

## **A11.1 Estuarine Ecology - Legislation**

This appendix provides supporting information to Chapter 11 (Estuarine Ecology, Section 11.2: Approach and Methods).

### **1 Legislative and Policy Framework**

#### **1.1 International Conventions and Directives**

##### **The Bern Convention**

- 1.1.1 The requirements of the Convention on the Conservation of European Wildlife and Natural Habitats (the Bern Convention) came into force in 1982. The Convention imposes legal obligations on Member States to protect over 500 wild plant species and more than 1000 wild animal species (JNCC, 2007a). These requirements are implemented in UK law through the Wildlife and Countryside Act 1981 (as amended) (see paragraph 1.2.1).

##### **The Bonn Convention on Conservation of Migratory Species of Wild Animals 1979**

- 1.1.2 The Bonn Convention aims to achieve the effective management of migratory species across national or jurisdictional boundaries and is implemented in the UK by the Environmental Protection Act 1990 (JNCC, 2007b).

##### **The Convention on Biological Diversity (CBD)**

- 1.1.3 The CBD was adopted at the Earth Summit in Rio de Janeiro, Brazil in June 1992, and entered into force in December 1993. It was the first treaty to provide a legal framework for biodiversity conservation, with three main goals: the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits arising from the use of genetic resources. Contracting Parties are required to create and enforce national strategies and action plans to conserve, protect and enhance biological diversity. The UK government ratified the Convention and published the UK Biodiversity Action Plan (UKBAP) in 1994, and to complement the UKBAP, separate biodiversity strategies for each of the devolved governments have been subsequently launched including the Scottish Biodiversity strategy, launched in 2004. The implementation of UKBAP is discussed below in the Non-Statutory Guidance section.

##### **European Union Directive (92/43/EEC) (Habitats Directive 1992)**

- 1.1.4 The European Union Directive (92/43/EEC) on the Conservation of natural habitats and of wild fauna and flora (EC Habitats Directive) is the means by which the Community meets its obligations as a signatory of the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention). The Directive introduces a range of measures including the protection and surveillance of habitats and species. The main aim of the Directive is to promote the maintenance of biodiversity by requiring Member States to take measures to maintain or restore natural habitats and wild species at a favourable conservation status, introducing robust protection for those habitats and species of European importance.
- 1.1.5 The 189 habitats listed in Annex I of the Directive and the 788 species listed in Annex II, are to be protected by means of a network of sites. Each Member State is required to prepare and propose a national list of sites for evaluation in order to form a European network of Sites of Community Importance (SCIs). Once adopted, these are designated by Member States as Special Areas of Conservation (SACs), and along with Special Protection Areas (SPAs) classified under the EC Birds Directive, form a network of protected areas known as Natura 2000.

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#### **The Birds Directive (79/409/EEC)**

- 1.1.6 The European Union Directive on the conservation of wild birds (79/409/EEC) was adopted in 1979. The Birds Directive is a primary tool for delivering EU obligations under the Convention on Biological Diversity (CBD), the Ramsar and Bonn Conventions. The Birds and Habitats Directives require Member States to take a number of measures/actions in order to protect all bird species, their sites and their habitats, these include: measures to conserve and maintain all naturally occurring bird species across the EU through the designation of Special Protection Areas (SPAs) for species listed on Annex I of the Directive and migratory species.

#### **Natura 2000**

- 1.1.7 Natura 2000 comprises a network of ecologically valuable designated areas in Europe. This network is established under the terms of the EU Directive 92/43/EEC as set out in paragraphs 1.1.4 and 1.1.5.
- 1.1.8 The network comprises Special Areas of Conservation (SAC) designated under the Habitats Directive, and Special Protection Areas (SPA) designated under EU Directive 79/409/EEC 'Conservation of Wild Birds' (The Birds Directive; Anon., 1979).

#### **Ramsar Convention**

- 1.1.9 The Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar Convention or Wetlands Convention) was adopted in Ramsar, Iran in February 1971 and entered into force in December 1975. The Convention covers all aspects of wetland conservation and comprises three elements of activity: the designation of wetlands of international importance as Ramsar sites; the promotion of the wise use of all wetlands in the territory of each country; and international co-operation with other countries to further the wise use of wetlands and their resources.

