

CHAPTER 11

THE ROLE OF UK STATUTORY NATURE CONSERVATION AGENCIES IN THE ENVIRONMENTAL GOVERNANCE OF FISHERIES

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Abstract

The subject of this chapter is the increasing role of statutory nature conservation agencies (NCAs) in fisheries governance in the UK. There are three main sections: in the first section, we set out the powers and responsibilities of UK NCAs in relation to the designation of marine sites and the potential for them to be protected from fishing activity. In the second section, we explain the wider strategic role of NCAs in helping to shape future fisheries policy at European, UK, national and local levels. In the third section, we discuss how effective NCAs are in fulfilling each of these roles, and what the main obstacles are to improving their effectiveness.

11.1 Introduction

There is no doubt that the statutory nature conservation agencies (NCAs) are playing an increasingly important role in UK fisheries governance, and, in this chapter, we explain and evaluate this role. The Country Agencies – Countryside Council for Wales (CCW), Scottish Natural Heritage (SNH) and English Nature (EN) – are the statutory wildlife advisers to national governments: they deliver their statutory responsibilities for Great Britain as a whole, and internationally, through the Joint Nature Conservation Committee (JNCC) and are collectively known as the nature conservation agencies (NCAs). CCW and EN are empowered by three main pieces of legislation: the National Parks and Access to the Countryside Act 1949; the Wildlife and Countryside Act 1981 (amended by the Countryside and Rights of Way (CroW) Act 2000); and The Conservation (Natural Habitats, &c.) Regulations 1994. SNH is empowered by the Natural Heritage (Scotland) Act 1991 and The Nature Conservation (Scotland) Act 2004.

We divide the influence on fisheries governance of the work of NCAs into two categories: **statutory** and **strategic**. The statutory work consists mainly in advice on selecting, designating and managing marine sites, and on the effect which activities could have upon the environment. This work can impact directly on fishing activities. NCAs do not have powers to manage fisheries, but their designating authority does give them substantial leverage over the way that other bodies manage fisheries. In section two, we explain this statutory work, giving illustrations, and pointing out certain difficulties faced by NCAs in carrying out these duties.

NCAs also give advice to governments (at international, national, and sub-national levels); to the fisheries regulators; and to others on wildlife conservation including on the potential environmental impacts of fishing activities. This is discussed in section

three, where we explain the strategic work of NCAs, which is essentially their advocacy role by which they seek to influence fisheries and environmental policy makers, including politicians.

In section four, we evaluate how effective NCAs are in carrying out these two roles, and we examine four ways in which their performance could be improved by removing legal and political obstacles, and by plugging information deficits. We conclude by summarising the findings of the chapter, and discussing five further issues that NCAs might address in their role as marine environmental stewards.

11.2 Statutory role: Influence over fisheries governance in marine sites

The statutory work of NCAs that affects fisheries lies essentially in their powers in relation to the designation of national – SSSIs (Sites of Special Scientific Interest) and MNRs (Marine Nature Reserves) – and European marine sites – SACs (Special Areas of Conservation) and SPAs (Special Protected Areas). Let us consider these sites in turn.

11.2.1 SITES OF SPECIAL SCIENTIFIC INTEREST (SSSIs)

The NCAs can designate SSSIs on land and along the intertidal zone for “special interest by reason of its flora, fauna or geological or physiographical features” (JNCC 1996). Each individual site notification contains a list of activities “likely to damage the special interest” (potentially damaging operations), and these include fishing activity, fisheries management, marine life collection or alterations to fishery management practice. SSSIs may encompass inter-tidal fisheries such as shellfish cultivation, mechanical and hand gathering of shellfish (for example, cockles and mussels) and netting for finfish. The amendment of the Wildlife and Countryside Act 1981 by the Countryside Rights of Way Act 2000 (CRoW Act) (or The Nature Conservation (Scotland) Act 2004) provides an assessment process that fisheries management authorities have to undertake before permitting an operation that is likely to damage a feature of the SSSI.

