wildlife and Countryside Act 1981 S.28	Sites of Special Scientific Interest
Wildlife and Countryside Act 1981 S.36	Marine Nature Reserves
Wildlife and Countryside Act 1981 S9-13 Sch 1, 5, 8	Species Protection
Habitats Directive & Conservation (Natural Habitats Etc) Regulations 1994 Regs 7 - 14	Designation of European Marine Sites (SACs)
Conservation (Natural Habitats Etc) Regulations 1994 Reg 33-34	Management of European Marine Sites (SACs)
Conservation (Natural Habitats Etc) Regulations 1994 Reg 36	Byelaws for European Marine Sites (SACs)
Birds Directive 79/409/EEC	Classification of Special Protection Areas (SPAs)
Ramsar Convention 1971 on Wetlands of International Importance	Listing of Ramsar Sites
Conservation (Natural Habitats Etc) Regulations 1994 Reg 16	Management Agreements for European Marine Sites (SACs)
Conservation (Natural Habitats Etc) Regulations 1994 Regs 38-43	Species Protection
Conservation (Natural Habitats Etc) Regulations 1994 Regs 44 - 46	Licensing protected species
Wild Mammals (Protection) Act 96	Protection of Mammals
Trade in Endangered Species 10 x EC Regulation 97 - 99	Trade in Endangered Species and controls over trade in whale and seal products
Endangered Species (Import & Export) Act 1976, Control of Endangered Species (Enforcement) Regulations 1997	
WCA 81 S.14	Introduction of alien species
Conservation of Fishery Resources 3 EC Regulations directly applicable	Control of certain fishing nets to reduce by-catch
Lead Shot Regulations 1999	Control of Lead Shot

Discussion

European Marine Sites

5.2 These provisions are considered to be largely ineffective except for Management Schemes for European Marine Sites (Regulations 34 - 35 the Habitats Regulations 1994). However, even in respect of the management provisions for European Marine Sites, there were widely varying views as to their effectiveness. Most felt that bringing all relevant authorities together,

with a common purpose, and requiring one to take a lead (not necessarily the nature conservation agency) was a valuable contribution to nature conservation.¹ This initiative and the subsequent duty for all relevant authorities to then exercise their functions so as to give effect to the scheme, is a model that could be adapted and extended elsewhere, some thought perhaps to all areas of the sea, as it might be the best way to secure marine nature conservation. It could be built into legislation for Integrated Coastal Zone Management.

- 5.3 However, by sharp contrast, others felt that the measures were imposed, and a burden. The legislation lacked clarity and it had the potential to seriously interfere with marine activities. Others felt the measures were limited in effect and not strong enough to deliver nature conservation any better than on a voluntary basis.

Sites of Special Scientific Interest

- 5.4 Some felt that the provisions for SSSIs, in the past, had been ineffective, and would not work well in the marine environment, being largely about incentive not to do things rather than positive management.
- 5.5 However, there was a more widely held view that SSSIs are likely to be a more effective measure if the changes proposed by the Government are enacted (Countryside and Rights of Way Bill). They could be used more in the marine environment whereas at present the general practice is to notify land only down to mean low water.

Marine Nature Reserves

- 5.6 Marine Nature Reserves were seen to be a failed initiative because they were seen to be over-bureaucratic in the process and unrealistically relied on complete consensus before designation would be progressed. This was not likely to be achieved with so many marine interests and, in any and every event, meant that one organisation could effectively veto any MNR. This was wrong. There was uncertainty as to whether the legislation relied on complete consensus or whether it was a policy, but there was little support for the MNR approach. In any event MNR legislation was too prescriptive, it was seen to be inoperable and a disappointment.
- 5.7 Generally site designation approaches were not favoured, there was a recognition that obligations for nature conservation should extend throughout the marine environment. Users often do not understand all of the implications of the designations

Species protection

¹

Although this is a record of the discussion it should be noted that the Regulations do not actually require one Relevant Authority to take a lead.

- 5.8 Species protection was not considered to be effective. It relied on a level of knowledge about the species that did not generally exist and on levels of enforcement that were unrealistic. Policing mechanisms are simply inadequate so there is little credibility. Trade in endangered species however, was excluded from these criticisms and was not seen as a particular weakness or strength.

