



**ISSUES WITH
MARINE WILDLIFE ENFORCEMENT**

Report to the Countryside Council for Wales

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August 2005 (*with amendments added June 2006*)

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1. EXECUTIVE SUMMARY

This report assesses the state of marine wildlife enforcement in the UK's 12-mile zone. A desk-based review was carried out, drawing on the results of other recent reviews and publications, along with interviews with some of the parties involved in enforcing legislation for the protection of marine sites and species.

The review shows that the UK's legal framework for marine nature conservation and species protection continues to lag behind the well-established systems for conservation on land. Some issues relate to the isolated nature of the marine environment and to the limited powers available to enforcement agencies in the 6-12 nm zone. Others relate to the difficulty of applying legislation and systems that have been designed for terrestrial systems to the marine environment.

Despite improvements in the systems to protect marine wildlife over the last 20 years, the level of protection available to marine species is still insufficient, and is lower than the levels of protection available to terrestrial species and systems. The key weaknesses with the current system of legal protection for marine wildlife and habitats include:

- limited coverage;
- inconsistency (between rules in different areas, between evidentiary standards for similar offences, varying levels of resources in different areas);
- inappropriately designed legislation;
- requirements for proving intention;
- lack of awareness;
- out of sight, out of mind attitude;
- lack of resources;
- lack of information;
- problems with collecting evidence;
- problems with coordination; and
- lack of a coherent marine spatial planning system.

If Wales and the UK are to deliver on their European and international obligations to protect marine biodiversity, substantial changes to the current system must be made. Consistency and adequate resources will be even more essential as the Natura 2000 network is expanded outside 12 nautical miles.

The challenge for policy-makers will be in taking advantage of upcoming opportunities to change legislation and strengthen systems. The publication of the UK Marine Bill, and subsequent consultation, could provide the chance to start this process.

1. CRYNODEB GWEITHREDOL

Mae'r adroddiad hwn yn pwysu a mesur cyflwr gorfodaeth ar gyfer bywyd gwyllt morol yng nghylchfa 12 milltir y DU. Gwnaed arolwg desg, yn tynnu ar ganlyniadau arolygon a chyhoeddiadau diweddar eraill, ynghyd â chyfweiliadau gyda rhai o'r partion sy'n gysylltiedig â gorfodi deddfwriaeth ar gyfer gwarchod safleoedd a rhywogaethau morol.

Dengys yr arolwg bod deddfwriaeth gyfreithiol y DU ar gyfer gwarchod natur morol a rhoi gwarchodaeth i rywogaethau yn parhau i fod ar ôl o'i gymharu â'r systemau sefydledig ar gyfer gwarchodaeth ar dir. Mae rhai problemau yn ymwneud â natur ynysig yr amgylchedd morol a'r pwerau cyfyngedig sydd ar gael i asiantaethau gorfodaeth yng nghylchfa'r 6-12 milltir fôr. Mae eraill yn ymwneud â'r anhawster o gymhwyso deddfwriaeth a systemau sydd wedi eu dylunio ar gyfer systemau tiriogaethaol at yr amgylchedd morol.

Er gwaetha gwelliannau yn y systemau i warchod bywyd gwyllt morol dros y 20 mlynedd diwethaf, mae lefel y warchodaeth sydd ar gael i rywogaethau morol yn dal yn annigonol, ac yn is na lefel y warchodaeth sydd ar gael i rywogaethau a systemau tiriogaethol. Mae'r gwendidau allweddol gyda'r system gyfredol o roi gwarchodaeth gyfreithiol i fywyd gwyllt a chynefinoedd morol yn cynnwys:

- ymdriniaeth gyfyngedig
- anghysondeb (rhwng rheolau mewn gwahanol ardaloedd, rhwng safonau tystiolaeth am droseddau tebyg, lefelau amrywiol o adnoddau mewn gwahanol ardaloedd);
- deddfwriaeth amhriodol;
- gofynion ar gyfer profi bwriad;
- diffyg ymwybyddiaeth;
- agwedd sy'n golygu bod pobl yn anghofio am bethau nad ydynt yn gallu eu gweld o'u blaenau;
- diffyg adnoddau;
- diffyg gwybodaeth;
- problemau gyda chasglu tystiolaeth;
- problemau gyda chydlynid, a
- diffyg system cynllunio morol ofodol a chydlynus.

Os yw Cymru a'r DU i gyflawni eu goblygiadau Ewropeaidd a rhyngwladol i warchod bioamrywiaeth morol, rhaid gwneud newidiadau sylweddol i'r system gyfredol. Bydd cysondeb ac adnoddau digonol hyd yn oed yn fwy hanfodol wrth i rwydwaith Natura 2000 gael ei ehangu y tu allan i gylchfa'r 12 milltir fôr.

Yr her i lunwyr polisi fydd manteisio ar gyfleoedd sy'n ymddangos i newid deddfwriaeth a chryfhau systemau. Gallai cyhoeddi Mesur Morol y DU, ac ymgynghoriad wedi hynny, roi'r cyfle i ddechrau ar y broses hon.

2. INTRODUCTION

'People see crimes against birds, they go and report it to the RSPB, the RSPB work very closely with the Police Wildlife Liaison Officers... Where do you go if you witness someone harassing a harbour porpoise? It is not clear is it? Nobody knows where to go...' [C Hatton WWF, in evidence to the Environmental Audit Committee, 2004]

With the increasing prominence of marine conservation and requirements to implement European Directives in the marine environment, there is a growing call on EU Member States to be able to protect wildlife and habitats in the sea as well as on land and in freshwater.

Despite improvements in the statutes related to wildlife protection over the last 20 years, the protection available to marine species still seems insufficient. It is possible that this insufficiency relates, at least in part, to issues of compliance and enforcement.

Enforcement is aimed at improving levels of compliance, and can include:

- inspections (to determine compliance status and detect violations);
- negotiations with those who are out of compliance to develop mutually agreeable schedules and approaches for achieving compliance;
- legal action to compel compliance and to impose some consequence for violating the law; and
- compliance promotion (e.g., educational programs, technical assistance, subsidies) to encourage voluntary compliance.

This report seeks to set out the current situation with regard to enforcement of laws relating to marine conservation in the 0-12 nautical mile (nm) zone in Wales with some consideration of the situation elsewhere in the UK. The work was commissioned by the Countryside Council for Wales (CCW) to inform its views on potential wildlife enforcement and fishing in the 12 mile zone and supplement the Country Agencies' response to proposed changes in structures for fisheries enforcement. The report may also be used to advise views on the content of the proposed Marine Bill for the UK. The contract specifications for the project are detailed in Annex 1. Enforcement that is strictly related to commercial fishing issues (eg misreporting of areas fished, misreporting of catches) and not to other 'wildlife' is not considered in this report, although fish are, of course, wildlife. Fisheries management issues are considered in more detail in the report of Symes and Boyes (2005).

3. INTERNATIONAL AND UK LAW CURRENTLY IN FORCE

The environmental law that applies in the inshore marine environment in Wales includes international instruments, EU Directives, and national Acts and Regulations. Much of the same legislation applies in England, with variations in Scotland and Northern Ireland. A summary of the legislation applicable in different parts of the UK is available in Symes and Boyes (2005). The most important instruments relating to marine wildlife protection are discussed below.

3.1. International Conventions

The UN Convention on the Conservation of European Wildlife and Natural Habitats (the Bern Convention) was adopted in Bern, Switzerland in 1979, and came into force in 1982. The principal aims of the Convention are to ensure conservation and protection of wild plant and animal species and their natural habitats (listed in Appendices I and II of the Convention), to increase cooperation between contracting parties, and to give special protection to the most vulnerable or threatened species listed in Appendix III of the Convention. As of 2003 there were 45 Contracting Parties to the Convention, including the UK. To implement the Bern Convention in Europe, the European Community adopted Council Directive 79/409/EEC on the Conservation of Wild Birds (the birds Directive) in 1979, and Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora (the habitats Directive) in 1992.

The Convention on the Conservation of Migratory Species of Wild Animals (also known as CMS or Bonn Convention) aims to conserve terrestrial, marine and avian migratory species throughout their range. Since the Convention's entry into force, its membership has grown steadily to include 89 States (as of 1 February 2005), including the UK. Migratory species threatened with extinction are listed on Appendix I of the Convention. CMS Parties strive towards strictly protecting these animals, conserving or restoring the places where they live, mitigating obstacles to migration and controlling other factors that might endanger them. Besides establishing obligations for each State joining the Convention, CMS promotes concerted action among the Range States of many of these species.

