

Across the waters

Implementation of the UK Marine and Coastal Access Act and devolved marine legislation: cross-border case studies

December 2009

The North Channel

This case study forms part of the Across the Waters series prepared for Wildlife and Countryside Link, Scottish Environment LINK, Northern Ireland Marine Task Force and Wales Environment Link. It was funded by the Esmée Fairbairn Foundation and The Tubney Charitable Trust.

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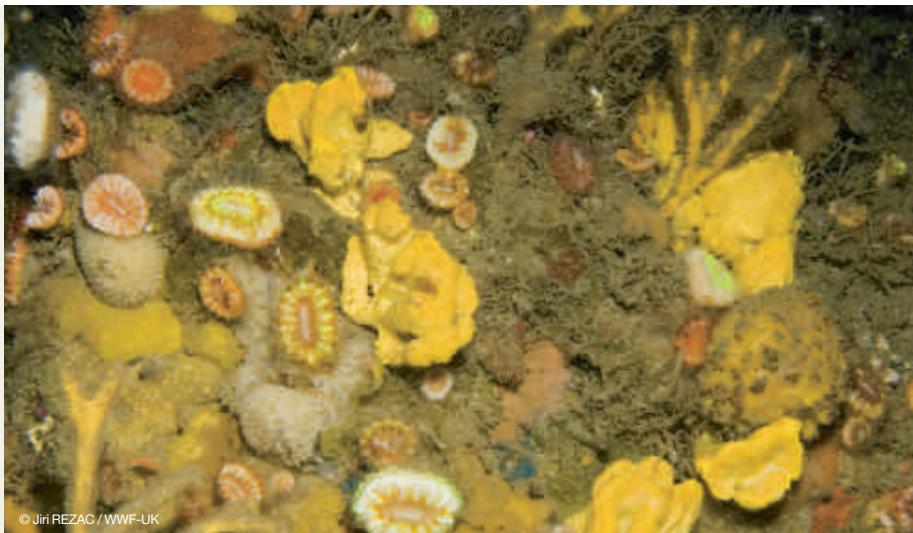
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New marine legislation is being introduced throughout the UK that will require coordinated implementation to achieve a consistent and coherent approach. The Across the Waters project aims to raise issues and concerns from local stakeholders and highlight recommendations for managing the UK marine environment in cross-border areas.

This report is one of a series of three. It focuses on the North Channel and the perspectives of the shipping and conservation sectors. The site boundaries of the North Channel were identified by incorporating as wide and representative an area as possible. The authors obtained the views of 12 stakeholders through a mixture of face-to-face and telephone semi-structured interviews. The interviews formed the basis of the report and were used to create a series of recommendations for cross-border working. For the purpose of this report the term 'cross-border' mainly refers to the internal UK border between Northern Ireland and Scotland.

The other two reports in the series investigate the Solway Firth and the Severn Estuary and Bristol Channel.

New marine legislation



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This is an exciting time for the management of our marine environment. Legislation has been produced that will attempt to modernise, streamline and improve protection of our marine environment. The UK Marine and Coastal Access Act (hereafter referred to as the Marine Act) received Royal Assent in November 2009. It is important to note that timetables driving the processes of creating marine legislation are different throughout the UK. In Scotland, the Marine (Scotland) Bill was introduced to the Scottish Parliament on 29 April 2009 for its first reading and the deadline for completion of the first stage of the legislative process is 30 October 2009. In Northern Ireland, the legislative process is much slower, with consultation on the policy proposals not expected to take place until April 2010, and legislation to be in place by 2012. The Northern Ireland primary legislation will deliver functions such as marine planning and marine conservation, as these are devolved matters. The UK Marine Act will not deliver these things for Northern Ireland's waters.

This report assesses the implications of new marine legislation coming in the form of the UK Marine Act, Scottish and Northern Ireland Marine Bills, with a particular focus on marine planning in the North Channel between Scotland and Northern Ireland. This area of sea is particularly diverse in terms of socio-economic activities, ranging from concentrated and intensive navigation to many different types of fishing and aquaculture, communications and cabling, aggregate dredging and tourism.

