

EA/NE/CCW
“Marine planning and
licensing across national
borders and implications for
statutory environmental
advisors”

FINAL REPORT

25 April 2008

Notice

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NOTICE

The work contained within this report has been completed before publication of the Draft Marine Bill (April 2008). The contents of the report do not represent the views of the agencies concerned but is the view of the authors based on the research undertaken.

EXECUTIVE SUMMARY

Study Purpose and Approach

The study purpose is for the project sponsors (Environment Agency, Countryside Council for Wales and Natural England) to consider what could be required of them under a new marine management and planning regime for England and Wales and what this means within a cross border estuarine situation.

The project seeks to provide (the project sponsors) an improved understanding of the practical implications of the Marine Bill proposals in a cross border situation and options for how best to deliver conservation objectives and the challenges this poses. The Dee Estuary was selected as a geographic focus area to exemplify the issues arising. A series of case theme activities were used to illustrate past or current cross border issues. These were assessed to determine the environmental impacts and management implications (internal and external working practices) of a range of possible marine planning options and how the project sponsors capacity to deliver may be altered as a consequence of this change.

Case topic “themes” were selected to demonstrate examples of conservation management (marine conservation designations such as Marine Conservation Zones) and socio-economic development (dredging and dredge disposal and offshore renewable development) in a cross border situation.

Study Findings

A key conclusion of the study is that the future success of achieving and delivering marine conservation objectives is fundamentally associated with ensuring the successful long term collaboration between the two key proposed Planning Authorities (WAG/MMO). There is greater opportunity for the successful collaboration of economic development with marine conservation when a statutory planning approach is adopted or where a statutory duty to collaborate has been established.

The study concludes that marine planning Option 2b (2 separate statutory national marine plans with a duty for cross border working) is the most appropriate option to seek to achieve marine ecosystem objectives as it provides the best opportunity for effective collaborative working. The option would provide a clearer process for engaging in the planning and engender greater public and institutional confidence in the successful delivery of the outcomes of the plans.

There may be a need for the production of supplementary planning guidance to help coordinate national marine management efforts. Organisation specific “Key Performance Indicators” (KPIs) may also need to be agreed and set, especially between Defra/MMO and WAG (as well as within each of the project sponsor organisations). The statutory duty to collaborate would need to include all levels of management including national (MMO/WAG) in order for the plans to be fully integrated and avoid risk of divergence during implementation through the licensing regime. The licensing/implementation would remain within MMO/WAG and this would also need more effective collaboration for licence and consenting arrangements within the Dee.

Finally, a key issue for further consideration prior to the introduction of any marine legislation will be to provide enabling powers for marine plan making and license determination functions for sub-regions to be delegated to partnerships including the project sponsors, as well as regional and local government and bodies.

The key recommendations set out within the report (to inform the planning bodies as well as for the project sponsors).

1. Set out a series of separate organisational Key Performance Indicators (KPIs) to help achieve marine ecosystem objectives and to ensure commitment to co-ordinated/partnership working between MMO and WAG. Also to increase institutional capacity to deliver marine planning at a regional level (MMO/MFA/WAG);
2. Coordinate a streamlined approach to marine consenting between planning organisations, retaining and simplifying (where possible) the current system of separate consents for different sectors, and incorporate environmental and navigational concerns into each.
3. Improve organisational capacities for the delivery of marine EIAs in cross border situations;
4. Improve and streamline consultation processes for marine EIA and consenting issues.
5. Provide a duty for planning organisations and project sponsors to collaborate (e.g. similar to that within the Civil Contingencies Act) and adopt best practice examples from the CCA, Concordats, SMP2 Coastal Group model and Management Scheme approaches that currently work well in cross border situations
6. Improve procedures for information exchange on marine conservation matters (e.g.: a consents portal plus the promotion of mechanisms (building on existing projects and UK funded initiatives) to effectively deliver integrated cross border marine data management.
7. Ensure agreements are in place in cross border situations concerning the survey details needed to enable the appropriate selection of new Marine Conservation Zones (MCZs).
8. Provide enabling powers for marine plan making and license determination functions for sub-regions to be delegated to partnerships
9. Ensure planning bodies (MMO/WAG) operate independently of any commercial or land ownership considerations, and provide a forward looking, strategic approach to future management of MCZ designations.

List of Abbreviations

Abbreviation	Definition
AA	Appropriate Assessment
CCA	Civil Contingencies Act
CCW	Countryside Council for Wales
CEFAS	Centre for Environment, Fisheries and Aquaculture Science
CPA	Coast Protection Act 1949
CRoW Act	Countryside and Rights of Way Act
DBERR	Department for Business, Enterprise and Regulatory Reform
Defra	Department for Environment, Food and Rural Affairs
EA	Environment Agency
EAW	Environment Agency Wales
EIA	Environmental Impact Assessment
FEPA	Food and Environment Protection Act 1985
FRM	Flood Risk Management
GV	Government View
ICZM	Integrated Coastal Zone Management
IPC	Infrastructure Planning Commission
JNCC	Joint National Conservation Council
KPI	Key Performance Indicator
LPA	Local Planning Authority
MCEU	Marine Consents and Environment Unit
MCZ	Marine Conservation Zone
MFA	Marine Fisheries Agency
MLWM	Mean Low Water Mark
MMO	Marine Management Organisation
MNR	Marine Nature Reserve
MSP	Marine Spatial Planning
NE	Natural England
NERC Act	Natural Environment and Rural Communities Act
NNR	National Nature Reserve
ORCU	Offshore Renewables Consents Unit
PPSs	Planning Policy Statements
Ramsar	Convention covering wetland sites of international importance
RBMP	River Basin Management Planning
RIA	Regulatory Impact Assessment
RPGs	Regional Planning Guidance
SMP	Shoreline Management Plan
SAC	Special Area of Conservation
SEA	Strategic Environmental Assessment
SPA	Special Protection Area
SPGNs	Supplementary Planning Guidance Notes
SSSI	Sites of Special Scientific Interest
WAG	Welsh Assembly Government
WFD	Water Framework Directive

1. Introduction

1.1 Project Purpose

The study purpose is for the project sponsors (Environment Agency – referred to as the “Agency”, Countryside Council for Wales - CCW and Natural England - NE) to consider what could be required of them under a new marine management and planning regime for England and Wales and what this means within a cross-border estuarine situation. The focus is to provide evidence of existing cross-border working, to enable them to consider future implications for delivering their functions, including appropriate internal arrangements. This will help to:

- identify licensing and consenting issues early on in the marine planning process;
- appraise marine planning options and;
- provide advice on what guidance is required.

The role of this project is therefore to seek to provide (the project sponsors) an improved understanding of the practical implications of the Marine Bill proposals in a cross-border situation and options for how best to deliver conservation objectives in such a situation and the challenges this poses. The Dee Estuary has been selected as a geographic focus area to exemplify the issues arising. The pros and cons of different options for planning and licensing have then been explored and presented along with some future recommendations for cross-border working.

The report sets out observations and ideas for further consideration by the project sponsors.

1.2 Background

‘A Sea Change’, a Marine Bill White Paper, and a partial Regulatory Impact Assessment (RIA) was published on 16th March 2007. The three-month consultation period ended on 8th June 2007. This outlined proposals for a new strategic approach to the way marine activities are managed.

With the publication of the Draft Marine Bill (anticipated for early April 2008), it is likely there will remain uncertainty regarding the practical delivery of marine planning in practice around UK territorial waters. The inclusion of enabling legislation for marine planning in the UK shall still raise uncertainties over how activities are actually to be managed within a cross-border estuary situation (such as the Severn, the Dee or the Solway) or in areas where there is the potential for increased complexity due to differing political and administrative priorities and separate delivery mechanisms for management. The White Paper gave options for planning across devolved boundaries. This stated:

“Our proposals would enable the different administrations to prepare plans jointly across administrative boundaries, or across the division between territorial and offshore waters. This could be important in cross-border estuaries, given our commitment to integrated coastal management and our Water Framework Directive obligations to consider river basins holistically. We need to ensure joined up thinking at all plan boundaries – planning jointly is not the only solution”¹

With this in mind, it is clear from UK consultees that there is general support for the Marine Bill in principle. Some of the key points made earlier this year are re-iterated below (*taken from the Marine Bill newsletter - Issue 6: October 2007*) to help place this report into context. Additional commentary regarding cross-border implications is, however, added below each box:

¹ Paragraph 4.41 at page 25

Integration between land and sea

Several respondents were pleased that an integrated approach would be embedded within the Marine Bill proposals, but some felt strongly that integrated coastal zone management (ICZM) had not received enough prominence throughout the White Paper.

Cross Border issue – it is unlikely that ICZM will be mandatory around the UK. How easy will marrying terrestrial and marine planning systems be within an estuarine cross-border situation and could ICZM be the “zip” to create that connection?

Environmental data and information

Many respondents supported the general approach to data and information as set out in the White Paper. There was strong support from respondents for the “collect once, use many times” approach to data stewardship.

Cross Border issue – coastal environmental data is stored, presented and collected in different forms at present. Consistency on this matter will help ultimate delivery and represent key cost savings if implemented correctly.

Planning in the marine area

All respondents supported the creation of a UK marine policy statement, jointly prepared and agreed by the UK Government and devolved administrations. The majority of respondents supported marine plans that would consider all relevant activities and anticipate changing economic, commercial and social trends, in particular the impacts of climate change. Nearly all respondents commenting on delivery of planning supported the proposal for the MMO to be the planning body that delivers marine planning; about 50% of all respondents explicitly stated their support for delivery of planning by the MMO.

Cross Border issue – clarity on the need for a UK National Marine Policy Statement (or separate ones for England and Wales). These should demonstrate synergy towards the future delivery of marine management within a cross-border estuarine situation. Significant implications arise in terms of delivering nature conservation objectives where two separate policy statements imply slightly different futures for national marine waters.

Licensing in the marine area

59% of all responses received supported of the aims of the marine licensing proposals. Most respondents commented on the benefits to be gained from streamlining and simplifying the licensing regime. Many respondents supported the inclusion of all licensed marine activities within the reformed marine licensing regime. Many responses also expressed support for the proposed functions of the MMO in relation to licensing of marine activities.

Cross Border issue – the organisations in charge of marine licensing need to demonstrate consistency and efficiency in a cross-border estuarine situation. It is questionable whether such efficiency would exist where two separate licensing bodies have (devolved) jurisdictional powers to license marine activities.

A Marine Management Organisation

46% of all responses explicitly stated support for setting up a new MMO. Many respondents supported the delivery of multiple marine functions by the MMO due to the advantages to be gained through delivery by a single organisation.

Cross Border issue – clarity over the administrative functions of a new MMO and WAG will need to be addressed and communicated to all involved to help deliver a seamless marine management process within a cross-border situation.

In view of the above statements, the project sponsors are seeking to consider the implications of the Marine Bill in cross-border situations, focusing on internal and external management arrangements, on the day-to-day delivery of their functions and importantly, upon the delivery of marine nature conservation objectives and marine environmental management in such areas, particularly in relation to planning and licensing.

1.3 Methodology and Deliverables

The project has been completed to a three month programme. It was commissioned in January 2008 and an Interim Report was produced (February 2008) to identify the methodology to be used. This is included in Appendix A along with details on the project approach and the findings of the preliminary consultation exercises. Details of the Project Workshop and the preliminary SWOT analysis are presented in the Workshop Findings Report (Appendix B). Appendix C addresses current management roles and responsibilities within the Dee estuary.

This Final Report therefore focuses on presenting the key findings. These can then be used to assist the project sponsors' in their response to the Draft Marine Bill and to inform others with respect to cross-border working.

A series of case theme activities have been used to illustrate past or current cross-border issues and how the project sponsors were involved. These have been assessed to determine the environmental impacts and management implications (internal and external working practices) of a range of possible marine planning options and how the project sponsors capacity to deliver may be altered as a consequence of this change. The case topic "themes" were selected to demonstrate examples of **conservation management** and **socio-economic development** in a cross-border situation (see Table 1). These Themes are discussed further within Section 4.

The themes determined via consultation were:

<u>Conservation Management</u>	<u>Socio-economic Development</u>
Marine conservation site designations	Offshore wind farm/renewables
	Dredging and disposal of dredged material.

Table 1 – Case “Theme” Headings

The report is purposely structured to help communicate:

1. what actions the project sponsors will have to make to ensure the appropriate planning bodies are advised (through consultation) to make informed decisions in accordance with the new proposed marine plans (**Consultation and Engagement**);
2. how the integration of marine planning objectives with the project sponsors' working practices will take place or need to change in the future, along with the capacity of each organisation to deliver their agreed remits (**Institutional Capacity**).

These two “Management Implication” headings (*Consultation and Engagement and Institutional Capacity*) are used throughout the report to help categorise the findings of this short project.

The report is subsequently structured using the following headings:

- Project Assumptions and Headline Statements (Section 2);
- Cross Border - Local Implications for the Dee (Section 3);
- Marine Planning Options Appraisal - SWOT Analysis Findings (Section 4);
- Recommendations and Guidance for Cross Border Situations (Section 5).

NB: the report represents findings gathered from key project sponsor staff (telephone interview or from the Workshop). Its purpose is not to provide a listing of current technical issues on the Dee, nor to provide details of project sponsor working practices within the Dee. The guidance and recommendations section is based on findings specifically compiled from this project and is

designed for project sponsors to tailor their consultation responses on the pending Draft Marine Bill.

1.4 Reports not reviewed for this Study

Defra have commissioned a series of separate studies linked to the Marine Bill over recent months. These include:

1. **'Survey to Assess the Impact of Marine Bill Proposals on Marine and Coastal Developers'** (Frontline Consultants and Defra).
2. **'Marine Bill – Valuing the benefits of Marine Nature Conservation Proposals'** - SAC Ltd and Liverpool University have been commissioned for this project. Natural England and the JNCC are jointly managing the contract.
3. **'Marine Bill - Cost Impact of Marine Biodiversity Policies on Business'** - ABPmer, supported by Risk & Policy Analysts and Jan Brooke, were commissioned to complete an assessment of the cost to business resulting from the Marine Bill nature conservation proposals.

At the time of writing, these reports were not made available to Atkins Ltd and so links between the findings of these studies is likely to be subject to scrutiny.

2. Project Assumptions and Headline Statements

2.1 Project Assumptions

At the start of the project, the project sponsors and Atkins made some assumptions and educated guesses based on the information available in both the Marine Bill White Paper and from updates from the partners. These are raised here as they may underpin the sponsors' consultation response to the pending Draft Marine Bill. These are developed further with local examples (where possible) within the later sections of the report:

- There will be a Draft Marine Bill published during April 2008 (*which Atkins nor the project sponsors will have viewed in any form prior to the submission of this report, thus influencing its content*).
- There will be Marine Spatial Planning. It's likely to include areas of intense use such as that experienced in the Dee Estuary;
- There will be separate marine plans for England and Wales. The precise boundaries are unknown, though these are assumed to follow the devolved boundaries (*NB: Atkins have introduced the option of a joint plan approach for the Dee for comparative purposes – see Section 4*);
- Linked to the point raised above, any marine plan development may well be “non mandatory” (i.e. possibly with permissive powers to produce a marine plan in the future) but that adherence to any future marine plan could be statutory.
- WFD issues will need to be included within any marine plan design, along with other statutory requirements. For example, the WFD gives a statutory requirement to produce a plan but no statutory requirement to implement it;
- Assumption that marine planning responsibility will NOT be with the sponsor organisations and this shall sit with Welsh Assembly Government (WAG) and the (to be established) Marine Management Organisation (MMO). This would have limited significant change to sponsors' roles and remits as statutory consultees, though there could be some need for increased time and key personnel commitments associated with statutory plans.
- The Infrastructure Planning Commission (IPC) as a planning body will only deal with highly significant issues in areas such as the Dee (details to be determined). Otherwise the planning body will remain as WAG or MMO.
- Assumption that sponsors will maintain their existing conservation remits and work to existing legislation/remits (e.g. Water Resources Act, CROW Act) and thus continuing to operate as competent authorities. If this assumption is correct, then there is likely to be very little change in their remits or activities arising from the Draft Marine Bill. To this end, there would be little significant change as a consequence of a new Marine Planning process that does not impose a change of duties amongst the project sponsors. The roles of Agency/CCW and NE input (with regard to marine issues) are likely to be very similar to those already in place within the terrestrial planning system (*nature conservation authorities not directly responsible for the delivery of a statutory plan*).
- Assumption that consultation mechanisms will remain unaltered to those undertaken at present (e.g. FEPA applications etc);
- Assumption that if WAG/MMO delegated responsibility to sponsors it may result in a change in their roles and remits which would require a separate regulatory impact assessment (RIA) though could provide an official driver for consistent delivery of human resources to deliver marine conservation objectives.

2.2 Headline Statements

A number of headline statements have been identified during the preliminary consultations with project sponsors (e.g. building on responses to the Marine Bill White Paper). Initial headline statements are grouped under the two “management implication” headings already listed in Section 1.2. These statements are then developed further (where possible) within the remainder of the report with specific reference to cross-border working practices, opportunities and challenges.