The Convention on International Trade in Endangered Species (CITES) entered into force in 1975. It has around 167 parties, including the UK. Because the trade in wild animals and plants crosses borders between countries, the effort to regulate it requires international cooperation to safeguard certain species from over-exploitation. CITES was conceived in the spirit of such cooperation. Today, it accords varying degrees of protection to more than 30,000 species of animals and plants, whether they are traded as live specimens, fur coats or dried herbs. CITES includes protection for marine species, and there are particular issues involved with enforcing the Convention when items are introduced to land from the sea.

The Convention on Wetlands, signed in Ramsar, Iran, in 1971, is an intergovernmental treaty which provides the framework for national action and international cooperation for the conservation and wise use of wetlands and their resources. There are presently 144 Contracting Parties to the Convention, with 1421 wetland sites, totaling 123.9 million hectares, designated for inclusion in the Ramsar List of Wetlands of International Importance. The UK has designated Ramsar sites, and in England and Wales these are also classified as Sites of Special Scientific Interest under the Wildlife and Countryside Act 1981.

All of the Conventions discussed above impose obligations on the contracting parties, but there are no enforcement agencies involved and if parties do not comply, the best that can be hoped for is a 'name and shame' result.

3.2. EU Directives

In contrast to the International Conventions discussed above, the EU's habitats and birds Directives have binding status on Member State governments and compliance can be enforced through the European Court of Justice (ECJ). Amongst other things the Directives provide for

the establishment of a European network of protected areas (Natura 2000 sites) on land, at the coast and in the sea. Member States are required to transpose the provisions of the Directives into national legislation, and to establish adequate protected areas (Special Areas of Conservation (SACs) and Special Protected Areas (SPAs)). Non-complying Member States can be brought before the ECJ if they consistently fail to act, and may have to pay significant daily and/or lump sum fines. Following a judgement of the UK courts in 2000¹, it is clear that the UK's conservation obligations under these Directives extend to its internal waters, territorial seas, and wider EEZ.

The habitats Directive lists 253 natural habitat types and 632 plant and animal species in Europe whose habitats must be protected. There are 43 marine and coastal habitats on the list, of which 11 are accorded priority status. A number of marine species are also listed, including some seals, cetaceans, and several fish species². The Directives are transposed into UK law by the Wildlife and Countryside Act 1981 and the Conservation (Natural Habitats, &c) Regulations 1994 (discussed below).

3.3.UK Legislation

UK legislation imposes specific requirements on individuals and organisations. The most relevant pieces of legislation are discussed in general terms below. Specific provisions and an assessment of their effectiveness are set out in Table 1. The situation with regard to current legislation is not ideal. JNCC noted in their background document for the State of the Seas report (2005) that *'it would be misleading to state that the UK is well placed in terms of national legislation to protect the marine environment. Our legislation has no provision to implement strict protection on the sites, and most of our sites are multiple use, for example Plymouth Sound is an SAC but within it there are ports and industry, recreation, infrastructure and of course important habitats and species.'*

3.3.1. The Wildlife and Countryside Act 1981

This Act makes provision for marine nature conservation through the establishment of Marine Nature Reserves and provides for the notification of Sites of Special Scientific Interest (SSSIs) for the protection of flora and fauna, and other features of special interest. The Act transposes the birds Directive by protecting all species of wild birds from intentional killing, injury or taking of birds or their eggs. It also protects certain species of animals, including whales, dolphins, porpoises and basking sharks from intentional killing, taking or injuring and also gives certain species protection against intentional or reckless disturbance. Protection under the Wildlife and Countryside (W&C) Act extends to 12 nm from the baseline.

Schedules 5 and 8 of the W&C Act list certain animal and plant species that are given particular protection. In 2005, Defra consulted on a review of the species listed in these Schedules. JNCC recommended the addition of seven marine species to Schedule 5 of the Act – two species of seahorses, four skate species and the angel shark (see discussion of the case of skates in box below).

¹ *R v Secretary of State for Trade and Industry ex parte Greenpeace Limited* [2000] Env. LR 221.

² For further information on the implementation of the Directives in UK waters, refer to IEEP's briefings on nature conservation in the inshore sector: <http://www.ieep.org.uk/research/Inshore%20Fisheries/natura%202000.htm>.

The case of skates – an illustration of the complexities of protecting marine wildlife

JNCC has recommended that four species of skates be added to Schedule 5 of the Wildlife and Countryside Act 1981. There is good evidence that common, long-nosed and white skates have become extinct in the Irish Sea and parts of the North Sea as a result of commercial fishing, and they have also declined considerably through the remainder of their range.

Listing skates in Schedule 5 would mean that section 9(1) of the Act would prohibit deliberate taking, injuring or killing of skates. This would prevent targeting of skates by commercial or recreational fishing in territorial waters.

The majority of catches of skates in commercial fisheries occur as unintended bycatch. This would remain legal as long as reasonable efforts were made to return any caught skates to the sea alive.

Skates are caught both inside and outside the UK's 12 nm territorial waters, and the majority of the catch is now outside. As the W&C Act only applies out to 12 nm, catching and killing skates outside this limit would not be an offence. It would, however, still be an offence under sections 9(2) and 9(5) to land or sell them in Britain. If the skates were landed and sold in another country, no offence would be committed. This raises an issue of equity – the Act would prevent UK fishermen and processors from deriving economic benefit from skates but those based in other countries and fishing in the same grounds could do so.

There is also an issue of enforcement. If fishermen were found with dead skates on their boats, it would be difficult for inspectors to judge whether those skates were caught intentionally or non-intentionally, or inside or outside UK territorial waters, and therefore whether they were legal or illegal catch. Moreover, fisheries inspectors are not currently authorised to enforce the W&C Act

Skates are usually landed with other related species (rays), and at present many fishermen and processors are probably unable to tell them apart. Training would be necessary to prevent people from inadvertently breaking the law.

It is apparent that without protection, skates will continue to decline. It is also apparent that the current system for protecting marine wildlife is not well placed to enforce new or upcoming rules to protect skates.

Defra 2005

3.3.2. The Conservation (Natural Habitats, &c) Regulations 1994

The Conservation (Natural Habitats, &c) Regulations ('the Habitats Regulations') were designed to transpose the habitats Directive in the UK and apply out to the 12 nm limit. They require any competent authority with functions relevant to marine conservation to exercise those functions in compliance with the requirements of the habitats Directive. Regulations 33-36 contain provisions of specific relevance to European Marine Sites.

3.3.3. The Countryside and Rights of Way Act 2000

The Countryside and Rights of Way Act 2000 (CROW Act) applies to public rights of way, including access to coastal areas. It amended various provisions of the Wildlife and Countryside Act, as it applies to England and Wales. The CROW Act does not apply in Scotland.

3.3.4. Other applicable legislation

Other legislation applicable to marine conservation includes the Sea Fisheries (Wildlife Conservation) Act 1992, the Sea Fisheries Regulation Act 1966, the Environment Act 1995, the Conservation of Seals Act 1970, and the Wild Mammals Protection Act 1996.

As a body, this legislation requires Ministers and relevant bodies (including Sea Fisheries Committees) to have regard to the conservation of flora and fauna in the discharge of their functions under the Sea Fisheries Acts, and to endeavour to achieve a reasonable balance between that and any other considerations. It gives Sea Fisheries Committees the power to make bylaws controlling fishing for marine environmental purposes. Specific protection can be provided for seals through orders made by the Secretary of State.

3.3.5. Proposed legislation

In addition to the legislation currently in force, the Department for Environment Food and Rural Affairs (Defra) have carried out consultation on proposed Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2003 and proposed Conservation (Natural Habitats, &c.) (Amendment) (England) Regulations 2003.

The proposed Offshore Regulations aim to apply both the birds and habitats Directives to the offshore marine area. The Regulations are yet to be presented to Parliament, but advice from Defra is that they hope to lay them in 2005 (N Keeble, Defra, pers. comm.) As the focus of this study is in the inshore zone, no further attention will be devoted to assessing the enforcement implications of the proposed 'Offshore Regulations' though it appears these could be significant.