However, whilst the CroW Act requires a fisheries authority to seek assent from a NCA before permitting a potentially damaging operation in a SSSI, a NCA cannot stop a fishing activity within an SSSI unless it can serve notice on an owner/occupier. The protection of SSSIs is limited, therefore, because management agreements/notices do not apply to third parties and there is no provision to hold a fisheries authority accountable for allowing third parties to act. An offence could only be committed by a third party (such as a fisherman) if damage to a SSSI feature was intentional and the feature was known to be within the SSSI. The difficulty of prosecuting third party activity is further compounded by the public right to fish, because a fisherman could argue he was exercising his right to fish.¹

11.2.2 MARINE NATURE RESERVES (MNRs)

Seven MNRs were originally proposed by the NCAs in Great Britain (in the 1980s

¹ In common law, the public has a right to fish in the sea within the territorial waters of the UK unless an individual has acquired exclusive rights or Parliament has restricted the common law rights of the public. The public right extends to taking fish from the foreshore – the land between high and low water (CCW 2002).

following enactment of the Wildlife and Countryside Act 1981) of which only 2 were designated. The first to be designated was around Lundy Island in the Bristol Channel in 1986, and another around Skomer Island off the coast of South Wales in 1990. A further proposal for Strangford Lough in Northern Ireland was added and designated in 1995. However, the designation of these three MNRs took over 15 years because there was an undertaking in Parliament that everyone would have to agree regardless of the nature of the objection (the proposed Menai Strait MNR stalled for many years due to objections from recreational anglers), and there was neither the political will nor the means to overcome the objections received. A further hindrance to progressing the establishment and management of the sites was the fact that no other authorities beyond the NCAs held any responsibilities for promoting them. There was some control of fisheries in MNRs, but only through fisheries legislation/byelaws instigated through the Sea Fisheries Committees (SFCs).

11.2.3 EUROPEAN MARINE SITES (EMSs) – SPECIAL AREAS OF CONSERVATION (SACs) AND SPECIAL PROTECTED AREAS (SPAs)

In 1992, the European Community adopted the Habitats Directive (EC 1992) to ensure the conservation of habitats and wildlife by European Member States. One of the key objectives of the Directive is the creation of a network of SACs across all the land and sea areas of the European Union (EU). This ‘Natura 2000’ network of sites would enable the conservation of a diverse range of habitats and species and would incorporate the SPAs for bird species, designated under the 1979 Birds Directive (EC 1979). The Conservation (Natural Habitats, &c.) Regulations 1994 (HMSO 1994) is a Statutory Instrument that transposed the Habitats and Birds Directive into UK law. The NCAs have been given authority under these regulations to designate SACs and SPAs in UK waters.

While there have been many reviews of the impact of fishing on the ecosystem, the NCAs commissioned the first work assessing the potential implications of fishing on features of the 1992 EU Habitats Directive (Gubbay and Knapman 1999). By doing so, they laid the way for considering how fishing might be governed in those sites in future.

Moves towards designating 45 EMSs under the Natura 2000 series have greatly expanded the area of protection for marine conservation purposes in the UK as well as in the rest of the EU (EC 2000; Owen 2004; Hernandez-Aguilar 2004). The recent ruling following a case in the Waddenzee (ECJ 2002) has given legal backing to the interpretation of fishing as a ‘plan or project’, which means that any fishery likely to have a significant effect on the integrity of a site must be subject to appropriate assessment. The implications for fisheries governance could be quite considerable, as a precedent has been set for a precautionary stance.

While it is not the role of the NCAs to manage the fisheries taking place in the EMSs, as the statutory advisors to Government and others on the implications for wildlife of activities in the marine environment, their opinions must be acted upon by the competent authorities. In the UK, a variety of fisheries regulators act as competent authorities according to their jurisdiction.² It is the responsibility of a competent authority to undertake an assessment appropriate to a “plan or project” being proposed

² ‘Competent authority’ means any Minister, government department, public or statutory undertaker, public body or person holding a public office that exercises statutory powers (EN 1998).

within a Natura 2000 site. This entails assessment of all new fisheries or changes to current practices, including issuing permits or licenses when a fishery is reopened. The competent authority has to take account of the advice of the NCAs and to ensure that no significant deterioration of the favourable conservation status of the site will result. The competent authority can impose restrictions on the practice to ensure that but the integrity of the site is maintained.

11.2.4 CASE STUDIES

Since 2002, several Ministerial Orders have been requested by NCAs to prohibit particular inshore fisheries in EMSs in England.³ For example, EN made a formal request to the UK Department for Environment, Food and Rural Affairs (DEFRA) that an Order be put in place to protect Eelgrass beds in the Solent EMS from cockle dredging. EN presented evidence that the recent low level use of cockle pump scoop dredges was causing damage to the beds (which are, in themselves, a feature of the SAC, as well as providing an important food source for Brent Geese – a feature of the SPA (DEFRA 2004). The prohibition (the Solent European Marine Site (Prohibition of Method of Dredging) Order 2004) was thought to affect about five vessels using pump scoop dredges. Inadequate fisheries management led EN to recommend this Ministerial Order in the Solent. A SFC byelaw could be used to prohibit shellfish dredging in the Solent, but because the byelaw making process can take a year to complete, a Ministerial Order was required to provide necessary protection (DEFRA 2004). A prohibition Order could be temporary and allow time for a SFC or the Environment Agency (EA) to develop their own byelaw or allow an appropriate assessment to take place.