It is important to re-emphasise that whilst the project sponsors have different roles and remits assigned to them (see Section 3), their key views on the following headline statements for marine planning and licensing are closely aligned.

2.2.1 Consultation and Engagement

- There is a need for a clear understanding of the roles of the sponsor organisations with regard to marine plan development, delivery and consultation;
- There is support (amongst sponsor organisations) for collaborative, cross-border working;
- There is support (amongst sponsor organisations) for ensuring that marine nature conservation objectives are delivered effectively;
- There is a need for a functional marine planning process that enables collaboration between devolved administrations.

2.2.2 Institutional Capacity

- There is support (amongst sponsor organisations) for consistent data acquisition, sharing and management with regard to ensuring marine nature conservation objectives are achieved;
- There is support (amongst sponsor organisations) for a marine planning option that is statutory or at least provides a duty on regulators to collaborate in a cross-border situation;
- There is the need for an initial overall appraisal of the working relationships of ALL parties in the cross-border situation, and not just those addressing marine nature conservation related issues;
- The need to address the internal and external working relationships of a single marine coordination body.

3. Cross Border Delivery: local implications for the Dee

3.1 Section Introduction

The role of this section is to present some of the specific Dee Estuary issues ascertained from the consultation exercises (telephone interviews with applicants and regulators, face-to-face meetings and workshop findings) undertaken for this study. Specific roles and responsibility information, relating to the project sponsors' work within the Dee, are discussed in more detail within Appendix C.

The focus of this section is to identify current environmental management challenges (*consultation and engagement and institutional capacity*) associated with the two main cross-border working practice headings set out below:

Conservation Management	Socio-economic Development
Marine conservation site designations	Offshore wind farm/renewables
	Dredging and disposal of dredged material.

The two socio-economic development case themes are grouped together. This is because in general, many of the routine management roles for the project sponsors (particularly NE and CCW) are similar for both and do not warrant separation. For example, DBERR (and not the project sponsors) currently have responsibility for providing consent for offshore renewable energy for the whole of the UK continental shelf through the Offshore Renewables Consents Unit (ORCU). Nevertheless, the involvement of the project sponsors as competent authorities and statutory consultees within the consenting process remains important though similar in approach.

Some overall observations gained from the consultation exercise are therefore put forward under the generic headings with the use of a “**Key Points and Examples Box**” for possible elaboration by the project sponsors (within their consultation response to the Draft Marine Bill).

3.2 Conservation Management – Dee Specific Project Findings

3.2.1 Consultation and Engagement

Knowledge Sharing (Communication)

Key Points and Examples Box - Data Collection for single marine ecosystem units
<ul style="list-style-type: none"> • There is a need for improved data, research and targets to support effective objective setting; • For improved delivery of marine conservation objectives, and in terms of data management, the Dee Estuary should be regarded as a single ecosystem unit irrespective of the political border. Different regulations on either side add complexity and reduce the potential for successful delivery of the Ecosystem Approach; • There is a need for full and coherent access to existing and new marine datasets; • There are discrepancies in the detail of some ecological survey data between CCW and NE – conservation agencies work according to political, not ecosystem, boundaries;

- Issues with GIS can exist because product requirements can differ e.g. map scale. This affects estuary-wide continuity in storage, manipulation and presentation of data

Within the Dee, there are inconsistencies regarding data acquisition and management, with NE and CCW tending to work according to political, rather than ecosystem boundaries. Currently, the single Dee Estuary SSSI has different ecological or biodiversity features identified on both the England and Wales sides. This leads to differences in feature condition assessments and ultimately management decisions. There are also discrepancies in data quality between NE and CCW within the Dee. For example CCW having greater technical information detail (though not necessarily in house knowledge) on mussel growing.

The effectiveness of current consultation processes, that seek to ensure marine or coastal development proposals have minimal impacts on the environment, is in need of urgent review in cross-border situations. For example, there is no formal duty (within statute) for CCW/NE or EA to interact or engage with each other as part of the current FEPA application process. It could be argued that such a “forcing” mechanism is actually not needed between conservation bodies. However, for the betterment of ecosystem objective delivery, the communication of a consistent message and capture/dissemination of scientific information to non experts may be improved if such a duty was in place.

Linked to the above, in order to have a good statutory plan (or reduce risk of producing a poor statutory plan) regulators and the project sponsors will need to have plenty of effective and useable guidance to help communicate marine spatial planning within the sponsor organisations and to applicants and wider stakeholder groups. With the end of the Dee Estuary Strategy (1996), there is currently no independent cross-border organisation or officer who is able to manage the environmental and socio-economic delivery processes for the estuary. With the risk of two separate communication approaches being adopted on either side of the Dee, this could generate a large and un-wieldy consultation process (possibly similar to the terrestrial planning system and deviating against the desire to streamline marine consenting procedures). One possibility may be the introduction of supporting guidance documents, rather than formal guidance within legislation itself (e.g. SPGNs or PPSs etc). It is hoped that the design of a partnership grouping may occur through the River Basin Management Plan process for the Dee (as required for delivery of the WFD process) although it is acknowledged that this aspect is WFD specific and thus will not be able to cover generic issues.

External Integration (*Cohesion*)

- Key Points and Examples Box - The need for improved future collaborative working**
- The Dee suffers from a lack of overall strategic forum. There are numerous organisations involved in the Dee (such as the Tidal Dee Users Group) but no overarching viewpoint since the cessation of the Dee Estuary Partnership;
 - When applications are made to Defra regarding CITES species, there is joint consideration process between England and Wales resulting in a single outcome e.g. licences issued or rejected – not a combination of responses. It is a clearly established procedure and may be necessary for cross-border work in the future.

There appears to be a lack of an overall strategic agreement between the project sponsors on the setting of marine nature conservation objectives for the Dee. For example, in 2004 a Regulation 33 Package outlining conservation objectives for the Dee Estuary SAC was produced. However, whilst only minor, the NE approach did actually differ from the CCW approach. In the longer term this could lead to significant implications for staff time, financial resources and the overall time needed to find a satisfactory resolution. In the shorter term, there is a risk of a breakdown in communications between nature conservation organisations, which could be quite harmful within a management process and when having to convey a message to the public.

The question relating to “collaboration” needs to be clearly defined within a cross-border situation. Unless there is a duty for the planning bodies (i.e. WAG/MMO) to formally collaborate, then the various efforts of the project sponsors and other organisations further down the decision pyramid become less apparent and more effort is needed for collaboration. Therefore, clarity is needed particularly at the level where conflict resolution may need to take place (e.g. national WAG/MMO). Defra/WAG may remedy this situation by ensuring that any change in duty or delegated responsibility to CCW/NE and the Agency is formally written as revised Key Performance Indicator targets (KPIs) and thus become an official driver for each project sponsor (an approach

successfully adopted within the Civil Contingencies Act – 2004). Obviously the business structure of CCW and NE (in particular) would have to change quite considerably to accommodate this potential change.

Key Points and Examples Box - Examples of effective voluntary cross-border working groups
<ul style="list-style-type: none"> • A Technical Group and a Regulators Group exist for managing dredging consents. These comprise key stakeholders and meet weekly; • A Fishery Consultative Committee exists for the Dee; • Tidal Dee Users Group; • The JNCC 'committee' is an effective working example of cross-border working (not Dee specific); • Wales Spatial Plan is an effective working example of cross-border working (not Dee specific); • Mersey Dee Alliance Group (Dee specific); • Local Development Frameworks are an effective working example of cross-border working (not Dee specific);

Programming and Timing (*Efficiency*)

Key Points and Examples Box - Need to Improve Time and Efficiency
<ul style="list-style-type: none"> • For Liverpool Bay pSPA designation, CCW and NE currently have an imbalance in resources. NE has greater resources and this affects the work rate of the two organisations. This may affect stakeholder perceptions within the Dee; • Obtaining signatures for cross-border consents is time consuming – issues that affect sites in Wales still need NE's signature, similarly WAG and Defra both need to sign off any new designated site that impinges or includes part of a conservation site in Wales. Cross-border cases can take up to 30-50% more time to manage than in-country ones • Differences in priorities and performance targets can affect timescales and progress amongst project sponsors; • The system of consent applications for regulating orders to improve the management and conservation of the Dee fishery has significant shortcomings. It is lengthy, complex and requires liaison with two sets of lawyers with different interpretations of the law.

With a view to improving synergies on programming and timing, it is likely that any of the marine planning options presented in Section 4 would work more effectively with a single Dee Management Board in place to help coordinate activities. This would also be important for the encouragement of cross-border consultation for marine licensing within the Dee.

The promotion of a Cross Border "Consents Group" approach (Atkins 2006) could be a positive step towards better integration. A version of this has already been set up and used previously around England and adopted in places such as the River Hamble in Hampshire. Whilst this is not a cross "national" border, it does span county borders and demonstrates similar administrative and communication issue failures within England. The Consents Group could be an expansion of the existing Technical Group and Regulators Group which discusses dredging consents in the Dee, however, this group currently is unable to deal with wider consenting issues as the role of its constituent members is to provide specialised technical input to all, though this is only a small part of their 'day-job'. There are no resources currently set up to support an expanded role and often the success of external integration currently appears to depend upon individual relationships rather than a formal agreement to collaborate between organisations.

3.2.2 Institutional Capacity

Financial Resourcing - (*Funding*)

Funding for ecological and biological work within the Dee is imbalanced. It is apparent that some research is undertaken collaboratively between NE and CCW. However, there is an unofficial arrangement in place whereby CCW (as an example) will carry out additional research work within a cross-border situation if NE have a lack of funding;

Human Resources (*Capacity*)

Key Points and Examples Box - Staff capacity issues
<ul style="list-style-type: none"> • There are currently circa 5 CCW staff in the marine planning team nationally, with one Conservation Officer dedicated for the Dee. The Agency has employed a dedicated officer for the Dee, though NE do not currently employ such a resource; • Issues concerning the volume of work and shortage of staff were highlighted by CCW (nationally). For example, approximate statistics from 2007 showed that 800 licences were issued, 200 amendments were dealt with and 200 consultations with WAG were undertaken. In addition, roughly 20 enquiries are made to

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|---|
| <p>the team per day;</p> <ul style="list-style-type: none"> No CCW officer had been allocated to the pSPA initiative for Liverpool Bay. NE allocated a 0.5 person resource for this designation exercise; There are issues with building the capacity of existing CCW staff and subsequent marine planning training is likely to be required. |
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There is a need for personnel to be dedicated to Dee estuary conservation matters and also the need for staff continuity: e.g. the Dee SAC officer. Having a single Dee SAC officer proved very effective at bringing together a common Regulation 33 document jointly between CCW and English Nature (as was). Subsequent reviews of SAC features, SPA features and Regulation 33 have suffered due to the lack of a dedicated project officer, resulting in different ecological features being proposed on either side of the estuary;

The current provisions for cross-border working appear to be based on ‘bottom-up’ pragmatism and commitment of individual personnel at the local level and tend to work well, though are inherently inefficient as a business model. The current arrangements within the Dee are not helped by having to duplicate effort through bureaucratic arrangements and challenges over ensuring consistency between the two nations (England and Wales). Current cross-border working is subsumed within individuals’ jobs as good practice rather than an explicit and specifically resourced requirement.

Concerns have been raised by a number of applicants and regulators with regard to the efficiency of the planning bodies and project sponsors when advising on applications. In addition, the lack of resource availability of the MFA to process the applications has been raised by applicants. Project consultations have highlighted that there are a number of officers within the Agency, CCW and NE who are very knowledgeable and provide an excellent level of advice and support. However, this level of service is sometimes not provided to the same degree within or across the organisations (often dependent on need between the two countries).

In the view of non conservation stakeholders operating in the Dee, there appears to be no clarity on the role of project sponsors in the delivery of national strategic level planning. It is recognised (within this report) that national marine plan preparation and delivery for the Dee may be some way off. However, in the short term there is a need to improve on delivery (“who does what and when”) to help resolve some local conservation related issues which previously have been dealt with through voluntary partnerships. It is important that any new marine management approach (whatever marine planning option is followed) should not be reactive and driven by development applications.

Internal Institutional Structures (Organisation)

- | |
|--|
| <p>Key Points and Examples Box - Work volume issues exist</p> <ul style="list-style-type: none"> The change to UK Habitats Regulations in August 2007 has impacted on the law relating to many marine species. For example, CCW were tasked to inform applicants of the changes via mail shots and press notices and had to re-issue consent forms. This increased the work volume via generation of increased paperwork. The situation within a cross-border area would mean that NE would have to undertake a similar exercise, thus duplicating effort and resources whilst also creating stakeholder consultation fatigue. |
|--|

The internal working structures of the project sponsors often extend timings and reduce efficiencies linked to consultation. Whilst this is not unique to the marine management sector (and applies to many other industry sectors), consultation on consenting can be time consuming as everyone must have correct versions of documents for Ministerial signature and sign off. Obtaining mandatory official signatories can also take time. Other challenges lie in commitment and awareness of priorities i.e. internal communications can be slow within organisations.

3.3 Socio-Economic Development - Dee Specific Project Findings

3.3.1 Consultation and Engagement

Knowledge Sharing (Communication)

- | |
|---|
| <p>Key Points and Examples Box - Need for cross-border continuity</p> <ul style="list-style-type: none"> NE and CCW both issue technical advice relating to nature conservation and landscape impacts of offshore |
|---|

- wind farm and renewables developments
- NE and CCW liaise and provide joint responses to EIAs and Appropriate Assessments
 - Responses are led according to the territorial water of the application
 - Communication is informal via email, meetings and telephone

The effectiveness of current consultation processes, that seeks to address marine or coastal development proposals, is in need of review. For example, there is no duty for CCW/NE or EA to interact or engage with each other as part of the current FEPA application process. Paragraph 4.83 of the Marine Bill White Paper mentions the need to integrate land and marine planning. However no mechanism for this is proposed. There should be an explicit duty placed on all planning bodies, both terrestrial and marine, be they local, regional or national, to ensure policy consistency at the land/sea interface.

The Port of Mostyn consenting experience for maintenance dredging is a good example of the issues surrounding communication and effective cross-border working. The Port applied to the Department for Transport (DfT) for a CPA licence in October 2001, to MCEU for FEPA for dredge removal in October 2001 and for a dredge disposal licence in July 2003.

Consent is issued to the Port of Mostyn jurisdictional area under the Water Resources Act (under the schedule 25(5) byelaws) as the boundary of the “main river” has been drawn across the mouth of the estuary (Point of Ayr to Hibre Point). The Flood Defence Consent is actually of little relevance (only requiring a flood risk assessment) however, the consent process includes taking due cognisance of environmental interests. From this legal position, the Agency have taken up a full role as regulator of the development, whereas in the more normal course of events, the Agency and CCW would be consultees under the FEPA license and CPA consent procedures.

To streamline the application and consenting process, it would appear appropriate to design a standard coastal consents application form for the Dee to standardise questioning and avoid repetitive consultations. As mentioned within Section 3.2, support could be given to the design of a pre-application Marine Consents Risk Assessment form. Other solutions such as establishing a national marine consents guide, producing guidance notes for project sponsor staff and preparing a readily accessible Dee specific (or cross-border) geographically referenced database would be widely supported (resource issue dependent).

Developers in the Dee are also keen to help facilitate change, though if any marine policy or coastal consent related changes are introduced, they need to be considered by all parties (cross-border) and should ideally be gradual in their programmed implementation. Any significant new changes to coastal or marine consenting, or marine management approaches would not be favoured by the private sector as the cost and administrative ramifications for them may be considerable.

- Key Points and Examples Box - Need for cross-border continuity**
- Horizontal and vertical continuity of officers and message is required;
 - Currently, up to 5 different coastal consents may be required for a development application. This results in overlaps in project sponsor time and consultation with other consultees.

The Agency has identified that there is confusion amongst external organisations in the Dee regarding the requirements for land drainage consents which is made more complex by local byelaws. There are guidance notes available which are sent to applicants but these are not uniform across the country (as byelaws differ across the country). The Agency has recommended that these are reviewed as part of the Making Space for Water process. Consistent guidance is needed, and should be produced with the assistance of WAG/MFA.

Consultations with both applicants and regulators on the present consenting process have concluded that the Agency has difficulty in engaging with other regulators and applicants. This is due to the current consenting regime. Flood Defence Consent requires consultation with only NE or CCW and therefore other regulators do not feel engaged with the Agency and it is recommended that the consultation process and dialogue is reviewed.

The consultation procedures become more complex with the introduction of the Marine Works Environment Impact Regulations (2007) with respect to consultation. The Regulations formalise the

existing non-statutory process and provide a more coherent and transparent approach to marine impact assessments. However, in cases where marine and terrestrial consents are required, the different EIA consultation procedures may further delay applications. In particular two scoping opinions may be required (from the LPA and MFA) and consultation periods differ. The key points of the Marine Works EIA Regulations of relevance to this study are:

- MFA (and WAG) are required to consult with the relevant statutory consultees and other interested parties for a minimum of 28 days regarding the proposals before making a screening decision.
- There is no statutory time period for the MFA (or WAG) to respond with a Screening opinion (as there is in the Town and Country Planning Act EIA Regulations, where the Local Planning Authority has 3 weeks to provide a decision).
- When the developer submits a Scoping Opinion, the MFA (and WAG) again have to consult for 28 days with the relevant consultees, and again there is no statutory time period for a response.