6 CONTROL OF PLANS AND PROJECTS

Introduction

- 6.1 Plans and projects in the marine environment are controlled through a multiplicity of regulatory regimes. Examples are controls under the Food and Environment Protection Act 1985 (known as FEPA) whereby licences or other consents are required for any structure or other deposit on the sea bed. Under these provisions the Marine Environment Branch of MAFF are responsible for the issue of several types of licences including the disposal of dredged material and construction licences for structures in, on, under and over the sea bed. The same project may also require a consent from the DETR Ports Policy Division which, amongst other matters, is responsible for regulating works out to the extent of the continental shelf to ensure safety of navigation. These consents are operated under the provisions of the Coast Protection Act 1949.
- 6.2 In October 1994 the UK Government brought the requirements of the EC Habitats Directive into force in domestic law through the Conservation (Natural Habitats Etc) Regulations 1994. Amongst other matters, they define "Competent Authorities" very widely, effectively any Minister or public body or officer or statutory undertaker. It makes them responsible for compliance with the Directive in the exercise of their functions and imposes strict decision making procedures designed to protect the ecological integrity of European Marine (and all other Natura 2000) Sites. The Regulations operate on the precautionary principle, restricting the circumstances where consent may be given to a project when the Competent Authority cannot ascertain it will not have an adverse effect on the integrity of the site.
- 6.3 Another important provision in respect of the control of plans and projects is the Environmental Impact Assessment (EIA) regimes. The requirements of EC Directives in 1985 and 1997 (EEC 85/337, 97/11) are implemented in England and Wales by a range of statutory Regulations which include, in respect of the marine environment:
- the Town and Country Planning (EIA) (England & Wales) Regulations 1999;
 - the Transport and Works (Application and Objection Procedure) Rules 1992 and Transport and Works Act (EIA) Regulations 2000;
 - the Public Gas Transporter Pipeline Works (EIA) Regulations 1999;
 - the Electricity Works (EIA) Regulations 2000;
 - the Harbour Works (Assessment of Environmental Effects) Regulations 1988 / 89 / 96 / 99;
 - the Highways (Assessment of Environmental Effects) Regulations 1999;
 - the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999;
 - the EIA (Land Drainage Improvement Works) Regulations 1999;
 - the EIA (Fish Farming in Marine Waters) Regulations 1999;

the Nuclear Reactors (EIA for Decommissioning) Regulations 1999;
and
the draft EIA & Habitats (Extraction of Minerals by Marine Dredging)
Regs

Discussion

The Habitats Regulations

- 6.4 Some controls over plans and projects in the marine environment were considered to be very effective, in particular the provisions of the Habitats Regulations in relation to European Marine Sites. However, some felt that the Regulations would eventually fail because they were over prescriptive and inflexible. Because all competent authorities had to apply the Regulations it was evident that different bodies interpret the same provisions differently, leading to uncertainty and confusion. The assessment of projects in combination and the consideration of cumulative effects are particularly difficult.
- 6.5 CCW and EN are the nature conservation advisers, not the decision makers under the Regulations but many bodies felt that, in reality, they do effectively make the decisions because few competent authorities are going to go against their advice and conclusions. Others commended the precautionary approach and felt this could be more widely adopted in marine environmental controls.

FEPA controls

- 6.6 The FEPA controls were also considered to work well in terms of disposals and constructions at sea. However, the effectiveness of other regimes for nature conservation was seen to be very variable, depending mainly on whether EIA was required and if it was, whether it was effective in identifying nature conservation issues.

Environmental Impact Assessment

- 6.7 The environmental impact assessment regime is seen as a good provision for nature conservation, indeed for the marine environment generally. It looks at all environmental issues and, in cases of good practice, provides a thorough assessment of effects on flora and fauna, and other environmental sensitivities. In principle, the regime introduces a rigorous, reasonably standardised, systematic and critical examination of environmental effects and wide public consultation which would not otherwise occur. The environmental statement sets out the effects of the scheme, mitigation measures and residual impacts with an estimate of their significance.
- 6.8 However, in practice, concern was expressed about the lack of clarity and rigour in terms of what environmental impact statements should contain and the standards they should meet. The schedules to the regulations are still open to interpretation and, whilst the content and methods adopted by statements needs to be flexible enough to accommodate differing circumstances, the requirements are insufficiently prescriptive. Good practice is not widespread and standards remain low. Conversely, concern was also expressed that the

effort and cost of the EIA process needed to be more commensurate with the nature and scale of the project.