In Wales, the Shellfish (Specified Sea Area) (Prohibition of Fishing Methods) (Wales) Order 2003, under the Sea Fish (Conservation) Act 1967, was introduced to prohibit hydraulic dredging for bivalve molluscs in Carmarthen Bay, off the South Wales coast. The Order was introduced following a reasoned opinion by the European Commission against the UK in 2002 in relation to the non-designation of Carmarthen Bay as an SPA for the Common Scoter duck, and against the South Wales SFC (SWSFC) for not carrying out an appropriate assessment before authorising hydraulic dredging for razor clams (a third party was believed to have complained to the Commission). The Order followed a long-running dispute between CCW and the SWSFC over the assessment of the impact of hydraulic dredging for razor clams (a new fishery) in Carmarthen Bay. Uncertainties and difficulties of implementing the requirements of the Habitats Directive to ensure that hydraulic dredging did not have a significant impact on the features of the Carmarthen Bay SPA, may have led to the reluctance of the SWSFC to introduce further restrictions or undertake a costly impact assessment. The lack of suitable local control led the Welsh Assembly Government to introduce an Order to prohibit hydraulic dredging.

CCW could agree to this Order being rescinded if an adequate environmental assessment took place and measures to control fishing were introduced to ensure that

³ Ministerial Orders can be made under section 5 of the Sea Fish (Conservation) Act 1967 in England and Wales (section 5A of the Act permits Orders to be made for marine environmental purposes), and sections 3 and 15(3).

the integrity of the site is maintained. (Note the Bay was designated an SPA for non-breeding Common Scoter in 2003). However, in most fisheries in the UK there is an inability to control effort or intensity of fishing effort, other than vessel size restrictions and through opening or closing a fishery. This is an example where a feature of a site may comfortably withstand light fishing intensity, the integrity of the site might be compromised if fishing effort increases. Another example concerned scallop dredging in an SAC in North Wales (Pen Llyn a'r Sarnau) where CCW advised the North Western and North Wales SFC (NWNWSFC) to prohibit scallop dredging from a bay where, although a low level of fishing would have been acceptable, the SFC were unable to guarantee that only a low level of fishing would ensue.

SWSFC have sought advice on the implications of the Habitats Directive from both DEFRA and the previous Government department, the Ministry of Agriculture, Fisheries and Food (MAFF) since 1998, including answers to the following questions:

- Who pays for an assessment? (Developers (fishermen), or regulators (government department /SFC)?)
- How far should an assessment go in the collection of primary ecological information to support site designation? (This question reflects the dearth of ecological information collected by statutory conservation bodies, despite the sites having been submitted to the Commission for designation.)

The SWSFC were informed that the Environment Minister, Elliot Morley, was aware that the rules were not as clear as they might be, but he asked for some consideration, on grounds that this was a developing policy area. He hoped that more definitive guidance would be available in the near future (SWSFC 2002).

The cost of, and responsibility for, marine impact assessments is not unique to the fishing industry (PMSU 2004). Other marine industries, such as aggregate dredging, oil and gas and wind farms, abide by the polluter-pays principle and the developer provides the necessary information for the competent authority to decide whether the development can proceed. Yet, in the case of the fishing industry, the lack of ownership or exclusive rights to fish stocks or an area of seabed deters fishermen from paying for an assessment, if others who have not paid are likely to benefit.

Offshore (beyond 12 miles), the NCAs have been instrumental in identifying conservation sites. The first such site is the Darwin Mounds. The UK has been able to secure protection of these sites, which require special provision in relation to the European Common Fisheries Policy (CFP) (Clorley 2004). Offshore habitats regulations are currently being drafted.

It can be seen that, while the NCAs do not govern any fisheries, through the introduction of the Habitats Directive, and its subsequent EU interpretation and the Habitats regulations, they have an increasing influence on how fisheries are managed within sites of European marine nature conservation importance. Indeed, there is a growing obligation to manage fisheries to accord with nature conservation interests (Eno 2004). The fishing industry and regulators need to be aware that third party complaints to the Commission can lead to quick and decisive action (such as the hydraulic dredging prohibition in Carmarthen Bay). The implications of not preventing damage to site integrity might also be considerable (for example, the UK government is currently

subject to pre-infraction proceedings by the European Commission as a result of the loss of the majority of the biogenic horse mussel reef communities within Strangford Lough SAC, proceedings that may result in a very substantial fine. In this case, the fisheries department is the competent authority.)