The proposed Conservation (Natural Habitats, &c.) (Amendment) (England) Regulations would amend the current Habitats Regulations discussed above. The most significant of the amendments would be the removal of the defence that an act was 'the incidental result of a lawful operation and could not reasonably have been avoided'. New paragraphs 3A and 3B would be added to Regulation 40, with a new defence: a person shall not be guilty if 'he shows that the act was the incidental result of a lawful operation and could not reasonably have been avoided, and he was not aware, and could not reasonably be expected to be aware, of the effect of his act on an animal of a species' listed on the habitats Directive. This amendment would represent a significant improvement to the current situation where even if a result is predictable, if it is the incidental result of a lawful operation it will not be classified as a legal offence (Regulation 39, Habitats Regulations). Recent advice from Defra is that they are still considering whether to proceed with the amendments, and there is no firm date for these to be made (T Andrews Defra, pers. comm.). These amendments would apply only in England, as this is a devolved matter. Scotland have already amended the W&C Act as it applies to them, to alter this defence.

In 2006, Defra began consultation on the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2006 which can be accessed through:

<http://www.defra.gov.uk/corporate/consult/offshore-marine-2006/offshoremarine2006-consultation.pdf>

In 2006, Defra are also consulting simultaneously and separately on the Conservation (Natural Habitats, &c.) (Amendment) (England and Wales) Regulations 2006. Essentially these Regulations contain amendments to the 1994 Habitats Regulations for terrestrial and inshore areas, particularly to address the findings of the European Court of Justice in case C-6/04, discussed below:

<http://www.defra.gov.uk/corporate/consult/nat-habitats-2006/index.htm>

Defra is also consulting on its proposed Marine Bill in 2006, and several documents have been published in relation to the proposed content of the Bill (see www.defra.gov.uk for more information). The Bill will have implications for marine conservation, and is likely to set out a new regime for marine spatial planning. The Marine Bill is a possible vehicle to change the structure of current enforcement arrangements in the inshore zone, as discussed below. WWF-UK and the Wildlife and Countryside Link have drafted a proposed Marine Bill (WWF-UK 2005).]

Table 1: Summary of most relevant statutory provisions

Provision	Enforcement agency and requirements	Effectiveness
<p>Site Protection</p> <p>European Marine Sites Conservation (Natural Habitats, &c) Regulations 1994 reg 34</p> <p>Relevant authorities³ may establish a management scheme for a European marine site.</p>	<p>The nature conservation bodies have a special duty to advise the other relevant authorities as to the conservation objectives for a site and the operations that may cause deterioration or disturbance to the habitats or species for which it has been designated. This advice forms the basis for developing the management scheme.</p> <p>A scheme may be established by one or more of the relevant authorities. It is expected that one will normally take the lead. Once established, all the relevant authorities have an equal responsibility to exercise their functions in accordance with the scheme.</p>	<p>Management schemes seem to be largely effective where they are in place. However, negotiation and development of the schemes is time and labour-intensive. In England, they have been put in place at a number of sites (English Nature 2002). They rely on the cooperation of parties involved in management. The management document may refer to the mechanisms for decision-making in relation to future developments or changes in use. These should be agreed between the relevant authorities as part of the ongoing site management process. There are no provisions for 'breach' of a management scheme.</p>

³ Relevant and competent authorities are defined in the Regulations. Competent authority is defined in regulation 6 and includes 'any Minister, government department, public or statutory undertaker, public body of any description or person holding a public office. The expression also includes any person exercising any function of a competent authority in the United Kingdom.' Relevant authorities in relation to European marine sites are described in regulation 5, and are 'such of the following as have functions in relation to land or waters within or adjacent to that area or site-

- (a) a nature conservation body;
 - (b) a county council, district council, London borough council or, in Scotland, a regional, islands or district council [in Scotland, now read to mean a council constituted under the Local Government etc. (Scotland) Act 1994];
 - (c) the National Rivers Authority, a water undertaker or sewerage undertaker, or an internal drainage board;
 - (d) a navigation authority within the meaning of the Water Resources Act 1991;
 - (e) a harbour authority within the meaning of the Harbours Act 1964;
 - (f) a lighthouse authority;
 - (g) a river purification board or a district salmon fishery board;
 - (h) a local fisheries committee constituted under the Sea Fisheries Regulation Act 1966[26] or any authority exercising the powers of such a committee.'
- ⁴ Wadden Sea Case: C-127/02.

Provision	Enforcement agency and requirements	Effectiveness
<p>Conservation (Natural Habitats, &c) Regulations reg 36 The appropriate nature conservation body may make bylaws for the protection of a European marine site under section 37 W&C Act.</p> <p>Conservation (Natural Habitats, &c) Regulations 1994 reg 48</p> <p>The competent authority must make an appropriate assessment of any plan or project that may have a significant effect on a European site. The competent authority shall consult the appropriate nature conservation body.</p>	<p>The appropriate nature conservation body shall have power to enforce byelaws made by them (reg 94).</p> <p>Recent developments in the European Court of Justice⁴ have confirmed that fishing activities should be classified as plans or projects. CCW had already taken this position. Competent authorities (which will usually be SFCs in England and Wales, and SEERAD in Scotland) will be responsible for carrying out appropriate assessments in consultation with the nature conservation bodies.</p>	<p>The scope of these byelaws is very limited. Byelaws cannot prohibit or restrict the right of passage by a vessel (W&C Act section 37(3)), and Nothing in the byelaws made under this regulation should interfere with the exercise of functions of a relevant authority, any functions conferred by or under any enactment, or any right of any person. SFC bylaws have been used to complement the provisions of the s37 byelaws.</p> <p>Unknown in relation to fishing activities, as this process is just starting. However, English Nature have carried out some initial assessments of fisheries and advise that this is can be effective (Mark Gray, CCW, in IEEP, 2005.).</p>
<p>Marine Nature Reserves Wildlife and Countryside Act s 36 Allows for the designation of Marine Nature Reserves. These can be designated to 3nm from the baseline, or 12nm by special order. The level of protection is</p>	<p>Designation of the reserve and bylaws from nature conservation agencies can give no immediate legal protection against fishing⁵. If</p>	<p>Only three Marine Nature Reserves have been designated. There is no legal requirement for designation. The three in place are Lundy, Skomer</p>

⁵ Countryside Council for Wales (CCW) byelaws were introduced to protect the Skomer Marine Nature Reserve's marine wildlife from damage or destruction when the Reserve was declared in 1990. However, these byelaws exclude the taking of "seafish" as defined under sea fishery legislation, and impacts arising as a result of legitimate fishing operations, as these matters fall under the statutory remit of the South Wales Sea Fisheries Committee (SWSFC) and Department of Environment, Food and Rural Affairs (DEFRA). CCW's byelaws are now complemented by SWSFC byelaws that prohibit dredging and beam trawling and the taking of scallops by any method. Other than the protection afforded by these measures and by voluntary codes of conduct, marine wildlife in the Reserve is unprotected from the impacts of fishing activity. The

Provision	Enforcement agency and requirements	Effectiveness
<p>equivalent to National Nature Reserves, which gives a presumption against development, but is based on a cooperative approach to protection – and thus depends on securing the agreement of all the local interests concerned.</p> <p>Section 37 gives the conservation agencies the ability to make bylaws to protect Marine Nature Reserves. These are limited in the same way as the bylaws for European marine sites (see discussion above).</p>	<p>bylaws are developed to protect against fishing (eg no take zone for Lundy reserve, bylaws in place at Skomer, the relevant Sea Fisheries Committee will be responsible for enforcement).</p>	<p>and the Marloes, and Strangford Lough in Northern Ireland. Protection from impacts of fishing relies on SFC byelaws (discussed below). NGOs consider that the Marine Reserve provisions have been largely ineffective in providing protection for the marine environment (Environmental Audit Committee 2004).</p>
<p>SSSIs</p> <p>Designated under the W&C Act (s28). Extend only to the mean low water mark in England and Wales and the point of mean low water spring tides in Scotland. Protect areas of important flora, fauna, geological and/or physiographical features, including marine habitats. Many SSSIs include coastal areas (eg The Wash which covers 62,000 ha of coastal and marine habitats).</p> <p>Offences in relation to SSSIs include</p> <ul style="list-style-type: none"> • Carrying out, causing or allowing operations likely to damage an SSSI without consent (for owners) • Failing to minimise any damage to an SSSI and if there is any damage, failing to restore it to its former state so far as is possible. <p>Ramsar sites are recognised in UK law through the amended W&C Act (s 37A), but receive no specific legal protection per se. All terrestrial Ramsar sites in England</p>	<p>Nature conservation agencies have responsibility under s28 W&C Act to make sure SSSIs are protected and take enforcement action if the law is broken. Nature conservation agencies have a discretionary power (not a duty) to prosecute for offences relating to SSSIs.</p>	<p>Enforcement on land seems to be effective, but there have been few prosecutions (the first was brought in 2003 ref: http://www.english-nature.org.uk/news/story.asp?ID=450), and none in relation to damage to SSSIs in the marine environment. Where offending is by persons who do not own or occupy land in the SSSI, enforcement can be more difficult, although the CROW Act 2000 strengthened these provisions. In these cases, nature conservation agencies may need to work with other agencies such as the police who have more enforcement powers.</p> <p>A person is liable to a fine of up to £20,000 on summary conviction or an unlimited amount on conviction on indictment if he or she carries out, without reasonable excuse, an operation which damages the special features of an SSSI. The Courts are also empowered to make an order</p>

conservation deficiency arising from this gap in legal protection has become increasingly recognised and criticised. Also, the absence of any areas free from fishing activity has proved an obstacle to wildlife monitoring and surveillance research. (<http://www.swsfc.org.uk/consultation3.htm>).

