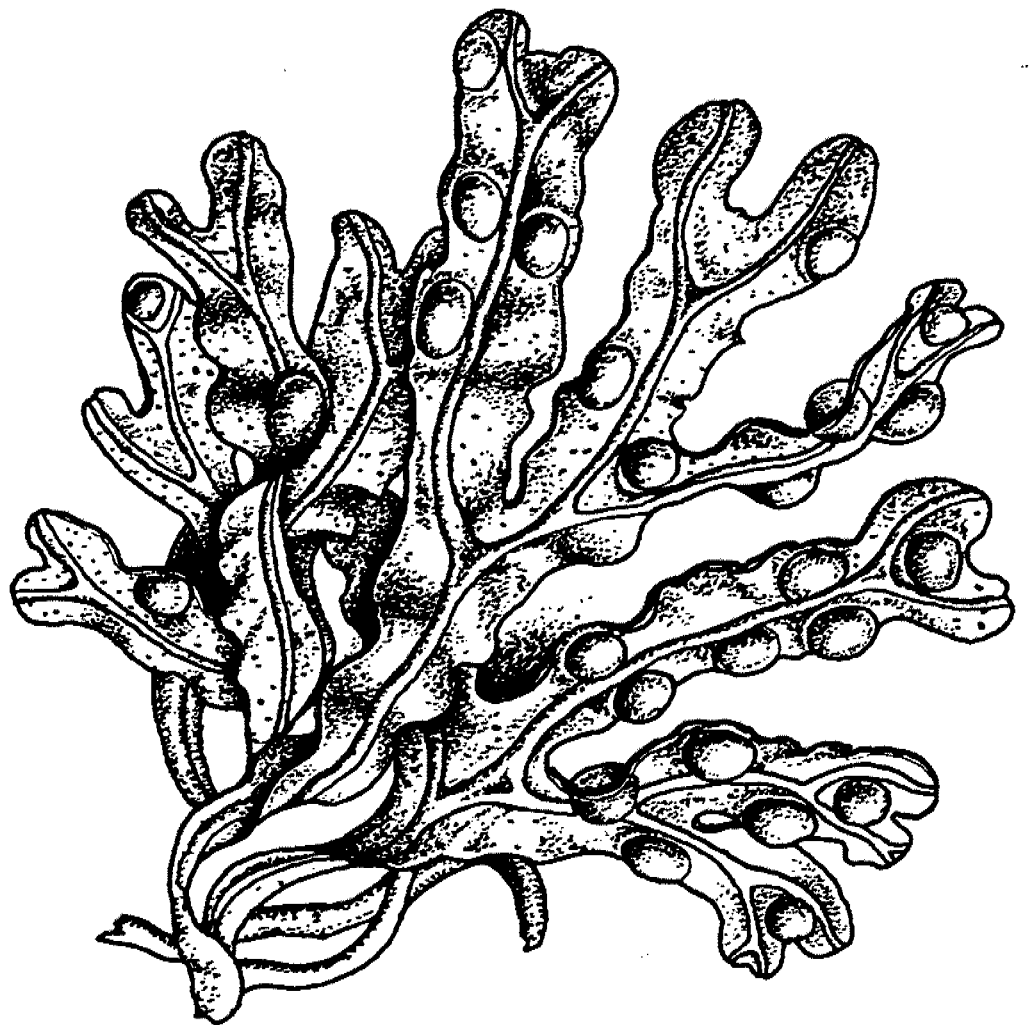


Protection and management  
of nationally important  
marine habitats and species

No. 390 - English Nature Research Reports



working today  
for nature tomorrow

English Nature Research Reports

**Number 390**

**Protection and management of nationally important  
Marine habitats and species**

Prepared by English Nature based on the views of a sample of members of the DETR  
Working Group on the Review of Marine Nature Conservation

January 2000

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## Context

The Department of the Environment, Transport and the Regions (DETR) established a working group to review marine nature conservation. This forum was set up to help Government develop possible future mechanisms to protect, conserve and manage nationally important marine wildlife in the seas around England. The original remit of the Working Group focussed on territorial waters, but this position was revised in the summer of 2000 to cover the continental shelf and superjacent waters under UK jurisdiction (usually up to 200 nautical miles from the coast). The Working Group has a wide membership drawn from statutory and non-statutory organisations, industry and user groups with a particular interest in the marine environment.

This report is one of four submitted by English Nature to the Working Group in 2000. The four documents in the series, sequentially, are:

LAFFOLEY, D. d'A. & BINES, T. 2000. Protection and management of nationally important marine habitats and species. Prepared by English Nature based on the views of a sample for the members of the DETR Working Group on the Review of Marine Nature Conservation. Peterborough: *English Nature Research Reports*, No. 390. 20 pp.

LAFFOLEY, D. D'A. 2000. Historical perspective and selective review of the literature on human impacts on the UK's marine environment. Prepared by English Nature for the DETR Working Group on the Review of Marine Nature Conservation. Peterborough: *English Nature Research Reports*, No. 391. 20 pp.

LAFFOLEY, D. d'A., CONNOR, D.W., TASKER, M.L. & BINES, T. 2000. Nationally important seascapes, habitats and species. A recommended approach to their identification, conservation and protection. Prepared for the DTR Working Group on the Review of Marine Nature Conservation by English Nature and the Joint Nature Conservation Committee. Peterborough: *English Nature Research Reports*, No. 392. 17 pp.

LAFFOLEY, D. d'A., BAXTER, J., BINES, T., BRADLEY, M., CONNOR, D.W., HILL, M., TASKER, M. & VINCENT, M. 2000. An implementation framework for conservation, protection and management of nationally important marine wildlife in the UK. Prepared by the statutory nature conservation agencies, Environment Heritage Services (Northern Ireland) and JNCC for the DETR Working Group on the Review of Marine Nature Conservation. Peterborough: *English Nature Research Reports*, No. 394. 29 pp.

