

Across the waters

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

December 2009

The Severn Estuary
and Bristol Channel

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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 marine environment in cross-border areas. This report is one of a series of three. It focuses on the Severn Estuary/Bristol Channel from the perspectives of the ports and marine aggregate dredging sectors. The findings are based on a series of semi-structured interviews conducted with both private and public sector organisations with key environmental management responsibilities in this region.

The other reports investigate the North Channel, between Northern Ireland and Scotland, and the Solway Firth.

New marine legislation

This is an exciting time in the management of the marine environment with the production of new legislation 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. The UK Act gives new powers to Welsh Ministers to designate a network of new marine protected areas (called Marine Conservation Zones); to create a marine planning system and to streamline the licensing regime. There will be a mixture of devolved and non-devolved activities in Welsh waters that will require co-operation between the Welsh Assembly Government (WAG) and the UK Government.



The Severn Estuary and Bristol Channel

The Severn Estuary is one of the largest estuaries in Britain and is well known for having the second largest tidal range in the world – at more than 12 metres. The funnel shape of the Estuary is a significant factor in creating the high tidal range. It is a high energy environment responding not only to the river flows from the extensive catchments – that of the Severn and its tributaries extends to much of central Wales and virtually the whole of the West Midlands, as well as all the eastern valleys of South Wales and rivers of the Somerset Levels; but also to tides, surges and storms originating from the sea. The seabed is composed primarily of rock and gravel with sub-tidal sandbanks associated with constant sediment movement on a large scale. This is fringed by large expanses of inter-tidal mudflats and sand flats, rocky platforms and islands. The adjacent low-lying Levels are extensive and vulnerable to flooding from both land and sea. The area is of high conservation value, not only with regard to the natural environment, but also in terms of the cultural heritage, particularly maritime heritage.

There is no defined boundary between the Severn Estuary and the Bristol Channel. The Welsh 'Mor Hafren' or 'The Severn Sea' includes the relatively enclosed waters to the line of the proposed barrage extending from Brean Down via Steep Holm and Flat Holm to Lavernock Point. For the purpose of this study, the most useful boundaries are those used by the Severn Estuary Partnership¹, with a seaward boundary from Aberthaw to Minehead (see map). The management boundaries in this area are inevitably complex.

1 The Severn Estuary Partnership (SEP) was set up in 1995 as an independent initiative to focus the activities of local government, statutory authorities and interested parties. Its stated aim is to bring together all those involved in the development, management and use of the Estuary within a framework which encourages the integration of their interests and responsibilities to achieve common objectives.

The Bristol Channel and Severn Estuary has a number of large ports and in 2006 over 20 million tonnes of cargo was handled by the ports in the area.

The region is critical for UK nature conservation, and supports a range of nationally and internationally protected species, more than 60,000 migratory and wintering wading birds and more than 100 species of fish, including seven species of migratory fish – more than any other British estuary. Much of the area is encompassed within SSSI (Sites of Special Scientific Interest) designations. The Estuary is a Ramsar site and Special Protection Area under the EU Birds Directive and has been proposed as a Special Area of Conservation under the EU Habitats Directive.

Environmental Assessment for a range of tidal power schemes, as well as plans for decommissioning and replacement of the two nuclear power stations of Oldbury and Hinckley Point, and a major extension of Avonmouth docks to accommodate the next generation of post-Panamax ships.