Provision	Enforcement agency and requirements	Effectiveness
<p>and Wales are given legal protection as SSSIs (ref http://www.ramsar.org/wurc.policy.uk.wales.htm).</p>		<p>requiring that person to take certain actions to restore the land to its former condition. Failure to comply with such a court order may be punished by a fine of up to £5,000 and a further fine of up to £100 per day for as long as the offence continues.</p>
<p>Damage/disturbance to sites (specific sites used by species) Wildlife and Countryside Act 1981⁶(W&C Act) s9(4) It is an offence to intentionally or recklessly damage or destroy any structure or place which a Schedule 5 species uses for shelter or protection or to disturb any animal while it is occupying a structure or place which it uses for that purpose. Conservation (Natural Habitats &c) Regulations (Conservation (Natural Habitats, &c) Regulations 1994) 1994 reg 39(1)(d) It is an offence to damage or destroy a breeding site or</p>	<p>The Police are authorised to enforce these provisions⁷ (Conservation (Natural Habitats, &c) Regulations 1994 reg 101/Wildlife and Countryside Act section 19). However, often police forces are not resourced adequately to enforce these provisions (see discussion in text on resourcing and current management arrangements).</p>	<p>The exception to these offences weakens them – if the act was ‘the incidental result of a lawful operation and could not have been reasonably avoided’ then an offence has not been committed (ref W&C Act sections 4(2)(c), 10(3)(c) and Conservation (Natural Habitats, &c) Regulations 1994, reg 40(3)(c)).</p> <p>There is a proposal for change to the incidental result defence in the Conservation (Natural Habitats, &c) Regulations 1994 to the following</p>

⁶ References to W&C Act are to the Act as amended by the CROW Act 2000. As the CROW Act does not apply in Scotland, there may be differences in the application of the provisions outside England and Wales.

⁷ Under Section 24(2) Police and Criminal Evidence Act, as amended by the CROW Act, the following are arrestable offences:

- Any offence under Sections 1(1), 1(2) or 6 WCA 1981 in respect of any Schedule 1 bird, or part thereof (taking, possessing, selling, etc., of any wild birds).
- Any offence under Section 1(5) WCA 1981 (disturbance of wild birds).
- Any offence under Sections 9, 13(1)(a) or (2) WCA 1981 (taking, possessing, selling, etc., of Schedule 5 wild animals or Schedule 8 plants).
- Any offence under Section 14 WCA 1981 (Introduction of new species etc).

Under Section 19(1) WCA 1981 a constable who has reasonable cause to suspect that any person is committing/has committed an offence under Part 1 WCA may:

- Stop and search that person
- Search and examine any thing which that person may be using or have in his or her possession if the constable reasonably suspects that evidence of the offence may be found there;
- Seize and detain anything which may be evidence of an offence or liable to be forfeited under Section 21(6) WCA 1981.

Under Section 19(3) WCA 1981 a Justice of the Peace who is satisfied by information on oath that any offence under Part 1 WCA 1981 has been committed may grant a search warrant to a constable to enter upon and search premises for the purpose of obtaining evidence relating to that offence. (CPS, undated)

Provision	Enforcement agency and requirements	Effectiveness
<p>resting place of an animal of a European protected species.</p>		<p>wording 'a person shall not be guilty of an offence... if he shows that the act was an incidental result of a lawful action and could not reasonably have been avoided, and he was not aware and could not reasonably have been expected to be aware, of the effect of his act on an animal of a species listed in Annex IV(a) to the Habitats Directive' (Defra 2003, 2004c). At present the change is proposed for England only (Defra 2003). This would correspond to the wording already in place in Scottish legislation, and would improve the strength of these provisions.</p> <p>If a change to the Conservation (Natural Habitats, &c) Regulations 1994 takes place, Defra would consider also changing the wording in the W&C Act (Defra 2004c).</p>
<p>SFC byelaws Can be made for environmental purposes in accordance with the Sea Fisheries Regulation Act 1966 (as amended by the Environment Act 1995). SFCs must consult with conservation agencies before submitting byelaws for Ministerial confirmation (Sea Fisheries Regulation Act ss 5, 6). The byelaws could be for protection of specific species, or for protection of habitat features.</p>	<p>Can be enforced by SFCs Sea Fisheries Officers, and prosecuted through the criminal courts. Enforcement of SFC byelaws appears to be generally effective, and SFCs have resources for patrols etc. However, SFCs have expressed concern about lack of additional resources for environmental enforcement.</p>	<p>Approval of byelaws is generally a lengthy process. They apply only in the 0-6nm zone, so cannot provide protection to areas/species from 6-12 nm or further offshore. They cannot normally be introduced in anticipation of a problem, only when the problem has manifested itself (Symes & Boyes 2005).</p> <p>Byelaws are piecemeal and fragmented around the coast. Byelaws cannot restrict fishing effort and remove or suspend fishing rights.</p> <p>Examples of environmental byelaws include the suspension of net fisheries in St Ives Bay</p>

Provision	Enforcement agency and requirements	Effectiveness
<p>Ministerial Orders Where a competent authority is unable or unwilling to prohibit certain types of fishing activity in situations where they may cause significant environmental damage, there may be a Ministerial order banning the specific activity.</p> <p>For example, the Shellfish (Specified Sea Area) (Prohibition of Fishing Methods) (Wales) Order 2003 No. 607 (W. 81): That part of the sea off the South Wales coast described in article 2 of the Order is an important site for non-breeding Common Scoter, and this Order prohibits the use of hydraulic dredging for bivalve molluscs in that area. Scientific and other exemptions are contained in section 9 of the 1967 Act.</p>	<p>Enforcement is carried out by SFCs (within 6 nm) and the SFI (outside 6nm). [As from 1 October 2005, the Marine Fisheries Agency took on this role].</p>	<p>Cornwall to protect seabirds from risk of incidental capture during the nesting seasons; the introduction of a no-take zone at Lundy MNR; and restrictions on scallop fishing in Lyme Bay to protect cold water reefs.</p> <p>No information available on the effectiveness of these instruments in Wales. (However, there have been Ministerial Orders placed in England which have effectively protected SAC features).</p>
<p>Species protection Protection of listed species Wildlife and Countryside Act s1, s9 It is an offence to intentionally kill, injure or take any wild bird or any animal listed on Schedule 5, or to have in your possession any live or dead, or part of a listed animal. It is an offence to intentionally or recklessly disturb a dolphin, whale or basking shark. Conservation (Natural Habitats, &c) Regulations 1994 reg 39 It is an offence to deliberately capture, kill, disturb, take or destroy the eggs of European protected species, or to sell, keep, transport, offer for sale or exchange European</p>	<p>Refer to discussions above in relation to protected areas (Damage/disturbance to sites (specific sites used by species)). Fisheries inspectors are not authorised to enforce the W&C Act.</p>	<p>The exception to these offences weakens them – if the act was ‘the incidental result of a lawful operation and could not have been reasonably avoided’ then an offence has not been committed (ref W&C Act s10(3)(c); Conservation (Natural Habitats, &c) Regulations 1994 reg 40(3)(c); Conservation of Seals Act s 9(1)(b)). However, there are proposals for improvement of this defence (see discussion above in relation to Damage/disturbance to sites (specific sites used by species)).</p>