Weaknesses in the present regimes

- 6.9 Weaknesses in the regimes include the multiplicity of controls and consenting regimes, the number of regulators, the lack of a lead or coordinating regulator and overlapping jurisdictions, especially in the intertidal. Examples of difficulties encountered included the lack of a single regulatory mechanism for marine dredging and a recent maritime wind farm and its terrestrial infrastructure which together required nine different consents from nine regulatory bodies which each looked at their remit narrowly. DTI were specifically identified as having “a plethora of separate regimes”.
- 6.10 The multiplicity of control means that it can be a very difficult task to identify what controls apply in particular circumstances. This can lead to unintended breaches of controls. It also means that who is responsible for different aspects of the marine environment is uncertain and this too can lead to unintended harm to nature conservation interests. Where there is no apparent or actual control it is difficult or impossible to apportion responsibility. Bodies are naturally reluctant to assume responsibilities outside their statutory remit and beyond their resources or expertise.
- 6.11 Equally, there can be unnecessary duplication, for example, DETR Ports, using the Coast Protection Act controls can do some of the same things as MAFF, using the FEPA controls. At least in part this derives from the application of some regulatory regimes in circumstances they were not intended and designed for, this includes some provisions of the Coast Protection Act 1949 and navigation.
- 6.12 There was concern expressed about the inclination of various bodies and users of the marine environment to take advantage of the complexity, multiplicity and uncertainty by interpreting legislation to meet their own needs. The need to balance competing interests, interpret complex statutory provisions and try to find a pragmatic decision making process means that there is bound to be variation in interpretation and there is always going to be a difference between legislation, guidance and what happens on the ground, or rather, in the sea. This can give the impression that some bodies and authorities are allowed to do things which others are prevented from doing, an unfair inconsistency. This is not necessarily duplicity but a need to find practical ways of getting things done whilst always conscious of the increasing likelihood of legal challenge.
- 6.13 Regulators have to be aware of, and on the look out for, opportunities for others to challenge their decisions in the courts. The environmental pressure groups and NGOs are both skilled and willing to make such challenges where they believe decisions have been made that are harmful to the marine environment. The marine industries therefore have to be cautious and have to

try to protect their own interests. Equally decisions made by the regulators in the interests of nature conservation can be challenged by others who seek to achieve their own aims, not necessarily for the purpose of nature conservation. The extent of uncertainty generates a potential for litigation and challenge and for narrow and over-cautious interpretation of statutory provisions.

- 6.14 There was a call for regulators to be more prepared to make firmer judgements and to be more flexible, to think of the process and object of regulation rather than the letter of the rules. The balancing of socio-economic arguments with environmental concerns is more difficult in the sea. There is uncertainty about the environmental effects (see below) and almost all projects and activities offshore have good socio-economic reasons for their continuation or proposal. For example, it was felt that MAFF find difficulties in balancing their obligations to the fishing industry whilst sustaining the quality of the marine environment. Even at the shore, there is the inevitable conflict between the desire to protect land from coastal erosion and the desire to allow systems to operate and develop naturally.
- 6.15 It was clearly felt that there is currently insufficient knowledge about marine ecology and the effects of natural and induced change. This was seen as one of the biggest problems in terms of successfully delivering nature conservation. Regulators, advisors and users of the seas all raised the point that there is a great gap in the understanding of this environment. Consequently, science is not being used in the most appropriate manner in the assessment of proposals. It was accepted that this knowledge is not going to be developed overnight.
- 6.16 Many comments referred to gaps in legislation and activities that were not controlled. However, few explicit examples were given that appear to be justified. It was suggested there was a lack of control over pipelines, dredging, wind farms, fishing and drilling and yet these same activities were highlighted as subject to a multiplicity of controls.
- 6.17 There was a widespread concern about the lack of an overall framework, or guidance, in which activities can be assessed and decisions can be made about the marine environment. Decisions therefore tend to be taken in isolation, in an ad hoc way or in accordance with only one body's policies or interpretation and view about nature conservation. This lack of an overall framework means that those involved in regulating the marine environment can miss tackling big issues and fail to appreciate the "bigger picture".
- 6.18 There is concern about the lack of nature conservation expertise amongst those making decisions. In particular there are difficulties in assessing the cumulative effects of change. Science, although being refined, is often not good enough to provide sufficient information. There is a serious lack of knowledge and understanding about the marine environment's responses to change. Sometimes science may not be used correctly or appropriately; or the scientific justification for, say, conditions on consents is irrational, weak or

wrong. Conditions requiring monitoring may be imposed as a substitute for a fully informed decision, sometimes to try to reassure and satisfy the concerns of nature conservation bodies.