#### **The Shellfish Waters Directive (79/923/EEC)**

- 1.1.10 The aim of the EC Shellfish Waters Directive is to protect or improve shellfish waters in order to support shellfish life and growth, therefore contributing to the high quality of shellfish products directly edible by man. The Directive sets physical, chemical and microbiological water quality requirements that must be met and for which monitoring is the responsibility of the national regulators (e.g. Scottish Environmental Protection Agency). The Directive is designed to protect the aquatic habitat of bivalve and gastropod molluscs, including oysters, mussels, cockles, scallops and clams. It does not cover shellfish crustaceans such as crabs, crayfish and lobsters. Any development and associated activities must not result in the Directive requirements being exceeded.
- 1.1.11 The Directive requires that certain substances are monitored in the water in which the shellfish live and grow. These substances can threaten the survival of shellfish, inhibit their growth or make them too expensive to treat before they can be used as a food source.
- 1.1.12 For each substance, the Directive specifies the minimum number of samples to be taken and the percentage of samples that must meet these standards.
- 1.1.13 In the UK, the Directive was transposed into UK legislations through the Surface Waters (Shellfish) (Classification) Regulations 1997 and the Surface Waters (Shellfish) Directions 1997.
- 1.1.14 The Directive will be repealed in December 2013 by the EU Water Framework Directive (WFD) (2000/60/EC), which must provide at least the same level of protection to shellfish waters (which the WFD classifies as protected areas) as the Shellfish Waters Directive.

**Water Framework Directive (WFD) (2000/60/EC)**

- 1.1.15 The WFD was transposed into Scottish domestic law under the Water Environment and Water Services (Scotland) Act 2003 (WEWS), and is discussed below (see paragraph 1.2.9).

**Coastal Protection Act (CPA) 1949**

- 1.1.16 This Act sets out the legislative framework for the protection of the coastline against erosion. Consent is required under this Act for any construction, alteration or improvement of any works on, under or over any part of the seashore lying below mean high water spring tide level (MHWS) or the deposit or removal on any object or materials below the levels of MHWS.

**Food and Environment Protection Act (FEPA) 1985**

- 1.1.17 A FEPA licence is required for all construction below MHWS from the Marine Consents and Environment Unit. Activities that require licensing include construction activities, extraction and disposal of materials.

**European Eel (Council Regulation (EC) No 1100/2007 establishing measures for the recovery of the stock of European eel)**

- 1.1.18 In response to the decline of eels the EU proposed an Eel Management Plan in 2004 which entered into force in 2007. The aim of the plan is to protect and ensure the sustainable use of European eel stocks. A key objective is to ensure that at least 40% of the potential production of adult eels (potential production refers to pristine conditions) escape to the sea. Under the resulting Council Regulation each Member State is required to create separate management plans for each river basin district Natura 2000.

**Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas (ASCOBANS)**

- 1.1.19 ASCOBANS was concluded in 1991 under the Bonn Convention and entered into force in 1994. The agreement offers protection of all species and subspecies of the Odontoceti with the exception of the sperm whale (ASCOBANS, 2008) through the signing of parties to set up protected areas, promote research, control pollution and increase public awareness (JNCC, 2007b).
- 1.1.20 The Agreement originally only covered the North and Baltic Sea but as of 3<sup>rd</sup> February 2008 the area has been extended to include the marine environment of the Baltic and North Seas and contiguous areas of the northeast Atlantic. Ten countries have so far become Parties to the Agreement, including the UK.

## **1.2 National Legislation**

**The Wildlife and Countryside Act 1981 (WCA) as amended**

- 1.2.1 The WCA 1981 (as amended) is the principal mechanism for wildlife protection in the UK, originally aimed at consolidating and amending previous legislation to implement the requirements of the Bern Convention and the Birds Directive. Of particular relevance is Schedule 1, which lists birds afforded special protection, Schedules 4-6, which protect various wild animal species from injury, killing or disturbance, and Schedule 8, which confers protection to certain plant species. The statutory designation of Sites of Special Scientific Interest (SSSI) is the main site protection measure in the UK established under the WCA.

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#### **Marine (Scotland) Bill (SP Bill 25)**

- 1.2.2 The Marine (Scotland) Bill was introduced in April 2009. The Bill makes provision in relation to functions and activities in the Scottish marine area, including marine plans, licensing of marine activities (such as dredging), the protection of the area and its wildlife including seals, and connected purposes. Marine Scotland was inaugurated to act as a statutory advisor and regulator for the legislation introduced by the Bill.

#### **The Conservation (Natural Habitats, &c.) Regulations 1994 as amended.**

- 1.2.3 These Regulations place a duty on planning authorities to meet the requirements of the Habitats Directive, and to provide protection for priority habitats and species listed in the Habitats Directive outside of protected areas. These Regulations are more onerous in Scotland than in the rest of the UK.
- 1.2.4 Under these regulations, in Scotland it is an offence to knowingly cause or permit to be done an act which is unlawful under Regulation 39 of the act (animals), to deliberately or recklessly harass a wild animal or group of wild animals, to deliberately or recklessly disturb a European protected species (EPS) whilst it is rearing or caring for young, or to knowingly cause or permit to be done an act which is made unlawful by Regulation 43 (plants). A licence is required for unavoidable impacts on species protected under these regulations.