Provision	Enforcement agency and requirements	Effectiveness
<p>protected species.</p> <p>Conservation of Seals Act 1970</p> <p>Grey and common seals are protected specifically under this Act. The Secretary of State may make an order to prohibit the killing, injuring or taking of seals in any area (ss 3(1) & (2)).</p>		<p>A new offence of 'reckless' disturbance was added to the W&C Act by the CRoW Act. The term 'reckless' was not added to the more serious offences of killing, taking or nest destruction (for birds, section 1) or killing or taking (for other animals, section 9). Defra considers that adding the term 'reckless' to all offences in Part I of the W&C Act would 'place an added burden on the legitimate activities of farming, timber production and fishing, for almost no conservation benefit' (Defra 2004c). NGOs, including those in the Wildlife and Countryside Link believe that the term 'reckless' should be added to all subsections where intent currently needs to be proved (WCL 2004)</p>
<p>Protection of salmon, trout, freshwater fish and eels</p> <p>In the Salmon and Freshwater Fisheries Act 1975. Fishing for salmon, trout, freshwater fish and eels in England and Wales requires a licence from The Environment Agency. Failure to have a licence is an offence, as is fishing in the close season. Fish poaching is stealing fish from private waters. Poachers usually target game fish such as salmon and trout, although prize course fish are sometimes taken. Fish may be caught in nets, by setting lines, snaring or even by chemical poisoning.</p>	<p>Environment Agency – Fisheries Enforcement Officers. The Agency has a duty to enhance biodiversity and have regard to conservation when carrying out its regulatory work. Eels are important prey species for species listed in the UK Biodiversity Action Plan, notably otters and bittern (the otter's preferred food is eels). It is important, therefore, to ensure that eel populations are sufficient to sustain predation by these species.</p>	<p>In the Salmon and Freshwater Fisheries Act 1975, the Agency has a specific duty to maintain, improve and develop eel fisheries. However, eels are considered separately from salmonids and coarse fish, receiving less protection than these species. Licences to fish for eels must be issued on demand and, although some controls on the use and type of instruments are available through byelaws, there is no power to restrict the number of fishing units. In England and Wales, legislation and regulations are inadequate to give proper protection to stock and fishery (Environment Agency, undated). Illegally caught fish are often sold to pubs and restaurants.</p>

3.4. Codes of conduct

There are various voluntary codes of conduct in place in UK waters (and worldwide), relating to different species and activities. Some codes, such as CCW's Sea Wise Code contain clear guidance on suggested speed restrictions when in close proximity to marine mammals, and a suggested minimum observation distance and time for boats. Others, such as the Divers Code of Conduct have only general guidance relating to avoidance of breeding sites and avoiding approach of cetaceans in the water. None of the current codes have regulatory status, (ie non-compliance is not a legal offence).

Examples of codes of conduct that can apply in UK waters

- The Underwater Photographers Code of Conduct;
- The United Kingdom Turtle Code;
- The Seashore Code;
- Navigate with Nature;
- Dolphin Space Programme;
- The Divers Code of Conduct;
- Various codes of conduct in relation to specific fisheries;
- Pembrokeshire Marine Code;
- Code of Conduct for Sea Anglers;
- Shore Fishing Code of Conduct; and
- Sea Wise Code (CCW).

From www.marinecode.org and CCW pers.comm

Scotland is making progress towards a uniform code of conduct for application in its waters. Under the Nature Conservation (Scotland) Act 2004 Scottish Natural Heritage must 'prepare and issue a code, to be known as the Scottish Marine Wildlife Watching Code, setting out recommendations, advice and information relating to commercial and leisure activities involving the watching of marine wildlife'. The code will apply to all activities in Scottish waters, and will also apply to activities such as bait digging and sand yachting in the coastal zone. The code will provide a baseline level of consistency that may then be restricted further by the application of other voluntary codes.

4. CURRENT MANAGEMENT ARRANGEMENTS

In England and Wales, inshore fisheries management is largely handled by the Sea Fisheries Committees (SFCs). Their jurisdiction extends from the baseline to six nm. SFCs were given environmental responsibilities in the 1990s as noted above, but they were provided with no extra funding, and still focus mainly on fisheries activities.

The main role of SFCs is the conservation and management of shellfish and some finfish stocks through local bylaws. They can regulate through use of permits, minimum landing sizes and gear restrictions. The process of making new bylaws is time-consuming, meaning it can be very difficult for SFCs to respond quickly to new problems (discussed in Table 1 above).

Enforcement of SFC bylaws and orders is applied through sea-going patrols and shore based inspections with a system of informal warnings, written warnings and the possibility of prosecutions through the criminal courts. SFCs in the UK and Wales have around 27 seagoing craft and around 95 sea- or shore-based enforcement staff.

The Environment Agency has a specific duty to manage salmon, eels, and sea trout in estuarine and coastal waters, and also to protect water quality. In some areas where there is no SFC coverage, the Environment Agency plays the SFC role. The Agency has no specific role in protecting marine wildlife, but does have a general duty of environmental protection.

The Sea Fisheries Inspectorate (SFI) was the enforcement arm of the Department for Environment, Food and Rural Affairs (Defra), responsible for monitoring fishing activities within UK waters (0-200 nm or the median line) adjacent to the coastline of England and Wales. As from 1 October 2005, the Marine Fisheries Agency, an executive agency within Defra took over the role of the SFI. It is charged with vessel licensing and quota management. It enforces the Food and Environmental Protection Act where it applies to discharges into the marine environment. As discussed in Table 1, fisheries inspectors do not currently have powers to enforce the Wildlife and Countryside Act. The Environment Agency has a general duty of environmental care, but current legislation, such as that to regulate the eel fishery, appears not to give it sufficient powers to fulfil its responsibilities in relation to the environment.

Primary responsibility for enforcing species protection legislation lies with the police. The ability of other agencies to carry out enforcement action is limited by the legislation under which they operate. As a consequence, it appears that little enforcement of nature conservation legislation is currently taking place away from the coast as the police do not have resources to operate in this area, and other agencies are not authorised for enforcement.

The Environmental Audit Committee were told during their investigation into Wildlife Crime (2004) in evidence by police that *'police forces did have resources that could be diverted to this work but, on the whole, they were not giving priority to tackling wildlife crime because it had not been established as a priority by the Home Office and wider Government'*. The Committee also heard evidence that *'the lack of importance attached to wildlife crime by managers within the Police service often results in wildlife crime officers being unable to operate effectively [and] being given little encouragement and time to carry out their duties.'*

5. DEFICIENCIES IN CURRENT MANAGEMENT AND LEGISLATION

The Environmental Audit Committee (2004) were advised during their investigation into wildlife crime (section 0) that there have been no prosecutions for offences against marine wildlife since the W&C Act was passed in 1981⁸, although harassment of marine wildlife has been noted as a problem by the media, and non-governmental organisations have highlighted a need for more control in this area. By contrast, there have been some numbers of prosecutions in the terrestrial environment.

The partnership against wildlife crime (PAW) has a marine wildlife enforcement working group set up to consider ways of improving the enforcement of legislation protecting marine species, including building a network of those with expertise in the area, and exploring ways of raising public awareness. The working group considers that there are significant issues related to lack of coordination in the marine environment, and that enforcement is currently hampered by a combination of lack of awareness (amongst the public and the designated enforcing organisations) and inconsistency (Nevin Hunter, pers. comm.).

The desk-based research undertaken for this review⁹ has highlighted several major areas of weakness in the current systems for marine wildlife protection:

- limited coverage;
- inconsistency (between rules in different areas, between evidentiary standards for similar offences, varying levels of resources in different areas);
- inappropriately designed legislation;
- requirements for proving intention;
- lack of awareness;
- out of sight, out of mind attitude;
- lack of resources;
- lack of information;
- problems with collecting evidence;
- problems with coordination; and
- lack of any marine spatial planning.

These are discussed in more detail below. Some are also mentioned in Table 1 (above).

5.1.Limited coverage

UK statutes dealing with wildlife protection apply only to the 12nm limit of territorial waters. SFCs are only able to make bylaws with application to 6nm, and are only resourced for enforcement within 6nm. This means that between 6 and 12 nm the instruments for protecting the environmental values of marine sites are more limited, and outside 12 nm they are currently absent. This situation is out of line with compliance with the habitats Directive which has been shown to apply to the UK's entire EEZ (Defra 2004b).