- 6.19 There is a lack of a clear and consistent “boundary” between the land and the sea and some regulators feel that regimes which try to draw artificial distinctions between the land and the sea are doomed to fail.
- 6.20 Other problems identified related to the legislation being largely reactive and piecemeal. Generally it was felt that UK has taken the “least pain approach” to tackling EU legislation, resulting in a diverse and complex series of additional controls sometimes inappropriately bolted on to existing regimes.
- 6.21 In addition to the historical perception of government that Crown ownership of the sea bed reduces the need for regulatory control, because it is a form of control in itself, it is also seen as limiting effective control because it can inhibit enterprise. On the other hand, no one actually suggested an alternative form of ownership.
- 6.22 The effect of devolution of government in Scotland and Wales is further increasing the number of different approaches, policies and statutory regimes and is already seen as adding to an already intolerably complex picture of regulation. The need for an overview and a strategic framework is getting more urgent, not less.
- 6.23 There is a lack of Integrated Coastal Zone Management. The sea is not well policed and it is inadequately regulated.

7. DUTIES TO HAVE REGARD TO NATURE CONSERVATION

Introduction

- 7.1 A number of statutory provisions, to have regard to nature conservation in the exercise of their functions, have been built into or added at a later date to the founding legislation of statutory bodies. Examples of these are S.3 of the Water Industries Act 1991 which requires Ministers, the Director General of Water Services and Water Companies to further the conservation and enhancement of SSSI when formulating or considering proposals. S.48A was added to the Harbours Act 1964 imposing a similar duty on Harbour Authorities. The Environment Agency undoubtedly has the most stringent duties for nature conservation, in respect of SSSI and wildlife and the water environment generally, under the provisions of Sections 6 and 7 of the Environment Act 1995.
- 7.2 The Sea Fisheries (Wildlife Conservation) Act 1992 requires Fisheries Managers to have regard to the conservation of marine flora and fauna and to endeavour to achieve a reasonable balance with the interests of fishing.
- 7.3 Under the provisions of Regulation 3(4) of the Habitats Regulations 1994, all Competent Authorities have to have regard to the requirements of the Habitats Directive in the exercise of all of their functions. Furthermore, Regulation 3(3) imposes a more specific duty on the Secretaries of State for Environment, Transport and the Regions and MAFF, and on CCW and EN to secure compliance with the Directive in the exercise of their nature conservation functions. Under Regulation 34, all Relevant Authorities are required to exercise their functions so as to secure compliance with the Habitats Directive through the implementation of the Management Schemes for European Marine Sites.

Discussion

- 7.4 These provisions were considered to be of limited effectiveness for nature conservation because:
- A] where there was a willingness on the part of statutory bodies to have regard for nature conservation and there was no conflict of interest most, if not all, would do so anyway; but
 - B] where bodies lacked a deeper commitment or where there were conflicts of interest then the statutory duty was too easily discharged and was not an effective requirement.
- 7.5 In any event, it is clear that different bodies interpret the requirements differently. Some are not considered to be weighing nature conservation against other issues properly. The need to take a balanced view was limited to

a very small number of bodies, eg the Fisheries Managers referred to in 7.2 above.

8. DISCRETIONARY POWERS TO HELP NATURE CONSERVATION

Introduction

8.1 A number of statutory provisions, giving various bodies discretionary powers to help nature conservation, in addition to their other statutory functions, have been built into or added at a later date to the founding legislation of statutory bodies. Examples of these are Sections 102 - 103 of the Environment Act 1995 which amended the Sea Fisheries Regulation Act 1966 to provide Sea Fisheries Committees with the powers to act to protect the marine environment by introducing Byelaws. The Sea Fisheries Conservation Act 1967 and Environment Act 1995 empower the Minister of Agriculture Fisheries and Food to restrict fishing for Nature Conservation purposes. Schedule 2 of the Harbours Act 1964 as amended enables Harbour Authorities to make Byelaws for nature conservation.

Discussion

8.2 These provisions are considered to be of limited effectiveness. The Minister of Agriculture Fisheries and Food has used the powers under the Sea Fisheries Conservation Act 1967 and Environment Act 1995 to restrict certain types of fishing in the Wash, for the purposes of nature conservation.

8.3 However, other bodies with these powers rarely if ever have used them. The main reasons appear to be:

- A] a reliance on Byelaws, which appear to be widely disliked; and
- B] a lack of willingness to spend, often scarce, resources on discretionary projects.

8.4 Byelaws are seen as cumbersome and expensive. There is widespread uncertainty about who can make them and when, there are legal difficulties in drafting and interpretation and there are inadequate resources to enforce them.