Against this backdrop, plans are being considered to develop marine renewable energy installations across the area, as well as under-sea carbon storage facilities. So the North Channel will be an incredibly busy maritime area of the UK and marine plans will be needed. Conflicts may arise if those marine plans are not comprehensive and integrated.

This report focuses on the cross-border planning issues that would affect navigation, shipping and conservation. But many of the issues identified will apply equally to all marine sectors operating in the North Channel.

North Channel: a shipping perspective

The North Channel is the stretch of water separating Scotland and Northern Ireland. The upper boundary for this project is between Benbane Head on Northern Ireland's north coast and Portnahaven, Isle of Islay in western Scotland (a distance of 47km). The lower boundary is between Donaghadee and the Mull of Galloway (41km). The narrowest part of the North Channel is just 23km, from Fair Head to the Mull of Kintyre.

Rathlin Island, near the upper boundary, is 9.6km from Northern Ireland and 25km from the Mull of Kintyre. It is the only populated offshore island (around 100 inhabitants) within Northern Ireland and within the site boundaries of the North Channel. Under the EU Marine Strategy Framework Directive (2008/56/EC) the North Channel is part of the OSPAR area known as the Celtic Seas (Region III, OSPAR Commission).

The North Channel is one of the principal maritime gateways of the UK, contributing to the European Spatial Development Perspectives' (ESDP, 1999) Trans European Networks (TENs). It links Ireland to Scotland, England and beyond to Europe, and incorporates both Northern Ireland's busiest port (Belfast) and Scotland's third-largest port (Clydeport). Both ports are highly significant as west coast intercontinental and Atlantic facing port operators and have well over 250 shipping routes between them.

The ports of Belfast and Larne offer year-round ferry crossings to Troon, Stranraer and Cairnryan in Scotland, and in the summer there are sailings to the Isle of Man and Heysham. Annually, over 1.2 million passengers and 300,000 cars are transported across this body of water, and half a million freight units are imported into the port of Belfast. The port receives 60% of Northern Ireland's seaborne trade.

Over half of Northern Ireland's wildlife lives in and around the seas of the North Channel, with around 4,000 species being recorded.

Described as the international gateway to Scotland's industrial heartland, Clydeport is four port facilities in one, and the controlling port authority for 1,165 sq km of the Clyde. Together, the four locations of Hunterston, Greenock, King George V Dock in Glasgow and Ardrossan handle more than 12 million tonnes of cargo a year.

The ports of Belfast and Clydeport are highly significant within the North Channel, and both are set to expand in the future, establishing themselves as popular ports of call for cruise ships and attracting more container ships and foreign retail trade. The increased ferry vessel movements across the North Channel, development and expansion of ports, and deepening of channels and berths for access and accommodation may increase the risks of marine accidents.