⁸ The two first prosecutions for harassment of dolphins are currently being pursued in Scotland. (Sgt Peter Charleston, pers. comm.)

⁹ See Annex 2 for a summary of some of the relevant reviews relating to marine wildlife that were published in 2004/05.

In April 2005 the EU's Fisheries Directorate-General established a Community Fisheries Control Agency¹⁰. It has been suggested that this agency could coordinate enforcement of marine wildlife legislation outside the territorial waters of Member States, and that the CFP will need to give greater consideration to marine conservation measures in future, as the Natura 2000 network expands outside the 12 nm limits.

5.2. Inconsistency

If members of the public or industry are expected to comply with certain standards of behaviour, it is important that these are simple and consistent. At present, different standards in different areas make it difficult for people to understand what the requirements are. A comprehensive single Code of Conduct for the UK marine environment could be at least a partial solution to this issue. As mentioned above, Scotland has commenced a consultation process on a code of conduct related to marine wildlife for use in their coastal and marine areas. PAW has indicated that it would support the adoption of such a code throughout UK waters (N Hunter, pers. comm.) as this would facilitate enforcement and awareness. This would not necessarily need to be legislated – a non-statutory code such as the Highway Code could still have good effect.

Alternatively, a legislative solution could be pursued, such as regulations to control specific activities such as marine mammal watching. Other countries such as New Zealand have specific regulations, and it seems that compliance with these is generally good (Baxter 2004). Although wildlife conservation is a devolved issue, it is still important that all the administrations act in a consistent fashion, so that UK citizens and tourists all have a clear idea of the standards of behaviour required.

The issues related to varying responsibilities within 6 nm, from 6-12 nm, and offshore also need to be addressed. Marine species and habitats need protection in all parts of their range. At present, this is compromised by variations in enforcement ability and responsibility.

Other inconsistencies at present relate to varying levels of resources to address the issues in different areas, along with different standards of evidence required for similar offences. These are discussed below.

5.3. Application of legislation to the marine environment

The legislation protecting species and habitats in the marine environment has generally 'evolved' from legislation primarily designed for the protection of terrestrial species. For example, section 9 of the W&C Act requires the protection of areas important for animals listed on Schedule 5, but defining areas important for resting or shelter for cetaceans and basking sharks can be very problematic. Legislation should be specifically designed to address the specific issues encountered in marine areas.

The UK government will develop a Marine Bill in 2006. It is expected to focus on marine spatial planning and integrated coastal zone management. The Bill is also expected to cover marine conservation, and may replace some of the current wording in the W&C Act that is considered inapplicable in the marine environment (see discussion in Table 1).

¹⁰ See: http://ec.europa.eu/comm/fisheries/agency/index_en.htm

5.4. The need to prove intention

A further difficulty with enforcing current wildlife protection legislation arises from the need to prove intention for an offence to have been committed. The CRow Act added the term 'reckless' to those sub-sections of the Wildlife and Countryside Act dealing with the intentional disturbance of breeding birds and other animals occupying resting places (sub-sections 1(5) and 9(4)), but failed to add 'reckless' for the offences of killing, taking or destruction of birds and other animals (and not at all to any offences involving wild plants). To make the standards relating to these offences more consistent, the term 'reckless' could be added to all appropriate sub-sections which currently demand that intent is proven (1(1), 3(1)(a), 9(1), 13(1)(a) and 13(1)(b)).

Some situations involve the killing and injuring of protected species 'incidentally' to a lawful operation under the Wildlife and Countryside Act 1981. Examples of this 'incidental' killing or injuring include the bycatch of small cetaceans, turtles and sharks in fisheries and the destruction of benthic species such as the pink sea fan (*Eunicella verrucosa*) by 'rockhopper trawls'. These events are not usually viewed as 'intentional acts' but as incidental to a legal primary activity, and therefore no offence is committed.

The amendment proposed by the Conservation (Natural Habitats, &c.) (Amendment) (England) Regulations 2003 would improve this situation by altering the defence to include an element of foreseeability (see discussion above). The Regulations would also require a process to be established to monitor incidental killing of protected species. This would mean that if incidental killing was presenting a threat to the survival of species this could be addressed. The legislation currently in force in Scotland provides a higher standard of protection than that in England and Wales¹¹.

Even where the standard of proof is 'recklessness', this can be difficult to prove. An example was given in evidence to the Environmental Audit Committee (2004). In a case near the Isle of Man, some divers swam within two metres of basking sharks. Prosecution did not occur, however, as it was unclear how close they had to be before causing 'disturbance'. Opinions varied widely – some sources said four metres, some said 100 metres. With no clear definitions available, proving 'intention' or 'recklessness' as necessary under the legislation is very difficult.

5.5. Awareness

There is certainly a lack of awareness of current marine protection legislation. In June 2004, the landing of a common sturgeon (*Acipenser sturio*) in South Wales raised this issue in relation to the legal protection granted to some fish within the EU (Brown, 2004). The sturgeon was (inappropriately) offered to Buckingham Palace (as a 'royal' fish) and there was then confusion about whether it could be offered for commercial sale. Due to its protection through the EC CITES Regulation and the EC habitats Directive, common sturgeon should not be subject to deliberate killing, capture or commercial use. The Wildlife & Countryside Act applies these provisions in the UK. The difficulties in the sturgeon case were compounded by uncertainties over the identification of the species – Atlantic sturgeon, a very similar fish, is not listed on the W&C Act's Appendices, and therefore is not subject to protection or restrictions on sale. DNA identification was eventually pursued to confirm the species of the fish in question.

¹¹ Refer to the Nature Conservation (Scotland) Act 2004.

If protected fish such as common sturgeon are taken as bycatch in inshore waters, this is not considered an offence in UK law if the act was the incidental result of a lawful operation and could not reasonably be avoided. However, such bycatch cannot subsequently be used commercially. The same issue with regard to protected species being sold illegally after being caught incidentally applies to shad and other species. To date, there have been no prosecutions for illegal sale of protected fish.

The UK government needs to raise awareness related to wildlife offences in the marine environment, and promote compliance amongst all users (including industry) in the marine and coastal environment. Enforcing agencies such as the police should also work on raising awareness within their ranks.

5.6.Resources

The allocation of scarce resources is always an issue for government (as well as non-government) bodies. However, it is clear that a lack of sufficient resources is a very real issue in ensuring compliance with marine wildlife protection and fisheries legislation. With regard to fishing, further on-board monitoring, such as onboard observers or video cameras to survey the catch as it is brought aboard, will be needed for enforcement to be effective in UK waters. Further resources will also be required to monitor compliance with:

- requirements not to harass marine wildlife;
- gear restrictions, restrictions on recreational activities, restrictions on fishing at SACs where these are in place; and
- legal restrictions on sale of protected fish species, especially if the W&C Act Schedules are amended to include more of these species.

Species protection is a police responsibility in UK waters, yet many forces do not have a marine unit in place. Even where there is such a unit, resources and time for investigations of wildlife offences often have to compete with the resource needs of other areas of criminal investigation. Political imperatives mean that resourcing of wildlife crime is seldom a top priority. This is somewhat due to the non-monetary value of wildlife and the out of sight out of mind perspective that dominates.

5.7.Lack of information

It is difficult to even say how well the current legislation is being enforced, as there is no clear picture of current levels of infringements. There is currently no central recording system for wildlife crime in the UK, including marine wildlife crime or incidents, and this is a severe weakness of the current systems.

5.8.Problems with collecting evidence

In combination with the factors described above, enforcement in the marine environment has inherent difficulties due to the conditions in the areas involved. For example, a person on a jet-ski is seen chasing dolphins near the beach. Assuming that the witnesses are aware that an offence has taken place and know who to report it to, there are then likely to be several issues with obtaining sufficient evidence to prosecute. Jet-skis do not necessarily bear identifying registration numbers like boats, and even where they do, they are small and difficult to see.

Even if the witnesses manage to identify the owner of the craft (eg by recording the licence plate of his/her car when he is leaving the area), there could be a problem in proving exactly who was driving it at the time of the offence. Examples such as this are common in the marine environment (example from Sgt Peter Charleston, pers.comm.).

5.9. Coordination between enforcement agencies

Another clear theme from many of the reports was a need for better coordination in the marine environment. The current framework is complex, and is spread across many organisations. Enforcement tends to be sectoral in approach, which does not encourage appreciation of the marine environment in its entirety.