8.5 Statutory undertakers cannot reasonably be expected to provide nature conservation projects when most of them can barely meet their statutory duties with available resources. The prospect of these bodies raising sufficient funds for nature conservation projects from their fees, licences, permits etc is remote and would be met with disdain by those who are liable to pay.

9. PROTECTION OF NATURAL RESOURCES

Introduction

- 9.1 This section relates to a wide range of statutory regimes designed primarily or incidentally to protect the natural resources of the sea in quality and / or quantity. Examples include measures intended to reduce or eliminate pollution of the marine environment, for example from shipping, and for the conservation and enhancement of fish stocks through sustainable fishing. For example there are two EC Directives, five Acts of Parliament and several Regulations governing fishing. There are two Acts of Parliament, six Regulations and three Orders controlling potential pollution from Merchant Shipping. There are at least 28 EC Directives and Regulations directly applicable to protect marine water quality, in addition to UK domestic controls such as discharge consents by the Environment Agency and FEPA licences issued by MAFF. All of these measures have potentially indirect benefits for nature conservation.

Discussion

- 9.2 On the whole, these controls are considered to be quite effective in achieving their purposes but their effectiveness is undoubtedly limited by the inevitable and obvious difficulties of enforcement at sea. The multiplicity of regulation and regulators is, again, a limiting factor in effectiveness.
- 9.3 In 2002 the Common Fisheries Policies will be amended so that environmental considerations will be a prime objective. This will help to reduce some present conflicts between fisheries and environmental conservationists. However, in practice, natural fluctuations can make it difficult to distinguish between the effects of commercial activities, on fish and other species, and natural changes.
- 9.4 International shipping law is considered to work relatively well. The EC Directives “bite hard” and all contribute to the health of the seas.

10. NON STATUTORY INITIATIVES

- 10.1 Although the aim of the Workshop was to evaluate the effectiveness of statutory regimes, the partnership approaches and potential achievements of the CHAMPs and voluntary marine nature conservation initiatives were cited as strengths of the current system.

11. OPPORTUNITIES AND SOLUTIONS

Introduction

- 11.1 After considering the strengths and weaknesses of the existing regimes for marine nature conservation, the discussions moved on to potential opportunities and solutions to the problems. As will be seen in the following report of discussions, and perhaps not surprisingly, there is some disagreement about the best way to proceed. The search for solutions and recognition of opportunities for positive change can usefully be drawn together under a series of interrelated headings. These ideas are drawn from all of the discussion groups and restructured in a chronological order.
- 11.2 Whilst no single discussion group initiated or followed the whole sequence that is reported below it was possible to draw all the key points together and use this sequence to place each in a logical context and an overall framework. The consultants have not attempted to interpret or embellish the comments made in the discussion groups, but the overall framework used to present the discussions and ideas is created for the purposes of this report. Most of the ideas discussed fit into this framework. However, views which did not easily fit this pattern are nevertheless reported separately.
- 11.3 Broadly, the range of discussions spread from the two extremes of completely abandoning the current legislation in relation to the marine environment and starting again; to keeping the existing statutory regimes as they are, but producing guidance to try to make them more effective. The majority view was closer to the latter of these suggestions, despite there being much concern over the current weaknesses in legislation.

Defining what we mean by nature conservation

- 11.4 It was widely agreed that the starting point must be the definition of what is meant by “nature conservation” in this context. Does it need to be distinguished from general environmental conservation? All measures which contribute to the health and sustainable use and management of the seas is a contribution to the conservation of wild plants and animals. These wider objectives are in everyone’s interests. There is a need to consider marine biodiversity as a whole, not least because it is an important indicator of the health of the seas.
- 11.5 Does nature conservation seek merely to maintain the existing biodiversity and abundance of life in the seas or enhance it? If so in what ways and which species or ecosystems are to be enhanced and is this feasible? How long and what resources would that take? Discussion even acknowledged that there may be some uncertainty as to how much society really wants nature conservation, over and above a generally healthy sea with abundant resources. Nature conservation must “fit” with other activities in the marine environment.

Creating a Vision and Setting Objectives

- 11.6 Consequently, it is necessary to define overall objectives. Broad, all encompassing obligations can help to deliver nature conservation as a part of a well managed international sea. There is a need for a clear statement by government, nationally, as to what we are trying to do for nature conservation, a clear vision of what we want to achieve, at what level. At present there is no overall vision for the marine environment or for nature conservation as a contribution to sustaining and improving that environment. Such a vision would provide the context for decisions as to changes that may be needed in the statutory regimes. In turn it would also enable better decision making, because regulators would better understand how an individual decision fitted into the overall objectives and policies aimed at achieving the vision.