11.3 Strategic role: Influence over fisheries policies and initiatives of government, the fishing industry and other agencies

Turning now to the strategic work of the NCAs achieved through advocacy, we examine the influence that NCAs exert on fisheries policy at three levels of decision-making: European and UK; devolved administrations; and local.

11.3.1 EUROPEAN AND UK LEVEL

At the European level, the NCAs have, increasingly over the last ten years, taken on a greater advocacy role regarding fisheries and their governance, reflecting the growing prominence in the EU of marine conservation and protection of marine wildlife and habitats. For example, a considerable amount of time was spent influencing the 2002 reform of the CFP, by lobbying, replying to consultations, and engaging in key meetings. A number of reports were commissioned to help stimulate different approaches to fisheries governance (Symes 1998; Pope and Symes 2000; Symes and Pope 2000; Symes *et al* 2002). The objective of the new CFP Regulation (EC 2002) has moved towards managing the whole of the marine ecosystem, rather than just one component (fish), acknowledging the impact of fisheries on the marine environment; and resolving to control those damaging activities (Clorley 2004). This is known as the ecosystem-based approach (EBA), the elements of which are set out authoritatively in Table 11.1.

Many of the greening influences over EU fisheries policy that have been claimed by environmental non-governmental organisations (ENGOS) resulted from a combination of pressures exerted by both statutory and voluntary environmental bodies, involving changes in public opinion and political will. The NCAs have certainly invested heavily in influencing the development of more integrated fisheries governance (integrating both stakeholder participation and environmental policies). For instance, EN commissioned work on the EBA to fisheries management (Pope and Symes 2000; Symes and Pope 2000), to determine how the EBA might be implemented. For its part, CCW has worked with stakeholders from around the Irish Sea to develop the concept of integrated fisheries management, by organising workshops and meetings. This work has contributed to the development of Regional Advisory Councils (RACs) and particularly to progressing the development of sub-areas within the North Western Waters RAC. While the NCAs will not be members of RACs as such, they will act as observers and monitor the RACs, and advise governments on whether they are applying an ecosystem approach. NCAs may also play a more active role in the working groups and sub-area discussions.

Table 11.1. Twelve principles of the EBA (UN 2003)

UN Convention on Biological Diversity's twelve principles of the EBA

1.	The objectives of management of land, water and living resources are a matter of societal choice.
2.	Management should be decentralised to the lowest appropriate level.
3.	The Ecosystem Approach should be undertaken at the appropriate spatial and temporal scales.
4.	Recognising the varying temporal scales and lag-effects that characterise ecosystem process, objectives for ecosystem management should be set for the long-term.
5.	Ecosystem managers should consider the effects (actual or potential) of their activities on adjacent and other ecosystems.
6.	Recognising potential gains from management, there is usually a need to understand and manage the ecosystem in an economic context. Any such ecosystem-management programme should: <ul style="list-style-type: none"> • reduce those market distortions that adversely affect biological diversity; • align incentives to promote biodiversity conservation and sustainable use; and • internalise costs and benefits in the given ecosystem to the extent feasible.
7.	Conservation of ecosystem structure and functioning, in order to maintain ecosystem services, should be a priority target of the Ecosystem Approach.
8.	Ecosystems must be managed within the limits of their functioning.
9.	Management must recognise that change is inevitable.
10.	The Ecosystem Approach should seek the appropriate balance between, and integration of, conservation and use of biological diversity.
11.	The Ecosystem Approach should consider all forms of relevant information including scientific and indigenous and local knowledge, innovations and practices.
12.	The Ecosystem Approach should involve all relevant sectors of society and scientific disciplines.

In 2003, following representation from the fishing industry, the British Prime Minister instructed the Cabinet Office's Strategy Unit to prepare a medium to long term fisheries strategy for the UK. In 2004, the Strategy Unit published a report entitled *Net Benefits: A Sustainable and Profitable Future for UK Fishing* (PMSU 2004). In addition to a long-term strategy, the report emphasised the importance of bringing the industry and other stakeholders into a partnership with government over management decisions. It is noteworthy that officers from the NCAs were seconded into the PMSU's core group to channel and provide nature conservation input. A series of working groups were organised following the publication of the report to agree on how the recommendations could be implemented. The NCAs are represented on, and make a significant contribution to, all of these groups, as well as to a full stakeholder group, the workings of which will influence how the DEFRA Sustainable Fisheries Programme draws up the government's response to *Net Benefits*, which is likely to determine how fisheries governance is to change in the UK.