This could have programme issues for applications as there is the potential for delays and disparity between the terrestrial and marine consenting programmes. Informal consultations with the MFA identified that it would aim to respond within 42 days but there is no Service Level Agreement in place.

External Integration (*Cohesion*)

Key Points and Examples Box - Need for both bottom-up and top-down communication

- Potential problems exist if current arrangements change and divergence develops in courses of action, commitment and timing of actions.
- Communication at the local level appears to be successful but not robust at the more executive level;
- Examples of effective (short term) interagency groups include UKA MPA Group, Interagency MSP Group and Interagency Marine Bill Group;
- Cross border working on a personal level is good but at a higher level, this often doesn't happen.

Socio-economic developments (in the Dee or other cross-border situations) have the potential to affect the estuary as a whole and the Regulators are often of the view that supporting studies are therefore needed to cover the whole estuary (coastal process studies etc). However, although the Habitats Regulations were issued in 1994 there had been no significant strategic monitoring of the Dee Estuary in the late 1990s and early 2000s. One exception to this is the recent Agency led LiDAR surveys of 2003 and 2006.

Clarification is also needed in relation to licensing for offshore oil and gas supply infrastructure. Given that the Infrastructure Planning Committee (IPC) is proposed to be responsible for considering energy projects over 100 MW, the proposed MMO and WAG are likely to be responsible for considering energy projects under 100 MW (possibly new proposals in Liverpool Bay), and the Department for Business, Enterprise and Regulatory Reform (DBERR - formerly DTI) will be responsible for licensing offshore oil and gas infrastructure. There needs to be clarification within the Marine Bill as to how this simplifies the marine consent process or provides continuity in decision making. One suggestion is that all large marine developments should be determined by WAG/MMO to ensure consistency and benefit from marine expertise within WAG/MMO.

If, contrary to this preferred option, large marine developments (in cross-border situations) are to be determined by the IPC then it is recommended that the following points are included in future proposals:

1. Flexibility in the proposed thresholds for development proposals to be referred to the IPC, in order to respond to changing technologies;
2. A consistent process by which the marine expertise of the MMO/WAG is provided to the IPC, and,
3. For an agreed UK wide Marine Policy Statement to be confirmed as a material consideration in IPC marine and coastal decisions.

It is worth raising that within a cross-border situation such as the Dee, there is the possibility that one national marine plan (Wales or England) could (in theory) place either a total ban or

considerable economic disincentives on a specific economic activity in the future (e.g. a specific type of offshore renewable development or for aggregate extraction) thus potentially creating more pressure on the adjacent national marine plan which may not portray such disincentives. Therefore, an inconsistent approach in a cross-border situation, on a specific activity may have “knock-on” effects on adjacent marine areas (or at least increase pressures on specific areas).

This issue of “collaboration” needs to be clearly defined in cross-border situations. As mentioned previously, unless there is a duty for WAG/MMO to collaborate, the various efforts of organisations further down the decision pyramid may become fruitless.

Key Points and Examples Box - Consistent coastal consenting and enforcement powers
<ul style="list-style-type: none"> No consent requirements exist for electricity cabling arriving at the shoreline currently exist except for Flood Defence consent to breach/cross existing defences at landing points; CCW don't use byelaw powers to enforce any licence agreement as these are impossible to enforce.

Programming and Timing (*Efficiency*)

Telephone interviews with the project sponsors, and also with Local Planning Authorities (LPAs) (e.g. Flintshire CC and Wirral BC) suggests there is currently little consistency in the way applications are handled by LPAs or applicants. Where attempts have been made to address specific issues or introduce project management regimes, they are rarely replicated for future applications or by other local authorities. The study has identified that regardless of what is being considered (offshore renewables, dredge disposal etc), the current situation (cross-border legislation) is confusing and complex. This arises predominantly through the process of consenting rather than the legislation (as applicants can be shielded from the legal texts from which the consents are based). It is therefore suggested that the focus for any change should be on improving the process of consents rather than amending/ repealing or introducing any new legislation. It is anticipated that the Draft Marine Bill will look in greater detail at the legislative issues associated with the consenting process.

Although not a marine consent, many cross-border marine activities and developments will also require planning permissions under the Town and Country Planning Act if they cross MLW. It appears that many of the issues of marine consents include the duplications with the terrestrial planning system and the capacity which LPAs have to deal with marine and coastal applications. In many cases officers do not have the capability or experience to guide applicants. It is recommended that a review is undertaken to identify opportunities for speeding up the existing process to enable greater consultation time. Opportunities would include faster initial processing of the consent, distribution to consultees and reduced lead in time for Planning Committees.

3.3.2 Institutional Capacity

Financial and Human Resourcing - (*Funding and Capacity*)

Key Points and Examples Box - Financial resourcing issues
<ul style="list-style-type: none"> Monitoring compliance is labour intensive and is difficult to deliver based on existing resources; Although legal conditions exist as part of issued licences, much work is required to improve on monitoring of compliance. A dedicated local office is key to consistent, sustained management of local issues.

The financial cost of cross-border actions is difficult to determine, though it is believed that addressing issues in cross-border situations can increase an organisations staff input by between 50% and 70%.

The human resources required to deliver marine planning should always be proportional to the need and issues in hand. Using a similar example for the Solway RBMP (though not taking into consideration other more routine working needs outside of river basin planning), the Agency employ as many officers to deal with the cross-border challenges at the Solway (England and Scotland) as they do for the whole of the remaining coastline for the NW of England.

One consideration is that if Defra/WAG were to delegate marine planning delivery responsibilities to CCW/NE and the Agency then future human resource needs should form part of their corporate

Key Performance Indicator target (KPIs). This approach is adopted within the Civil Contingencies Act (2004) and helps to enable priorities for resourcing to be set.

There are further concerns that staff are unable to cover case work when nominated cross-border officers or those with a cross border remit (FD, Environment Management, Conservation, Dee Conservancy) are absent and applications are not progressed, leading to uncertainty and delay. It is believed that the process could be improved if the project sponsors could provide applicants with greater support (to developers in particular) on nature conservation issues during the pre-application consenting stage, in particular, in identifying which consents are required and the level of information necessary to support the application. This communication issue does work both ways, though if guidance is produced by project sponsors on marine planning issues in a cross-border situation, and this is made readily available to developers, an improved delivery and management process should be developed over time. This could take the form of a “Cross Border Marine Planning Risk Assessment” or list of key questions from which project sponsors can identify the scale of the development, whether it is likely to have marine environmental impacts and other issues which can then be discussed with the applicant prior to the application forms being submitted.

Internal Institutional Structures (*Organisation*)

Devolution inevitably will create the major challenge to the delivery of any marine planning option that is proposed in the Dee. A screening exercise to identify complicated problems (that often exist in cross-border situations) requiring resolution may need to be undertaken PRIOR to the production of any Marine Plan to identify where the local planning problems are likely to arise. Pilot studies where European sites occur may be one obvious case for ensuring consistency and success (i.e. the common goal of addressing a site of European significance in a cross-border situation).

There is a need for consistent standards (possibly some form of Supplementary Planning Guidance Notes - SPGN). This is because “collaboration” in whatever form this takes does not necessarily lead to consistency. This may allow one marine plan to be prepared for a devolved administration though following closely the SPGN prepared for an area. This could mean that existing land use planning approaches and tools could be used as a starting approach for marine planning, though with consents only being granted if they comply with the Supplementary Guidance set for cross-border areas (i.e: separate Dee/Severn Estuary Guidance Notes). These Supplementary Guidance Notes can (for example) dictate how marine data is consistently compiled, stored and disseminated. These Notes can also be used to provide feedback to existing land use Guidance such as TANs (Wales) and PPS (RPGs) in England. They could or should also identify approaches to dealing with dispute in a cross-border marine situation (local delivery).

4. Marine Planning Options Appraisal – SWOT Analysis Findings

4.1 Overview

Three main marine planning options for implementing the Marine Bill have been considered and consulted upon during this project. These are described below (with additional sub-division variations assigned to them):

- Option 1a: Voluntary approach with no duty for cross-border working or collaboration;
- Option 1b: Voluntary approach with a duty for cross-border working or collaboration;
- Option 2a: Statutory approach with no duty for cross-border working or collaboration;
- Option 2b: Statutory approach with a duty for cross-border working or collaboration; and
- Option 3: One single, statutory cross-border plan.

The role of this section is to highlight the broad management implications (Consultation and Engagement plus Institutional Capacity) associated with each of the marine planning options (as determined from the project specific workshop held on 10 March 2008). An overall summary of findings (taken from the Workshop Findings Report – Appendix B) is presented in Table 4.1. Included within this table is an overview assessment of the likely environmental impacts or change in practical ecosystem management associated with each different marine planning option.

It is stressed that for all marine planning options presented in this Section, marine plan production would still be the ultimate responsibility of the relevant Minister but delivered by the MMO (England) and WAG (Wales). The project sponsors (CCW, NE and the Agency) are likely to remain as statutory consultees for nature conservation, delivering their existing duties (e.g. statutory harbour authorities; WFD, FRM WQ etc). Therefore, the project sponsors are unlikely to be responsible for producing any national or sub-regional (cross-border) marine plans though it is in their interest to be involved in the planning process as all public bodies will have to make their decisions in accordance with the marine plan.

There were some differences in interpretation of option 1a and 1b between the three workshop groups with respect to the statutory nature of implementation of the options. All three workshop groups discussed the plans being developed following the voluntary approach. However, one group assumed that as the need for the plan was identified in the Marine Bill, once created, there would be some requirement to adhere to the Plan. Having reviewed the workshop notes the slight difference in interpretation did not result in any disparity in the outcome of the discussions between the groups.

4.2 Option 1a - Voluntary approach with no duty for cross-border working or collaboration

4.2.1 Definition

This option is based on the assumption that the Marine Bill will make no specific provisions for cross-border working or collaboration for detailed local planning. The key elements of Option 1a are as follows:

- Two planning bodies and two non statutory plans (*for a defined water body such as the Dee*);

- No legal mechanism for integration of the two plans – no legal duty for a consistent approach; and
- Voluntary approach to integration of the two plans based on current working arrangements and partnership working.

The option does not preclude the production of a single non-statutory plan for the Dee.

4.2.2 Strengths

This option presents a good example of a “bottom up approach”. It would be based on existing circumstances and would therefore have the potential to progress quickly and with minimal initial arrangement in terms of organisation and cost. In addition, the option would present a flexible approach and would engender public support and inclusion.

4.2.3 Weaknesses

MMO and WAG are likely to be tasked with taking any Marine Plan forward. However, the option offers no incentive for the stakeholder organisations to commit fully to the plan. (It is important to note that there is a difference between ensuring organisations comply with the plan and the organisations driving the plan forward). In view of this, potential weaknesses of the option include:

- The option raises expectations because the potential for integration exists. However, no specific organisation will be empowered to integrate decisions to address marine nature conservation objectives across the England/Wales border;
- Separate “non statutory” policies or objectives for nature conservation for 2 countries have the potential to spit attentions and local activities on the ground;
- There may be a lack of urgency or drive to develop the plan or get agreement amongst stakeholders;
- Project officers may spend a large amount of time trying to obtain funding to develop the plan– and funding may be absent or sporadic; and
- Input from stakeholders may reflect the priorities of individual organisations rather than an integrated set of priorities for the estuary.

In view of the above weaknesses of a voluntary approach, any voluntary planning “successes” are likely to be dependent on the presence of a dedicated cross-border Project Manager and the commitment of individuals. Coordination of the various consultees in these situations is essential for coherent progress and to maintain impetus. A role similar to that of the previous Dee Estuary Officer would meet this need but wouldn’t address all of the weaknesses identified. In the absence of such a role, this option would be difficult to sustain and would be vulnerable to wavering interest and reduced or conflicting priorities. Moreover, there would, in turn, be a reduced potential for a positive outcome for marine conservation objectives.

4.2.4 Management Opportunities

The existing statutory backing of European Directives and terrestrial planning is useful to be able to deliver specific aspects for marine nature conservation (e.g.: WFD and Habitats Directive).

The environmental opportunities of this planning option are in fact minimal, as the only protection focus will be associated with existing European important designations. The lack of a statutory approach to having a consistent approach cross-border reduces the actual ecosystem management delivery opportunities in such situations.

4.2.5 Management Threats

The institutional capacity of organisations is likely to remain at contemporary resource levels, which is already over-stretched on such matters. There is also likely to be a lack of engagement due to unclear scopes of work in cross-border situations. The process will be led by individuals

from the bottom up, rather than by organisations from the top down. In view of this, and with the lack of specific statutory drivers and targets, the potential for an inconsistent approach and outcomes is increased.

The environmental risks of this planning option may include:

- Inconsistent environmental data capture across borders;
- Inconsistent environmental objective setting between nations;
- Developer preference to focus on one area of a cross-border situation where environmental protection focus is not deemed as important.

4.3 Option 1b - Voluntary approach with a duty for cross-border working or collaboration

4.3.1 Definition

This option is based on the assumption that the Marine Bill will make no specific provisions for cross-border working, but will not rule out local collaboration for detailed local planning.

The key elements of Option 1b are as follows:

- Two planning bodies and two non statutory plans (*for a defined water body such as the Dee*);
- Some legal mechanism to enforce integration of the two plans – i.e. a legal duty to collaborate; and
- Voluntary approach to delivering integration of the two plans based on current working arrangements and partnership working.

4.3.2 Strengths

This option is likely to be driven by a Memorandum of Understanding (MoU) at planning authority and key organisation level. In view of this, there is the potential for specific roles to be defined clearly within the MoU and therefore for a coherent process to be designed with consistent objectives set.

The SMP and WAG SDP process illustrates that a voluntary plan can be successful, particularly if it is associated with a financial incentive. For example, non statutory SMPs must be completed in order to attract associated grant-in-aid to deliver coastal engineering schemes on the ground (using the permissive powers imposed on local Authorities under the Coastal Protection Act of 1949 and the Agency through the Land Drainage Act).

The duty could be in the form of a funding ‘carrot’ similar to SMPs which would provide the driver for collaboration. This option therefore could differ from Option 1a as this voluntary approach has the improved potential to be directly linked to a financial driver. Under such circumstances, this option has the greater potential for success.

4.3.3 Weaknesses

One potential weakness exists;

- In the absence of drivers for delivery, such as funding or statutory status, the process may be perceived by stakeholders as being of a lower priority i.e. a lack of buy-in may exist.

Such a weakness would, in turn, undermine a successful outcome for delivering marine ecosystem objectives.

4.3.4 Management Opportunities

The option enables the strengths of the voluntary approach to be adopted. The option also presents the opportunity for iterative development of an inclusive, flexible, single plan without the

restrictions that a statutory obligation to collaborate might impart. A financial incentive to encourage collaboration may have the potential to ensure long term engagement (possibly linked to partner organisation KPIs to ensure collaboration or run the risk of losing marine management annual budgets).

The Regulation 33 Scheme of Management approach (set within the habitats Directive) is a possible model to adhere to with additions (in relation to improving consultation on FEPA applications etc (see Section 6 of this report).

The environmental opportunities of this planning option may include:

- The need for the existence of a Coastal Habitat Management Plan (CHaMP) or marine equivalent (e.g. a Marine Habitat Management Plan) to ensure integration of marine nature conservation objectives within a cross-border situation. This would need to be in place to secure funding streams to implement the Marine Plan for the area.

4.3.5 Management Threats

The potential exists for inconsistency regarding inputs to the marine planning process because there is unlikely to be any statutory duty to collaborate at all levels of management (i.e. any duty is unlikely to include a statutory duty for WAG and MMO/Defra to collaborate). For example, this occurred in the case of the Robin Rigg offshore wind farm development in the Solway Firth whereby the Scottish Executive worked often in isolation and lacked the direct involvement of Defra in marine consenting whilst there was collaborative working between organisations at a regional level. Such a circumstance could conceivably arise with WAG and MMO.

The option does not have statutory 'force'. It may therefore not attract consistent, long-term commitment from organisations, individuals and funding and may therefore be reduced in efficacy over time. The potential exists for conflict to be resolved via a weakening in plan objectives.

The environmental risks of this planning option may be reduced through the introduction of a Marine Habitat Management Plan. However, the need for consistency in licensing arrangements is perhaps of greater need between planning organisations. Failure to achieve this may have significant implications for the future effective management of marine conservation designations.

4.4 Option 2a - Statutory approach with no duty for cross-border working or collaboration

4.4.1 Definition

The key elements of Option 2a are as follows:

- Two planning bodies and two statutory plans (*for a defined water body such as the Dee*);
- Some formal mechanism to take account of integrated needs; and
- Use of partnerships for local delivery of environmental issues.

4.4.2 Strengths

The statutory approach provides greater certainty for delivery. Moreover, the option may be the precursor to the evolution of a single statutory plan developed over time. The potential exists for the process to capitalise on existing collaboration and strengthen such communication and commitment within a formalised framework.

