

15. GOVERNANCE

Current regulatory responsibilities

426. The Pilot reviewed existing regulatory responsibilities and experience in the marine environment through work commissioned from the Institute of Estuarine and Coastal Studies, University of Hull, (Boyes *et al.*, 2003b). A summary of current regulatory responsibilities is shown in Table 13. These parallel, but in important respects are different from, the responsibilities for enforcement reported in Chapter 14 and demonstrate the complexity and variation of the regulatory and consenting procedures to which users and developers are subject in the United Kingdom.

Table 13. Current regulatory responsibilities in the UK marine nature conservation - related sector

Authority	Regulatory responsibility
Environment Ministers and Departments: Defra, Scottish Executive Environment and Rural Affairs Department (SEERAD), National Assembly for Wales (NAW), Department of the Environment Northern Ireland (DoENI)	<p>Departments are responsible for designating European Marine Sites, establishing Marine Nature Reserves, and listing species on protected schedules. Also for issuing licences relating to protected species; and to the release of non-native species.</p> <p>Departments regulate the disposal of wastes at sea and the placement of structures under the Food and Environmental Protection Act (Marine Consents and Environment Unit in England and Wales).</p> <p>SEERAD regulate maintenance dredging in estuaries and coastal waters in Scotland. In Northern Ireland, the Environmental and Heritage Service regulates the disposal of wastes at sea and the placement of structures under the Food and Environmental Protection Act.</p> <p>Departments have policy responsibility relating to inputs of contaminants to the marine environment originating from land, but actual regulation is carried out by the respective environment agencies.</p> <p>Defra have policy responsibility for flood defence and coast protection in England and Wales.</p>
Agriculture and fisheries Ministers and Departments: Defra, Scottish Executive Environment and Rural Affairs Department (SEERAD), National Assembly for Wales (NAW) Agricultural Dept, Dept of Agriculture and Rural Development (Northern Ireland)	<p>Departments are responsible for issuing licences relating to protected species for agriculture and fisheries purposes, and for the regulation of the plant and animal health Acts, including in relation to fish and shellfish.</p> <p>Responsible for UK fisheries within 0-12n miles (in England and Wales this function is exercised by the Sea Fisheries Committees between 0-6n miles), and for the registration and licensing of fish farms under the Food and Environmental Protection Act. In Scotland, Fisheries Research Services maintains the fish farm register.</p>

Table 13 (continued)

Authority	Regulatory responsibility
Statutory nature conservation agencies: English Nature, Scottish Natural Heritage, Countryside Council for Wales, Environment and Heritage Service	Responsible for the notification and furthering the conservation of SSSIs & ASSIs, and declaration of National Nature Reserves. Also responsible for making byelaws for National Nature Reserves, Marine Nature Reserves and European Marine Sites. They also issue licences relating to protected species for scientific and conservation purposes and for photography.
Statutory heritage agencies	Responsible for conservation of historic buildings, scheduled ancient monuments and historic wrecks.
Environment agencies (including the Environment Agency, the Scottish Environment Protection Agency and the Environment and Heritage Service)	<p>In England and Wales, the Environment Agency regulates fisheries for migratory species, e.g. salmon, trout and eel. Where no Sea Fisheries Committee has been established, the Environment Agency is the fisheries authority in a number of estuaries.</p> <p>All responsible for regulating and authorising discharges via pipes, including discharges from fish farms to estuaries and coastal waters and for related monitoring including the classification and monitoring of bathing waters, and have operational responsibility relating to flood defence.</p>
Sea Fisheries Committees (SFC)	Regulate commercial sea fisheries and shell fisheries in England and Wales from 0-6n miles. They are able to make byelaws to regulate fisheries including where this is necessary to safeguard the marine environment, and also carry out relevant monitoring activities.
Marine Consents & Environment Unit (MCEU)	<p>MCEU is an alliance of the Marine Environment Branch of Defra, and Ports Division (Casework Branch) of the Department for Transport. MCEU provides a central facility for administration on behalf of both Departments of applications to undertake works in tidal waters and at sea, including marine developments, offshore energy, coast defences, navigational dredging, extraction of seabed deposits, and waste disposal.</p> <p>MCEU issues consents and licences under the Food and Environment Protection Act and the Coastal Protection Act for works on, over, or under the seabed which may cause or result in an obstruction or a danger to navigation and under the Telecommunication Act for cables. MCEU issues consents to harbour authorities for works in their areas dependent on the terms of the local legislation pertaining to that harbour.</p> <p>The Unit also administers certain applications on behalf of the National Assembly for Wales which is the licensing authority in Welsh waters.</p>

Table 13 (continued)