Need for Guidance and a Strategy

- 11.7 Whatever change may be considered in the statutory regimes it was widely seen as essential to provide a comprehensive, strong and clear policy guidance, perhaps in a form similar to the Planning Policy Guidance Notes which are seen as effective in influencing local decisions from a national perspective.
- 11.8 It may then be possible and desirable to produce a strategy for the marine environment and nature conservation with sets of goals for the stakeholders, programmes and plans for change - including a framework in which development has a positive role and activities can continue without unnecessary restriction. Where changes and development are to be proposed the strategy would form the focus of early discussions to identify the issues and potential solutions to problems.
- 11.9 The vision and any strategy would need to include the international, national and regional perspectives and mesh the devolved administrations. It would address the urgent need for better education and understanding about the marine environment.
- 11.10 The vision and any strategy would need to provide a clear context and justification for legislative change, which itself would need to be much clearer than some present regimes as to how nature conservation was to be delivered. In turn this would provide the context for deciding what processes / procedures were necessary to deliver the strategy and thus how existing ones may need to be changed. A “duty of care” could be introduced for all sea users; this would help to fill some gaps where activities were unregulated, but it would need to bite more effectively than the duties “to take account” of nature conservation discussed in section 7 above.
- 11.11 There was a concern that a review of legislation, without an overall guiding framework and without the opportunity to overhaul a wide range of statutory provisions, was not the way forward. Partial legislative review, aimed at addressing individual and specific deficiencies, however well intentioned, may result in particular provisions being much more specific, and therefore longer and even more complex.

- 11.12 Any review would need to take place on a frequent basis in order to ensure that legislation was kept up to date. Within the Workshop groups, it was recognised that this was not the most productive way forward, because the more specific the legislation is, the less likely it is to serve its purpose in the long run.

The need for coordination - a body with specific duties to fill gaps in the system

- 11.13 Whilst there was a degree of agreement about the desirability of a new framework - comprising the vision, objectives and policies, the issue of who should have the function of preparing and implementing such a framework was, however, rather more contentious. In terms of the overall framework and policy, views ranged from a Secretary of State being responsible to an integrated and co-ordinated approach by current regulatory bodies creating a cross disciplinary forum. There was also great concern that the introduction of such an approach should not create another layer of unnecessary complexity.
- 11.14 There was a recognition that a coordinating body was needed, capable of overseeing the processes regulating and changing the marine environment, enforcing the statutory provisions and encouraging all parties to contribute to the implementation of the strategy in an integrated way. It should be a multi-disciplinary body with an understanding of the activities as well as the environment of the sea. It could take responsibility for identifying the environmental information needed and available and coordinate monitoring and the acquisition of new information. There was a wide range of views as to how a subsequent coordinating body should be created, including a division of DETR or MAFF, a merger of existing DETR and MAFF teams, a separate statutory agency or an independent scientific organisation.
- 11.15 Such a coordinating body could also provide a pool of expertise on the marine environment available to all parties and an advisory service in respect of environmental impact assessment. This approach may also help to keep clearer distinctions between promoters / developers and regulators, distinctions that at present are sometimes blurred.
- 11.16 However, others rejected the idea of a single coordinating body and felt that more should be done to make existing systems work better before more widespread change was contemplated. The idea of a single coordinating “super agency” may be disliked both by users and regulators and may be politically unacceptable. It could create more tensions, especially if its decision making was not fully open and transparent. Some thought that there was a need to change processes but not necessarily the institutions operating them.
- 11.17 The poor enforcement and policing of the sea was a theme which came out of most groups. Currently there is little in the way of enforcement of legislation over the sea and this was highlighted as a weakness of the system. Whatever

changes may be implemented it was considered to be essential to improve the enforcement of statutory regimes.