A statutory option is more likely to provide an improved business case to attract human and financial resources for the sponsor organisations to support the plan and to better address marine conservation objectives. The potential exists for increased time, money and priority and therefore greater confidence in the outcomes of the plan.

Initial input to plan development should result in a streamlined and more efficient framework within which to manage activities and should result in time savings during the subsequent implementation and licensing process.

4.4.3 Weaknesses

In the absence of a statutory duty to collaborate, a significant potential for conflict and mismatch may exist between England and Wales. For example, differences in wind farm cabling or fishery management between the two national plans may lead to a spatial bias in activities. Similarly, the potential for asynchronous development of plans and activities exists. The potential for conflict and inconsistent outcomes exists as interpretation of legislation and policy drivers may differ and WAG and MMO may have differing priorities for the estuary.

4.4.4 Management Opportunities

Under option 2a, it is likely that current management arrangements would persist as at present. The opportunity exists for increased public confidence and inclusion and greater engagement in and transparency of the process. The opportunity for a consistent, resourced, dedicated approach to marine management within each country exists. It is important to note that the potential for an iterative approach that allows review of marine plan efficiency exists and that this option could evolve into a collaborative, single statutory plan approach (for a cross-border estuarine situation) over time.

The Natural Environment and Rural Communities Act (NERC 2006) is a good example of legislation that encourages collaboration. The Act itself is designed to help achieve a rich and diverse natural environment and thriving rural communities through modernised and simplified arrangements for delivering Government policy. The Act includes general powers to enable Defra and its public bodies to be more flexible and responsive to the changing needs of customers, wider stakeholders and central requirements. It introduces general powers for the Secretary of State to delegate functions to listed Defra and non-Defra public bodies and for the listed bodies to delegate Defra-related functions to one another.

Delegation is subject to mutual consent by the bodies concerned, and approval by the Secretary of State. For example, powers of delegation will allow the Forestry Commission to delegate grant-giving functions relating to forests to NE. The broader grant giving facility provides a more coherent approach to achieving better land management and use. This type of legislative approach may be a very effective model to follow within a cross-border estuarine situation.

The environmental opportunities of this planning option for the marine environment within a cross-border situation may include:

- WAG may be able to implement powers of delegation to enable key marine development stakeholders (e.g. DBERR etc) to delegate grant-giving functions relating to marine areas to CCW or NE as appropriate. This would prove beneficial in the proactive conservation management of marine resources as opposed to these organisations having to be reactive in their approach to prioritising activities based on grant funding availability.

4.4.5 Management Threats

The potential for inconsistent approaches between the two separate marine plans presents the key threat, particularly in the marine environment. For example, specific local socio-economic demands may be difficult to include in both plans – such as an offshore wind farm development on one side of the estuary and the visual impact on the other. Similarly, inconsistent approaches may lead to an unwelcome bias in activities on one side of the estuary - such as preferential shellfish catch. In addition, there may be inconsistency in the timing of and priorities given to different activities.

The environmental risks of this planning option may therefore include:

- Inconsistent marine data collection practices across borders;
- Inconsistent marine habitat map presentation, message communication to applicants and/or license consent arrangements.

4.5 Option 2b - Statutory approach with a duty for cross-border working or collaboration

4.5.1 Definition

This option is based on the assumption that the Marine Bill will make provision for joint working in the planning process e.g. by containing powers to enable the appropriate ministers to direct agencies to work together (cf. Civil Contingency Act).

The key elements of Option 2b are as follows:

- Two planning bodies and two statutory plans (*for a defined water body such as the Dee*);
- Some formal provision for collaboration; and
- Formal footing for partnership groups for local delivery.

4.5.2 Strengths

This option presents the opportunity for effective collaborative working. Moreover, the statutory duty to collaborate is likely to provide an attractive driver for allocation of resources within the sponsor organisations in order to achieve this. The option would provide a clearer process for engaging in the planning and engender greater public and institutional confidence in the successful delivery of the outcomes of the plans.

Successful convergence of two marine plans could provide a consistent, yet flexible, 'one plan' solution as under option 3 (see Section 4.6) without the political concerns and potential for vagueness that option 3 presents.

The option presents an opportunity for commitment to a joined-up approach but may have an initial cost burden.

4.5.3 Weaknesses

The key issue associated with this option relates to current inconsistencies in factors such as data acquisition and management, timescales, Government priorities, and legal interpretations of policy. A mechanism for identification and resolution of potential conflicts would be required. In the absence of such a mechanism, there would be potential for divergence over time.

Another weakness of Option 2b is that the outcome could end up being a box ticking exercise to prove that planning authorities/project sponsors have talked and the only real cross-border working will be agreements based on 'high-level' discussions.

4.5.4 Management Opportunities

Overall, the option presents a clear opportunity for a common purpose and a consistent approach. The sponsors would be engaged in additional and clearer consultation on marine spatial planning. This would include identification of linkage with existing plans and identification of outstanding issues and data requirements. This is likely to need to be resourced via additional time and staff of the sponsor organisations.

The environmental opportunities of this planning option may include:

- a more formal statutory footing would affect the degree to which environmental data collection, analysis and communication tasks were undertaken and would therefore present a clear driver and lever for allocation of additional resources.
- the statutory approach would also provide greater support for the sponsor organisations to seek the adherence to marine nature conservation objectives.

4.5.5 Management Threats

Independent statutes and plans, coupled with independent licensing arrangements are likely to generate real inconsistencies in marine planning time schedules. There would need to be a

Supplementary Planning Guidance Note (SPGN) to help link national horizontal collaboration efforts. Organisation Key Performance Indicators (KPIs) will need to be agreed and set, especially between Defra/MMO and WAG (as well as within each of the project sponsor organisations). The statutory duty to collaborate would need to include all levels of management including national (MMO/WAG) in order for the plans to be fully integrated and avoid risk of divergence during implementation through the licensing regime. The licensing/implementation would remain within MMO/WAG and this would also need more effective collaboration for licence and consenting arrangements within the Dee. A statutory duty to ensure collaboration should assist in the delivery of this option

The marine environmental risks of this planning option are likely to be reduced should the duty be imposed to collaborate across borders. There still remains the reduced risk of:

- continued inconsistent marine data collection practices across borders.

4.6 Option 3 - One single, statutory cross-border plan

4.6.1 Definition

This option clearly differs from option 2 and is based on the assumption that the Marine Bill **will** make provision for a single cross-border plan to be drawn up by agreement of relevant ministers *e.g. by stating that there will be no more than one plan for a given area of water (e.g. the Dee) and providing for cross-border collaboration (cf Conservation Regulations).*

4.6.2 Strengths

This option presents the greatest opportunity for a streamlined, consistent, coherent approach to marine planning. The potential exists for one plan to be developed according to a single time table and consistent data and according to a proactive framework that seeks to identify and resolve conflict in advance. Importantly, the potential exists for resolution of conflicts at the local level.

There is the potential for attendant long-term resource efficiency following an initial start-up cost.

4.6.3 Weaknesses

Two key barriers exist for this option. The first relates to a likely lack of political acceptance of the fundamental requirement to develop one plan regardless of political boundaries and development of tension as a result. The second relates to the associated potential for development of generic, vague, 'lowest common denominator' planning and/or protracted timescales as a result of a 'forced' duty to converge.

The process of decision-making and accountability would also be complex due to the nature of the collaboration. Initial start up planning and agreement of roles, responsibilities and objectives is of key importance. There is also likely to remain a risk of divergence of interpretation during the licensing and delivery process with WAG and the MMO retaining jurisdiction at this level.

4.6.4 Management Opportunities

It was debated whether introducing an extra Marine Planning option (3b) may be a possibility which takes forward Option 2b and introduces the use of Supplementary Planning Guidance Notes (SPGNs) as the "zip" to link together the two statutory plans to identify ways for consistent approaches and to pre-empt conflicts.

The opportunity for development of a clear, simple, streamlined process exists for public and organisation benefit. It is important to recognise that although there would be one plan, the delivery mechanisms may differ.

The environmental opportunities of this planning option may include:

- A streamlined, consistent, coherent approach to marine data collection and marine ecosystem planning.

4.6.5 Management Threats

The chief threat to the process is the potential for political difference. This may preclude the approach entirely or dilute the potential environmental delivery of objectives and outcomes due to forced agreements on marine conservation issues at a superficial level.

Table 4.1 – Summary of broad implications (for the project sponsors) of each of the proposed marine planning options

Marine Planning Option	Flexibility	Approach	Potential for consistent data management	Potential to attract resources	Potential for meeting ecosystem objectives	Certainty of delivery	Political acceptance	Positive public perception	Incentive to succeed	Potential for conflict resolution	Potential for a single plan	Environmental Benefits
	High	Reactive	Low	Low	Low	Low	High	Low	Low	Low	Low	Reduced
1a	↑	↓	↓	↓	↓	↓	↑	↓	↓	↓	↓	↓
1b	↑	↓	↓	↓	↓	↓	↑	↓	↓	↓	↓	↓
2a	↓	↓	↓	↓	↓	↑	↑	↓	↓	↓	↓	↓
2b	↓	↓	↓	↓	↓	↓	↑	↓	↓	↓	↓	↓
3	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓
	Low	Proactive	High	High	High	High	Low	High	High	High	High	Improved

KEY	High	Medium	Low
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NB: the arrow directions imply a generic progression from low to high levels of involvement or chance of successful delivery based on current institutional capacity. The column entitled “Political Acceptance” demonstrates that Option 3 is highly unlikely as a marine planning option, resulting in Option 2b being the most appropriate in the short to medium term. The environmental benefits column is produced to broadly indicate any significant improvement or reductions to the delivery of marine conservation objectives over time (this is subjective and is highly dependent upon the design of effective local management delivery mechanisms).

5. Discussion, Challenges and Recommendations

5.1 Overview

A discussion on key project findings, challenges and recommendations are presented below along with descriptions on how these might be taken forward by the project sponsors. In many cases the recommendations presented are as much to inform the planning bodies (WAG/MMO) as for the project sponsors.

A series of question headings are presented within the original project brief. The following text draws attention to the key challenges and subsequent recommendations to help provide some advice and guidance on cross-border marine management, based on the findings of this project. “Key Challenges” and “Key Recommendations” boxes are separately prepared at the beginning and end of each sub-section to outline the position and likely way forward to addressing that question within the Marine Bill consultation response.

As noted in Section 2.1 (Project Assumptions), this report has been completed prior to the release of the Draft Marine Bill and therefore may not be applicable depending upon its contents and proposed changes.

5.2 Recommendations and Challenges

5.2.1 Since the ‘planning’ boundary cuts across an ecosystem unit what challenges does this raise?

Key Challenges
<i>Ensuring protection of mobile and connected marine ecosystem resources and processes across administrative planning boundaries and that connected ecological processes (e.g. nutrient and larval supply, migration pathways etc) are not compromised.</i>
<i>Integration of cross-border management effort to achieve mutually acceptable marine planning outcomes.</i>
<i>Planning organisation collaboration and commitment at the senior decision making level between England and Wales.</i>

The key challenge to the ‘ecosystem unit’ is that inefficient and non-integrated planning across administrative boundaries risks damaging fundamental marine ecological pathways. In principle, the development control needed in sea use planning is fundamentally similar to that used in land use planning. Many activities and installations occupy fixed locations, both on the seabed and with respect to the water column and sea surface. Even activities which are traditionally regarded as mobile, such as fisheries and navigation, are in effect also fixed, but at larger scales – e.g. major shipping routes and fishing grounds. The difference is that, because of the three-dimensional nature of the marine environment, uses may be superimposed spatially on one another in ways different to those on land. Thus there is a case for spatial planning in the marine environment, similar in principle to land use planning, but more complex in practice due to the nature of the environment.

The main challenge, however, relates to integration of effort and the eventual marine planning outcome. Various plans (including those led by the project sponsors) cover issues that have an impact (direct or indirect) on the marine environment. Within a cross-border situation, there is a need for a mechanism to encourage collaboration with these plans so that they are co-ordinated

to best address marine planning. The current example of RBMPs for river basin management planning is one example which could be drawn from. The project's sponsors should seek to ensure that the plans and strategies of others, particularly those co-delivered with statutory responsibilities make provision for any relevant Programme of Measures needed. The SEA Directive also attempts to integrate this approach, and the Marine Bill is anticipated to acknowledge this. However, the strategic nature of the Marine Bill means it is likely to require additional support for its implementation by the creation of additional legal mechanisms to ensure the synergy of plans within a cross-border situation.

Many of the co-deliverers of these Programme of Measures will be represented on existing or pending stakeholder engagement groups at a river basin district or catchment level (e.g. for RBMPs as part of the WFD, or through Coastal Groups as part of the SMPs process), but this may not always be the case for marine specific stakeholders. A mechanism therefore needs to be set up to enable such organisations to share marine information to help answer any issues concerning marine plan delivery and to provide input towards achieving marine ecosystem objectives with these various planning processes.

A Streamlined Consents Group has been developed for the River Hamble in Hampshire and has proved successful in bringing together regulators and developers at an early stage and to identify key regulator concerns and coordinate responses. This mechanism could prove very successful in situations such as the Dee which is further complicated, having additional regulators due to devolved administration. The Group supported by the Marine Plan could ensure that the application process fully addresses the issues/opportunities of the ecosystem approach.

The planning processes likely to have significance to the delivery of marine ecosystem objectives are:

- spatial land use planning;
- rural planning;
- Periodic Reviews of water company plans;
- marine, transitional waters and coastal planning;
- biodiversity planning.

The pending RBMP process (as mentioned above) does offers opportunities to improve the co-ordination of planning processes at an ecosystem unit level within a single planning process. Agency staff and many others strongly support a move to greater integration of ecosystem unit planning processes. Integrating existing activities across an ecosystem unit will enable the project sponsors to be more effective in overseeing the delivery of the Programmes of Measures set out in the first RBMPs and in developing proposals to revise these plans by 2015. The timescales of the first Marine Plans (or specific cross-border plans as pilot studies) are not confirmed as yet, though the approach being adopted for RBMPs no doubt could be adapted and promoted for the pending marine planning process.

Perhaps the key challenge to this links through to collaboration and commitment at the top planning decision making level. The need for the anticipated two planning authorities (WAG/MMO) in a cross-border situation, to actually be forced to collaborate on marine planning is critical. They both also need to have compliance to achieving marine ecosystem objectives clearly set out within a series of separate organisational Key Performance Indicators (KPIs). Without this commitment, the endeavours of the project sponsors to ensure effective cross-border working runs the significant risk of being fruitless in the longer term.

Key Recommendations

Set out a series of separate organisational Key Performance Indicators (KPIs) to help achieve marine ecosystem objectives and to ensure commitment to co-ordinated/partnership working between MMO and WAG.

Coordinate a streamlined approach to marine consenting between planning organisations;

Collaborate with existing terrestrial planning processes (avoiding duplication) and ensure inclusion of marine ecosystem objectives where possible;

Clearly identify a planning process that reviews effectiveness of cross-border working overseen by either the planning bodies or a separate body tasked with conducting such a review (see section 5.2.3)

5.2.2 What legislative or institutional challenges are raised?

Key Challenges

Attempting to gain clarification of the extent to which project sponsors should fully integrate marine conservation measures into their respective management programmes.

How to address the legislative and institutional challenges linked to the land-sea interface within a cross-border situation.

Establishing similar internal structure arrangements (institutional development) to address marine conservation issues and to deal with FEPA license applications.

Despite recent clarification of the different agencies' environmental duties (see Section 3 and Appendix A) and the introduction of High Level Targets within each organisation, there is arguably still room for greater clarification of the extent to which project sponsors should fully integrate marine conservation measures into their respective management programmes. This remains, perhaps, the main institutional challenge for managing cross-border situations in the marine environment. Furthermore, the institutional roles with regard to ICZM delivery are in fact pivotal to marine planning success, as it could be argued that the Draft Marine Bill will prove inefficient unless it considers the delivery of ICZM and/or other more land based coastal issues in tandem. Often marine schemes will include a significant landward element that also requires consent under existing legislation, such the Town & Country Planning Act which may, in turn, trigger the need for a marine EIA under current EIA Regulations.

Whilst it is acknowledged that the focus of the Draft Marine Bill is for improved offshore marine management, and that the focus of this study is on cross-border issues, the inevitability of the main challenges being at the land /sea interface cannot be ignored when investigating the challenges of implementing marine planning, as it is at this boundary (as opposed to the cross-border territorial or administrative boundary) where the real delivery challenges will lie in the future.

In a cross-border situation, such as the Dee, where the various consents often impose a requirement for more than one environmental assessment, the consenting authorities will normally be content for the developer to provide a single document, provided that its scope is sufficient to embrace the range of marine environmental issues which each can be expected to consider. This may, for example, take the form of separate volumes addressing particular topics, such as the foreshore and land-based issues and sub-tidal matters. This in theory causes no obvious challenges, but in practice, the experience appears to be a different matter. This is through no fault of the project sponsors, though clearly reflects existing institutional structure differences and resource/timescale challenges imposed on them from WAG/Defra. Clearer communication of requirements and having similar internal structure arrangements (institutional development) is AS IMPORTANT as any new attempts to force collaboration in a cross-border situation.