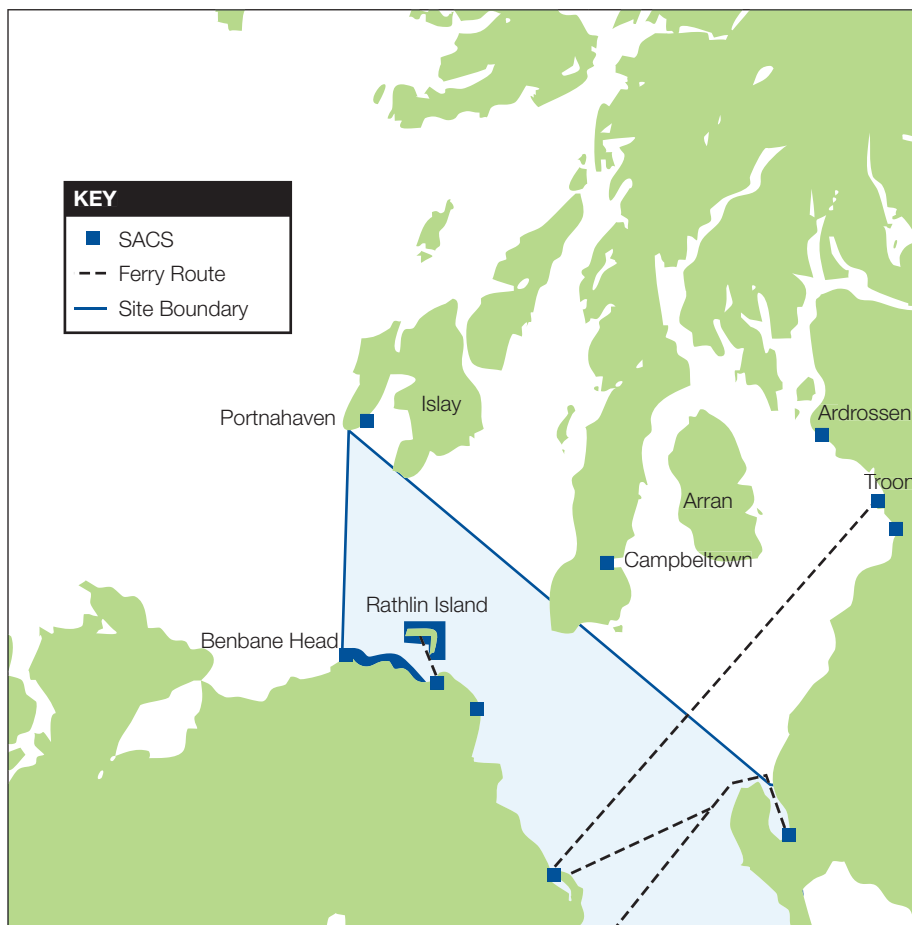
Other key ports in Northern Ireland include Cushendall for fishing, aquaculture and tourist pleasure cruises, and Ballycastle, which provides year-round ferry crossings to Rathlin Island, and summer crossings to Campbeltown, Kintyre. In Scotland, there are regular island crossings from Ardrossan to Arran and crossings from Kennacraig to the Isle of Islay. There is also a large volume of recreational sailing activity within the North Channel, particularly in the summer.

North Channel: a conservation perspective

The coastal fringes of the North Channel are highly significant and important areas for much of Northern Ireland's and western Scotland's marine wildlife and conservation. With high rates of productivity and exceptional quality, over half of Northern Ireland's wildlife lives in and around the seas of the North Channel, with around 4,000 species being recorded. These include rare or declining species such as the fan shell, harbour porpoise, and maerl and seagrass beds (Saville and Hutchinson, 2006). Western Scotland has over 800 islands. The seas around them contain a wealth of marine biodiversity, being home to over 5,000 species including corals, Atlantic salmon, whales and dolphins.

Both sides of the channel are of international importance in terms of the numbers of breeding seabirds, such as puffins, guillemots and razorbills, and wintering shorebirds (Symes and Ridgway, 2003). There are two marine Special Areas of Conservation (SACs) on the Northern Ireland side of the Channel – much of the North Antrim coast and Rathlin Island. There are also 16 marine SACs in western Scotland, although none of them fall within the North Channel project site itself. These have been designated under the EC Habitats Directive (92/43/EEC).

Red Bay, Cushendall has been put forward as a candidate SAC to the EU for implementation next year (NIEA Biodiversity Implementation Plan, 2009-2012) and there are more potential SACs being explored on both sides of the Channel.



Stakeholder views on the implications of the marine legislation



Even though the aims of shipping and navigation could conflict with those of conservation, there appears to be a level of consensus over the potential implications of the respective UK Act and Scottish and Northern Ireland Bills. In general, both sectors welcome the legislation and see a definite need for marine planning in the area. Consequently, marine plans were highlighted as a major output of both the Act and Bills. Stakeholders also welcomed the proposed streamlined approach to licensing that should result in a single licence for each activity, along with the new tools to protect marine biodiversity (Marine Conservation Zones).

Shipping and navigation sector perspective

Shipping and navigation appear to generate relatively few concerns in relation to the UK Marine Act. Representatives stated that while their sector is of major value to the UK economy, the Act could only add to their safety at sea – their prime concern. They noted that the most positive implication of the Marine Act for them would be the creation of marine plans, as these would provide guidance and certainty to developers, particularly for marine renewable technologies, and they had the potential to better separate marine activity through zoning.