The designations approach

- 11.18 SACs, SPAs and MNRs all rely on site specific geographical designations in order to deliver nature conservation. There was considerable discussion in the groups as to whether a designations approach was the most appropriate means of achieving nature conservation in the marine environment. Two potential alternatives to this were suggested. Clearly, in the limited time available to explore and develop these ideas, the approaches are embryonic and need much further thought.
- 11.19 The first would operate in a similar manner to the principle of Shoreline Management Plans, whereby the whole of the sea would be addressed by breaking it down into manageable zones that had a relevance to marine processes or activities. An assessment of each of these zones would then provide information about the need for nature conservation. Importantly, nature conservation activities would not operate in isolation from the surrounding area, as may occur now outside site specific designations. Thus, all areas would be zoned and there would be locally relevant mechanisms to deliver whatever nature conservation action was considered to be necessary, tailored to the needs and priorities of the zones.
- 11.20 The second suggested approach is similar both to the first and to the approaches of the Countryside Agency and English Nature in the countryside character and natural areas approaches respectively. It would be intended to take more account of the mobility of species within the sea. It would not seek to rigidly zone the sea but to define nature conservation management requirements by habitats and species distribution, more closely related to ecosystems.
- 11.21 In both cases, no other designations (except those required by international obligations) would be generated. Clearly both of these approaches are reliant on considerable amounts of research being carried out, but this would help to address the concerns regarding the lack of knowledge and understanding in the marine environment. They would also provide a more flexible approach than the historic site designations and move towards Integrated Coastal Zone Management.

Other points of view

- 11.22 Many held the view that we should work with what we have got, and improve the present system. New legislation may not be necessary if the existing regulators worked more closely together, for example in the way that the DETR and MAFF are forming a Joint Consents Unit. Again this raises the

issue as to whether it is better to change the processes rather than the institutions or regulators operating them, the distinction is seen as important. Alternatively, others felt it may be better to bring all the existing legislation together, take away the departmental labels, bring the regulators together, identifying gaps and overlaps and re-sort into one, more effective decision making process.

- 11.23 There were proposals that there should be 2 branches of consent: one addressing whether the proposal was fit for purpose; the other looking at impacts on the environment. There could be two public inquiry systems one establishing the project's status in terms of public need and benefits, the other how it can be done in the most environmentally acceptable way. Having devised a process that protects the public interest, including environmental protection, it should be integrated into existing institutions with the minimum disruption, reorganisation and regulatory change.

APPENDIX A

LIST OF BODIES REPRESENTED AT THE WORKSHOP

Representatives from 28 organisations were invited to attend the Workshop. A small number declined the invitation to attend including DETR Water Quality Division and the Countryside Agency. The Maritime and Coastguard Agency accepted the invitation and was very willing to attend but had no available staff owing to their urgent work in UK and France dealing with a tanker spillage in the English Channel. Seven organisations which indicated their intention to attend were not represented on the day, in two cases because of travel difficulties at a time of severe disruption to rail travel. The seven organisations were DETR Shipping Policy Division, DTI Oil and Gas Division, DTI Wind/Water Energy, Environment Agency, Local Government Association, Planning Officers' Society and Water UK.

Whilst the Workshop discussion groups were held on a non-attributable basis, it is important to establish the organisations which contributed. Brief details of the organisations represented at the Workshop are outlined below.

British Ports Association

Membership comprises small to medium sized ports throughout Britain. The members are also Harbour Authorities and are primarily small organisations generally with limited financial resources.

Centre for Environment, Fisheries and Aquaculture Science (CEFAS)

CEFAS are an Agency of the Ministry of Agriculture, Fisheries and Food, providing scientific advice on various aspects of the marine environment, including the state of fish stocks and the implications of oil, gas and marine aggregate licensing.

Coast Protection Authorities

Coast Protection Authorities are all coastal Local Authorities in England and Wales. There is no distinct umbrella organisation representing Coast Protection Authorities, but there are a number of Coastal Groups in England and Wales which are comprised of representatives from the individual Authorities. A representative of the Chairmen of these Coastal Groups attended the Workshop.

Countryside Council for Wales

CCW is the statutory body advising central and local government and other regulatory bodies in respect of the conservation and enhancement of natural beauty in Wales, including the conservation of flora, fauna and geological and physiographical features. Of relevance in this context, it also has duties in respect of the notification, protection and management of SSSI, the designation and management of Marine and National Nature Reserves and advice to the National Assembly for Wales in respect of international nature conservation designations.

Crown Estate

The Crown Estate are owners of the foreshore and sea bed to a distance of twelve miles. In a number of cases the Crown have sold or leased parts of the foreshore and sea bed to other bodies, such as Local Authorities. Except in such areas, the Crown Estate Commissioners affect regulatory control over development and other activities through the proprietary interests of the Crown.

DETR - Ports Policy Division

This division is responsible for regulating works in tidal waters up to the extent of the continental shelf. It is responsible for issuing consents under the Coast Protection Act with the primary aim of maintaining the safety of navigation.

DETR - Minerals and Waste Planning Division

In relation to the marine environment, this division of DETR is responsible for overseeing the extraction of minerals and the depositing of mineral waste in the intertidal area and in the sea. It is proposed that the DETR will assume regulatory functions for marine dredged aggregates from the Crown Estate.