A real concern relates to the mechanisms to attain FEPA licences in a cross-border situation. Although new Regulations are under consideration to amend FEPA, and for devolved responsibility for this to be passed, the EIA Directive has only just started to be applied fully to this Act. Nevertheless, there are existing provisions within FEPA to require license applications to provide the licensing authority (WAG/MFA/MMO) with such information as it deems necessary to enable it properly to consider the application. This currently remains a challenge in a cross-border situation such as at the Dee. The licensing authority's (WAG/MMO) policy is that this information shall include the equivalent of a formal ES in support of all marine development (e.g. offshore windfarm, major port proposals and other projects that may have potential significant environmental effects to inform the process of impact assessment).

Key Recommendations
<i>Set organisational KPIs to include requirements to commit resources to marine planning (including cross-border coordination);</i>
<i>Improve organisational capacities for the delivery of marine EIAs in cross-border situations;</i>
<i>Improve and streamline consultation processes for marine EIA and consenting issues.</i>

5.2.3 What consultation structures and groups could be involved in cross-border marine planning?

Key Challenges
<i>Establishing an effective engagement mechanism for offshore stakeholders.</i>
<i>How best to set a duty on planning authorities to actively participate on marine conservation matters.</i>
<i>How to introduce mechanisms to improve coastal cross-border working as part of the existing (or revised) planning process.</i>

There are a range of possible consultation structures that could be adopted to better deliver cross-border working relationships. However there is currently no effective engagement mechanism in place at present for offshore stakeholders. Whatever method or approach is adopted, there needs to be a duty on planning authorities to actively participate. This will help to ensure that a series of common strategic objectives are set across a range of sectors within a cross-border situation. This has many benefits, not least to possibly help in authorities sharing responsibilities and also resources. There should also be a duty on local authorities to join cross-border partnerships to ensure the link with the terrestrial planning system.

There could (or perhaps should) be a marine management information “portal” that helps to informatively assess the cumulative impacts of marine consents. This portal should initially act as a clearinghouse, but then focus on addressing certain administrative inefficiencies within either the planning authorities, or from within the project sponsors, by looking at marine licensing applications from start to finish (crossing departmental boundaries). Expertise should remain within the existing project sponsor bodies, even though all information is channelled through a single MMO/WAG “portal”. MMO / WAG should also seek to arrange to have more of a regional capacity which is of particular importance in a cross-border situation.

Three possible legislative stakeholder engagement models, which currently exist, could be adapted for implementation of cross-border working. One other initiative has recently been successfully set up for terrestrial spatial planning. These are:

- Management Scheme approach (for compliance to the Habitats Regulations);
- Civil Contingencies Act (CCA 2004);
- Wales Spatial Plan Cross Border Working Group;
- Concordat Approach (example set between Scottish Executive and DTI).

These models are presented in more detail within Appendix D, though some useful tools used to encourage good cross-border working practices are presented below.

- The drafting of Memorandum of Understanding/Working Agreements, signed up to by politicians to confirm their commitment to cross-border collaboration.
- The production of SPGNs with one possibly being a marine cross-border specific SPGN, to show good and bad examples of cross-border collaboration, from a regional, local government and community perspective.

The CCA is an interesting engagement model as it is separated into two substantive parts: local arrangements for civil protection (Part 1) and emergency powers (Part 2). Part 1 of the Act and supporting Regulations and statutory guidance “Emergency Preparedness” establish a clear set of roles and responsibilities for those involved in emergency preparation and response at the local level. The Act divides local responders into two categories, imposing a different set of duties on each. Those in Category 1 are those organisations at the core of the response to most emergencies (e.g. emergency services, local authorities, NHS bodies).

Category 1 responders are subject to the full set of civil protection duties. Category 2 organisations are more “co-operating bodies” and less likely to be involved in the heart of planning work but will be heavily involved in incidents that affect their sector. Category 2 responders have a lesser set of duties - co-operating and sharing relevant information with other Category 1 and 2 responders.

A similar approach could be mirrored for cross-border working by creating formal Category 1 and 2 “marine stakeholders” within the cross-border decision making process. CCW/NE and the Agency along with WAG/Defra (MMO) would all be included as Category 1 “stakeholders” and a series of appropriate “duties” would be imposed on them. As expanded upon in Appendix D, the intelligent use of technology to assist Category 1 and 2 “marine” stakeholders may be the key to the successful implementation of the Marine Bill. One major stumbling block of the CCA is the local authority claim that it is not included amongst their key performance indicators – the metrics that have been established to measure their success against the targets set by Government.

Key Recommendations
<i>Improve consultation procedures through the use of effective consultation engagement models;</i>
<i>Provide a duty to collaborate (e.g. similar to that within the Civil Contingencies Act);</i>
<i>Improve procedures for information exchange on marine conservation matters (consents portal);</i>
<i>Increase institutional capacity to deliver marine planning at a regional level (MMO/MFA/WAG);</i>
<i>Production of supporting tools to aid sponsor organisations (Service Level agreements; PPGs; TANs etc).</i>

5.2.4 Will partners change the way they work in accordance with a cross-border marine planning situation?

Key Challenges
<i>How can internal working practices be easily mirrored between project sponsors when addressing marine conservation issues?</i>
<i>How should marine planning audit evaluation exercises be set up to address marine conservation objectives?</i>
<i>How and who is to monitor development and implementation of the Marine Plans?</i>

It will become crucial for planning authorities and the project sponsors to agree on how marine planning progresses in a cross-border situation and how internal working practices may need to change. An internal working model to identify objective compliance and to improve internal working for marine management delivery is ultimately required. Such a working model need not be an onerous exercise, and should be iterative in its structure to enable change as the marine planning process develops (i.e. learn from the first cycle of draft marine plans around the UK). It is recommended that project sponsors adopt two different kinds of marine planning audit evaluations:

- Formative evaluation – a review of partner organisation progress (to planning bodies) in contributing to marine plans or planning before its targets are achieved. This will enable the

project sponsors to adjust and improve internal working procedures to demonstrate improvements to the delivery of marine ecosystem objectives.

- **Summative evaluation** – to check at specified milestones to see how far marine planning KPIs or targets have been achieved. This should include collaborative aims, indicators of success, milestones for achieving marine ecosystem objectives and those responsible for measuring the success of future marine plans. The quality of results will need to be assessed regularly so that the appropriate and latest marine information is being used to review the cross-border marine plans. Within this evaluation system, planning authorities (and the project sponsors) will need to take account of the latest plans (e.g. RBMPs) and reporting procedures of all organisations to gain a broad view of progress.

Key Recommendations

<i>Review internal capacity structures and capabilities (for each sponsor organisation) in light of the published Draft Marine Bill (April 2008);</i>

5.2.5 What changes will be required within the partner organisations?

Key Challenges

<i>Institutional commitment between the project sponsors to agree on designing “mirrored” marine teams;</i>

<i>Desire to set clear KPIs on marine management that are transparent between the project sponsors;</i>

<i>Desire to sustain a group similar to a Cross Border Marine Consents group over time.</i>

This is a difficult question to directly answer, though an assumption was stated within Section 2.1 of this report that:

- marine planning responsibility will NOT be with the sponsor organisations and this shall sit with Welsh Assembly Government (WAG) and the (to be established) Marine Management Organisation (MMO). This would therefore result in limited significant change to the sponsors’ roles and remits as statutory consultees, though there could be some need for increased time and key personnel commitments associated with statutory plans.
- Project sponsors will maintain their existing conservation remits and work to existing legislation/remits (e.g. Water Resources Act, CROW Act) and thus continue to operate as competent authorities. If this assumption is correct, then there is likely to be very little change in their remits or activities arising from the Draft Marine Bill.
- If WAG/MMO delegated responsibility to the project sponsors, this may result in a change in their roles and remits which would require a separate regulatory impact assessment (RIA) though could provide an official driver for consistent delivery of human resources to deliver marine conservation objectives.

To this end, there would be little change in responsibilities as a consequence of a new Marine Planning process that does not impose a change of duties amongst the project sponsors. The roles of Agency/CCW and NE input (with regard to marine issues) are likely to be very similar to those already in place within the terrestrial planning system (*nature conservation authorities not direct responsible for the delivery of a statutory plan*).

Despite this, a key area where institutional change could be applied effectively and efficiently is linked to support towards delivering integrated cross-border marine data management.

Both marine consent applicants and regulators acknowledge that there is no consistency (and hence uncertainty) as to what information is required within EIA and Appropriate Assessments in a marine environment (i.e. new baseline information etc) and many applicants do not appreciate the timescales and costs associated with data collection within the marine environment. This results in poor documentation in support of a marine consent and increased consultation time for the Agency, NE, CCW and other consultees who often have to request further information. This usually results in additional costs and programme delay to the applicant, particularly in a cross-border estuarine situation. It is recommended that any cross-border guidance includes advice on information requirements and levels of assessment for a marine EIA (as an example only).

There is a risk, however, that the greater availability of information could simply raise the expectations of regulators concerning the acceptable standards of consent application assessments and simply lead to more scrutiny of marine developments in greater detail. Agreeing the scope with NE/CCW and the Agency and the regulator will reduce the risk of this occurring (i.e. tools to assist in better pre-application communication, such as the cross-border “portal” concept raised in Section 5.2.3).

While some rationalisation of the marine consenting regime could (and is expected) be achieved by WAG/MMO in the coming months, many of the requirements will continue to be driven inevitably by the EIA, Habitats Regulations, WFD and SEA Directives. There are no short cuts that can be taken in relation to these commitments, for which the clear and detailed process set out in law must be followed in full. Any new requirements that the Marine Bill imposes on applicants will also need to be absorbed into these processes. This inevitably constrains the scope for simplification of the consenting process for developments that fail to be considered under these (and new Marine Bill) legislative processes.

Finally, it is recognised that the Habitats Regulations and the requirement for Appropriate Assessment (AA) is complex and confusing. This is exacerbated and often duplicated within a cross-border situation. Where an AA is required under the Habitats Directive, the EIA must provide the competent authority with the information that will be required to inform that assessment. Many LPAs, however, do not have the skills to advise applicants or undertake the AAs themselves and CCW/Agency and NE are required to advise all parties on the scope and requirements of the assessments as well providing guidance on the terminology and implications of adverse impact. NE (as an example) has provided guidance on this topic but it is recommended that any new WAG/MMO Cross-Border Marine Consents Group provide specific guidance on undertaking Appropriate Assessment within the marine environment.

Key Recommendations

Promote mechanisms (building on existing projects and UK funded initiatives) to effectively deliver integrated cross-border marine data management.

Promote the marine data management cross-border “portal” concept.

5.2.6 How can effective vertical planning be assured? (considering local and regional interpretation of national objectives)

Key Challenges

Gaining cross-border agreement on the wordings and agreements in the content of a UK Marine Policy Statement.

Assuring consistency in legal interpretation of the Draft Marine Bill for Welsh and English Territorial Waters

There is always likely to be slight variations in the legal interpretation of a UK marine policy statement. It is also very likely that devolved administrations (Wales, Northern Ireland and Scotland) will want to design their own specific statement based on variances in devolved legal requirements. To this end, effective vertical planning is only likely to be assured if a duty is

imposed on planning authorities to collaborate and agree on the legal implications of separate vision statements or Marine Conservation Zone objectives within their own marine waters.

The emphasis on communication and engagement remains critical here, and collaborations (e.g. possibly through existing or new partnerships) is an easy mechanism to engage planning authorities. Many developers/applicants are uncertain of which consultees need approaching for different coastal/marine consents. If there were two different marine policy statements for each country covering the Dee, then confusion is likely to increase and add to the disparate delivery of marine management and delivery of marine ecosystem objectives.

At the local level, discussions relating to cross-border marine developments have raised concerns (not specifically within the Dee) that local authorities should be statutory consultees on coastal consents which affect their jurisdictional area. In the majority of cases, LPAs are not consulted during the consenting process and there are calls by a number of parties for this issue to be addressed through the Draft Marine Bill (re-emphasising the issue on ICZM delivery raised in Section 5.2.2). Jurisdictional complexity is heightened where a LPA (or other terrestrial regulator) owns land below mean low water and whether this results in an extension of the Town and Country Planning Act (Atkins 2006).

Finally, a key issue for further consideration prior to the introduction of any marine legislation will be to provide enabling powers for marine plan making and license determination functions for sub-regions to be delegated to partnerships including the project sponsors, as well as regional and local government and bodies.

Key Recommendations

Ensure agreements are in place in cross-border situations concerning the survey details needed to enable the appropriate selection of new Marine Conservation Zones (MCZs).

Need to insist on a duty for collaborative working partnership arrangements to be set up between MMO and WAG;

Desire to set clear KPIs on marine management that are transparent between the project sponsors to enable auditable Action Plans (between the agencies) to be prepared.

Provide enabling powers for marine plan making and license determination functions for sub-regions to be delegated to partnerships

5.2.7 Will there be differences in the approach required for planning as opposed to licensing? What are the cross-border implications of this approach?

Key Challenges

Duplication and inefficiency in delivering FEPA consultation processes in cross-border situations.

The common denominator between marine planning and marine licensing is that of informed and effective consultation. Section 4 has considered in some detail the implication of marine planning options on management delivery. With regard to marine licensing, this study has highlighted that a lot of communication on cross-border issues (between planning authorities) is not effective and is often ad hoc and uncoordinated.

It is recognised that there is considerable duplication and inefficiencies in the consultation process on cross-border situations which results in numerous copies of documents being forwarded to single project sponsor officers. Strengthened communication should result in a number of benefits as the arrangements for consultations and processing of specific marine applications can be arranged cross-border meetings.

Consent applicants often raise concerns about the quick response time required for many applications yet conversely applicants believe that the process is too slow and should be speeded

up (*pers comm.* Port of Mostyn). The problem arises from the requirements of consenting organisations to take applications to approval boards for approval (e.g. planning committee for local authorities and statutory Harbour Committees for works licences)..

The benefits of an improved cross-border communication and consultation system are many, though are likely to include:

- Reduced need for sending multiple copies of documents to the same organisations;
- Reduced risk of uncoordinated requests for consultation on different consents for the same application;
- Reduced risk of uncoordinated time-scales for responses;
- Opportunities for discussion of the different issues arising;
- Encourage further informal liaison between consenting organisations and other consultees; and
- Reduced risk of conflicting responses from organisations between two countries.

Key Recommendations

Consolidate environmental and Agency conservancy regimes (FEPA and CPA) which account for more than 90% of consents applied for;

Bring a number of regimes together into an integrated, holistic system, requiring a single “cross-border” marine consent application and licence form.

Retain and simplify the current system of separate consents for different sectors, and incorporate environmental and navigational concerns into each.

Set clear KPIs on marine management that are transparent between the project sponsors to enable auditable Action Plans (between the agencies) to be prepared..

5.2.8 What other agreements are already in place for working across national borders?

Section 5.2.3 raises the “agreement” models set up for the CCA (2004) and the Management Scheme approach which could be adapted as working approaches to encourage effective working agreements across national borders (see also Appendix D).

There are few examples of effective cross-border working within the marine environment. The Coastal Group engagement model for SMP2 is proving to be a good workable model for shoreline management, though further offshore, there does not (as yet) appear to be an approach which stands out as being successful (perhaps understandably so as attention has not been focused on this until recently).

The Government View (GV) process for marine aggregate extraction is one such mechanism to perhaps focus on here as it does possess significant drawbacks as a working model for cross-border working. It is characteristically slow, often taking several years, as a result of industry lead-in times, and the time it takes for an applicant to complete the relevant environmental studies and consultation requirements and then for the consenting authority to issue a GV. The system has been described as insufficiently open and transparent. There is no Strategic Environmental Assessment (SEA) of dredging operations, and applications for licences are submitted and dealt with on a case-by case basis for particular areas of the seabed.

As such, there is no overview of the nature and extent of the resource beyond the specific licence application site, or data on less sensitive extraction areas;

The GV Procedure does not apply within a Local Planning Authority area, where LPA consent is required, or where permitted under Local Harbour Acts. Where dredging within harbour authority areas is for commercial aggregates, both the harbour authority procedures and the GV will need to run in parallel.

Key Recommendations

Adopt best practice examples from the CCA, Concordats, SMP2 Coastal Group model and Management Scheme approaches that currently work well in cross-border situations (see Appendix D)

Clearly determine the key elements of the existing land-use planning system which may be transferable to marine aggregate dredging, including the need to conserve natural resources and cultural heritage (as well as the resource itself);

*Establish consistency in decision-making; conflict resolution; greater stakeholder involvement; and greater potential for sustainable development
MMO/WAG needs to operate independently of any commercial or land ownership considerations, and provide a forward looking, strategic approach to marine aggregate dredging and future management of MCZ designations.*

The Draft Marine Bill should be seeking to enable a more robust framework for determining future marine minerals dredging applications, and hopefully ensure consistency between land- and sea-based decision making. Several key elements of the existing land-use planning system appear transferable to marine aggregate dredging, including the need to conserve natural resources and cultural heritage (as well as the resource itself); consistency in decision-making; conflict resolution; greater stakeholder involvement; and greater potential for sustainable development.

The new regime must also operate independently of any commercial or land ownership considerations, and provide a forward looking, strategic approach to marine aggregate dredging.