Respondents stated that it would be important to see marine renewables such as offshore wind farms and underwater turbines not being developed in navigational and shipping lanes, where there are potential risks of collision and associated environmental impacts, such as oil spills. They highlighted that shipping and conservation can happily coincide in the port of Belfast, giving the example of the RSPB's Site of Local Nature Conservation Importance, which is within the Harbour Estate.

Conservation sector perspective

Representatives of the conservation sector said the UK Marine Act was an essential step forward in ensuring sustainable management of the seas. We hope that both the Act and Bills will lead to better management and monitoring of currently protected sites. Respondents stated that the management objectives for the new marine conservation zones would have to be stronger than the current SAC designations. They stressed that this would have to involve joined-up working between all the administrations.

The remaining implications of both the Act and Bills from the views of both sectors have been laid out thematically below, under Planning, Licensing, and Conservation.

The marine legislation is being developed in different timeframes, on different scales and with different approaches to marine planning and marine management.

Planning

Legislative purpose

Representatives from both sectors highlighted that all of the devolved administrations will be working under the same High Level Marine Objectives (HLMO) (Defra, 2009) which could help to achieve a convergence of marine planning systems across the UK. The UK Act includes provisions for a jointly agreed UK-wide Marine Policy Statement to sit below the HLMOs, to guide marine planning. This is an opportunity to achieve coordination between the different administrations.

Respondents stressed that one of the key implications was that the Marine Act and respective Bills will give a legislative purpose to marine spatial planning (MSP). This, they said, will help avoid ad hoc planning and encourage more rational and long-term approaches to development. In providing a legislative backing to marine management, both the Act and Bills will contribute to more effective structures and help enable more local control and management of the marine environment.

Devolution

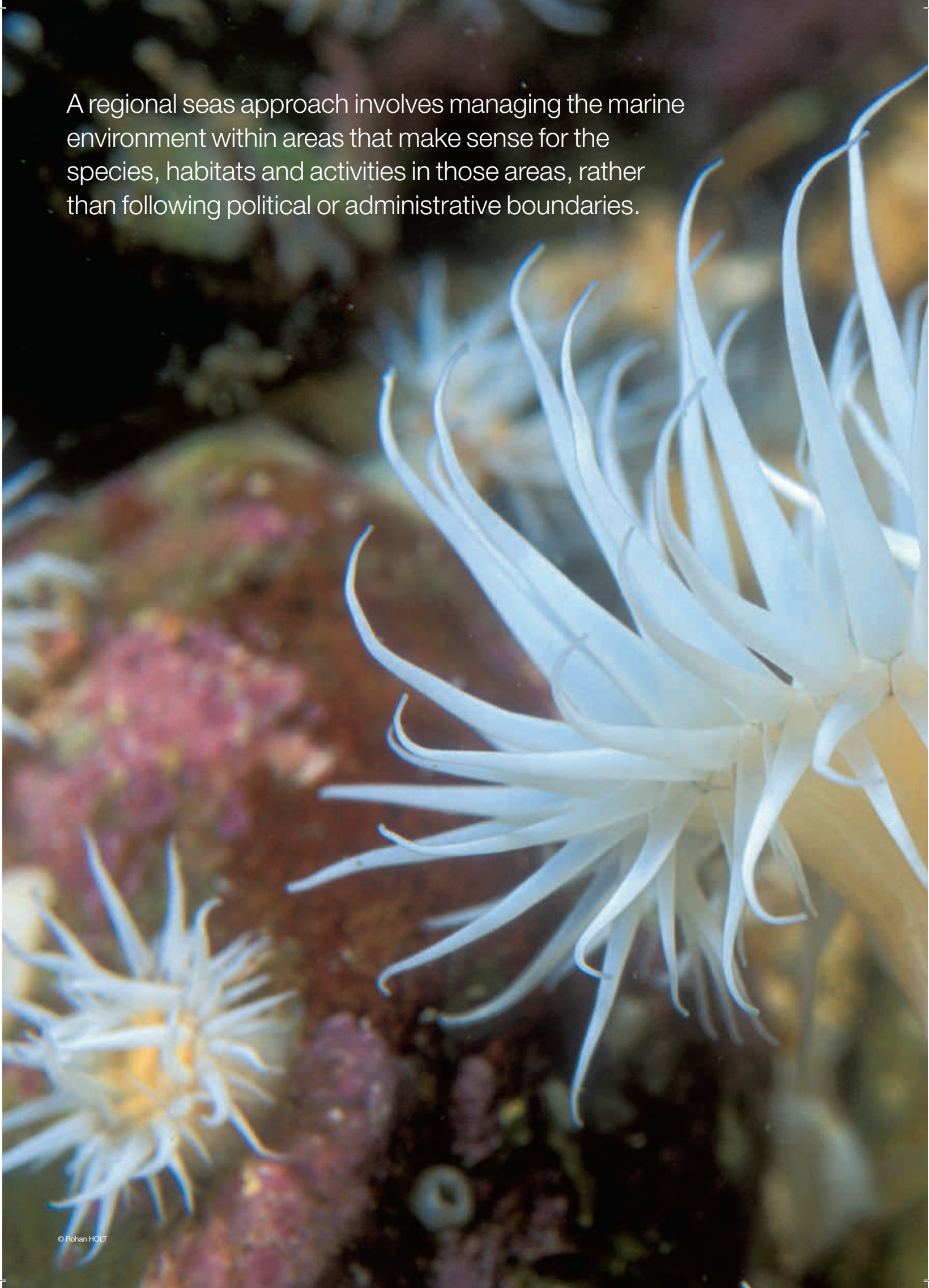
Stakeholders raised concerns that in signing up to the Marine Policy Statement the devolved administrations would have the opportunity to 'opt out' of the Statement if they no longer support the policies it includes or no longer wish to participate. The Department for Environment, Food and Rural Affairs (Defra 2009) states that the provisions are in place simply to ensure flexibility for the long-term future if the circumstances of the administration change.