#### **Nature Conservation (Scotland) Act 2004**

- 1.2.5 This Act requires Scottish Ministers to publish a list of habitats and species considered to be of principal importance for biodiversity. This list, the Scottish Biodiversity List, was subsequently published in 2005 and is intended to be a tool for public bodies and others doing their Biodiversity Duty and as an important source of information and guidance for all.
- 1.2.6 The Act has three parts;
- Part 1 promotes the conservation of biodiversity whereby all Scottish public bodies and office holders will be obliged to 'further the conservation of biodiversity' in the course of exercising their functions;
  - Part 2 revises the designation of the SSSI system for protecting Scotland's most precious natural places; and
  - Part 3 enhances the existing species protection provisions of the WCA 1981, as amended by adding the word 'recklessly' to legislation regarding killing, injury or disturbance of protected species so that 'intent' no longer needs to be proven.

#### **Conservation of Seals Act 1970**

- 1.2.7 This Act prohibits the killing, harming or taking of pinnipeds by certain methods and during closed seasons.
- 1.2.8 The annual closed season for the grey seal (*Halichoerus grypus*) extends from the 1<sup>st</sup> September to the 31<sup>st</sup> December inclusive. The annual closed season for the common seal (*Phoca vitulina*) extends from 1<sup>st</sup> June to the 31<sup>st</sup> August inclusive.

#### **The Conservation of Seals Order (Scotland) 2007**

- 1.2.9 The Conservation of Seals Order (Scotland) 2007 extends the protection of common seals in Shetland, Orkney and an area of the east coast between Stonehaven and Dunbar through a year-round closed season, which includes the Firth of Forth (Wild-Scotland, 2007).

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#### **Water Environment and Water Services (Scotland) Act 2003 (WEWS)**

- 1.2.10 The WEWS (Scotland) Act 2003 was the first act in Scotland to implement the WFD. This Act has subsequently been augmented by the Controlled Activities Regulations (CAR) as stated below (see paragraph 1.2.14). This act sets out the key principles and instructions for WFD implementation in Scotland, for example confirming the SEPA as leading the River Basin Planning and Characterisation Processes and implementing the majority of necessary regulatory controls. The WFD was transposed into Scottish domestic law under the WEWS (Scotland) Act 2003 and cited SEPA as the main agency implementing the necessary controls.
- 1.2.11 The WFD recognises that ecosystem health is the most effective way to assess the environmental quality status of a watercourse. The WFD came into force in December 2000. It requires that all inland and coastal watercourses in Europe do not deteriorate from their current condition and reach at least 'good' ecological status by 2015.
- 1.2.12 The WFD sets out a river basin management planning process. For each river basin district (RBD) a river basin management plan (RBMP) will be prepared, implemented and reviewed on a six-year cycle. Appropriate objectives are to be established in the RBMP. River Basin Characterisation required by Article 5 of the Directive is an important early part of this process which, for each RBD, requires the following:
- analysis of its characteristics;
  - review of the impact of human activity on the status of the water bodies within the RBD; and
  - economic analysis of water use.
- 1.2.13 The environmental objectives that need to be achieved under the WFD are summarised as:
- achievement of good ecological status and good surface water chemical status by 2015;
  - achievement of good ecological potential and good surface water chemical status for heavily modified water bodies (HMWBs) and artificial water bodies (AWBs);
  - prevention of deterioration from one status class to another; and
  - achievement of water-related objectives and standards for protected areas.
- 1.2.14 Water bodies are identified as being at risk if they are likely to fail any of these environmental objectives.

#### **Water Environment (Controlled Activities) (Scotland) Regulations 2005 (CAR)**

- 1.2.15 This act is an implementation of the WFD in Scotland as detailed above. These Regulations came into force in April 2006, and apply to inland waters and wetlands linking to lochs or rivers (although they may be extended to cover all wetlands). CAR is based on a three-tier system. General Binding Rules (GBRs) outlines low risk activities for which, if best practice is followed, no further action is required. Registration of activities is required for activities not covered by GBRs that pose a low risk individually, but cumulatively could cause harm. Licensing by SEPA is required for all other purposes.

#### **Planning Policy**

- 1.2.16 All policy relating to the proposed scheme are presented in Appendix A20.1 of Chapter 20 (Policies and Plans).

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