Copies of these reports can be obtained from the enquiry team at English Nature in Peterborough.

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## **Preface**

This report has been compiled by English Nature to support the work of the DETR Review of Marine Nature Conservation Working Group. The case for action and proposals have been developed after discussions or correspondence with a sample of the membership of the Group.

In developing the package of proposals set out in this document English Nature has sought to draw out key issues for debate within the Working Group. The aim was not to achieve full consensus or come to solid conclusions within the short timescale available. Thus it should be noted that whilst these proposals have broad support, they do not represent the definitive position of any organisation listed above. In addition, the proposals may not be an exhaustive list but are thought to be the main areas that need to be discussed to form a clear view on any measures required. DETR and the Working Group may wish to satisfy themselves that this is the case and that, through examination of actions in other European Member States and wider, no other practical alternatives exist.

English Nature, along with the other organisations involved, view these proposals as the opening words on the nature of protection and management required rather than the last, and will develop a formal position as discussions proceed.

Dr T Bines & Dr D Laffoley  
English Nature  
January 2000

## **Part A - Analysis leading to proposals**

### **1. Introduction**

1.1 The DETR Review of Marine Nature Conservation Working Group first met on 10 September 1999. It was formed as a result of the Government's consultation a year earlier on better protection and management for Sites of Special Scientific Interest. The aims of the Working Group are:

- evaluating the success of previous statutory and voluntary marine nature conservation measures and identifying examples of current best practice and existing barriers to successful marine conservation objectives;
- putting forward practical and proportionate proposals for improving marine nature conservation in England, which may also inform separate proposals for marine conservation in Wales; and
- finalising recommendations by the end of 2000.

1.2 The review process will:

- focus primarily on marine nature conservation between the mean low water mark and the 12 mile limit of UK territorial waters;
- take account of but not seek to duplicate international, European and national marine conservation initiatives;
- take into account the current protection mechanisms in the intertidal zone and proposed changes to the SSSI regime;
- take account of the implications of its recommendations both for maritime users and for other regulatory regimes beyond territorial waters and covering the intertidals;
- take into consideration other developing Government policies in the marine environment; and
- consider recent developments in marine nature conservation thinking.

1.3 The review group's final report will be presented to DETR Ministers and the National Assembly for Wales.

1.4 At the second meeting of the Review Group on 2 November 1999, in addition to agreeing the above Terms of Reference, English Nature offered to draft a paper as a think piece which would take into account issues such as existing legislation and its adequacy, the wider sea - quality, pollution, hazardous substances, environmental assessments, by-catch, plans and projects, relevant authorities, a legislative framework for site protection and powers for Ministers.

1.5 It was agreed that English Nature should produce a paper, drawing in the group, which will be open to the group for consultation and discussion. This report is provided in fulfilment of that action.

## **2. Rationale**

- 2.1 In keeping with the Terms of Reference of the Group the rationale behind this report was to generate proposals which, if implemented, could safeguard and promote effectively for all public interests the sustainable conservation of marine habitats and species. The aim would be to achieve harmonisation and consistency with other UK wildlife policy and legislation, mindful of the need to fulfil existing UK obligations and the need to be comprehensive but both simple and straightforward in approach.
- 2.2 English Nature took the view that this document should be high level and strategic in nature, rather than caught up in details or analysis. Between November and December 1999 the views of a selection of members of the Working Group were sought in order to develop the case for action and produce a series of proposals for subsequent discussion and deliberation.
- 2.3 Consensus was an important part of the process but so were the views of individual members, especially on topics outside the general sphere of interest of others. Thus some proposals have wide ranging support whilst others are championed by relatively few, eg the proposal covering waters internal to baseline. English Nature presents these proposals for what they are and has limited its role to capturing and packaging the thinking of its own staff and those from other organisations involved into a vision and series of proposals.
- 2.4 Key elements in developing a national framework for marine conservation are an understanding of why such actions are needed and a vision of what that framework could look like if implemented.

## **3. Why is conservation of the marine environment important?**

- 3.1 It is estimated that 50% of the UK's biodiversity is found in the seas. The marine environment also supports many jobs and industries, is the source of renewable and non-renewable resources and is a place of enjoyment for many millions of people every year, as well as having one of the highest diversities of marine habitats and species of any country in Europe. Management of these marine habitats and species in sensitive and sustainable ways is central to their continued values. For this reason alone conservation of the marine environment is essential for the continued prosperity of the UK, transcending boundaries of conservation, industry, tourism, fisheries, recreation and leisure.

## **4. What is the current system and why doesn't it work?**

- 4.1 Marine conservation in the UK relies on both statutory and voluntary measures, some designed specifically for nature conservation, and others, like environmental duties, giving indirect support for conservation programmes. In the marine environment below low water there is no equivalent to the Town and Country Planning system of



development control. The management and consenting framework for potentially environmentally damaging activities that does exist is largely sectoral.

4.2 Currently there are three principle statutory measures available that have been designed in whole or part to deliver marine conservation in the UK.

- Marine Nature Reserves (MNRs), which offer limited protection to habitats and species in just a few small scattered areas;
- the Habitats Directive, with measures for some wide ranging marine species and the development of the *Natura 2000* network of sites (Special Areas of Conservation (SACs), set up under the Habitats Directive, and Special Protection Areas (SPAs) under the Birds Directive), which offer more widespread protection but only in particular circumstances; and
- Schedule 5 of the Wildlife and Countryside Act providing a mechanism to afford protection to specified marine species.