Also, together with representatives from Government, the Association of SFCs, and a scientific expert on bycatch, the NCAs sat on the UK Small Cetacean Response Strategy Group set up in 2001. The aim of the strategy was to identify measures that could be introduced to reduce small cetacean bycatch to below the target (1.7 per cent of the population) set by the ASCOBANS Meeting of the Parties in 2000.⁴ A consultation paper was produced in 2003 but its recommendations were superseded by an EC (2004) regulation which came into force in July 2004, and which included the mandatory use of acoustic devices ('pingers') in specified bottom net fisheries.

⁴ ASCOBANS – the international Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas – is an annex of the Bonn Convention.

11.3.2 DEVOLVED ADMINISTRATIONS: SCOTTISH EXECUTIVE ENVIRONMENT AND RURAL AFFAIRS DEPARTMENT (SEERAD); WELSH ASSEMBLY GOVERNMENT (WAG)

The second level of fishery policy decision-making at which NCAs exercise influence is that of the so-called ‘devolved administrations’ in Scotland and Wales. In the case of Scotland, improved markets for shellfish, the decline in offshore fisheries, and greater consideration of the marine environment, have led to a review of the inshore sector. SNH are members of the Scottish Inshore Fisheries Advisory Group (SIFAG), which has been asked by SEERAD to develop a strategy for inshore fisheries, to include an element of stakeholder management.⁵

In the case of Wales, in order to ensure a sustainable future for all Welsh fisheries, the WAG intends to create an over-arching Welsh Fisheries Strategy that will cover commercial sea and inland fisheries, aquaculture, and recreational fisheries. This strategy will involve a statutory steering group of which CCW is a member, and a stakeholder Advisory Group (comprising representatives of the sea fisheries sector). CCW sit on the Welsh Fisheries and Aquaculture Strategy Groups (FASG)⁶, which has already produced a component strategic action plan for the development of the Welsh Fisheries and Aquaculture sector, the focus of which was “to develop a profitable and sustainable Welsh fisheries industry” (WDA 2003). CCW also had input to the group developing of *A Strategy for the Recreational Fisheries of Wales*’ (WAG 2003). CCW thus ensures that wildlife conservation elements are considered in Wales, and it particularly promotes those policies contained in its Sea Fisheries Policy (CCW 2003).

11.3.3 LOCAL LEVEL

The third level of fishery policy decision-making influenced by NCAs is the sub-national or local level. Within Wales and England, this means influencing the SFCs. For example, in 2002, the Skomer Advisory Committee⁷ instructed CCW and SWSFC to investigate the desirability of establishing ‘no-take-zones’ (NTZs) within the Reserve, where no removal of living material would be permitted. In addition to nature conservation, CCW also recognised the potential benefits to fisheries of such no-take-zones, and, since 2002, CCW and SWSFC have consulted widely with the local community, fishermen and anglers. A draft byelaw was submitted to the SWSFC in January 2004, which recommended a limited commercial pot fishery, and restriction of boat and shore angling to specific areas.

This initiative followed two recent no-take-zones in England: St Agnes in North Cornwall led by local shell-fishermen to test whether the viability of their fishery could be improved; and Lundy MNR that resulted from a joint development between the Devon SFC and EN for both fisheries and nature conservation purposes (Phil Coates,

⁵ SIFAG provides advice on inshore fisheries matters to the Scottish Executive, and consists of 16 organisations, including 11 fishermen’s organizations, local authority representation, Scottish Natural Heritage, Scottish Environmental Link, Seafish and Highlands and Islands Enterprise, as well as two Executive agencies (Fisheries Research Services and the Scottish Fisheries Protection Agency).

⁶ FASG comprised industry representatives from the catch, aquaculture, processing and retail sectors, SFCs, CCW and NGOs. It has just split into two component groups with overlapping membership.

⁷ Skomer Advisory Committee represents commercial, recreational, fisheries and educational interests, and comprises about 60 members.

SWSFC pers comm 2002). However, there has been a mixed reaction to a project to develop a network of no-take zones around the Cornish coast, which is being driven by Cornwall County Council and is backed by EN, the EA, sea fisheries bodies and other sectors. The zones, inside the six-mile limit, are intended to maintain marine biodiversity and improve fish stocks, and they could be either legally enforceable or voluntary. Moreover, there was almost unanimous opposition to the setting up of a NTZ at Whitsand Bay at a public meeting in November 2004 (*Fishing News* 2004:19).