Authority	Regulatory responsibility
<p>Transport Ministers and Departments: the Dept for Transport, Scottish Executive Transport and Lifelong Learning Department (SETLLD), and Dept of Agriculture and Rural Affairs (Northern Ireland)</p>	<p>In Scotland, SETLLD regulates navigational dredging under the Coastal Protection Act and has overall policy responsibility for flood defence and coast protection, but maintenance dredging in estuaries and coastal waters is the responsibility of SEERAD. In Northern Ireland, Environment and Heritage Service regulates the disposal of dredged material.</p> <p>The Secretary of State for Transport is responsible for approvals of harbour works by way of Harbour Revision or Empowerment Orders and for the approval of any byelaws promoted by harbour authorities.</p> <p>The control of dredging is included in the definitions contained above. Departments are responsible for international shipping, maritime safety and ballast water policy and conventions through the Maritime and Coastguard Agency.</p> <p>Departments are also responsible for the authorisation of electricity cables and pipelines, and telecommunications cables.</p>
<p>Ports and harbours authorities</p>	<p>The authorities are able to direct vessels to ensure safety of navigation, pollution prevention and clean up in relation to ports and harbours. They are also required to provide waste reception facilities for ships entering ports and harbours. Harbour authorities have wide byelaw-making powers to regulate the movement of vessels within a port. Such byelaws can regulate recreational craft and also bathing.</p>
<p>Ministry of Defence (MOD)</p>	<p>MOD is responsible for naval dockyards, naval vessels and military firing ranges in defence of the Realm, including in Crown Dependencies, and Overseas Territories.</p> <p>The Secretary of State for Defence has power to make bylaws applying to:</p> <ol style="list-style-type: none"> a. sea and tidal water that either abuts on defence land or over which firing takes place from defence land; b. any area of sea, tidal water or shore used for defence purposes, provided that it lies at least partly within the seaward limits of territorial waters. <p>Bylaws may be made for regulating the use of the area and securing the public from danger. They may therefore exclude other uses of the area. The consent of the Secretary of State for Transport is required if the bylaws interfere with public rights of navigation, anchoring, grounding, fishing, bathing, or recreation. The Secretary of State for Transport must first publicise the proposed bylaw in the locality, consider objections, and ensure that the interference with public rights is reasonable in the interests of defence or public safety. The consent of the Crown Estate Commissioners must also be obtained in relation to any Crown foreshore or sea-bed affected by the bylaws.</p>

Table 13 (continued)

Authority	Regulatory responsibility
Department of Trade and Industry (DTI), Department of Enterprise, Trade and Investment In Northern Ireland (DETI)	DTI is responsible for regulating the exploration and production of oil and gas over the UK Continental Shelf and is also responsible for authorising marine oil and gas pipelines on the continental shelf. DETI issues licences in its onshore area. DTI regulates offshore renewable energy generation, and inshore generation in England including the laying of electricity cables. In Wales, developments under 50MW are administered by the National Assembly for Wales; the Scottish Executive and DETI are responsible for administering wind farm applications in their territorial waters.
Crown Estate	The Crown is regarded in common law as the owner of much of the foreshore and the sea-bed under territorial waters, and for dredging. In Scotland, the Crown also owns coastal salmon fishings and oyster or mussel beds within territorial waters. Where a fish farm affects their rights, a Marine Works Licence is required from the Crown Estate. Licences are granted for minor works and for aggregate dredging on receipt of a favourable opinion following implementation of the Government View consultation procedure. Where the Crown Estate is the owner of the seabed, its permission is required for the laying of cables and pipelines.
Office of the Deputy Prime Minister, National Assembly for Wales, Scottish Executive Development Department, Department of Environment (Northern Ireland)	Overall Governmental responsibility for development planning down to low water mark, including through the issuing of national planning guidance.
Local authorities	Local authorities are responsible for the development of strategic and local development plans and for implementing planning development controls. They are responsible for declaring Local Nature Reserves and for making byelaws to protect these and also to regulate recreational activity in coastal waters. Local authorities also have responsibilities for coastal protection, including through development of shoreline management plans. Local Authority areas of jurisdiction do not generally extend into the sea below the low water mark. In England and Wales, the seaward boundaries of local authorities in general were regulated in 1974 by extending them to the low-water mark of medium tides. The position in Scotland is similar but low water is taken as mean spring tide low water.

427. These responsibilities can be summarised as falling into the categories of i) Strategic and Development Planning, ii) Sectoral Regulation, iii) Integrated Management.

Strategic and Development Planning

428. Much coastal development falls within the Town and Country Planning system and is regulated by local authorities acting under the principles and presumptions set out in strategic and local plans.

Local authorities also have considerable influence over recreational development and activity in their area, and are, therefore, the key regulators in respect to the vital tourism and recreation economic and employment sectors. In general, development control powers extend to low water mark.