Ports

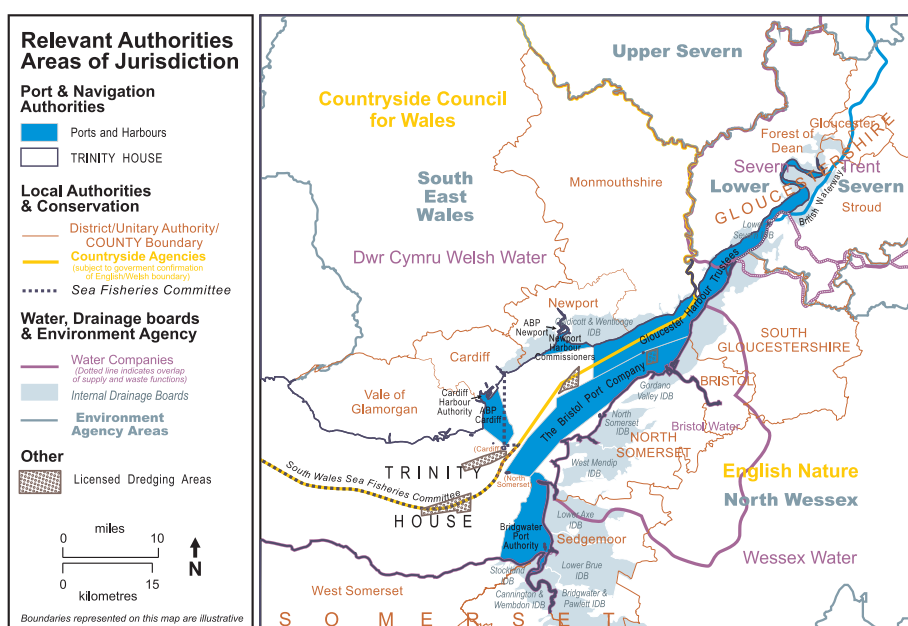
The Bristol Channel and Severn Estuary has a number of large ports and in 2006 over 20 million tonnes of cargo was handled by the ports in the area. The principal ports in the region include Newport, Cardiff, Port Talbot and Swansea, all operated by Associated British Ports, who are also responsible for the large port area of Barry; and Avonmouth Docks, operated by the Bristol Port Company. In terms of shipping cargo volumes generated, the most significant are arguably Port Talbot, which is the focus of iron ore imports for the Margam steelworks and the relatively small steelworks at Llanwern; and Avonmouth Docks. Nonetheless the other ports also have significant levels of shipping traffic.

Industrial uses

The Severn Estuary and Bristol Channel has primarily an urban coast, with the urban areas of the South Wales valleys and West Midlands conurbations linked to it by the catchments. A wide range of sea and coastal uses are represented, with shipping and ports, power stations, aggregate dredging, waste disposal, leisure and recreation industries, conservation, and coast protection and flood defence especially notable. There is also an ongoing Strategic

Aggregate dredging

The licensed aggregate dredging areas are shown on the map, in addition to which there is maintenance dredging required for all the major ports. It should be noted that aggregate dredging also takes place to the west, especially on the Nash and Helwick Banks. Approximately two-thirds of the aggregates dredged for the whole region is landed in South Wales. In 2008 1.47 million tonnes of aggregate were dredged from the Severn Estuary and Bristol Channel from a total licensed dredging area of 130 km².





General overview of stakeholder views

This report assesses the implications of new marine legislation on marine management in the Severn Estuary and Bristol Channel. It focuses on the cross-border management issues that would affect ports and marine aggregate dredging. But many of the issues identified will apply equally to all marine sectors operating in the Severn Estuary and Bristol Channel.

Current system

The aggregates sector feels that delays are inherent in the current licensing system. Under existing arrangements, aggregate dredgers must obtain dredging permission from either the Welsh Assembly Government in Welsh waters or from the Marine and Fisheries Agency in English waters. There are some differences between England and Wales in the Statutory Instruments that guide this process that could lead to confusion and delay. The current system also requires a licence under the Coastal Protection Act 1949 for removal of materials below the low water mark and another licence under the Food and Environment Protection Act for depositing articles on the seabed. Both of these licenses will be replaced by a Marine Act licence which should go some way to simplifying the process. In anticipation, the Welsh Assembly Government has already established a Marine Consents Unit that will be a single point of contact for marine aggregate license applications. Similarly, in England the Marine Management Organisation will be a single point of contact.

However seamless the administration procedure, aggregate dredgers operating in both English and Welsh waters will have to continue to deal with two different licensing authorities.

Consequently, the aggregate sector believes that there is a risk of duplication of effort in developing the new system as a result of the inherent complexity in the licensing process. The need for robustness and consistency was underlined. Effective planning and communication are essential to avoid unnecessary burdens being placed on industry.

The ports sector is critical of the current licensing procedure, with a delay of seven to ten weeks encountered in processing minor cases such as repairs. On occasion the industry has apparently had to manage multiple applications on its own due to delays caused by excessive bureaucracy.

Priorities for the UK Marine Act

Improvement in the licensing system is considered by the ports sector to be a priority area for the UK Marine Act. The aggregates sector is concerned about the transition from old to new systems as this will require a clear, consistent approach, and business development aid to reduce risk. An extensive amount of outreach work to gain qualitative stakeholder input is suggested, together with managing stakeholder expectations based on the feedback received. For the Countryside Council for Wales (CCW), the over-riding priority for the delivery of a Marine Act is a robust and implementable strategy, coupled with clarity in specific areas of competence and collaborative working to produce compatible plans in cross-border areas.