11.4 Discussion: Evaluation of the effectiveness of NCAs in their environmental influence on fisheries governance

We divide our discussion of NCAs' effectiveness into their two main roles: statutory and strategic.

11.4.1 STATUTORY

How effective are the NCAs in their statutory interventions with fisheries activities through designation of protected marine sites? In our view, they are having an increasingly marked impact on fisheries governance in the UK. An important element in ensuring the effectiveness of the NCAs in relation to fisheries governance is in their ability to work collectively. This was facilitated through the JNCC, whose chair at the time was Lord Selborne (who had chaired the House of Lords enquiry into the mid-term review of the CFP), aided by the formation of an inter-agency Marine Fisheries Working Group. This working group developed a work programme that was accompanied by the appointment of dedicated fishery officers. It was the first time that the NCAs had made a concerted effort to influence sea fisheries policies, and it was undertaken as fishing was the most widespread activity in the marine environment, with many fishing practices seen as unsustainable. The group's work was a combination of identifying the needs of marine wildlife, undertaking research on the effects of fishing (for instance through EU funded studies on ghost netting and potting work – Eno *et al* 2001; Bullimore *et al* 2000; Kaiser *et al* 1996) and developing their reputation with the fisheries sector from a scientific and policy perspective. The work of the NCAs' group gradually became more policy-focussed pending the reform of the CFP, as their written and oral evidence was sought in response to fisheries consultations. At the same time, the work of the individual agencies is being increasingly felt in their designation of marine sites.

11.4.2 STRATEGIC

How effective are NCAs in influencing fisheries policy by their advocacy activity? This is a more difficult question to answer, because it is notoriously hard to demonstrate cause and effect relations in policy arenas, and in this particular policy arena, it is especially hard to separate the effectiveness of NCAs from that of ENGOs. However, it seems clear that NCAs have contributed significantly to the contemporary shift in direction in European fisheries governance towards an EBA, and the integration of environmental objectives into fisheries policy. Evidence to support this claim comes from the CFP 2002 reform process which was heavily influenced by NCAs, along with ENGOs, and which marked a turning point in the way in which European fisheries are governed, from a single stock management strategy, to an EBA strategy. NCAs have

also influenced thinking on the new RACs. Some of the points from the CCW-commissioned study on integrated regional management of the Irish Sea (Symes *et al* 2002) have featured in Commission guidance on setting up RACs. Domestically, UK decision makers are keen to involve the NCAs – indeed, they are sometimes the only ‘environmental’ organisation involved in fisheries strategy development (for instance in DEFRA’s small cetacean bycatch strategy group). NCAs have also been closely engaged in developing and implementing the national fisheries strategies of SEERAD and WAG.

The UK political climate towards marine conservation has dramatically changed in recent years as the UK has signed up to international agreements (such as the FAO Code of Responsible Fishing) and conformed to new European fisheries (as a result of the reformed CFP) and environmental framework legislation. The NCAs are now formally part of UK and National Administrations’ fisheries governance strategies as members of government decision-making groups, and they are formally consulted on changes to technical regulations (including Statutory Instruments). There is a general acceptance that fisheries management should take an EBA (fundamental to the reformed CFP: EC 2002), and that the precautionary principle should be used where necessary. The NCAs advise government on how the EBA can be applied to fisheries and the implications of it, and when and where the precautionary principle should be applied. Fisheries regulators appear keen to engage the NCAs to ensure that environmental issues are considered adequately, not only as a matter of formality, but as a matter of political necessity.

11.4.3 HOW COULD THE NCAs BE MORE EFFECTIVE?

There are four ways in which NCAs could be made more effective: by the removal of legal constraints; the resolution of political obstacles; the availability of better marine environmental information; and by a strengthening of the European network of fisheries and nature conservation advisors.

11.4.3.1 *The Removal of Legal Constraints*

One of the most frustrating features of NCAs’ work in relation to fisheries is that they often have to recommend drastic action – such as closing fisheries – to protect habitats or species, because the competent authorities are legally unable to cut fishing effort. There is an urgent need for a change in the law to enable SFCs to reduce fishing effort, which would facilitate a win-win situation. The legal problem of how to deal with third party violations of SSSI agreements must also be addressed. At present, third parties cannot be prosecuted for damaging an SSSI, unless that damage was shown to be deliberate, an anomaly that is compounded by confusion over the extent of the public’s right to fish. Notifying the fishing industry of SSSI features susceptible to damage from fishing operations could help to address such enforcement difficulties. For example, following advice from EN, information on SSSI features susceptible to damage from cockle hand gathering in Morecambe Bay was included in a NWNWSFC’s cockle and mussel hand gathering permit scheme in 2003.