5.3 Discussion

Whilst there remain very obvious legislative and administrative uncertainties linked to establishing new MCZs and conservation management delivery within cross-border situations, (prior to the release of the Draft Marine Bill in early April 2008), an attempt has been made to support the creation of an “action plan” or route forward for the project sponsors to possibly promote or adapt in their Draft Marine Bill consultation response.

Figure 6.1 is produced to outline a conceptual model for cross-border marine conservation management. Two draft objectives (yellow boxes) are shown which address marine conservation aspirations for the future (for both project sponsors and planning bodies). Surrounding these are four draft “Actions” which may be developed into internal KPIs, to help demonstrate progress on effective cross-border working.

Figure 6.2 develops further how each Action seeks to help implement the two cross-border working objectives (centre boxes shown in Figure 6.1). This concept could (for example) be piloted within the Dee (or the Severn) as a working test Marine Plan model.

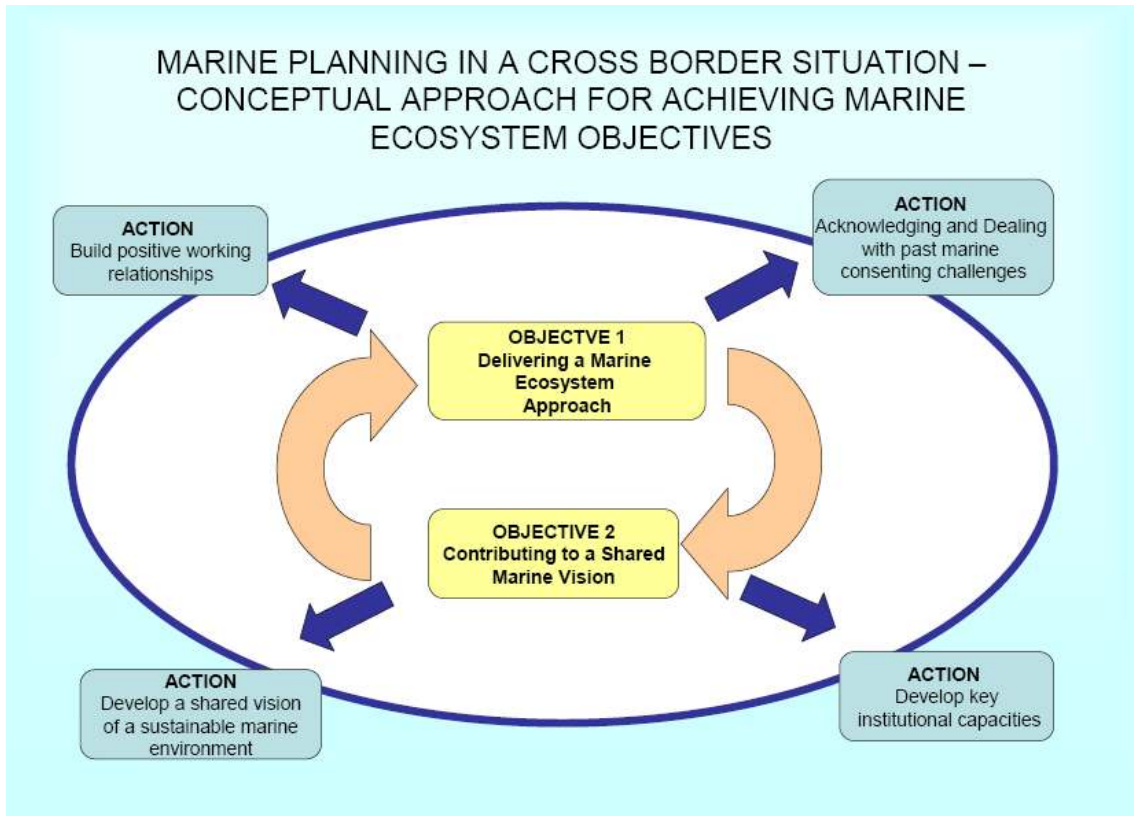


Figure 6.1 – Collective Cross-Border Marine Objectives and Strategic Actions (for all project sponsors to promote)

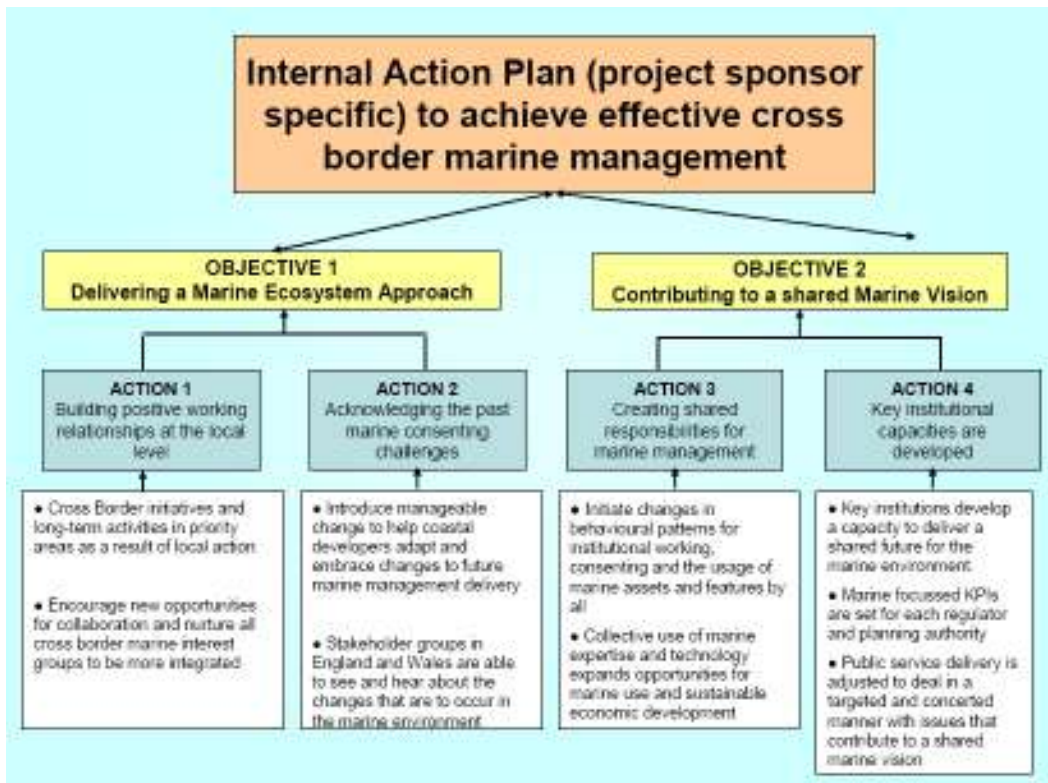


Figure 6.2 Detailed Cross-Border Action Plan to better implement marine ecosystem objectives

6. Conclusions

6.1 Marine Planning in Cross Border Situations

A key conclusion of the study is that the future success of achieving and delivering marine conservation objectives is fundamentally associated with ensuring the successful long term collaboration between the two key proposed Planning Authorities (WAG/MMO). Section 4 has identified that there is greater opportunity for the successful collaboration of socio-economic marine development with marine conservation when a statutory planning approach is adopted or where a statutory duty to collaborate has been established.

The study concludes that Option 2b appears to be the most appropriate marine planning option in a cross-border situation (for the project sponsors) to ensure the best possibility of achieving marine ecosystem objectives. Statutory options have greatest potential for attracting resources and therefore greatest potential for support to existing cross-border working and refinement/streamlining and be future proof – in short, the greatest potential to be effected and be effective.

Option 2b also best provides the opportunity for effective collaborative working. The option would provide a clearer process for engaging in the planning process and engender greater public and institutional confidence in the successful delivery of the outcomes of the plans. The option may prioritise attentions on current inconsistencies in factors such as data acquisition and management, Government priorities, and legal interpretations of policy.

There may be a need for the production of SPGNs to help link national horizontal collaboration efforts. Organisation Key Performance Indicators (KPIs) will need to be agreed and set, especially between Defra/MMO and WAG (as well as within each of the project sponsor organisations). The statutory duty to collaborate would need to include all levels of management including national (MMO/WAG) in order for the plans to be fully integrated and avoid risk of divergence during implementation through the licensing regime. The licensing/implementation would remain within MMO/WAG and this would also need more effective collaboration for licence and consenting arrangements within the Dee.

Finally, a key issue for further consideration prior to the introduction of any marine legislation will be to provide enabling powers for marine plan making and licence determination functions for sub-regions to be delegated to partnerships including the project sponsors, as well as regional and local government and bodies.

6.2 Marine Licensing in Cross Border Situations

With devolved powers soon to be passed from MFA to WAG for FEPA coastal consents, it is strongly recommended that similar consenting procedures are adopted between the two countries. Discussions with MFA and WAG imply that there is a strong statement between the two organisations to ensure a synergistic approach on marine licensing. The main issue that needs addressing is improved communication to applicants and wider stakeholders that this will take place. The introduction of a Cross Border Supplementary Guidance Note may be one recommended approach to ensure this clarity is communicated. Some possible actions or streamlining processes that could be proposed by the project sponsors include:

- Streamline environmental and Agency conservancy regimes (FEPA and CPA) which account for most of the marine/coastal consents applied for;
- Bring a number of regimes together into an integrated, holistic system, requiring a single “cross-border” marine consent application and licence form.
- Retain and simplify the current system of separate consents for different sectors, and incorporate environmental and navigational concerns into each.

- Promote the principle of one proposal, one license to encourage simplicity for all marine regulators and applicants for the future.

References

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4. 1889 Dee Conservancy Act;
5. Dee Estuary Strategy Final Report (1996) – A Management Strategy to Safeguard the Future of the Dee Estuary.
6. EA Wales document “Safe Marine Operations in the Dee Conservancy” - August 2003
7. MARICO (2001) “River Dee Conservancy Review Report” Report No. 00NR053

Appendix A – Interim Report

(see separate file)

Appendix B – Workshop Findings Report

(see separate file)

Appendix C Dee Estuary Current Planning and Licensing Arrangements

C1 Dee Estuary - Contemporary Management Arrangements

This appendix is designed to briefly outline the current management issues surrounding coastal consenting within the Dee. Some information is gathered on issues relating to current marine licensing and consultation approaches, including who is involved in marine development decision making processes, the roles and responsibilities of regulators within the Dee estuary relating to marine nature conservation or activities influencing or influenced by delivering marine nature conservation. For a full description of generic project sponsor remits and responsibilities, refer to the Interim Report (see Appendix A).

The Environment Agency

Dee Conservancy

The Agency is the conservancy and local lighthouse authority for the Dee Conservancy, a defined harbour area that extends from Wilcox Point in Chester downstream from Chester Weir, to the seaward boundary of the estuary. This boundary is a line linking Point of Ayr on the Welsh coast and Hilbre Point on the Wirral peninsular.

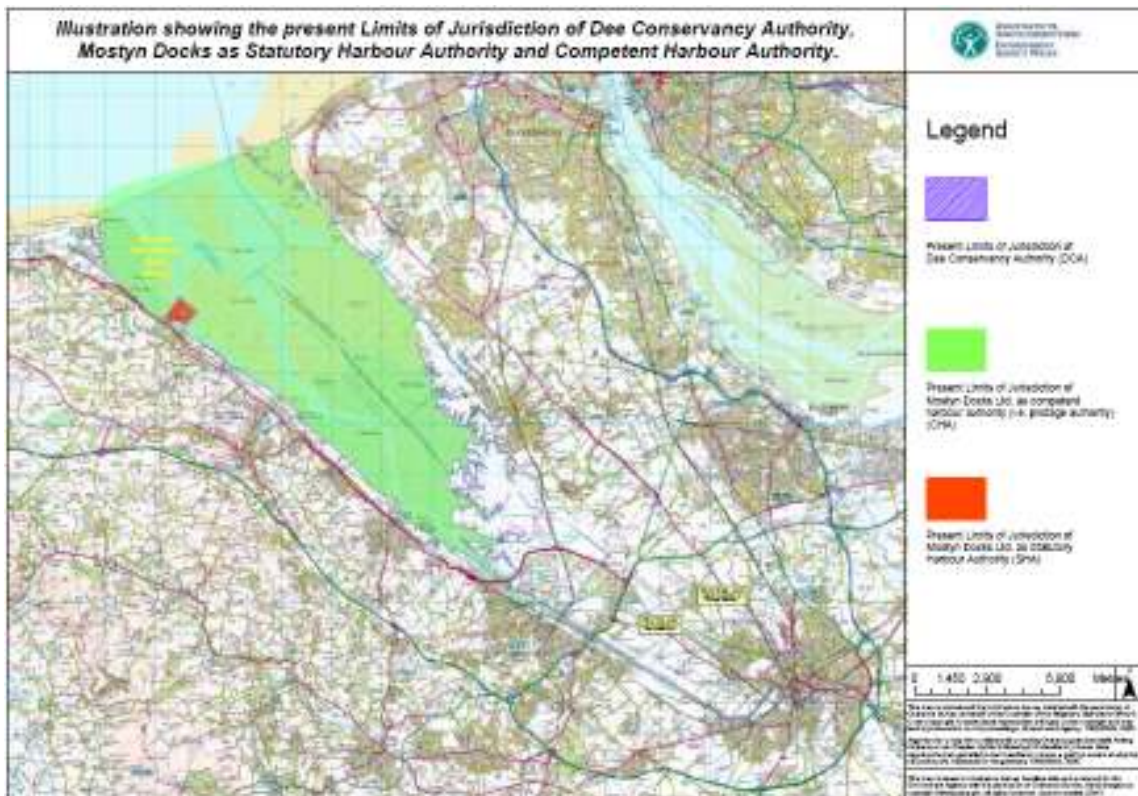


Figure C.1 Illustration showing the present Limits of Jurisdiction of Dee Conservancy Authority, Mostyn Docks as Statutory Harbour Authority and Competent Harbour Authority.

As conservancy and local lighthouse authority for the estuary, the Agency is under a duty to take reasonable steps to conserve the estuary and to mark or light it so that it is reasonably safe for navigating vessels. The Agency's responsibilities as conservancy and local lighthouse authority are found in general common law duties and public general legislation. Further responsibilities are

to be found under local legislation, particularly the 1889 Dee Conservancy Act. In summary, the Agency's conservancy responsibilities include installing and maintaining aids to navigation, such as buoys and beacons, maintaining the estuary's training walls, and disseminating accurate sounding and other information for estuary users.

The conservancy role in the Dee is fairly unusual for the Agency. Despite this, the Agency are involved with other estuary management initiatives elsewhere though without the statutory conservancy role.

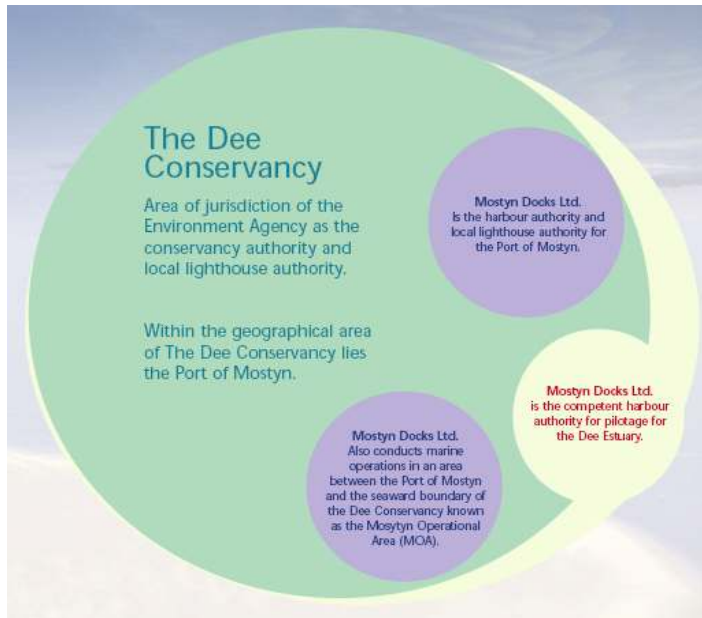


Figure 3.2 Management of Marine Operations in the Dee Conservancy (taken from the EA Wales document "Safe Marine Operations in the Dee Conservancy" - August 2003

Many of the Agency's functions as conservancy authority are still governed by the original 1889 Act, which sets tight limits on the dues which the Agency can raise from estuary users to fund its conservancy activities. While some dues can be levied by the Agency, there are several significant exemptions, resulting in a situation where the Agency is unable to levy dues on the vast majority of commercial users of the estuary, regardless of whether they benefit from the conservancy and local lighthouse services provided by the Agency. The costs of providing these services must therefore be met from the Agency's budget through grant in aid. Section 26 of the Harbours Act 1964 ("the 1964 Act) confers a general power for conservancy authorities to charge dues, but this power does not override any restrictions contained in local legislation.

The Agency does not have responsibility for pilotage services in the estuary. Mostyn's jurisdiction over pilotage currently extends over a very similar geographical area to the Agency's conservancy and local lighthouse authority jurisdiction. Again, this is shown more clearly in Figure 3.1.

The Agency's conservancy and local lighthouse authority functions are in addition to its general functions relating to the Dee estuary pursuant to the Environment Act 1995 and other public general legislation.