It is disappointing that there are only two areas in the new marine legislation where all four UK administrations can be joined up – in the (agreed and published) High Level Marine Objectives and in the development of the Marine Policy Statement. In the remaining parts of the Marine Act the different administrations are choosing to carry out their own arrangements. The conservation and shipping sectors both highlighted that this could potentially impact on the overall strength of both the Act and Bills in achieving UK-wide co-ordination. It is therefore essential that the administrations achieve the objective of agreeing a UK-wide Marine Policy Statement and put safeguards in place to ensure administrations do not 'opt out' of the agreed Statement.

The Marine and Coastal Access Act, having already received Royal Assent is ahead of the Marine (Scotland) Bill and Northern Ireland Marine Bill. All are all being developed in different timeframes, on different scales and with different approaches to marine planning and marine management. The conservation sector in particular stressed that the number of different bodies in the different UK countries that will be managing decision-making in the environment (the UK Marine Management Organisation (MMO), Marine Scotland and the yet to be determined equivalent in Northern Ireland) could also adversely impact on the strength of the legislation.



A regional seas approach involves managing the marine environment within areas that make sense for the species, habitats and activities in those areas, rather than following political or administrative boundaries.







Boundaries

Some in the conservation sector called for boundaries to be integrated with the other devolved administrations and jurisdictions, to attain the regional seas approach of the UK. A regional seas approach involves managing the marine environment within areas that make sense for the species, habitats and activities in those areas, rather than following political or administrative boundaries. The shipping and navigational sectors and Northern Ireland policy makers stressed that Northern Ireland has to integrate its boundaries with the Republic of Ireland, tallying closely with the OSPAR Celtic Seas regions being used for the EU Marine Strategy Framework Directive.

Institutional skills

Concern was raised from both sectors over who and what type of skills will be needed to carry out marine planning once the legislation is put in place. Respondents highlighted that land-based planners are reluctant to extend their planning responsibilities beyond the mean low water mark. Additional concern was raised over the process of developing the Marine Policy Statement (MPS) and the model of stakeholder engagement applied, as a key requirement of the Marine Act is to have an MPS in place within two years of Royal Assent by the end of 2011, which may not allow more extended engagement. Defra has begun stakeholder engagement for the MPS with a series of workshops.