4.3 The reasons why MNRs are largely seen to have failed are well rehearsed in many papers. They revolve not so much around the inadequacy of legislation, which is relatively easy to redress, but the policy position that 100% agreement is needed before any MNR can be put in place. Concerns over the framework to implement the Habitats Directive are now becoming apparent and relate mainly to alleged weaknesses in some relevant authorities' own supporting legislation and conflicts of interest, how wide to cast the net to assess 'in combination' effects, difficulties in dealing with habitats on mobile coasts, the general lack of information on which to base decision making and development of a level playing-field across Europe. Legislation for marine species is both limited and flawed, principally due to the wording of the law and an inability to give any real effect to measures through enforcement.

4.4 Mechanisms are also available to assess development in relation to international sites and species (SACs & SPAs), and more generally for national interests through FEPA, and the EIA Directive, on the Continental Shelf and Territorial Seabed. In addition there are one or two other provisions scattered through legislation that could be used in support of marine conservation. These are usually tied up with, and subsidiary to, other principal economic-related duties of authorities and accordingly prove difficult to use.

4.5 These and other difficulties with specific provisions, or gaps in the required measures, have led to dissatisfaction with the current arrangements but there is also a more fundamental reason. Until now measures and proposals put forward for marine conservation have been developed in an ad hoc manner, responding to particular events, new legal obligations and public pressure. There has never been a systematic and co-ordinated approach to the subject or any overall vision and objectives for marine nature conservation in the UK. The work of the Review Group is a rare opportunity to tackle this issue.

## 5. Why is action required now?

- 5.1 The general approach to marine conservation is one of non-intervention in comparison to the active management approach to conservation on land. Such approaches are, however, similar in that both require legal and policy frameworks in which to work, requiring a mix of site-based habitat and species protection and wider environment measures. A particular priority is the development of a framework to addresses the needs of vulnerable, and nationally important, marine habitats and species.
- 5.2 It is an undeniable fact that the marine environment around the UK is under considerable and increasing pressure from the effects of human activities. This manifests itself in some locations by threatening the continued existence and health of marine habitats and species. There is, for example, rising pressure on the coastal zone as individuals have more leisure time available. More widely though:
- the overall ecological structure and functioning of the marine environment more generally around the UK has now been significantly altered, in terms of long-term species composition by the effects of fisheries operations. Put simply, some species components of the ecosystem no longer occur in our waters or are now at radically different abundances. Short to long term effects, resulting from the associated bycatch, are a serious concern;
  - the overall quality and health of the seas around the UK has been measurably, and, in some locations, significantly altered by human activities, particularly in enclosed waters or other locations that act as sinks for contaminants. More obvious effects are from land run off or discharges, and dumping at sea, causing elevated nutrient levels and sometimes eutrophication, but these are complemented by growing evidence of more insidious effects on species and the food chain from endocrine disrupters, amongst others;
  - at least an area of the UK sector of the North Sea seabed, perhaps equivalent to the size of Cambridgeshire, has been measurably contaminated by exploitation for oil and gas. Areas of seabed have slumped by up to 20 metres as reserves have been extracted from below, whilst more widespread disruption to cetaceans now seems to be occurring due to exploration activities;
  - other direct impaction of marine habitats and species continues from a variety of sources, some localised, some widespread. Some habitats and species are more tolerant to this than others, illustrated by meta data studies on the effects of fishing gear on seabed ecology. Systems to assess and where necessary ameliorate the effects of human activities go some way to avoiding damaging impacts, but it is what is happening that we don't know about that must give greatest cause for concern.
- 5.3 Such pressures and threats sit against a background where national measures for appropriate protection and management exist but cannot be implemented in a consistent, effective or efficient manner. In other circumstances the correct policies have been agreed but no significant or appropriate action has been taken. There are also cases where national ability is conspicuously absent leading to a considerable

inequality of conservation approaches on land compared to the sea. The current inability to confer any effective area-based measures on nationally important marine habitats and species at sea, whose particular circumstances may warrant it, or to enforce any wider habitat or species measures that may be required are obvious gaps. Put simply, the need for action for national marine conservation purposes exists but effective mechanisms largely do not.

- 5.4 As to whether there are already any real obligations to develop an appropriate national marine conservation framework, in the face of pressures and threats to the health of the marine environment the UK has already made many clear commitments to advancing marine nature conservation both within and beyond its Territorial Waters. Some stem from requirements under international conventions and agreements, such as the United Nations Convention on the Law of the Sea, the Convention on Biodiversity, OSPAR and the EC Habitats Directive, but others, such as support for voluntary marine conservation initiatives and the broad scope of the biodiversity action plan process, show that there is a need and a commitment to take this issue forward at other levels as well.
- 5.5 The UK already requires an effective national framework to deliver on existing commitments such as the Biodiversity Action Plan. Towards the end of 1999 the maritime Biodiversity Action Plans for the UK were published. Given the Terms of Reference for the Working Group, it is evident that Natura 2000 measures should be looked to in order to deliver as much as possible of the requirements of these plans.
- 5.6 Analysis of the situation shows that whilst the Natura 2000 process will play a valuable role in supporting BAP implementation, in the marine environment only around 60% of specified site-based actions for habitats and species may be delivered by the existing international framework. For the remaining 40% there is no effective delivery mechanism. This has arisen due to significant gaps in coverage of marine habitats and species by the Habitats Directive and authorities only having an ability to act for international marine conservation matters under the Habitats Directive. As already stated, there are also shortcomings and gaps in existing measures for species conservation and for management of the wider sea. Thus a framework needs to be put in place to provide the legal and policy instruments to assist the implementation of such plans.
- 5.7 Another area of commitment which applies throughout UK waters is OSPAR, following adoption in 1998 of the new Annex V relating to the conservation of marine biodiversity. The UK along with other Contracting Parties is helping to develop an approach to the conservation of habitats and species of importance in the north-east Atlantic including the identification of threatened habitats and species. These will require protection both through site-based and wider measures. While some of the habitats and species are likely to overlap with those covered by Natura 2000 provisions, others will not. This will lead to the same situation now faced with the Biodiversity Action Plan where national mechanisms will be needed to fulfil what is required.
- 5.8 There is thus a demonstrable need for a national marine nature conservation framework to enable actions to be taken when or where needed. In short, the current reactive approach to national marine conservation, with a lack of any effective,