Challenges

The intention of the UK Marine Act is to streamline and rationalise management and reduce bureaucracy, however, a number of challenges are likely to be encountered in the delivery of the legislation. The ports sector considers that it remains unclear whether the Marine Act will achieve the necessary changes to the management system, although the intentions are good. The aggregates sector will use the licensing process as a benchmark for the measurement of success of the Act. Both sectors highlighted that devolution may be a complicating factor in terms of implementation of the Marine Act in cross-border areas due to the different systems in operation on either side of the border.

WAG highlighted that one of the primary aims of the UK Marine Act is to increase certainty for stakeholders, as well as protecting habitats and species, which the introduction of a streamlined licensing system and statutory planning system will help to achieve.



There has been substantial stakeholder engagement during the passage of the legislation, however, it is evident that detailed policy guidance will be necessary once the Act is fully in operation in order for stakeholders to understand the implications of the legislation and how it will work in practice.

Working together

Marine management

The UK Marine Act includes provisions for a new organisation called the Marine Management Organisation (MMO), which will be set up in April 2010. The MMO will be the strategic delivery body for marine management in English waters and for non-devolved activities throughout UK waters. In Welsh inshore waters (0-12 nm) the Welsh Assembly Government will be the delivery body for marine management for devolved activities. Another layer of complexity arises from the establishment of the Infrastructure Planning Commission (IPC) under the Planning Act 2008.

The IPC will be the decision-maker for 'nationally significant infrastructure projects'. In the marine environment this will include large ports and harbours and large renewables projects. In the Severn Estuary and Bristol Channel, all three bodies (MMO, WAG and IPC) will have roles and responsibilities.

Cross-border issues

The ports sector notes that Welsh ports may be disadvantaged if they have to deal with both Welsh and English licensing systems. There will be separate licensing systems on either side of the Estuary, which could cause complexity. Aggregates consider that the most critical aspect will be the maintenance of business as usual during the transition period. The MMO will have to align with the current system as the issues will remain the same, despite the fact that they will be dealt with by a different management system.

WAG highlighted that it already has a working relationship with the UK Government and its agencies regarding cross-border management of the Severn, and this will be built on when the MMO becomes operational. WAG stated that it will implement a more formal structure to manage cross-border issues.

WAG considers that the new arrangements in the Marine Act will streamline the licensing system, with stakeholder engagement a key part of the new system. WAG believes that there is likely to be no substantial impact on current and future extraction plans and does not foresee many problems in working with the MMO.

The port sector has not seen any clear guidance from the MMO or WAG on estuary wide regulation and management and how it relates to the mixture of competencies and jurisdictions in the Estuary. The aggregates sector considers that this should not be an issue as long as existing links continue to be developed through the new institutional structure, a view shared by WAG. A critical factor is that the planning system and timeline of implementation has to be synchronised across all areas, necessitating increased collaboration between the UK and Welsh Governments and their agencies.

The role of the Infrastructure Planning Commission

The port sector accept the IPC's role in decision-making on major port developments, but pointed out that both the MMO and WAG will have responsibility to develop a good level of communication with the IPC to ensure a successful outcome. At present the development of Avonmouth Docks is the only major scheme likely to be affected by the new regime. The aggregates sector considers that IPC input will not affect the operation of aggregate dredging unless any of the Severn tidal power schemes proceed. CCW believes that the IPC should provide comprehensive evidence for justifying that decision-making process including how it took evidence into account in reaching decisions.



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Resourcing

In the longer term, all sectors recognise that it is important that the correct skills are available to deliver new functions under the Act; currently the dredging industry is not in a position to increase its resource base and this may have implications for delivery of the Marine Act. Both the ports sector and CCW believe there is a challenge for Wales in terms of building up the necessary expertise and capacity resources to implement the Act. It was emphasised by the aggregates sector that the priority must be to ensure resources are available from the outset.

Marine Planning

Marine Policy Statement

The UK Marine Act contains provisions for a UK-wide Marine Policy Statement (MPS) to be agreed by all four UK administrations, which will guide the marine planning systems in each country. This represents one of the few parts of the Act that has a UK-wide scope. The ports sector thinks that a jointly agreed MPS would be a good start in ensuring a coordinated approach to marine planning. CCW agree that it is moving in the right direction but believes a UK-wide MPS is not sufficient to ensure coordination throughout the UK. CCW believes that more collaboration and consideration is required, and more stakeholder outreach and involvement is a necessity. The aggregates sector does not feel there is currently enough detail about the MPS to understand how it will guide decision making or achieve coordination.