Some authors have called for a clearer legislative framework - perhaps a Marine Act, such as the one proposed by WWF-UK (WWF-UK 2005). Others such as PAW point out the need for enforcers to work together, and even suggested a legal requirement for collaboration, as required under the Crime and Disorder Act 1998 to address crime and disorder in society. Current capacity is already low, and this is further restricted by lack of coordination.

5.10. Marine spatial planning

A number of the reports and interviewees commented on the need for integrated management in the marine environment. Increasingly, people are moving towards the coast, looking for improved quality of life. Demands on coastal areas are growing as more people seek to use these areas for recreational and commercial opportunities. Defra's RMNC (2004) noted that tourism and recreational activity can cause disturbance to cetaceans and birds and damage fragile habitats in estuaries, such as salt marsh or sea grass beds. A practical constraint on the effective use of bylaws regulating the use of such recreational craft is the lack of adequate enforcement.

A system of planning the use of marine and coastal areas that takes into account the needs of different users and of the environment is necessary. CCW has been carrying out work on analysing the sensitivity of different marine habitat types, and this work may allow future planners to assess where different types of fishing gears can be used without a significant effect (Eno, 2004).

6. RECENT DEVELOPMENTS IN THE ECJ

During the final stages of preparing this report, an Opinion was released by the Advocate-General of the ECJ in Case C-6/04 (*Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland*)¹². The Opinion comments on several issues of relevance to the subject of this report.

Key points in the Opinion in relation to this report include:

- with regard to the requirement for intention, the Advocate-General considers that the derogations for the harm in the event of lawful conduct that are currently included in

¹² The full text of the Advocate General's Opinion in case C-6/04 is available online at www.curia.eu.int

UK legislation are 'incompatible with Article 16 of the Habitats Directive'. The Opinion discusses the meaning of 'deliberate' in the Directive, and says that the term cannot be transposed by a derogation for lawful operations, since lawful conduct does not necessarily preclude an intention to harm¹³; and

- on the question of application of the Directive outside territorial waters, the Opinion confirms the decision of the UK High Court in the *Greenpeace* case and states that 'the Habitats Directive is ... to be transposed in respect of areas outside territorial waters, in so far as the Member States or the Community exercise Sovereign rights there'. As the UK has legislative provisions in place covering only the activities of the oil industry in offshore waters, the Advocate-General considers that the UK 'has not fully transposed the Directive outside territorial waters'.

The outcome of this case should provide a strong incentive for the UK to ensure its legislation is in compliance with the Court's findings. If the eventual judgement confirms the Advocate-General's opinion, new offshore regulations and changes to the defence of 'incidental result of a lawful activity' can be expected.

Update: June 2006

In October 2005, a final judgement was issued in Case C-6/04. The Court found in support of the Advocate-General's Opinion discussed above that the derogations from Articles 12, 13, 14 and 15(a) and (b) set out in UK domestic law do not comply with the conditions specified in Article 16. In addition, the specific derogations relating to harm that was the 'incidental result of a lawful operation and could not reasonably have been avoided' were found to be beyond the scope of Article 16. The Court stated strongly that these derogations were contrary to the spirit and purpose of the habitats Directive.

The Court also found that the UK had failed to adequately transpose the habitats Directive outside 12 nautical miles, and stated that additional legislation was needed to supplement the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 as these Regulations concern only the petroleum industry.

¹³ See case 412-85 *Commission v Germany* [1987] 3503, paragraphs 14 and 15: the intention to use land, for example for agriculture, does not preclude the simultaneous deliberate killing or capture of birds, the deliberate destruction of, or damage to, their nests and eggs and their deliberate disturbance, within the meaning of Article 5 of the Birds Directive.

7. CONCLUSIONS

According to the findings of all recent reviews and the information obtained from interviewees in this study, the current systems for protecting marine wildlife are not adequate. If Wales and the UK are to deliver on their European and international commitments, improvements must be made. The key areas for such improvement are set out in Table 2.

With the probable adoption of a UK Marine Bill in the near future, there is a real opportunity for change in some of the areas where weaknesses are apparent. The challenge for policy-makers now is to make sure this opportunity is seized, and that systems for protection of marine species and habitats are strengthened to bring them to the same level as those for species and habitat protection on land.

Table 2: Summary of areas for improvement

Area of weakness	Problem/issue	Recommendations for change
Limited coverage	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.	<ul style="list-style-type: none"> UK should support consideration of marine conservation by any new EU fisheries enforcement agency, and should support inclusion of more measures for marine conservation in the CFP.
Inconsistency	Lack of universal standards makes it hard to prove that an offence has been committed	<ul style="list-style-type: none"> Adoption of a universal Code of Conduct for marine and coastal wildlife interactions throughout UK waters. Legislative change, inclusion of standards in new marine legislation
Applicability of current legislation to the marine environment	Current legislation has been designed primarily for application in the terrestrial environment, and wording is not always appropriate for marine applications.	<ul style="list-style-type: none"> Design of specific marine legislation, eg the proposed adoption of a Marine Act.
Requirement to prove intention	Requirement that offences are committed intentionally means that where wildlife/habitats are damaged incidentally, there is no opportunity for legal restriction. For some acts, even if these were committed 'recklessly' there is no offence – this is not consistent in current legislation. Currently, Scotland has stricter criteria than England and Wales.	<ul style="list-style-type: none"> Amendments to Wildlife and Countryside Act to make incidental killing/taking of wildlife an offence where appropriate, and definitely in cases where such incidental killing and taking is a significant threat to the species/habitat. Consistent application of the need for intention throughout legislation, and throughout UK waters.
Awareness	Members of the public, and even enforcing agencies have a poor level of awareness of the marine environment, and also of offences in this environment. Marine species identification is difficult and there are not sufficient resources to enable enforcement of current rules for protection of threatened fish species.	<ul style="list-style-type: none"> Conservation agencies and UK administrations should promote awareness of sensitivities in the marine environment, and the need for compliance with current rules Information on threatened fish species should be produced and distributed. Consumer awareness should be improved with regard to their purchase of threatened fish. Fishermen and enforcers should also be targeted to

	<p>increase awareness of marine wildlife offences and species and habitats that are currently protected.</p> <ul style="list-style-type: none"> • A review of total resources available for marine wildlife enforcement throughout the UK is needed. This should include analysis of future enforcement needs related to potential changes in legislation and management requirements (eg increased number of marine SACs, addition of more marine species to the Schedules of the W&C Act). Additional resources should be provided where necessary to give effect to current provisions. • The Police should have more resources for wildlife crime, and it should be clearly identified as a priority for action by the Home Office and Government. 	
Resources	<p>Marine wildlife enforcement is currently under-resourced. There are very few staff involved in this work, and those that are often also have responsibilities in other areas. Police marine units must compete for resources with other areas of criminal investigation. Due to the remote nature of the environment where offences are committed, providing an appropriate level of enforcement is expensive.</p>	
Information	<p>There is no central database for recording of marine (or terrestrial) wildlife crime. This hampers any analysis of enforcement needs/difficulties.</p>	
Evidence	<p>The marine environment is a difficult and expensive place in which to operate. Lack of identification of boats and owners can make it very hard to gather evidence and pursue prosecutions.</p>	
Coordination	<p>Currently there is no requirement for organisations involved in enforcement of legislation or management in the marine environment to cooperate or share information.</p>	<ul style="list-style-type: none"> • Wildlife and Countryside Link (2004) have proposed a compulsory system for registration of boats and small craft. UK agencies should consider this proposal and its costs and benefits in terms of wildlife crime and other marine offences (such as speed restrictions in ports). • UK agencies and governments should encourage cooperation between agencies responsible for the marine environment.

<p>This leads to inconsistencies and prevents development of best practice.</p>	<ul style="list-style-type: none"> • If cooperation is not adopted on a 'voluntary' basis, legislation requiring cooperation should be considered.
<p>Marine Planning</p> <p>Spatial</p>	<p>There is currently no system for planning 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.</p> <ul style="list-style-type: none"> • Develop methods of marine spatial planning. • Continue work to assess the sensitivity of marine sites to impacts from fishing and other activity.

8. ACKNOWLEDGEMENTS

Thank you to all those who have contributed to the production of this report, especially to Clare Coffey, James Brown, Saskia Richartz, Clare Eno, Peter Charleston, Nevin Hunter Annie Smith, and Jean-Luc Solandt.