cohesive supporting legislative or policy base, must be developed into a strategic, coordinated, proactive approach that provides some real mechanisms to manage marine biodiversity. Marine conservation must be a principal aim, at least equal to the rights, and not subservient to the requirements, of other sectors. The moral, social, cultural and economic benefits of progressing marine nature conservation have become more widely understood in the last two decades and, as a consequence, it is no longer sufficient to take a piecemeal, minimalist approach. If the UK is to be one of the nations advancing this subject "in the round" it will need to go as far and then beyond the letter of the law and implement the spirit of these agreements as well.

## **6. What are the necessary components of a national marine conservation framework?**

6.1 Three main elements of a national framework are provisions relating to:

- non-mobile habitats and species, ie sites;
- wide ranging species; and
- the quality of the wider sea and its ecological processes.

All of these would require the development of implementation measures such as management and consenting procedures.

6.2 A key component of any framework must, therefore, be the ability to identify and give statutory protection to sites for the protection and management of nationally important wildlife and habitats, and the ability to confer adequate protection to wide ranging species in UK waters. The prevention of disturbance and harassment and the need to deal with bycatch issues has been raised on many occasions and remains a pressing area for action.

6.3 At the level of the wider sea, other key components must relate to provisions to adequately deal with water quality issues and to tackling ecological process and the conservation of habitats and species at an appropriate scale, including the impact of fisheries. Decisions have already been taken in some areas but still await implementation e.g. the agreement to reduce particular inputs into the marine environment. There is also a need to be clear about the role and responsibilities of authorities and users of the wider seas.

6.4 A fourth component relates to delivering effective management measures and consenting procedures. Similar systems to The Conservation (Natural Habitats, &c.) Regulations 1994, (forthwith referred to in this document as 'The Habitats Regulations'), could be introduced to handle plan and projects for nationally important marine conservation interests, but considerable streamlining is needed for the approach to work well. Links to the EIA Directive and FEPA also need investigation to ensure a level playing field approach to environmental decisions affecting none mobile habitats and species, wide ranging species and the wider sea. At a broader level attention needs to be given to zoning issues and problems concerning the supporting framework in waters internal to baseline and perhaps wider.

## 7. A vision of a new framework

7.1 The proposed vision is:

*A framework to safeguard and promote effectively in the public interest the sustainable conservation of marine habitats and species.*

7.2 It would need to include a balance between:

- a network of marine conservation areas;
- measures for the conservation of wide-ranging marine species;
- measures which support marine conservation in the wider seas

using mechanisms that for example:

- complement approaches already established on land for conservation and management of nationally important wildlife and those more recently introduced on land and sea for internationally important habitats and species;
- increase understanding in authorities, giving them the ability to act to appropriate ways; and
- incorporate the advice of the conservation agencies based on the ecological requirements of the habitats or species concerned.

7.3 The aim should be harmonisation and consistency with other UK wildlife policy and legislation, mindful of the need to fulfil existing UK obligations and the need to be comprehensive but both simple and straightforward in approach. The vision given above is based on the fact that national measures should start where international provisions stop.

7.4 The national tier thus becomes a process aimed at filling gaps in action in the international framework. Its focus would be on **nationally important** habitats and species already covered by the Habitats and Birds Directives, e.g. Lyme Bay for reefs, as well as any habitats or species not covered by these Directives, e.g. those associated with straits, shallow subtidal mud and intertidal rock. In particular it would provide for the protection and management of habitats and species which are nationally rare, the finest examples of other habitats, and habitats and species which are under threat or declining (eg bringing together information from the Maritime Biodiversity Action Plans, the Agreement on the Conservation of Small Cetaceans Of the Baltic And North Seas (ASCOBANS) and OSPAR recommendations).

## 8. Delivery of any new framework

8.1 Any new framework would need to be delivered through a combination of policy action and new or revised legislation. The former relates to taking new policy decisions or ensuring that existing decisions are fully implemented in an appropriate and proportionate manner. Any legislation might take the form of a revision and considerable expansion of the MNR provisions of the Wildlife and Countryside Act

1981, or new legislation analogous in many ways to the Habitats Regulations covering European marine sites. The former approach would be more consistent with established nature conservation mechanisms on land whilst the latter would build on the generally positive views expressed over the framework for delivery of European marine sites, and would bring involvement of existing regulators and key players to the process. The core of the argument rests on the degree to which English Nature works with, or directs the actions of, other authorities. This debate, in the context of consideration of the proposals in Part B of this document may ultimately determine the fate or future of MNRs. If they have a future, MNRs must, however, form part of any new framework and not work outside it in a piecemeal manner.

- 8.2 English Nature would prefer any national framework to be implemented through a single new piece of legislation with supporting policy, rather than piecemeal alterations and additions to existing Acts. The desire is for consolidation not further piecemeal action, seeking a reduction of diversity of players with clearer leads. Any legislation could go so far as to encompass the relatively stand alone existing provisions of the Habitats Regulations for European marine sites, thus placing all international and national marine conservation provisions within a single legal instrument. It may be prudent, given the similar needs of nationally- and internationally-based sites, to go further and detach the management measures in the Habitats Regulation to form a stand alone set of management provisions for wider applicability within any new framework.