DETR - Marine, Land and Liability

This division of DETR is concerned with ensuring that environmental matters are in accordance with national priorities, which in turn are in line with international policies and guidance.

English Nature

English Nature is the statutory body which achieves, enables and promotes nature conservation in England. Like CCW, English Nature also has duties in respect of the notification, protection and management of SSSI, the designation and management of Marine and National Nature Reserves and advice to the DETR in respect of international nature conservation designations.

Joint Nature Conservation Committee

The JNCC are an advisory body, whose role is to set the standards for conservation, including qualifying criteria for marine SACs and SPAs and the standards for SSSIs in the intertidal areas throughout Great Britain. They advise the government (mainly DETR and DTI) with respect to offshore nature conservation.

MAFF - Marine Environment Branch - FEPA Licensing

The Marine Environment Branch of MAFF are responsible for issuing licences under the Food and Environmental Protection Act, 1985 (FEPA). The types of licences issued are wide ranging and in relation to the marine environment cover topics such as the disposal of dredged material and construction licences for structures in, on, under and over the sea bed.

MAFF - Flood and Coastal Defence with Emergencies Division

This division of MAFF is the one which Coast Protection Authorities have most contact with, providing guidance to them, for example in relation to the assessment of coastal defence projects and the production of shoreline management plans.

MAFF - Fisheries Division

This department was originally established with the intention of protecting fish stocks but now has a wider remit for marine protection. In managing fisheries they therefore have to have regard to the impact on the marine environment including the sea bed.

National Assembly for Wales - Environment Division

This is the division of the Welsh assembly undertaking similar environmental functions to the DETR in England. It works with all other bodies regarding marine nature conservation, in order to consider the many interests in the marine environment.

Sea Fisheries Committees

Sea Fisheries Committees are committees of local authorities responsible for managing fisheries out to six nautical miles from baselines in England and Wales. Their regulation is through byelaws applying to their respective Districts. In addition, they enforce some EU and national legislation.

Sea Fish Industry Authority

The Sea Fish Industry Authority was set up by an Act of Parliament in 1981 to succeed the White Fish Authority and the Herring Industry Board. Its main source of income is a statutory levy on all landings and imports of fish into the UK. As a development agency for the UK fish industry it has a wide ranging brief, including research and development, marketing, training and aquaculture.

UK Major Ports Group

As the name would suggest, this organisation is the representative body of the major ports in the UK. These are the largest and most commercially viable ports, which also have responsibility as Harbour Authorities.

UK Environmental Law Association (UKELA)

This body is an association mainly, but not exclusively, of solicitors and barristers who practice with a special interest and expertise in the field of environmental law.

The Workshop was also attended by three representatives of the European Wildlife Division of the Department of the Environment, Transport and the Regions, who hosted the Workshop and observed the discussions; three members of staff from David Tyldesley and Associates and three from Browne Jacobson, Solicitors who facilitated and recorded the discussions.

APPENDIX B

FORM OF THE WORKSHOP

Following brief introductory sessions, including an introduction to the subject and purpose of the Workshop and an overview of the relevant statutory regimes, the Workshop was structured into two break out sessions which formed the main body of the Workshop.

Each break out session lasted approximately two hours. The attendees were divided into four groups of between four and six people, led by an independent facilitator from the joint consultancy team. The groups were structured to comprise a mix of representatives, broadly one each per group from ports, fisheries, water / pollution control, infrastructure, nature conservation bodies and local government. The groups were remixed on the same principle for the afternoon session. This ensured that duplication of sectoral interest did not occur within one group, and as far as possible enabling different people to work together in the different sessions.

The groups in the morning session were asked to consider the strengths and weaknesses of legislative regimes under the broad topics which form the headings of sections 4 to 9 of this report. They were also asked to consider: potential opportunities that may improve the delivery of nature conservation; any threats to the successful implementation of existing provisions and any obstacles to effective nature conservation in the marine environment.

Each participant had been sent an agenda and an outline of how the discussions would be structured so that they could think about and prepare their contributions in advance. All contributors clearly had done so.

In the afternoon session, the work groups were asked to discuss what appropriate and proportionate changes should take place in order to help deliver better nature conservation. A range of topics were suggested, including mechanisms to deliver international obligations, effective administration, designations and protected species. The aim of this session was to develop a range of potential solutions to the problems and difficulties identified in the morning.

The day closed with a brief overview of the discussion sessions and an explanation of how the Workshop report would be circulated for comment and consultation and used to inform the marine Working Group.