Agency National Responsibilities

In addition to being the conservancy Authority within the Dee, the Agency's national responsibilities include regulating activities in controlled waters, which include coastal waters out to three nautical miles (for control of land based discharges and pollution control purposes including managing and prosecuting pollution incidents); establishing and enforcing environmental standards; compliance monitoring; and reporting on the state of the environment. The Agency also has a duty to promote the conservation of wildlife and habitats dependent on the aquatic environment and the recreational use of inland and coastal waters. The Agency has statutory responsibilities for the management of migratory fish to six nautical miles and manages sea

fisheries in approximately 60% of estuaries, including the Dee estuary where the Agency is also the sea fishery committee.

The Agency is also charged by Government to deliver Flood Risk Management (FRM) in an integrated and sustainable way both inland and on the coast and is the competent authority for a number of EC Directives, including Water Framework Directive, Bathing Waters Directive, Shellfish Waters Directive, Nitrates Directive and the Urban Waste Water Treatment Directive in England and Wales.

The Conservation (Natural Habitats, &c) Regulations 1994 transpose the Habitats Directive into law in Great Britain (herewith referred to as the Habitats Regulations). The Agency is also a competent authority for the Habitats Directive and needs to ensure any development project/plan/consent application within the Dee complies with the Habitats Directive and is assessed for no significant impact. The Agency supplies information on estuary activities to other statutory bodies where it believes this assists in helping them deliver their responsibilities.

The Agency is also a 'section 28g authority as defined by the Wildlife & Countryside Act 1981 as amended which gives the Agency, in exercising its functions, responsibilities for protecting the features of SSSI's. It is also a public authority under the NERC Act which extends a duty to conserve biodiversity to all public bodies and statutory undertakers. This also applies to NE and CCW (see below).

Natural England (NE)

Unlike the section for the Agency (above), there is no mandatory role for NE specifically within the Dee Estuary. The following reflects their national remit (i.e.: not geographically specific to the Dee).

NE is a new public body. It was formed in October 2006 by bringing together English Nature and parts of the Rural Development Service and the Countryside Agency. The Natural Environment and Rural Communities Act (NERC 2006) specifies NE's purpose as:

"to ensure that the natural environment is conserved, enhanced and managed for the benefit of present and future generations, thereby contributing to sustainable development"

The Habitats Regulations give Natural England and the Countryside Council for Wales a statutory responsibility to advise relevant authorities on the conservation objectives for European marine sites in England and Wales and to advise these authorities regarding any operations which may cause deterioration of natural habitats or the habitats of species, or disturbance of species for which the sites have been designated. This information will be a key component of any management scheme, which may be developed for this site. It will also aid competent authorities in defining the scope and nature of 'appropriate assessment' which the Habitats Regulations requires to be undertaken for plans and projects having a significant effect on the European site (Regulations 20, 48 & 50). There are also general duties placed on NE under Regulations 3, 4 and 5.

NE and CCW will also advise competent authorities on individual plans and projects in the Dee as they arise. NE and CCW are themselves competent and relevant authorities for nature conservation related activities in the Dee, landscape, access and recreation. They provide information and advice to other organisations and individuals in England and support/conducts research relating to nature conservation. NE are responsible for nature conservation of protected areas e.g. SSSI, SPA, SAC, NNR, Ramsar, MNR sites and protected species.

NE 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 Act 2000) and The Conservation (Natural Habitats, &c.) Regulations 1994.

NE do not issue consents or licences within the Dee, the Agency is the responsible authority for this. However, NE is approached for advice concerning consents as well as the impacts the consent acceptance may have on nature conservation interests.

There is no dedicated Natural England officer for the English side of the Dee.

Countryside Council for Wales (CCW)

Unlike the section for the Agency (above), there is no mandatory management role for CCW specifically within the Dee Estuary though CCW do have mandatory functions that apply in the Dee (e.g. site designation, SSSI assenting).

CCW is the government agency responsible for nature conservation in Wales and has responsibilities in relation to landscape, recreation and access. CCW reports and is accountable to Welsh Assembly Government (WAG). They provide information and advice to other organisations and individuals; and support/conduct research relating to nature conservation. CCW are responsible for nature conservation of protected areas e.g. SSSI, SPA, SAC, NNR, Ramsar, MNR sites and protected species. CCW carry out statutory monitoring of SSSIs within the Dee under Common Standards Monitoring.

CCW can notify, protect and manage the marine environment by designating SACs and SPAs (known collectively as European Marine Sites). Within the Dee, CCW is a statutory consultee with respect to licensed activities (such as those managed by the Agency) but they are also a licensing authority in their own right where the activity takes place in a SSSI (which the whole of the Dee is).

CCW and other relevant and competent authorities have legal obligations associated with the relevant Habitats Regulations. These relate to protection of species identified as requiring protection under the regulations and the protection of sites that have been designated for features of European importance as part of a network of European Sites (Natura 2000 or N2k Sites). The primary method of control and protection of N2k sites is the consideration of consent or permissions relating to plans or projects under the Habitats Regulations. CCW have no direct enforcement powers in SACs or SPAs below low water. However, regulations do require all relevant authorities to utilise their statutory powers to enforce the implementation of marine SAC management schemes, including the public's use of such sites.

CCW 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 Act 2000) and The Conservation (Natural Habitats, &c.) Regulations 1994.

CCW have two police officers seconded to work with them. These officers based in North and South Wales work hand-in-hand with CCW conservation and licensing staff dealing proactively with enforcement. There is also a dedicated CCW Conservation Officer for the Welsh side of the Dee.

C2 Dee Estuary – Current Management Issues

Coastal Consenting Procedures

In general, the licensing regime in the Dee is approached in a top-down manner (following the national licensing regimes). There are different policies and procedures that operate on the England and Wales sides of the estuary and regulators within the two countries seek to work around this challenge by improving communication mechanisms within their lines of work. The Infrastructure Planning Commission (IPC) may provide solutions to this (for the developments they will deal with) and if there was a clear communication process then this would be beneficial and more effective (addressed more fully in Section 6). It is felt that the problem of twin licensing agreements may be a significant challenge when a new marine development is proposed in a cross-border situation. There needs to be a series of common denominators regarding the working and licensing procedures between the two Governments and the consultation arrangements for NE/CCW/Agency whilst at present, this is lacking.

Within the Dee, the following consents (England and Wales) are of relevance within the estuary (for various local applications though details are not specified in this report):

1. Food and Environment Protection Act 1985 (FEPA) - *deposits of articles or substances at sea (thus protecting the marine environment from pollution);*
2. Coast Protection Act 1949 (CPA) - *activities on, under or over the seashore and sea-bed which may affect navigation;*

3. Petroleum Act 1998 - *construction and operations in connection with the exploitation of oil and gas, construction and operation of submarine pipelines;*
4. Telecommunications Act 1984 and Communications Act 2003 - *submarine communications cables;*
5. Electricity Act 1989 and the Energy Act 2004 - *electricity generating capacity and transmission of electricity*
6. Harbours Act 1964 - *development or redevelopment of a port or harbour*
7. Transport and Works Act 1992 - *major infrastructure projects*
8. Water Industry and Water Resources Acts 1991 - *certain works by water and sewerage undertakers*
9. Protection of Wrecks Act 1979 and the Military Remains Act 1986 - *for certain wrecks and remains*
10. Crown Estate licence for mineral extraction through dredging of the sea bed.

In addition to the consents outlined above, developers and flood and coast defence authorities (e.g. Wirral BC or Flintshire CC within the Dee) will frequently require other consents for operations below the mean high water mark depending upon the type and location of the works proposed. The issue of a FEPA licence and/or CPA consent does not obviate the need for the holder to obtain other approvals, which may include the following:

- Planning Consent (under the Town & Country Planning Acts, as amended);
- approval of a local harbour authority (under a local harbours Act);
- agreement of the land owner (often the Crown Estate Commissioners);
- consent of the Environment Agency (*Waste Management Licence - Environmental Protection Act 1990 / Waste Management Licensing Regulations 1994; Discharge or Drainage Consents*);
- approval under the Health & Safety Act 1974 (Application to Offshore Installations) Order 1995.

With reference to nature conservation, the Habitats Regulations require competent authorities (i.e. all project sponsors) to exercise their functions so as to secure compliance with the requirements of Habitats Directive. The Regulations identify a number of competent authorities as 'relevant authorities', with particular functions in relation to European marine sites. In addition to their duties as competent authorities, under Regulation 34, the relevant authorities may establish a management scheme for a European marine site under which they shall exercise their relevant functions. This has not been set up within the Dee as yet, though does represent a possible model for improved cross-border working. This is because Relevant Authorities must, within their areas of jurisdiction, have regard to both direct and indirect effects on an interest feature of the site.

With the SSSI within the Dee extending down to MLW mark (ie much of the Dee) there will be a need for consent/assent for operation considered to be potentially damaging to the features for which the SSSI has been designated.

Figure 3.3 provides a schematic diagram of the pre-application scoping of environmental assessment of developments (English side of the Dee only). The current system at pre-application stage appears (from a project sponsors perspective) relatively clear, however, this does not represent the situation within a cross-border estuary. What is not demonstrated are issues relating to consistency in feedback to MFA (previously the MCEU – as presented in the figure below), coordination in cross-border applications, and timing of responses between England and Wales.

A Marine Consents Unit has been established within the Marine Branch of the Welsh Assembly Government. The Unit will be taking over the administration of FEPA applications for Welsh Projects later this year and are currently working with the MFA on the handover of this work. The intention is that the Unit will become a 'one-stop' shop for marine licensing and consents for Wales, including Marine Minerals Aggregates licensing and Marine European Protected Species Licensing, as well as the new regime being proposed by the Marine Bill. The Unit, now and in the future, will work closely with all other Government Administrations, Departments and Regulators (as well as Advisors, Stakeholders and the public) where necessary (e.g. cross-border projects/projects requiring multiple licenses) to ensure that there will be a streamlined, transparent and straightforward approach to carrying out licensing for projects in Welsh Waters.

Figure 3.3 is therefore currently relevant for both the Welsh and English sides of the Dee but the cross-border consultation and coordination procedures are yet to be agreed. It is therefore uncertain to what extent the licensing issues will hamper or benefit the delivery of marine nature conservation objectives and the eco-system approach.

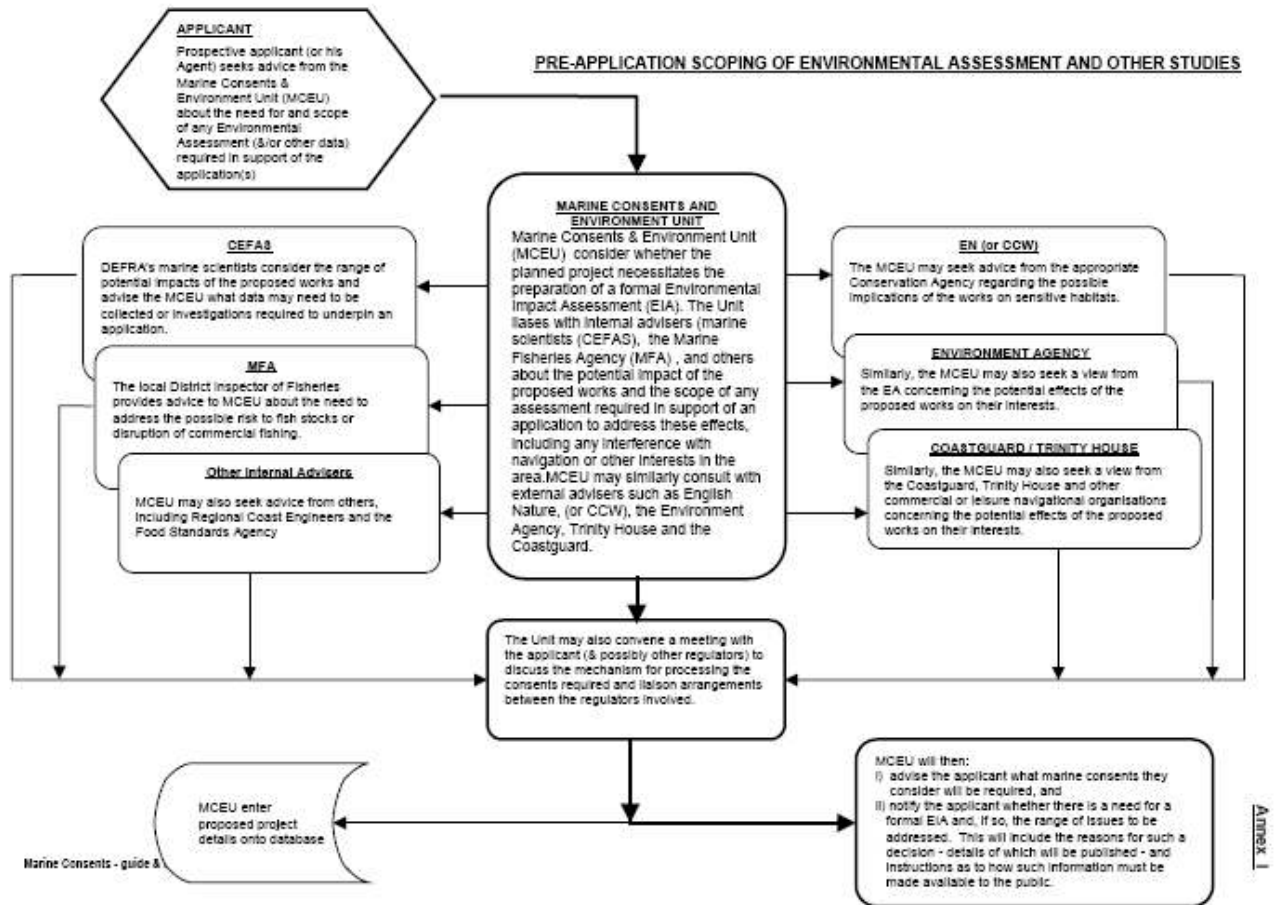


Figure C2 MFA consenting process for environmental assessments (also relevant for WAG).

Consultation and Engagement (Pre-application, application and post application)

At present, cross-border working is voluntary: no statutory duty to collaborate exists. Numerous organisations are involved in the Dee Estuary and in the absence of a strategic overview there is a reliance on informal networking. Examples of cross-border working are summarised below in Table C.1.

Example	Organisations involved	Remit
Technical Group and Regulators Group	Agency, NE, CCW, WAG, MFA	To inform dredging consents
Tidal Dee Users Group	NE, Ellesmere Port & Neston Borough Council Agency, Flintshire County Council Wirral M Borough Council CCW,	Coastal processes, SMP issues
Dee River Basin Liaison Panel	Business & industry (Heavy Industry) and (Small-Medium Enterprises) Consumer Council for Water, Countryside Council for Wales Environment Agency Wales Environment Agency Environmental NGOs –Cheshire Wildlife Trust – Wales Welsh Wildlife Trust Farming – FUW & NFU	To help achieve active involvement and stakeholder engagement in the Water Framework Directive.

Example	Organisations involved	Remit
	Fisheries Salmon & Trout Association Local authorities – Wales and England Ports and navigation Port Of Mostyn Recreation Institute for Sports, Parks and Leisure Regional Development Agencies – England North West Regional Assembly Rural land management - Country Land & Business Association Water companies – Wales and England	
Agency Monitoring and Sampling Programme	The Agency	Service level agreement for operational works linked to water quality sampling etc
Fishery Committee	Commercial fishermen, nature conservation agencies, local authorities, Agency, NE, WAG, RSPB	This is a non statutory consultative committee that advises EAW as Sea Fisheries Committee for the estuary. There is no formally constituted SFA outside of EAW. It is chaired by the Agency as Area Environmental Manager
EIA and Appropriate Assessment	NE, CCW, planning and licensing authorities	Review of scope and data requirements, technical review
Dee Conservancy	Proposed committee of 16 under Harbour Revision Order. This is a consultative committee only, to advise the Conservancy	Technical advice, regulation of Dee Estuary
Liverpool Bay Coastal Group	Conwy County Borough Council Denbighshire County Council English Nature The Agency Flintshire County Council Sefton Metropolitan Borough Council West Lancashire District Council Wirral Metropolitan Borough Council	
Dee Estuary Conservation Group	British Association for Shooting and Conservation. Campaign for the Protection of Rural Wales. Cheshire and Wirral Ornithological Society. Cheshire Wildlife Trust. Chester and District Ornithological Society. Clwyd Ornithological Society. Dee Estuary Voluntary Wardens. Dee Wildfowlers and Wetland Management Club. Deeside Naturalists Society. Deeside Urban Wildlife Group. Dyserth Field Club. Flint and Deeside Flukers Association. Hilbre Bird Observatory. Liverpool Bay Wader Study Group. Marine Conservation Society. Merseyside Naturalists Association. Merseyside Ringing Group. North Wales Wildlife Trust. Royal Society for the Protection of Birds. Wildfowl and Wetlands Trust. Wirral Bird Club. Wirral Society. Observers: British Trust for Ornithology. Countryside Council for Wales. Dee Estuary Strategy. Defence Estates. English Nature. The Agency. Flintshire Ranger Service. Mersey Estuary Conservation Group. North Wales and N West Sea Fisheries Committee. Wirral Borough Council Ranger Service.	planning applications to local authorities, - applications to government bodies (Environment Agency, DEFRA, DETR), - leisure activities - commercial fishing – cockling etc and makes representation to the relevant authorities where appropriate.