## Part B - The Proposals

### 9. An introduction to the proposals

- 9.1 The following proposals should be viewed as a suite of measures which, when taken together, provide the basis for a framework to implement protection and management at a national level for marine wildlife and habitats. They sit within the Terms of Reference for the Review Group, refer to English Nature where relevant (given the England focus for the Review), and cover issues from mean low water outwards.
- 9.2 Some of the proposals are quite specific, but all will need extensive discussion and consideration by DETR and the Working Group. They are, not surprisingly, a mixture of site based and wider measures. Great care has been taken to craft proposals in order to take relevant and appropriate account of existing terrestrial or marine, national or international statutory and policy frameworks.
- 9.3 Two particular problems have been encountered in formulating the proposals:
- There seems to be some uncertainty as to whether the current considerations by the Working Group of policy and legislation should just focus on marine nature conservation matters, or spread beyond this principal objective to include other aspects of natural heritage (MEHRAs, fisheries closed areas), enjoyment (tourism, leisure, education) or non nature heritage values (marine archaeology)? This would appear to have significant bearing on the subsequent 'ownership' of any end products. This issue remained undefined at the time of writing but given its significant impact on any measures that may be developed it has been placed as proposal 1 for consideration by the group. Of those that were able to express a view, many noted the benefits of a wider scope.
  - The terms of Reference for the Group only loosely define the geographical area to which considerations should apply. There is nothing in the proposals that would stop SSSIs continuing to apply in intertidal areas. It is for DETR or the Working Group to consider the risks and benefits of restricting the application of the proposals given here to cover parts, rather than the whole, of marine waters below high water. The recent High Court judgement in the Greenpeace case has particular bearing on this issue. There is also a self-evident need to avoid DETR reconvening the same group in about two to three years to resolve how to implement OSPAR proposals (very much open water issues) and for MAFF to convene a group to discuss closed areas within the EEZ, subject to any national and European progress on such matters.
- 9.4 Given these problems, proposals have accordingly been drafted so that they could be applied to UK waters from mean low water outwards and could be related to authorities additional to those principally involved with marine conservation. The term 'relevant authorities' has been avoided in favour of 'authorities', given the fact that further away from shore there are fewer relevant authorities but more emphasis on Government Departments having the decision-making powers.

- 9.5 Finally, only very limited thought has been given on a name for any areas established under any new national-tier framework. This is tied up in the future of Marine Nature Reserves but if another name was sought it could be marine environmental special areas. Alternatively marine parks could be a useful label, especially if the scope for establishing areas was cast more widely, as discussed under proposal 1.

## 10. Proposal 1: Developing a statutory purpose for a national marine conservation framework

- 10.1 Any new legislation must have a defined purpose (“statutory purpose”) to guide its application. For example, at the simplest level, the statutory purpose could relate to the vision given in section 7, so as to effect the delivery of measures for nationally important marine habitats and species. Such a purpose should include issues of ecological coherence, the role of site series and the role of the legislation in providing a legal basis for implementation of the Biodiversity Action Plan and Marine Nature Conservation Review recommendations. It would need to take account of the existing remit of MNRs and the particular need for education and research in the marine environment. It would also need to tackle the relationship between any new framework, intertidal SSSIs and how to integrate these with relevant terrestrial habitats.
- 10.2 Such a statutory purpose may be best set out as a series of high level criteria with supporting text, akin to the approach used to guide the development of Ramsar sites, World Heritage Areas or the Habitats Directive. If considerations were cast more widely, the principal statutory purpose of marine conservation may need to also encompass other aspects of natural heritage (MEHRAs, fisheries closed areas), enjoyment (tourism, leisure, education) or non-nature heritage values (marine archaeology). This would particularly be the case if a decision was taken to unify the approaches to various sectors, outside that of marine conservation, in order to deliver ‘marine parks’. Such a wider scope brings with it the greater positive potential from involvement from other sectors. What ever the view, the definition of the statutory purpose for legislation would then be used to guide the work of those charged with identifying sites and wider measures for action under any new national framework (proposal 2).
- 10.3 Developing a statutory purpose for national marine conservation could be partly informed by commissioning JNCC with the country agencies and others to prepare a brief view on the marine habitats and species that would be covered by national marine conservation measures. This would avoid duplication with the Natura 2000 network and draw from information on nationally important marine wildlife stemming from early work on Marine Nature Reserves, work on BAP, VMNRs, Marine Consultation Areas, Sensitive Marine Areas and, more recently, the outputs from the findings of the Marine Nature Conservation Review. The focus would be on **nationally important** habitats and species already covered by the Habitats and Birds Directives, e.g. Lyme Bay for reefs, as well as any habitats or species not covered by these Directives, e.g. those associated with straits and sounds, deep subtidal sediment, shallow subtidal mud, intertidal rock and biogenic reefs (and sea lochs in Scotland). It is envisaged that the output of such work would be an illustrative list of nationally



important habitats and species with a commentary on national quality sites, possible or actual threats, rarity and/or decline.