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ANNEX 1 TERMS OF REFERENCE

Contract specification

Advice is required to help inform the Countryside Council for Wales' views on potential wildlife enforcement and fishing in the 12 mile zone. Particular emphasis should be paid to the 6-12 mile zone where SFC powers are not in place.

The material collected will supplement the Country Agencies' response to DEFRA's review of marine fisheries and environmental enforcement. The review being undertaken by DEFRA has primarily focussed on fisheries enforcement. Consultation with other agencies can be undertaken as required.

There have been recent developments related to wildlife enforcement including reports commissioned for the Irish Sea Pilot study from the Institute of Estuarine and Coastal Studies at Hull University. The marine action group Partnership Against Wildlife crime (PAW) have also produced an enforcement review for DEFRA's Review of Marine Nature Conservation which reported very recently.

Using such available reviews and experience from enforcement officers, and suggestions from our Site Safeguard Officers, assess potential and practical requirements for marine wildlife enforcement, specifically related to fishing activity and disturbance effects in European Marine Sites. Assess what is and isn't currently being enforced and projected requirements for future work (eg as regulation 34 packages are agreed for EMS). Provide an assessment against the Government's recommendations for an enforcement agency to address where extra training or powers may be required. Work currently being undertaken on the fisheries policy front within CCW on sensitivity of features within European Marine Sites should also be referenced.

ANNEX 2: RECENT REVIEWS RELATED TO ENFORCEMENT IN THE 12 NM ZONE

2004 saw the publication of a number of significant reviews related to the inshore marine area. These included:

- Review of Marine Fisheries and Environmental Enforcement (Defra 2004a)
- Review of Marine Nature Conservation (Defra 2004b)
- Net Benefits – A Sustainable and Profitable Future for UK Fishing (Strategy Unit 2004)
- The Irish Sea Pilot (Vincent *et al* 2004)
- ICZM in the UK, a stocktake (report to Defra; Atkins 2004)
- Turning the tide: addressing the impact of fisheries on the marine environment (Royal Commission on Environmental Pollution, 2004)
- Environmental Crime: Wildlife Crime (Environmental Audit Committee, 2004)

Each of these is discussed in turn below.

Review of Marine Fisheries and Environmental Enforcement

The aim of the Review of Marine Fisheries and Environmental Enforcement (RMFEE) (Defra 2004a) was to recommend options for the most effective organisation of enforcement to meet conservation objectives in the marine environment and the long-term needs of the fishing industry out to the limit of the UK's EEZ. It covered England and Wales, and reported to Defra in March 2004.

The RMFEE commented on the complex nature of current enforcement arrangements. Its provisional conclusions included reference to a single marine management agency, and it recommended alternative strategies to achieve this, including changes to the SFI and combining of the SFI and SFCs. The English government has taken the first step towards a single marine agency by confirming that the SFI will become an Executive Agency within Defra as from late 2005. Further outcomes from the review will be published later in 2005.

The RMFEE recommended that the SFI should have responsibilities for enforcing environmental requirements outside six nm, but that SFCs should have this responsibility within six nm. This raises questions of consistency and coordination. However, if the SFI and SFCs were combined into a single agency as proposed, these problems would be alleviated. Changes to legislation and resources would be needed to ensure a good level of uptake.

Review of Marine Nature Conservation

The Review of Marine Nature Conservation (RMNC) (Defra 2004b) was established in 1999 to examine the effectiveness of the system for protecting nature conservation in the marine environment and develop practical and proportionate proposals for its improvement. It reported to Defra in July 2004. It discussed conservation of marine wildlife throughout the UK's EEZ.

The RMNC pointed out that one of the reasons for difficulties in applying nature conservation legislation in the marine environment is that this legislation is often based on terrestrial principles. Further, its proper implementation often relies on a level of knowledge that is not available for many marine species, making actions to promote their conservation or recovery difficult.

The Review discussed the geographical limitations of domestic wildlife legislation to 12 nautical miles. This is out of line with European wildlife legislation, which applies to all UK waters. It also noted that current domestic legislation focuses on species issues and does not provide protection for important habitats, which is also out of step with European wildlife legislation.

The RMNC presented one key recommendation in relation to enforcement: *'Government should ensure that mechanisms are in place to deliver enforcement arrangements capable of supporting any legislation underpinning the marine nature conservation framework'*.

Supporting recommendations related to combining of enforcement for marine nature conservation and fisheries legislation in UK waters, coordination of activities, ensuring that enforcing agencies had appropriate powers, and adequate resourcing.

Net Benefits

Following a meeting with fishing industry representatives in January 2003, the Prime Minister tasked the Strategy Unit with carrying out a review of options for a sustainable UK fishing industry in the medium to long term.

The Net Benefits report (Strategy Unit 2004) sets out a 10–15 year strategy for the UK sea fishing industry, and an indicative transition path for implementation. The report pointed out that fishing has many effects on vulnerable marine habitats, dependent on the gear being used and the habitat in which it is used. It contained several recommendations with implications for enforcement in the inshore zone, including the introduction of Strategic Environmental Assessments of both inshore and offshore fisheries by the end of 2006, increased use of marine protected areas, and integration of fisheries management tasks with other marine management. A joint response from the four UK fisheries departments will be published at the end of April 2005.

The Irish Sea Pilot

The purpose of the Irish Sea Pilot was to help develop a strategy for marine nature conservation that could be applied to all UK waters and, with international collaboration, the adjacent waters of the north-east Atlantic. It reported to Defra in January 2004 (Vincent et al 2004).

The recommendations of the Pilot regarding enforcement were largely picked up by the RMNC (discussed above). However, the Pilot stated more firmly that *'in practice, nature conservation bylaws passed to protect European marine sites cannot be enforced effectively because neither the nature conservation agencies nor the police*

have the necessary vessels and other resources... what is quite clear... is that, away from the immediate coast, very little enforcement of nature conservation legislation is taking place.'

One of the contributions to the Irish Sea Pilot was the PAW report: *Enforcement of marine wildlife legislation - Responses to Marine Wildlife Enforcement Working Group Questionnaire* (PAW 2002). PAW consulted 37 agencies involved in wildlife enforcement, and received responses from 16 of those agencies. Their report summarised the responses, highlighting the need for coordination and sharing of good practice by agencies involved in enforcement. The authors commented that there may be a need for a legal requirement for collaboration, as required under the Crime and Disorder Act 1998 to address crime and disorder in society. The report also commented that for many agencies, the marine environment suffered from the effects of an '*out of sight, out of mind*' attitude.

ICZM (Integrated Coastal Zone Management) in the UK

In March 2003, the UK Government undertook a stocktake of the current framework for management of the coastal zone in the UK. This was the final report of the project, and was designed to be a contribution to the developing ICZM programme for the UK and the national strategies for England, Scotland, Wales and Northern Ireland which are due to be completed by 2006.

The report (Atkins 2004) looked at a wide range of coastal and marine activities. With regard to enforcement, the authors commented '*Enforcement of the legal framework is also spread across many organisations and tends to take place within a sector. This provides clarity to specific user groups but this comes with a risk of not achieving the bigger picture of enforcement requirements for all activities at the coast.'*

Turning the tide

This report was presented to Parliament by the Royal Commission on Environmental Pollution in December 2004. As with *Net Benefits*, its recommendations were controversial, especially those related to marine protected areas and closure of some fisheries to conserve stocks.

The report (Royal Commission on Environmental Pollution 2004) noted that most of the designations available for marine site protection in UK waters lack means of preventing fishing, even if the sites are of national importance. The authors considered that Marine Nature Reserves had been rendered largely impotent as a designation tool in the UK, due to the legal and political processes involved in their establishment, combined with a lack of legal requirement to designate sites.

Turning the tide noted that improved enforcement and inspection regimes will be needed to ensure compliance with any gear restrictions/regulations as existing enforcement schemes are costly, and are prone to high levels of non-compliance. There could be an opportunity to improve compliance by developing better cooperation with the fishing industry in the design and implementation of environmental measures.

Environmental Crime: Wildlife Crime

On 4 April 2004, the Sub-committee on Environmental Crime announced that it would be holding an inquiry into wildlife crime. This was the third in a series of four inquiries focused on environmental crime. The Sub-committee reported back in September 2004 (Environmental Audit Committee 2004).

The report made a number of recommendations related to current wildlife protection legislation and systems, and the most relevant of which are discussed in the text of this report. During the inquiry, the group considered issues specific to the marine environment, and recognised that there was a specific lack of resources and coordination in this area.