Licensing

Streamlining

Many respondents from both sectors considered the UK Marine Act's emphasis on streamlining the licensing procedures to have positive implications. Creating a 'one-stop-shop' compares favourably to the existing situation which seems to be a source of frustration for many, as it is spread across several different government departments. It was stressed, particularly from the conservation sector, that the new process would ensure better management and a more holistic and consistent approach. A knock-on effect of this would be to create more trust and faith in the system as a result of increased transparency and simplification.

Until Northern Ireland produces its own Marine Bill it could miss out on the benefits of a streamlined licensing regime – including reduced costs and greater certainty for developers. This could impact on investment in Northern Ireland marine areas. Some of the conservation respondents noted that, under the UK Act, development proposals will be approved only if they conform to the marine plan.

Consultation

Some participants from the conservation sector noted that they were unsure if streamlining licensing procedures, by introducing consolidated licensing, would necessarily lead to a faster system as public consultation was needed each time a new licence application is made. However, this is likely to be streamlined to one consultation under one licence rather than the involvement of multiple departments in multiple stages under a number of different licenses. Some participants suggested that they would be concerned if the system was speeded up too much, and placed emphasis on getting the decision right. Combining new licensing procedures was seen as positive because government departments and statutory consultees would then be more encouraged to communicate and consult with each other.

Conservation

Siting

Currently most cross-border conservation takes place along the coastal strip (usually less than 3nm) and within fairly shallow waters. However, there is the potential for the designation of a suite of deeper cross-border water areas that could qualify for SAC or MCZ protection. The issue of knowledge was also raised, because as more becomes known about the ecology of deeper cross-border areas, additional conservation issues may arise and the MMO (or equivalent) will have to help manage these.

European sites

The conservation sector noted much frustration about the length of time it had taken for European Sites to be designated – an “inordinate amount of time”, said one respondent. It was hoped that with the introduction of MCZs through the Marine Act, designation of future sites would not take as long and would produce stronger protection measures.

Fisheries

It was noted that the Northern Ireland Marine Bill would create more joined-up planning in the area. But a concern was raised about the institutional organisation of the MMO. It was suggested that if Northern Ireland’s Department of Agriculture and Rural Development fisheries section were to move into the MMO, there may be problems of handling the conflicts between conservation and the health of the fishing industry. However, a member of the conservation sector noted that having a single, independent management organisation could improve the rationalisation of the fishing industry and meet conservation objectives.

Navigation

Few issues were raised about the effects the UK Act would have on navigation. Navigational safety is the main priority of the shipping industry, to ensure that no collisions take place and the risk of pollution is minimised. Navigational Safety and Marine Environmental High Risk Areas (MEHRAs, Department for Transport 2006) are likely to be strengthened by the Act, as they improve cross-border relationships and contribute to conservation in areas of high volume shipping. This could be used as a model to designate additional areas which are environmentally sensitive to navigation and as a model for cross-border collaboration for other economic sectors.

Respondents stressed that the compatibility of activities will be strongly assisted by new marine plans and that this should minimise conflicts between the navigational channels and the siting of marine renewable developments, especially wind turbines.



Risks and opportunities for cross-border cooperation

Overview

There was much support for the Act and Bills and the way they will influence cross-border cooperation. A lot of interviewees noted that the proposed structures and policies initially appear sound. But they voiced concerns about how effectively they will be implemented. The opportunities and risks associated with the new MSP arrangements are noted below. Within the opportunities and risks, however, there is scope for more work to be carried out in future. We have outlined a series of recommendations in the last section of this report.

Opportunities

Collaboration

Many of the interviewees believed a cross-border approach would help to establish better working relationships between the devolved administrations for comprehensive planning, as well as collaboration to agree joint objectives and common goals. Some mentioned that collaboration would help to establish joint research bids. Additionally, respondents saw opportunities to continually strengthen current collaborative efforts across the Channel in the devolved administrations. The establishment of MEHRAs has indicated that part of the North Channel contains a limited number of areas of high environmental sensitivity which are at risk from shipping. This agreement encourages mariners to take extra care in those areas when planning passages. Interviewees recognised the benefits of carrying out more cross-border, collaborative work.