## **11. Proposal 2: Implementing any national marine conservation framework**

- 11.1 Having a statutory purpose for any legislation provides the basis for its application in order to identify habitats and species worthy of action. The practical outcome of this may be, in the first instance, the identification of a number of site-based or wider measures relating to particular vulnerable habitats or species. It is anticipated that this would be followed by work to address the comprehensiveness or otherwise of the overall representation of habitats and species within the UK international and domestic marine conservation framework.
- 11.2 The application of the statutory purpose of the legislation, to identify habitats and species, and sites and wider species measures, could be undertaken through a specially constituted Marine Conservation Advisory Group reporting to DETR. The make up of such a group would need to be determined but would be centred around English Nature, or English Nature and JNCC, depending if it was undertaken on a country or wider basis. Recommendations would be made within an agreed timetable, with consultation being an important element of their work. Their considerations would also need to take full account of experience developed elsewhere in undertaking similar projects eg NOAA in USA.
- 11.3 The considerations of the Marine Conservation Group could then be implemented through a new power on the Secretary of State for the Environment, or English Nature, to designate sites or introduce wider measures in the national interest, even where full agreement between all interest groups had not, and reasonably would not, be achieved. This change of policy from the current MNR situation would avoid valid proposals being vetoed by any individual self interests. Any revised system would, nevertheless, need an associated system for handling socio-economic issues out with the scientific process. The precedent for agreeing measures in the face of some opposition has already been established by SSSI and by implementation of the Habitats Directive. This site designation duty would need to be complemented by an ability to periodically review and amend any framework of sites and measures that had been put in place, especially with regard to mobile habitats and species and the effects of climatic change.

## **12. Proposal 3: Delivering the competency within the UK for a national marine conservation framework within the 12 mile limit or beyond**

- 12.1 Consideration will need to be given to the principle and the practical ability of the UK to deliver national marine conservation within its waters. The recent High Court judgement over the Greenpeace case established that the Habitats Directive applies to both Territorial Waters and the UK Continental Shelf waters and superjacent waters. It seem inherent that if the UK has responsibility to deliver international conservation matters over such an area, then it should have a similar ability for nationally important marine conservation matters. The United Nations Law of the Sea would seem to support this assertion.
- 12.2 In addition to responsibility, there is a need to consider the practical ability to deliver any marine conservation action, whether out to the 200 mile limit, or even within the 12 mile limit, and develop appropriate implementing mechanisms. For example, the UK has given over competency outside 12 miles, and in specific ways between 6 and 12 miles, to the EU through the Common Fisheries Policy. Thus any measures that are desirable to put in place for conservation, and that would need to apply outside 6 miles and that may interact with fisheries measures, need to be agreed through an appropriate European route. This would be through European Commissioners making proposals to the Council of Ministers. At a more general level, procedures will also need to be agreed between English Nature and JNCC to enable delivery of practical conservation measures outside the 12 mile limit, given that JNCC is an Committee of the agencies and not an agency in its own right.
- 12.3 Contracting parties to OSPAR who are also Members of the European Community will face precisely the same issue over implementing any proposals for marine wildlife. A single UK approach could be taken to address this issue. Whatever the route, the UK must resolve this issue in order to have a practical ability to deliver nature conservation within its waters.

## **13. Proposal 4: providing an ability for authorities to use their powers in the national interest for nature conservation**

- 13.1 Any new legal framework would need to specify how all authorities with jurisdiction in the sea can use their powers to positively act in a sustainable way for national marine nature conservation. Some sectors have this ability (eg fisheries under the Environment Act 1995, building on the Sea Fisheries Conservation Act 1967) and the precedent for such an ability more generally was established by the relevant authority framework in the Habitats Regulations. A similar ability for national marine conservation should include authorities with responsibilities for air traffic, so as to prevent or manage disturbance to sensitive or vulnerable sea bird populations from low flying aircraft. A reduction in the diversity of players would also simplify the implementation of this proposal.

## **14. Proposal 5: Duties and powers of English Nature**

14.1 The power of authorities under proposal 4 will need to be complemented by duties and powers for English Nature.

14.2 These could involve duties on English Nature directly, or through JNCC, to:

- provide advice to authorities on conservation objectives and operations which may cause deterioration of habitats, or disturbance of species, or the deterioration of habitats of species, on sites or through wider conservation measures. Authorities should be required to take the advice of English Nature, or English Nature through JNCC, fully into account and use their powers as appropriate for implementation. This could be supported by the power to secure positive management and prevent damage to sites;
- advise authorities throughout the country in establishing management schemes for nationally important marine areas. Existing jurisdiction of authorities at the site level would not be affected by this approach but it would result in the required level of coordination and consistency in decision-making for implementing management schemes, with priorities for action clearly based on conservation benefits. The management scheme would be the mechanism by which authorities discharge their functions to secure compliance with the conservation advice from English Nature, or English Nature through JNCC. Only one scheme can be established for each area. Authorities would still be responsible for their own actions over sites and would not hold joint or several liability for the management schemes. In taking such a role English Nature would not become a lead authority for any management schemes. Such decisions would still reside with the authorities responsible for each site. Criteria would need to be developed to implement this process and hear appeals. If zoning is appropriate it would also result in some consistency in application.

14.3 These duties could be complemented by powers for English Nature directly, or through JNCC, to:

- prevent damage to sites or species and to direct actions to secure positive management where required. The prevention of damage to sites would involve an ability to stop 3rd party activities and to act where others are, for example, unwilling, unable or are acting in the wrong way to prohibit with immediate effect a specified activity or activities from a given area on nature conservation grounds. Appeals would be heard after the measure had been put in place and wilful damage of nature conservation interest would result in the protagonists incurring the costs necessary to restore the site. Such a proposal should also include the ability to refuse consent for the equivalent of PDOs/OLDs. This mirrors developments in the approach to SSSIs, would prevent short term/immediate damage to marine conservation interests and ensure authorities actively contribute to the positive management of a site to maintain or restore it to a stated and appropriate condition. This would need to be thought through carefully, particularly over its scope, the need for action over likelihood of damage and not absolute proof, other options (eg use of

Area of Special Protection Orders under section 3 of the Wildlife and Countryside Act or perhaps the development of nature conservation 'Regulation Orders') and by being informed from the debate over terrestrial SSSI reform and socio-economic questions;

- a power to use byelaws under section 37 of the Wildlife and Countryside Act (byelaws for the protection of MNRs) for the protection of nationally important marine habitats and species. As the law stands, this power can only be used if nothing in such a byelaw interferes with the exercise of any function of an authority, any function conferred by or under an enactment (whenever passed) or any right of any person (whenever vested). This proposal would need to be thought through carefully to determine whether its use would be limited to just site-based actions, if other options are available, how adequate section 37 is to do the job and whether the competencies required and enforcement needed could be delivered by English Nature at sea. A potential joint role for Sea Fisheries Committees, the Marine Coastguard Agency or the Environment Agency would need careful thought.