Sectoral regulation

429. Historically, much of the regulation of human activity below low water mark has been sector based, with separate Government Departments or statutory agencies responsible for the various sectors, e.g. shipping (Department for Transport), energy (Department of Trade and Industry), naval defence (Ministry of Defence), surface water quality (environment agencies) etc. Where the sector has strong inter-dependencies between its marine and terrestrial elements (e.g. transport, energy supply, defence, surface water quality), this sectoral approach is likely to remain an important factor in determining future governance systems.

Integrated management

430. Integrated Coastal Zone Management is not a statutory requirement in the UK, though the current UK ICZM Stocktake being undertaken by Defra is in part implementation of the EU Communication on Integrated Coastal Zone Management (European Commission, 2002). However, the fact that a number of sectoral regulators (fisheries, water quality, coastal defence and nature conservation) are now overseen by Defra in England and SEERAD in Scotland is preparing the way for much better integration.

Future requirements

431. Previous chapters of this report have concluded that implementation of the draft framework for marine nature conservation will require:

- i. a national and international regulatory system which supports sustainable development in the marine environment;
- ii. strong strategic and spatial planning at the Regional Sea scale, with all regulators participating in plan development and implementation;
- iii. the establishment and conservation of an ecologically-coherent network of important marine areas;
- iv. a range of sectoral and cross-sectoral support measures.

432. In considering what factors should contribute to future governance arrangements, the Pilot would identify the following principles:

- i. to the extent practicable, governance structures should follow strategy;
- ii. governance systems should be cost-effective to administer;
- iii. governance systems should serve the needs of society, and be as simple and efficient as practicable.

433. The strategic goals set out in *Seas of Change* (Defra, 2002b) form the basis of a strategy for the sustainable development of the marine environment and governance systems should seek to parallel this strategy. However, as stated above, certain sectors (transport, energy, defence, surface water quality) have very strong strategic cohesion within their sector, and the links to the strategic

goals for the marine environment may, perhaps, be best considered in the context of strong cross-compliance rather than (structurally) integrated management.

434. The links between fisheries, mariculture, marine pollution and nature conservation, however, are so strong that these sectors lend themselves to integrated management, and the Pilot considers that policy oversight is best delivered by the same Department.

Spatial planning

435. The issue of how to give effect to strategic and spatial planning in the marine environment is a crucial one. In the UK, Town & Country Planning is a terrestrial planning system that is development-plan based. There are 56 local authorities bordering the Irish Sea with differing policies and priorities. Extension of their powers to include ill-defined areas of sea would not be likely to lead to consistency or efficiency in decision-making. The extension of local authority planning beyond the boundary of waters internal to baseline does not appear to offer an integrated solution to spatial planning and development control in the marine environment.

436. Not only is there a need to engage all the relevant UK sectors within a spatial plan, but also there is a need to achieve the participation in spatial planning, at the Regional Sea scale, of adjacent countries.

437. In the light of the foregoing, the Pilot reaches the following conclusions:

- i. there is a need for strong cross-departmental oversight of marine spatial planning to achieve the full collaboration of all Departments, administrations and agencies and to foster collaboration with adjacent countries at the Regional Sea scale. A Cabinet committee might be an appropriate mechanism for this;
- ii. notwithstanding i. above, a single Department needs to take the initiative in ensuring the development of strategic plans at the Regional Sea scale, and of liaising with adjacent countries, working to the principles set out by the Cabinet committee (or other authority exercising this function). In the UK, Defra should be this Department;
- iii. to the extent practicable, regulation of fisheries, mariculture, marine pollution and nature conservation should come within the policy oversight of a single Department;
- iv. all sectoral regulators should be required to carry out their functions in compliance with the Government's strategic goals for the marine environment.

438. In view of the range of current Governmental initiatives currently engaged in reviewing governance and enforcement procedures (in particular the Review of Development in Coastal and Marine Waters) which are expected to address some of the more complex regulatory issues, including development, dredging and disposal consents, the Pilot concentrates its recommendations on the central issue of strategic and spatial planning referred to above.

Recommendations

R59 A Cabinet committee or other cross-departmental authority be established to take over all responsibility for strategic planning in the marine environment and to develop the necessary links with other countries to ensure complementary working at the Regional Sea scale.

R60 In the UK, Defra should take the lead in developing strategic plans for the Regional Seas in full consultation with other UK Government Departments and devolved administrations, and in liaison with relevant other countries.

R61 To the extent practicable, fisheries, mariculture, marine pollution and nature conservation should come within the policy oversight of a single Government Department.

R62 Following completion of the various reviews being undertaken by Government on regulatory procedures and on enforcement in the marine environment, any necessary adjustment be made to existing responsibilities.