



Legislative reform for the Welsh marine environment

Executive summary

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CONTEXT

The planning and management of the Welsh marine environment, in common with all UK waters, are entering a new phase of development. In a legal and political context, the most significant changes relate to the increasing importance of European measures and their incorporation into national law, along with the devolution process and transfer of powers to the National Assembly for Wales (NAW). With the NAW having recently completed its first term of office, it is timely to investigate whether existing legislative powers in Wales need to be reviewed in order that the NAW is able to meet its statutory commitment to sustainable development and ensures effective management of marine and coastal resources. This report, along with the accompanying series of 12 sector-specific topic papers, reviews the key pieces of international, European, national and NAW legislation that apply to the Welsh marine and coastal environment. The major shortcomings and problems arising from the sectoral legislation and regulatory procedures are identified, and options for reform of the current legislative framework are outlined.

STRUCTURE OF REPORT

This report is divided into two sections. The first part of the report (Part A) is a Discussion Document which addresses the sources of jurisdiction in the Welsh marine environment and the organisations involved in its management. The key issues and shortcomings of the existing legislative framework are identified and a range of statutory and non-statutory options / optional components are discussed which could strengthen the legislative basis for the improved management and planning of the Welsh marine environment. The second part (Part B) is the report of the stakeholder workshop undertaken as part of the second phase of the study. The workshop was informed by the Discussion Document and the 12 topic papers which address the legislation affecting each sector.

KEY ISSUES RELATING TO THE LEGISLATION

- Although the NAW has some powers to make secondary legislation for the Welsh marine environment, it cannot pass primary legislation and does not have any exercisable powers beyond 12nm. Important exclusions from the NAW's remit include merchant shipping, oil and gas, and defence.
- Some of the more significant planning decisions are reserved by Westminster, which arguably dilutes the NAW's commitment to sustainable development.
- The tendency to develop *ad hoc* solutions to problems has resulted in a sectoral approach to the management of the Welsh marine environment.
- There appears to be little vertical or horizontal integration between the legislation, which has arguably led to fragmented control of the Welsh marine environment.
- The complexity of the plethora of regulations has inevitably resulted in omissions and overlaps in the marine legislative framework, some of which may be attributed to limited reference to the coast or marine environment within more terrestrially focused legislation.

- Much of the legislation governing some sectors (e.g. inshore fisheries) has been in place for many years and may no longer be fit for purpose.
- However, the sectoral approach to legislating is well-established and understood. Also, in some sectors, much of the legislation is underpinned by policy initiatives, which provide a new dimension to the legislation.
- As the functions of regulatory bodies and other agencies are often defined by legislation, there may be constraints upon their ability to co-operate with each other;
- The effectiveness and enforcement of legislation in the marine environment is often compromised by organisational problems, and distinct jurisdictional boundaries between land and sea.
- There is no overall legislative framework for the integrated management of the marine and coastal environment.

OPTIONS FOR REFORM

The three options presented for reform of the current legislative framework are:

- **Retention of the status quo** – the *laissez faire* scenario which involves retaining the existing sectoral approach to legislating for the planning and management of the Welsh marine environment.
- **Non-statutory co-ordination of the implementation of existing laws** – this option is essentially the expansion of the current policy framework. Arrangements for improved co-ordination and co-operation could be enshrined within plans that do not themselves take the form of legislation, but utilise existing mechanisms set out in a series of guidance documents.
- **Marine legislative reform** – this could be accomplished in two main ways – at the framework level, involving the co-ordination of existing legislation (framework statute); or on a comprehensive level, which would involve wholesale reform of the coastal and marine planning and management system.

Arising from a legislative approach is the need for a defined Ministerial and departmental lead and for any advisory and supporting bodies to take forward the implementation of an integrated management strategy for the Welsh marine environment.

CONCLUSION

The complex framework of national laws affecting the coastal and marine environment has inevitably created many anomalies that can only be resolved through legislation. Any such instrument needs to include an over-arching vision and a long-term strategy for the protection of the coastal and marine environment, so that each sector has a clear set of objectives and environmental values against which decisions can be taken. Clearly the scope for independent legislative reform within Wales is severely limited by the NAW's lack of primary legislative powers. For this reason, WWF are campaigning for a UK Marine Act, with the ecosystem approach as its basis, which would provide an over-arching piece of framework legislation to provide stakeholders with a coherent regulatory framework for the management of the marine environment.

Recommendations

The output of this study and following workshop (Part B) should provide the basis for a more in-depth review of legislation and governance structures related to the Welsh marine environment. As a precursor to any reform, the collection, collation and evaluation of baseline data on the whole area under the jurisdiction of any new legislation would appear to be imperative. There is much work already being undertaken – what is missing is a co-ordinated effort to bring nationally significant information sources together in an accessible format in order that gaps in the knowledge base can be addressed.

The legislative, policy and governance framework should also be comprehensively assessed in terms of effectiveness and ability to meet the needs of a more integrated ecosystem-based approach. This would be a significant undertaking, building upon the initial review presented in this report, as amended and modified by workshop participants. Arguably, such a study should be co-ordinated by the Environment, Planning and Countryside Committee of the NAW with assistance and guidance provided by a steering group comprising WCMP members and, importantly, benefiting from expert legal input. A key outcome of this detailed review could be a Welsh Consultation / Issues Paper identifying, within the current devolved functions of the NAW:

- amendments required to existing statutes to remedy gaps or inconsistencies in the legislative framework;
- existing powers available to the NAW under devolved legislation that have not yet been utilised;
- obsolete legislation and regulation that could be repealed;
- recommendations for the potential amendment of the roles and responsibilities of relevant authorities;
- recommendations for structural changes that would assist in streamlining marine regulation;
- provisions for the NAW to ‘opt back out’ of legislation being developed in Westminster if, during its passage through Parliament, it was amended in a way that made it less acceptable to Wales.

Finally, it is also recommended that the WAG develop a long-term strategy for the sustainable management of WTS, including protection of the coastal and marine environment, so that each sector has a clear set of objectives and environmental values against which decisions can be taken.



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WWF-UK registered charity number 1081247
A company limited by guarantee number 4016725
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Printed on recycled paper Project number 1835/June 2004

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- conserving the world's biological diversity
- ensuring that the use of renewable resources is sustainable
- promoting the reduction of pollution and wasteful consumption

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