## **15. Proposal 6: Ministerial powers to direct**

15.1 Ministers (eg Secretary of State for the Environment, MAFF Ministers) could be given powers to take measures necessary to further any statutory purpose for national marine conservation, including the ability to exclude particular activities from a specific marine area. Although it may be that such exclusion can already be achieved for fisheries through the Sea Fish (Conservation) Act 1967, for other areas that interact with marine conservation the situation is less than clear. A policy for using such a power would need to be developed.

15.2 Ministers could also be provided with powers to direct authorities over management schemes that may, in particular:

- require conservation measures specified in the direction to be included in the scheme;
- appoint one of the authorities to co-ordinate establishment of the scheme for an individual site;
- set time limits within which any steps are to be taken;
- provide that the approval of the Minister is required before the scheme is established; and
- require any authority to supply to the Minister such information concerning the establishment of the scheme as may be specified in the direction.

## **16. Proposal 7: Developing effective protection and management of marine species**

16.1 The practical application of existing measures for marine species conservation, and the gaps and inconsistencies in legislation, are important areas to be addressed. Marine mammals may have been the focus for most widespread concern, but

consideration should extend to all other marine species of conservation interest, wide ranging or otherwise, including reptiles, fishes and invertebrates.

- 16.2 The wording of legislation needs revision, and actions need to be taken, in order to provide an effective framework that tackles in a meaningful way issues such as reckless or intentional harassment and disturbance and incidental capture as a result of an otherwise lawful operation (bycatch). Specific and wide powers to police and enforce against reckless or intentional harassment and disturbance of marine species on Schedule 5 of the Wildlife and Countryside Act should be extended to the appropriate marine authorities (eg Sea Fisheries Committees, Marine Coastguard Agency and the Environment Agency). Schedule 5 should be expanded to give statutory underpinning for BAP. New punitive measures would need to be introduced that must act as a real deterrent and be set at a level commensurate with the relative costs of enforcement and bringing offenders to court. Punitive measures for enforcement that need strengthening are powers to bring prosecutions, powers of search and arrest, and penalties for offenders, including custodial sentences for repeat offences.
- 16.3 In addition, whilst Government has already agreed to bycatch monitoring under the Habitats Directive and ASCOBANS, there is a need for such measures to be implemented and additional action to measurably reduce bycatch in the first place. A bycatch response strategy needs to be put in place, perhaps with statutory underpinning, involving species reference levels, and supplemented more generally by building elements of self interest/policing, the possible use of population management plans and the need for development of processes to involve the EU.

## **17. Proposal 8: A system for making decisions over developments and human activities affecting nationally important marine conservation interests**

- 17.1 Accepting that international obligations may differ, nevertheless, a similar system should be developed for handling consents, permissions or authorisations (“plans or projects”) affecting nationally important marine conservation interests. In effect any framework should operate as a presumption against damaging activities, plans or projects, in relation to national marine conservation interests, and act a mechanism for positive management and enhancement.
- 17.2 Some of the main issues to consider in developing an appropriate approach will need to include:
- the need for a simple, non-bureaucratic, clear and effective system for evaluating and advising on plans and projects affecting national marine conservation interests, drawing from the experience with the Habitats Regulations. Such a system would need to avoid duplication and mesh with the EIA Directive and FEPA in order to provide a unified approach to handling and assessing the impact of development across the wider sea and protected and managed areas;

- at the core of any approach, the need to work on a single understanding of common terms affecting UK wildlife sites (eg significance, adverse effects etc). Using different terms or definitions will lead to endless confusion for authorities. Different policy control may be required, however, to meet domestic or international requirements and obligations;
- the streamlining of the management of any consenting process to take account of nationally important marine conservation interests and socio-economic factors. The current initiative led by DETR Ports Divisions to coordinate formally the process between Government Departments with respect to marine consents under the Habitats Directive may provide valuable insight into the types of issues involved and approach required, including the concept of 'consent certificates'. It may be that the process and roles of authorities will need to be more tightly defined than at present in order to avoid them second guessing one another.

## **18. Proposal 9: Providing support for national protection and management of wildlife in the wider sea and marine-influenced waters internal to baseline**

- 18.1 Clear and strong views have been expressed during the development of this paper from a number of members of the Working Group that more supportive planning and management frameworks must be developed if any national marine conservation measures are to be implemented in an effective and efficient manner. In short, more coherent management of UK waters is required to simplify and unify the complexity of multi authority jurisdiction (eg DETR, MAFF, Local Authorities, Ports & Sea Fisheries Committees).
- 18.2 Members of the Working Group who expressed views were divided over the best approach to take. At the broadest level was the desire to see some form of strategic planning for the wider sea. This would allow all sectors to be considered in a plan for the management, exploitation and conservation of the seas and its resources. It could perhaps be seen as a marine equivalent to unitary development plans and could be linked to regional development agencies and regional planning guidance. It would allow areas to be identified for particular uses or as reserve areas with high sensitivity. It could use existing consenting mechanisms and would not require an extension of planning powers below low water mark. Site protection would be part of the wider strategic framework.
- 18.3 At a more localised level, two proposals were advocated for application within 'waters internal to baseline'. The term 'waters internal to baseline' is a useful label to characterise the marine influenced areas that are generally heavily used by the population, eg estuaries, large bays, channels between islands etc, and where management conflict and issues are particularly acute. These proposals relate to extension of planning control and a whole internal waters unit management approach:
- Extension of planning control to cover internal waters. At present there is a piecemeal approach to planning control over waters internal to baseline and considerable confusion above roles and responsibilities. For example, in some estuaries authorities planning jurisdictions completely covers the inlet eg the