There is an urgent need for legal clarification on Natura 2000 site issues. For instance, can Member States implement measures to protect Natura 2000 sites from fisheries without the need for Commission involvement? It has been argued that Member States’

obligations to manage fisheries to meet obligations under the Habitats Directive do not fall within the remit of fisheries management, but under the environmental part of the treaty (Owen 2004). If this is the case, then Member States could restrict fisheries in Natura 2000 sites without the agreement of the Commission (Clorley 2004; Owen 2004). Another Natura 2000 issue arises out of the application of Article 6(2) of the Habitats Directive (EC 1992), which is a general duty of care imposed upon competent authorities to ensure that the activities they authorise do not threaten the integrity of a Natura 2000 site. How will competent authorities monitor potential impacts of fisheries in order to determine whether they threaten the integrity of the sites? In other words, who is responsible for funding the required impact assessments?

The work of NCAs is also seriously hampered by the lack of legal ownership over, or exclusive rights to use, marine resources, and the resulting difficulty of finding relevant responsible parties against whom to take action for harm to the marine environment. This is a major issue, currently being grappled by the PMSU and resultant Sustainable Fisheries Programme, which is in favour of more property rights being established over marine resources, with concomitant responsibilities, but the issue is complicated by the public right to fish.

11.4.3.2 *The Resolution of Political Obstacles*

Until 2002, when the PMSU began to take an interest in fisheries management, NCAs had long felt weakened because environmental issues in relation to fisheries management had not been at the top of the UK political agenda. The feeling was that, especially in Scotland, the government was more concerned about the fate of the fishing industry than it was about the fate of the marine environment. However, whether the PMSU initiative will shift the balance significantly in the environmental direction remains to be seen, because the primary emphasis in the PMSU report (2004) seems to be on ensuring a profitable industry (unlike the report from the Royal Commission on Environmental Pollution, which categorically prioritises the health of the marine ecosystem over that of the fishing industry (RCEP 2004: para 10.78)). Another political obstacle lies in the attitudes of other EU countries towards environmental issues of fishing. For example, because of the political strength of fishing interests in Spain and France, UK attempts to regulate offshore fisheries for marine conservation purposes, such as reducing dolphin fatalities, face tough opposition. However, in the case of Darwin Mounds, pressure came via the Habitats Directive, which trumps objections from individual Member States.

11.4.3.3 *The Availability of Better Marine Environmental Information*

It is no secret that there is an information deficit with regard to the marine environment. The knowledge that we possess about the way the marine ecosystem functions is very patchy. Although we know quite a lot about some individual commercially valuable species, we are especially ignorant about the population size and dynamics of many protected species, such as cetaceans and basking sharks. We also lack information on the distribution of habitats and species of key conservation importance (such as elasmobranchs), and on the marine ecosystem and trophic webs: knowledge of which would help us to determine how important commercially exploited fish (target and non-target species) are to protected predators. The critical question is who will pay for all the research necessary to plug these information gaps? Researchers at ICES (the International Council for the Exploration of the Sea) are already fully stretched, and without a massive increase in their resources, they would be incapable of undertaking

the vast amount of increased work that would be required to fully understand the marine ecosystem. But without this understanding, the attempts by NCAs to advance the EBA in fisheries governance will be difficult.

11.4.3.4 *The Strengthening of the European Network of Fisheries And Nature Conservation Advisors*

While there is a European network of nature conservation agencies – the European Environment Advisory Council (EEAC) – there are very few examples of equivalent agencies to the NCAs throughout Europe who advise on the effects of fisheries on marine nature conservation interests. The UK NCAs established a European Nature Conservation and Fisheries Advisory Network (ENCFAN), but many of the members are not from equivalent bodies and include academics, independent consultants and representatives from fisheries departments. ENCFAN has been used to share information and ideas on European policy issues, and the UK NCAs have often facilitated this exchange including the commissioning of a series of workshops organised by the Institute for European Environmental Policy (IEEP) in the run-up to the reform of the CFP (see Coffey, this volume). A strengthening of this network would help facilitate exchange, and possibly coordination, of advice and policy messages across Europe. Interfacing with RACs is an obvious area where this could bring benefits.