Managing the Severn Estuary and Bristol Channel as a single unit

The ports industry considers that current management processes in the Severn Estuary are effective, and is supportive of the idea of managing the area as a coherent unit, although adequate resourcing may prove to be a problem. The Severn Estuary Partnership is considered to be a valuable asset, especially in issue resolution at a local level, although the aggregates representatives consider that the role of partnership working may need


clarification under the new regime. The aggregates sector points out that the current system that creates zones for aggregates works should be continued through the marine planning system. CCW believes that marine planning should be based on a system of zoning, with each zone having a specific management strategy depending on the nature and level of activities, pressures and nature conservation demands peculiar to each zone. WAG is very supportive of the Severn Estuary Partnership and envisions that both WAG and the MMO will work with the partnership as it represents the views of local stakeholders from both sides of the border.

Both the ports and aggregates sectors consider that artificial boundaries are not ideal, and the development of parallel plans will require both the establishment of a common core approach and extensive co-ordination. WAG insists that, despite the boundary between Wales and England in the Severn Estuary and Bristol Channel, it will be working together with the UK Government to ensure clarity for stakeholders and a coordinated approach to management.

The marine planning process

The aggregate industry would like to be involved in the plan development stage as the dredging industry is a key stakeholder. Marine planning policies will have to be very clear, with sectoral uses identified and interactions and conflict resolution mechanisms set out. CCW considers planning to be a critical aspect of implementing the management process, and it must include nature conservation, recreation and sustainable development. The focus on stakeholder outreach and dissemination is critical, with the Severn Estuary Partnership potentially having an important role in local and strategic management. WAG believes that the plans should be inclusive of all stakeholders from the outset, with zonation a necessary component. Public participation is a statutory requirement in the Act.

The detail of the relationship between marine plans and decision-making remains unclear. Although the principles are clear enough, the stated targets are likely to be complex, a view shared by both ports and aggregates sectors. CCW emphasised that there is not a good understanding of how decision-making



based on plans will work in practice. It will be a long process, with more collaboration and stakeholder outreach necessary. WAG considers that the development of plans will have an important role in maintaining stakeholder awareness and ensuring inclusivity.

Conclusions

Opportunities:

The Marine Act will provide the opportunity to develop a clear, consistent approach which could minimise business risk in the two sectors analysed. There is a need for the development of regular communication among stakeholders, and between WAG, the MMO and the IPC. There is an urgent need for more guidance in Wales on how the Marine Act will be delivered.

A new marine planning system represents an opportunity to manage the marine environment in a coordinated and strategic way. There are a number of sectoral interests in the Severn Estuary and Bristol Channel that are currently managed in an ad hoc way which can lead to uncertainty and delays. The challenges of integrating two separate planning systems in one estuary are clear but there is an opportunity to work together to create coordinated systems. The Severn Estuary Partnership represents a potential mechanism to ensure there is coordination between stakeholders across the border.

A simplified marine licensing system as part of the new planning process represents an opportunity to reduce delays for development and ensure that the cumulative effects of all activities on the marine environment are taken into account

Risks:

Risks relate to the transition from the old to the new system, including the timing of the introduction of the new arrangements. Care will have to be taken in the introduction of the additional layer of WAG to the system, with its related boundaries issues and the political need for parallel rather than joint plans. This includes the need for adequate resourcing by WAG in particular. There is also the business risk inherent in the introduction of a new management system.

Recommendations

Recommendation 1: The priority for the ports and marine aggregates industries is for the minimisation of business risk in the implementation of the Marine Act in the Severn Estuary and Bristol Channel. In order to achieve this there should be a clear and consistent approach to implementation throughout UK seas.

Recommendation 2: The Marine Policy Statement should be agreed by all four administrations to coordinate the vision and strategy for marine management in UK seas. The statement must contain sufficient detail to guide the marine planning process and create clarity for sea users.

Recommendation 3: A co-ordinated plan should be developed for the Severn Estuary and Bristol Channel through either joint or parallel arrangements. The plan should be properly linked to other marine plans and to land-use, coast protection and flood defence plans.

Recommendation 4: In order to deliver a coordinated approach there must be effective communication among stakeholders at a local level. The UK and Welsh Governments should clarify the role of the existing Severn Estuary Partnership in integrating local views into the planning process.

Recommendation 5: In order to deliver the UK Marine Act effectively, the UK and Welsh Governments must ensure there are adequate resources behind implementation. There is a need to build up the skills and expertise of the organisations tasked with implementing the provisions in the Act.

Recommendation 6: In the Severn Estuary and Bristol Channel a number of different organisations will have jurisdiction for different functions. Detailed working arrangements should be agreed between WAG, the MMO and the IPC to ensure coordination.

Recommendation 7: Stakeholders require detailed guidance on how the Marine Act will be implemented in Wales and this should be produced and consulted upon urgently to ensure clarity and stakeholder buy-in.

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.

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