Boundaries

A few respondents, particularly from the conservation sector, stated that cross-border cooperation would help to overcome the “illogical lines” drawn between Scotland and Northern

Ireland, and would raise the importance of natural rather than administrative boundaries. They stated that the current administrative boundaries provide an illogical approach for establishing a regional seas approach to management, and that it makes more sense to use natural ecosystem boundaries which would create similar goals and would facilitate similar structures.

Interviewees also said that thinking about using different boundaries provides an opportunity to carry out a pilot plan for MSP in the North Channel. The shipping and navigation sector in particular emphasised that a cross-border approach creates more natural boundaries for thinking about potential marine disasters, such as pollution from an oil spill or collision, since such events do not recognise political or administrative boundaries. In this particular area it would provide an opportunity for overall systematic management as at present “nobody really manages that part of the sea”.

Clarity

Some respondents reported that greater cross-border working would provide clarity to marine users, as policies would be better aligned, with less conflict and it would be easier to carry out enforcement across the entire area. They said that even if there were two marine plans operating within the North Channel, cross-border arrangements such as the HLMOs and the Marine Policy Statement could provide a shared commonality between plans.

Data sharing and partnerships

Nearly all the respondents agreed that the new arrangements for marine planning would bring all stakeholders, agencies and government departments together, and would provide an opportunity for more coordination and begin to fill in the data gaps in this area of water – since most data gathering is carried out close to the coastline (<3nm). This could potentially create cross-border networks for future research ventures.

Risks

Timing

The majority of respondents felt that the different timing and the lack of parallel development of the Act and separate Marine Bills in Scotland and Northern Ireland would hamper cross-border arrangements. Some noted that the delay in the Northern Ireland Marine Bill timetable would mean the idea of cross-border working would be too late because the UK Marine Act has already received Royal Assent. The disparity and mismatch between the stages of the legislation was highlighted as an important point.

Collaboration

It was also noted, particularly by respondents in Northern Ireland, that the government was more used to understanding cross-border cooperation in terms of the relationship with the Republic of Ireland, although opportunities from a Marine Bill may stimulate more productive working with Scotland, particularly within the Celtic Seas region.

Licensing

Respondents noted that while licensing is currently a fragmented activity, the issues arising from the UK Act are focused on defining those licensing powers that are devolved and those which are not, rather than cross-border issues. The majority stressed that there was already a good working relationship between Scotland and Northern Ireland when it comes to licensing. Currently, if there are licences for cross-border issues (e.g. telecommunication cables or gas pipelines, the Interconnector – linking Northern Ireland's and Scotland's electricity grids) Northern Ireland and Scotland automatically consult with each other. Respondents stressed that this was not an issue. However, this tends to be the case for matters that are reserved to the UK Government, and the greater challenge will be to ensure coordination between the administrations when they are operating under their own devolved legislation.

Boundaries and devolution

There was much uncertainty about the implementation of marine planning along the administrative boundaries. Current government thinking is that marine legislation must be developed in line with administrative boundaries, and a few respondents appear to have accepted that this is how it will have to be worked: "we have to plan along political boundaries". However, given the nature of this research project, this should perhaps not be read as objective reality or the

accepted opinion, as some other respondents suggested that there is potential for a middle tier of marine planning. This would cover the North Channel area, and could be developed as a middle tier between country-specific planning regimes and the UK MPS, achieved through Memoranda of Understanding or other types of agreements between countries.

Additionally it was noted that no devolved administration would want to give up its devolved powers to work in a cross-border context, as power sharing would be inevitable. Respondents thought there would be an opportunity for Scotland to manage their waters and Northern Ireland theirs, and the two plans would bolt on together in the middle. Planning would then be carried out under the HLMOs and the Marine Policy Statement, coupled with extensive consultation across the administrative boundaries. Under the Marine Strategy Framework Directive, cross-border working and cross-border plans are encouraged between devolved administrations and Member States. However, a few respondents said that it would be rather idealistic to have one plan operating in this cross-border region, and that it would be too hard to "nail it down" specifically. It would be much easier and more effective to have two smaller, more regional plans operating under the same overarching HLMOs and the Marine Policy Statement. This would require substantial coordination across borders to ensure that sea users would be dealing with two nearly identical plans.