Inner Thames Estuary, whilst in other areas one authority may have subtidal jurisdiction whilst all others do not. The proposal is to extend planning control to comprehensively cover estuaries, to resolve the uncertainties and to clarify responsibilities of authorities. Such an undertaking would not remove any other bodies jurisdiction where they currently have no ability, but would rationalise the situation by introducing planning powers where these do not already exist. Alternatively, any new planning powers could be given to Regional Development Agencies. The idea of planning control over internal waters is not new and in some locations, eg The Channel Islands, planning control extends out to the 12 miles limit. Careful consideration would need to be given over the merits of this proposal and the costs/benefits of doing so or otherwise. In particular, the fact that whilst a power is given, no powers are taken away, and how such a new measure may interact with existing jurisdictions in internal waters, would need further consideration.

- Whole internal waters unit management approach eg estuaries. There is a view that wider scope for management must be given, above and beyond the boundaries of individual conservation sites within an estuary. Indeed, this is an inevitable consequence of the fact that operations and activities taking place outside the site are deemed to have a potential effect on site condition. The proposal, therefore, is for management to be undertaken at the whole estuary level. This proposed approach is in order for any authority who may be charged with responsibilities to implement any framework (and who already have responsibilities for international sites) to address processes and issues of ecological coherence at the appropriate scale above the level of an individual conservation site. It is also needed to reduce repetitive development of multiple plans from first principles within an estuary and migrate towards overall consistency between such plans, both statutory and voluntary. Consideration of implementing any proposals would raise the issues of boundary definition for conservation areas in relation to resource management and creation, which would need discussion. Policy on boundary setting would need reviewing and amending as a result. This would be in order to encompass defined features and buffer/adjustment zones, taking account of the dynamic nature of coastal features and/or the need for sustainable development planning. Whatever the outcome of these discussions a greater level of precision would be needed to define the areas for which whole unit management approaches were to be taken rather than relying on the general boundary of waters internal to baseline. The statutory basis for such an approach is contained within the Habitats Regulations, with little or no modification. However, there remains the need to develop effective consultations mechanisms to evolving a long term (100 year?) 'vision' of the future sought by all stakeholders, and in terms of incorporating valid, consistent action plans generated by stakeholders, both statutory and voluntary. These would include all statutory designated site plans, Shoreline Management Plans, BAPs, LEAPs, sectoral strategies (e.g. port strategy papers), and any voluntary sector plans developed by NGOs or local organisations.

18.4 The latter two, promoted by only a few individuals, will need careful consideration in relation to improving the integration and management of such waters and the relative costs and benefits of doing so. An appropriate way to consider the range of issues

involved may be to request that an existing group with experience in this area, the Estuaries Review Group, is commissioned to consider this matter further against defined criteria, a given timetable and to report back.

- 18.5 A final issue of concern, and at a more detailed level, concerns the development of a common approach to the zoning across individual marine conservation sites. With the increasing number of management schemes under development, a common approach will prove invaluable. In particular some consistency needs to be achieved in relation to the consistent use of colours to reflect different levels of management and some parameters to help consistently define different management regimes. It is also essential that links to permit and licensing systems are made clear as zoning schemes cannot work in isolation.

## **19. Proposal 10: full implementation of supporting policy measures**

- 19.1 Taking into consideration other developing Government policies in the marine environment, there are a few areas over which agreements have already been made that need full and effective implementation in order to support any national marine conservation framework. These policy areas are implementation of:

- the Habitats and Birds Directives and, in due course, the Water Framework Directive, in marine areas to which they apply ie Special Areas of Conservation and Special Protection Areas out to the limit of the UK Continental Shelf waters and superjacent waters. The approach to national sites is reliant on international provisions playing their full role, including complete transposition of the Habitats Directive into national legislation and particularly the application of the Habitats Regulations to fisheries;
- action plans covering inputs into the wider sea. The UK, as a contracting party to OSPAR, agreed at Sintra in 1998 to reduce inputs of nutrients, hazardous chemicals and radioactive substances. Maintaining or developing good water quality is a key environmental concern for any conservation measures in the sea.

## **20. Proposal 11: A review of the competencies, funding and resources, and organisation of authorities to deliver any national framework**

- 20.1 The last half of the 1990s have brought with them an unparalleled rate of change in the growth of responsibilities on marine authorities to take account and act for environmental reasons. This has manifested itself most recently in the form of responsibilities for implementing the Habitats Directive and has resulted in extended remits and, in some circumstances, contributed to changed structures.
- 20.2 During the same period there has been little consideration of matching responsibilities to the required competencies, resources and organisation of the authorities. In some areas there is an evident absence of good “joined up Government”, on which limited



action is now being taken, e.g. consenting processes, whilst the ability of relevant authorities to deliver remains formally unassessed.

- 20.3 The possibility of further changes for authorities, this time in respect of national conservation measures, makes the need for a fundamental review of the competences, resources and organisation of relevant interests all the more urgent. A focus should include the structuring of the existing agencies and whether a reorganisation is required to best deliver new commitments, especially enforcement and management. It should also cover the ability of authorities to deliver management and the need for incentive schemes and 'marine' ESAs.