11.5 Conclusion

Our conclusion has two parts. First, in summarising the findings of the chapter, we find that the work of NCAs in influencing fisheries governance in an environmental direction, takes two forms: statutory, which consists in designating protected sites, thereby, where appropriate, restricting fishing activity immediately; and strategic, which consists in influencing fisheries policy, thereby, where appropriate, restricting fishing activity in the future. Both roles are important, but the latter is more difficult to evaluate. We also identified several impediments, which prevent NCAs from playing an even more effective role in fisheries governance, some of which can be addressed speedily by governments.

Second, we suggest five issues that NCAs themselves might address. One issue is the implementation of the EBA and the role of NCAs. The NCAs need to convince the fishing industry and regulators that the EBA provides a fundamental delivery mechanism for progress towards sustainable development rather than preservationism – the latter being a commonly held view within industry. This has led CCW, NWNWSFC and representatives of the fishing industry to develop a sustainable fisheries project in North Wales to trial the application of the EBA to fisheries management. In addition to an analysis of the economic, environmental and social elements of three fisheries (mussel cultivation, potting and scallop dredging) there will be a comparative investigation of the fisheries against the internationally agreed (United Nations Convention on Biological Diversity (CBD)) twelve principles of the EBA (Table 11.1). There are also moves to develop more integrated, multi-species analysis (under a new project ‘Science for sustainable marine bioresources’ being sponsored by the Natural Environment Research Council (NERC), DEFRA and SEERAD), and efforts to identify meaningful indicators will help with predictive models and monitoring.

Another issue is the potential tension (or even conflict of interest) that NCAs face in simultaneously serving as judge of, and collaborator with, the fishing industry. Their statutory role of designating protected sites pulls them in the direction of judge, identifying the environmental harm done by fishing, but their strategic role of advocacy pulls them in the direction of collaborator, working alongside fishers to arrive at a better environmental outcome. Conflict could arise between these two roles, if, for example, in its collaborative role, the NCA encouraged the industry to think that they were meeting environmental requirements, but subsequently, in its statutory role, it informed them that they were not. Such tension is faced equally by other bodies, such as the Environment Agency, and it is likely to be resolved only by the relevant senior management deciding on the organisation's priority between coercion and cooperation.

The third issue is the involvement of NCAs in the development of marine spatial planning. In a speech at the Coastal Futures Conference in London in January 2005, The Minister for the Environment, Elliot Morley indicated that the proposed Marine Bill would cover marine spatial planning to aid integrated management of all activities in our coastal waters. The Government's first Marine Stewardship Report, *Safeguarding our Seas*, published in May 2002, contained a commitment to explore the role of marine spatial planning. In March 2004, the Government's response to its Marine Stewardship follow-up consultation paper, *Seas of Change*, proposed an investigation into how a marine spatial plan could be prepared and used. The NCAs are now contributing to the development of marine spatial planning through, for example:

- A DEFRA led project research into marine spatial planning using the Irish Sea as an example: due to report in June 2005;
- A JNCC project mapping marine regulations and policy implications on marine activities in the UK sectors of the Irish Sea;
- The formation of an internal NCA Marine Spatial Planning group to contribute to Government-led initiatives, to ensure consistency between NCAs, to develop strategic thinking and to share the work-load.

The fourth issue is the relationship between NCAs and ENGOs. On the one hand, they are quite different types of organisations: NCAs are public servants; ENGOs are independent of government. On the other hand, NCAs and ENGOs share many common objectives in relation to fisheries governance: in particular, they both want to integrate environmental policies (particularly the EBA) into fisheries management, and there is sometimes a fine line between the advocacy role of NCAs and the campaigning role of ENGOs. A dilemma NCAs face is maintaining a proper distance from ENGOs, yet embracing them as fellow workers in the field. The latter response could have significant cost saving implications for both organisations, by sharing the work load.

The fifth issue is how to influence the protection of offshore nature conservation interests from fishing. The rapid extension of statutory marine protected sites in recent years, from intertidal SSSIs to offshore Natura 2000 sites (eg Darwin Mounds), has raised a number of issues that the NCAs are having to consider. These include the legal basis for measures to restrict fishing, for example through the CFP or through individual Member States, monitoring the condition of the sites and enforcement. The internal NCA Habitats Group is currently considering these issues and offshore habitats regulations are currently being drafted.

Regardless of how the advice is delivered, a vital component part of fisheries governance is that statutory nature conservation responsibilities are acted upon. The NCA will therefore continue to play a role in this important objective, thereby contributing significantly to the achievement of fisheries which are sustainable from all perspectives.

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