Ecosystem argument

One respondent stated that the ecosystem argument for cross-border working was not as strong in the North Channel as it would be in the other regions of this research project. The Solway Firth and the Bristol Channel were easier to justify in ecological terms compared to the North Channel which is much larger and more difficult to define. However, another respondent stated that there is a real argument for the ecosystem approach to planning in this area as not as much is known about the ecology of the North Channel. Navigation, larval transport and migration, and the potential energy installations were highlighted as important for the ecosystem argument and, therefore, for joint planning in this area.

Recommendations

A UK-wide Marine Policy Statement represents an opportunity to achieve coordination in the aims and objectives of the devolved administrations.

Recommendation 1: There should be full sign-up to the UK Marine Policy Statement from all four administrations in order to drive consistency in approach.

Recommendation 2: There is a need to develop the skills base for the new function of marine planning which will require governments to invest resources.

Recommendation 3: Formal arrangements should be put in place for consultation between the two jurisdictions on marine policy and initiatives in the North Channel area, to clarify the expectations and requirements for dialogue across the border.

Recommendation 4: A cross-border approach (between Northern Ireland and Scotland) to marine management is necessary to ensure comprehensive marine planning, clarity for sea users, and ensure efficient and effective data collection and sharing. Examples of cross-border working between Northern Ireland and Scotland and Northern Ireland and the Republic of Ireland already exist and lessons should be drawn for management under the Marine Act, Marine (Scotland) Bill and Northern Ireland Marine Bill.

Recommendation 5: The differences in timing from the assent of the Marine Act to the development of the different Marine Bills are likely to reduce the ability to achieve a cross-border approach. Northern Ireland should bring marine legislation forward urgently and should ensure arrangements are in place to achieve swift implementation.

Recommendation 6: If there are to be multiple marine plans in the North Channel they should be consistent and coordinated and should appear to sea users as one unified marine plan. It will be necessary to identify options for achieving integration between marine planning systems, e.g. Memoranda of Understanding or the development of a common set of policy principles or a strategic spatial strategy.

Recommendation 7: There should be collaborative work by stakeholders to identify data gaps and ensure there is no duplication of effort. A central research hub or information point for data was mooted as a good initiative.

Further note

It is worth noting that many of the individuals interviewed had not fully grasped the full operational significance of the new marine management regime. The fact that Northern Ireland is somewhat behind the legislative programmes being followed in other parts of the UK has accentuated this problem. When the demands for the new regime (e.g. zoning in Marine Spatial Plans) do become clearer, it is possible that stakeholders will begin to see further potential constraints and opportunities of cross-border cooperation.

The North Channel may face acute and significant development proposals in the future (e.g. major energy projects such as the tidal arrays between Scotland and Northern Ireland). This may give rise to many challenges, and contribute to the growing pressures on our seas. It was noted that there were a number of other current marine issues in the North Channel that would be worthy of investigation and research, namely around marine offshore renewable installations and the potential development of the extractive and aggregate sector.

Furthermore, a number of participants highlighted the need for alignment of policies and targets for the Celtic Seas, under the OSPAR Convention, of which the North Channel is only a small part. Some consideration should therefore be given to placing the North Channel within wider coordination of this area. There are currently other initiatives (PISCES, WWF 2009) taking place in other regions of the Celtic Seas and so we see further potential for collaboration in areas that encourage active engagement across a spectrum of marine sectors.

Northern Ireland should bring marine legislation forward urgently and should ensure arrangements are in place to achieve swift implementation.



The Wildlife and Countryside Link Marine Task Force*, the Scottish Environment LINK Marine Task Force, the Northern Ireland Marine Task Force and the Wales Environment Link Marine Working Group work together on a joint campaign to improve the protection and management of the marine environment. This work is supported by the Esmée Fairbairn Foundation and The Tubney Charitable Trust.

* The following members of Wildlife and Countryside Link support this document: Marine Conservation Society, The National Trust, RSPB, The Wildfowl & Wetlands Trust, The Wildlife Trusts and WWF.



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