Table C.1 – Summary examples of cross-border working

Within the Dee, and other cross-border and non cross-border estuarine situations, a challenge is linked to the delivery of joined up consultation under FEPA (with maritime local authorities and other interested agencies). This is in respect of applications such as for construction works, offshore renewable energy developments, the designation of new marine disposal sites and disposal activities close inshore.

Licence applicants are often required to seek the views of other interested parties and this may involve informal scoping and formal consultation in respect of other consents and approvals. For example, developers will often require planning consent, and coast protection and flood defence authorities are obliged to seek comments from NE or CCW on proposed works. With the Dee Estuary classed as a main river, any dredging application requires land drainage consent for the removal of material, a FEPA licence and Coast Protection Act consent from WAG and the MFA for its disposal, and potentially a consent or assent under the W&C Act 1981. As a consequence, within the Dee, three different regulators are required to be consulted with. These regulators attach conditions concerning monitoring and environmental impact that need to be consistent and non-contradictory

In order to avoid unnecessary duplication of consultation in such cases, an applicant is encouraged to submit with their application details of any other consent applied for - or already obtained - together with copies of all associated correspondence relating to that approval. Wherever possible correspondence should indicate specifically the works to which they relate (e.g.: by use of the reference / drawing number, reference of environmental statement etc). The licence application form is designed with this in mind. In an attempt to avoid confusion and duplication of effort, within the Dee, the key regulators (Agency, CCW and NE) should meet voluntarily in a Technical Group and a Regulators Group. The group works well though the exercise is time consuming, and hence is the product of an inefficient consultation system which would perhaps not be needed if one licensing body provided consent. A clear, agreed, single approach concerning legalities, policies and processes would be welcomed in this cross-border situation.

6.2.1 Institutional Capacity

Following a rapid consultation exercise and telephone interview process with Dee regulators, it is clear that there are a wide range of practical issues that need to be addressed within a cross-border situation, both on behalf of the applicant and regulator side (e.g. improved communication of estuarine consents and different national planning guidance etc). The project workshop results have shown that the possible solutions offered by a streamlining of coastal consents procedures are hugely supported both within England and Wales.

Institutional capacity issues associated with devolution require specific attention in cross-border situations. Permissive powers for the Coastal Protection Act (hence FEPA applications) are likely to be devolved to WAG (previously run by MFA in London), and will have significant implications for the consultation process under FEPA (e.g. how would WAGs licensing team and MFA coordinate to avoid the situation where CCW/NE are consulted twice about the same activity occurring close to the border?). In addition, WAG is in the early stages of developing capacity in this area. It is now often the situation whereby CEFAS advises Defra (from England) and Defra subsequently advises WAG on coastal consenting related issues, which is unnecessarily complex and ultimately avoidable.

The consenting process is involved and complex but the current arrangement does appear to work well. There is an associated cost and workload issue related to this. The current process does present an applicant with a complex set of regulations to address with several regulators to approach, each of whom have differing perspectives or levels of engagement e.g. the Agency, WAG, Defra, CCW, NE.

The current regulating and consenting system, within cross-border areas, has significant shortcomings. There is clear evidence that this is lengthy, costly and complex. Issues linked to resourcing of Defra / MFA staff and time taken to process consent orders are very evident. There

is also the need (within the Dee) for regulators to liaise with two sets of lawyers (Defra in England and WAG in Wales). Coupled with this, two separate sets of consent advertising is needed which increases the complexity and cost and for both the applicant and regulator.

Appendix D – Possible Engagement Models

D1 Ideas for Cross Border Working using the Management Scheme approach as a model

A possible similar model could be adopted for implementation of cross-border working for the Marine Bill. The procedures for the Management Scheme approach (for compliance to the Habitats Regulations) are set out below.

THE PROCESS FOR PRODUCING THE MANAGEMENT SCHEME:

Stage 1 - Relevant authority training on the Habitats Regulations
Stage 2 - Foundation document
Stage 3 - Identification of key activities
Stage 4 - Inventory of activities
Stage 5 - Analysis of activities
Stage 6 - Assessment of activities
Stage 7 - Monitoring
Stage 8 - Management scheme

Stage 1 - Relevant authority training on the Habitats Regulations. The Habitats Regulations training day is primarily to raise awareness among all appropriate relevant authority personnel about the Habitats Regulations and how the work of each relevant authority may relate to the conservation features of the EMS and to the production of the management scheme. This should ultimately help all relevant authorities provide full and accurate information on their organisations activities to produce the scheme of management

Stage 2 - Foundation document. The purpose of the Foundation document is to provide a stepping stone to the production of the management scheme. It will describe the basic information and principles on which the management scheme is to be based, such as legislative background, reasons for designation, responsibilities of relevant authorities and the agreed process for producing the scheme

Stage 3 - Identification of key activities. The aim of this stage is to produce a matrix of activities for all relevant authorities across the whole of the site, which may cause deterioration or damage to the features and/or sub-features of the EMS. These will be determined by sector group (local authorities, ports/harbour authorities, Environment Agency, water companies and Internal Drainage Boards) meetings, where one co-ordinator from each RA will identify which activities their RA is responsible for and which operations they cause. A generic list of activities will be analysed for this purpose. The matrix will provide a site-specific summary of how local activities interact with the interest features of the EMS

Stage 4 - Inventory of activities. This stage will provide more detailed assessment of the activities. Relevant authorities will use their local knowledge to carry out a scoping exercise of activities for which they are responsible. This will be based on a simple pro-forma, which is merely a tool for each relevant authority to help them complete the scoping exercise. In addition to minimising effort, it will also help provide a consistent approach to Stage 4, which will be vital to later analysis. This will be an important stage and it will be essential that correct information is obtained.

Stage 5 - Analysis of activities.

Natural England and the Countryside Council for Wales will analyse all the completed pro-formas. They will work with the relevant authorities whose activities may cause deterioration or disturbance to complete an

additional ‘impacts of activity’ section to the pro-forma. To help with this additional section, further matrices, specific to each relevant authority, will be prepared which will:

- list the activity (s) to be considered
- type of impacts (operations) which should be considered in relation to the activity (s), and
- the sub-features which need to be considered in relation to the activities and operations.

These activities will form the basis of the management scheme.

Category Detail

A- Activity is not known by the RA to have an effect in its area of jurisdiction

B- Activity is known by a relevant authority to be having an effect in its area of jurisdiction and a single relevant authority is responsible or has power for that activity

C- Activity is known by a relevant authority to be having an effect* in its area of jurisdiction and a number of relevant authorities have powers or are responsible for that activity around the Estuary

D- Activity is having an effect and no one has responsibility for the activity

E- Effects of activity are unknown

Stage 6 - Assessment of activities. The assessment of activities from Stage 5 will lead to the production of an Action Plan detailing precise action to be taken to implement the scheme, the organisation responsible for each action, and a timetable for implementation of each action.

Category	Detail	Assessment Process
A	Activity is not known by the RA to have an effect in its area of jurisdiction	Recorded. No action required subject to continuation of current management regimes.
B	Activity is known by a relevant authority to be having an effect in its area of jurisdiction and a single relevant authority is responsible or has power for that activity	The relevant authority to address the problem
C	Activity is known by a relevant authority to be having an effect in its area of jurisdiction and a number of relevant authorities have powers or are responsible for that activity around the Estuary	The appropriate relevant authorities work co-operatively to address the problem. They may set up a working/topic group from within the sector groups if appropriate and other relevant organisations and interested parties will be invited. Discussions may then take place to determine possible solutions.
D	Activity is known to cause deterioration or damage and no one has responsibility for the activity	Relevant authorities will call a working/topic group of relevant organisations to consider action. Discussions may then take place to determine possible solutions.
E	Effects of activity are unknown	Relevant authorities may initiate a working/topic group which will involve relevant organisations and user groups to determine cause and effect and any possible actions that can be undertaken either by the relevant authority where appropriate or other organisations/initiatives through voluntary means

Stage 7 - Monitoring. In order to establish whether the conservation objectives are being met, a monitoring programme of the condition of all the interest features is required. Natural England and the Countryside Council for Wales will report to the Secretary of State via the Joint Nature Conservation Committee on the condition of each interest feature and the site every six years. In addition other relevant authorities will be responsible for monitoring the activities as identified within the management scheme.

A detailed monitoring programme will, therefore be developed in parallel to the management scheme, actions arising through the management scheme process will help prioritise future monitoring requirements within the programme

Stage 8 - Management Scheme. There can only be one statutory management scheme for each European marine site, but where SPAs and SACs overlap, the Habitats Regulations allow separate management schemes to be established for each site. Government guidance states however, that there will often be practical advantages in establishing a single management scheme to cover both. In such cases the specific management measures may vary in different parts of the whole area according to the respective nature conservation interests (DETR Guidance para 3.12).

The management scheme for the Severn Estuary European marine site will provide a management scheme for the SPA, in the context of the ongoing pSAC and Ramsar issues. It will not at this time specifically consider the features and sub-features of the Ramsar or pSAC. However, many of the activities identified as causing deterioration or disturbance to the SPA features and sub-features, will also be applicable to the features of the pSAC and Ramsar. This means that where pSAC and Ramsar features are coincident with the SPA features and sub-features, they will be protected by management prescriptions contained within the management scheme. Should the SAC be submitted to the European Commission as a cSAC at some point in the future, ASERA will have to decide on how to best address the management of additional nature conservation features and sub-features within this designation. In addition, ASERA will have to decide on how best to address the management of additional nature conservation features and sub-features of the Ramsar designation.

D2) Wales Spatial Plan Approach

Two Cross Border Working Group meetings were held to help deliver the Wales Spatial Plan. The main aim was to arrange a high profile Cross Border Event in January 2007. Key outcomes to be achieved from the event include:

- To decide on principles for cross-border collaboration in terms of sharing information, consultation, working group collaboration and border proofing;
- To seek political buy in and identify processes for collaborative working;
- Discuss some key strands (e.g. service delivery, eliminating disadvantage, equality of opportunity, health, places, communities, housing, transport) and consider the extent to which funds/resources are being spent and how procedures can be made easier;
- To focus on best practice;
- To reach an agreement at the end of the event in terms of future collaboration.

Numerous issues and opportunities were highlighted as part of the discussions, for example:

- Further dialogue required from a policy, strategy and service delivery perspective in relation to cross-border issues;
- Further emphasis to be placed on best practice in other regions and how it can be translated cross-border;
- The Cross Border Working Group to be the foundation of a more formal network in terms of quality assurance and also in incorporating cross-border issues into various processes;
- Common issues of cross-border importance include the future of the rural economy, decline in access to EU funds and access to services;
- The possibility of developing a checklist to be used as an aid to influence and address cross-border issues;
- There are already good examples of cross-border collaboration starting to emerge, for example, Powys are in discussions with Shropshire Council in relation to the preparation of local housing assessments

and gypsy & traveller strategies. Furthermore, Member/officer collaboration across the border at a local level has resulted in developments in relation to community transport.

The group presented the possibility of setting up:

- A Memorandum of Understanding/Working Agreement to be signed up to by politicians, confirming their commitment to cross-border collaboration;
- Case Studies produced to show good and bad examples of cross-border collaboration, from a regional, local government and community perspective.

D3) Marine Bill links with Civil Contingencies Act

Intelligent use of technology maybe the key to the successful implementation of the Marine Bill, possibly using lessons from the more recent Civil Contingencies Act. One major stumbling block of the CCA is the local authority claim that it is not included amongst their key performance indicators – the metrics that have been established to measure their success against the targets set by Government.

Lesson – the Marine Bill MUST include cross-border working and liason in the Dee/Severn as a key performance indicator with the MMO (Defra) and WAG.

There is a lack of incentive, and (it seems) a lack of additional resource at local government level. Whilst the CCA is specific to include national security issues such as terrorism, it also provides for serious damage to human welfare in the event of (for example) a recurrence of foot and mouth disease, a bird flu epidemic or a fuel blockade. So for the UK the CCA not only tasks local government, emergency services and other local responders specified by the Act to work within a unified framework in response to national security threats: it also gives them a further responsibility to plan for and deal with more ‘mundane’ events.

Lesson – the Marine Bill could mirror such an approach for cross-border working and liason in the Dee/Severn by ensuring licensing for smaller issues is covered in parallel with statutory needs (linked to IPC) for major developments or activities in the marine environment that could influence .

In technology terms there are four areas to address for civil contingency:

- intelligent risk analysis;
- post event analysis;
- the ability to unify data (fusing diverse sources into one, to a level required for efficient response), and
- robust, efficient, ‘on the day’ operational delivery using the right information, in the right place, at the right time. Ad hoc communication and co-ordination (with the enabling IT as an afterthought) is no longer an option.

Importantly, the CCA makes it a requirement to analyse – and test - whether a given service could continue to run as normal in the event of response to a major incident. In this field there is much ‘what if’ preparation work to be done, and some smart risk analysis technology now exists that will help responders to be more prepared in advance by identifying any risks that they can not respond to with their normal level of service being maintained. A view is that any solution for UK civil contingency (and likewise cross-border working) should be Internet-centric, but with a two-speed structure that will accommodate the sharing of background and time-critical information, when the communications infrastructure is damaged (or likely to be through a policy or development). The Act makes co-ordination and communication more vital than ever, as it involves a much wider range of respondents – from local authorities and health services to utilities and transportation organisations.

Fortunately, the software and services now exist that enable multiple parties to share information from diverse data sources, as fully as required for operational response while also protecting personally or commercially sensitive information. When combined with state-of-the-art command and control technology, ‘full information, fully shared’ provides the best possible environment for effective civil contingency response. The Civil Contingencies Act, and accompanying non-legislative measures, will deliver single framework for civil protection in the United Kingdom capable of meeting the challenges of the twenty-first century.

Lesson – the Marine Bill could mirror such an approach for cross-border working by ensuring that data and information management is set up between Defra/WAG to allow EA/CCW/NE to use the same data and work collectively to achieve marine ecosystem objectives.

The Act is separated into two substantive parts: local arrangements for civil protection (Part 1) and emergency powers (Part 2). Part 1 of the Act and supporting Regulations and statutory guidance “Emergency Preparedness” establish a clear set of roles and responsibilities for those involved in emergency preparation and response at the local level. The Act divides local responders into two categories, imposing a different set of duties on each. Those in Category 1 are those organisations at the core of the response to most emergencies (e.g. emergency services, local authorities, NHS bodies).

Category 1 responders are subject to the full set of civil protection duties. They will be required to:

- * Assess the risk of emergencies occurring and use this to inform contingency planning
- * Put in place emergency plans
- * Put in place Business Continuity Management arrangements
- * Put in place arrangements to make information available to the public about civil protection matters and maintain arrangements to warn, inform and advise the public in the event of an emergency
- * Share information with other local responders to enhance co-ordination
- * Co-operate with other local responders to enhance co-ordination and efficiency
- * Provide advice and assistance to businesses and voluntary organisations about business continuity management (Local Authorities only).

Category 2 organisations (e.g. Health and Safety Executive, transport and utility companies). These “co-operating bodies” are less likely to be involved in the heart of planning work but will be heavily involved in incidents that affect their sector. Category 2 responders have a lesser set of duties - co-operating and sharing relevant information with other Category 1 and 2 responders. Category 1 and 2 organisations will come together to form Local Resilience Forums (based on police areas) which will help co-ordination and co-operation between responders at the local level.

Lesson – the Marine Bill could mirror such an approach for cross-border working by creating formal Category 1 and 2 “stakeholders” within the cross-border decision making process. CCW/NE and EA along with WAG/Defra (MMO) would all be included as Category 1 “stakeholders” and a series of appropriate “duties” shall be imposed on them (adapting those set out above for the CCA).

D4) CONCORDAT BETWEEN THE SCOTTISH EXECUTIVE (SE) AND THE DEPARTMENT OF TRADE AND INDUSTRY (1999)

INTRODUCTION

1. The way in which the UK is governed has changed in a major way through the devolution settlements to Scotland, Wales and Northern Ireland. Devolution to Scotland, affected by the Scotland Act 1998, has changed the way in which Scotland is governed by creating a Scottish Parliament with devolved powers within the United Kingdom. Executive power in devolved areas is exercised by the Scottish Ministers, while the UK Government at Westminster has retained direct responsibility for reserved matters, as listed in Schedule 5 to the Scotland Act 1998. In this context, DTI and the SE operate in a number of linked and related areas and this concordat addresses relationships on these matters. This concordat is made between the Scottish Executive (“SE”) and the Department of Trade and Industry (“DTI”).

2. The purpose of this concordat is to provide a framework for working arrangements between DTI and the SE. The principal aim in producing the framework is to establish and maintain good working relationships between DTI and SE. This will include, as far as possible, maintaining pre-devolution arrangements for exchange of information and co-operation, including on new legislation and new policies. The responsibilities of the SE and DTI include the work and interests of bodies which they sponsor.