

Management of Marine Resources around Barra and Vatersay

As part of process initiated by Stewart Stevenson, MSP and Minister for Environment and Climate Change, and following a meeting held on 3 July, 2012 attended by Councillor Donald Manford and Angus MacLeod from Barra and Michael McLeod from Marine Scotland, this paper was developed by the local development company, Coimhearsnachd Bharraidh agus Bhatarsaidh Ltd, to look at possible routes to providing a locally led management regime, which would meet local, regional, national and European needs while underpinning the livelihoods of all users.

Background

In recent years there has been conflict between conservation interests represented by SNH and the local community over the designation of various areas as Special Areas of Conservation (SAC) and Special Protection Areas (SPA). The community on Barra and Vatersay are of the view that designation is not justified by the science produced by SNH and that the designation process has been personal agenda led, using the meeting of EU quotas as a justification. The view is that increased areas under designation leads to more restriction on new and existing development and will eventually undermine the viability of certain activities, industries and ultimately community cohesion. The main existing industry directly impacted is commercial fishing.

SNH maintain the designations are required under the European Habitats Directive, are driven by science and that there is no agenda other than this.

To all intents and purposes an impasse has been met.

Successive Scottish Ministers have been drawn into the debate of the two key SAC proposals from SNH, East Mingulay Ridges (EMR) and the Sound of Barra (SOB). While the EMR has now been put forward for designation by Scottish Government (SG) the issue over permissible activity within the area has not yet been resolved. A paper on SOB is expected to recommend that it too is designated.

In recent months Stewart Stevenson MSP opened discussion with members of the island community and Marine Scotland (through Michael MacLeod) on how a locally led management approach might enable the impasse over the SOB to be removed. While a Fisheries Regulating Order was mentioned this is not seen as the only possible way forward.

What are the implications of a local management agreement for the community?

Any management agreement requires a form of regulation to be put in place and monitored. Under an SAC this process is normally directed and led by SNH, who may opt to set up a management group where this is deemed necessary. The community in the southern isles have made it clear they are not happy with this approach which distances assets from local influence or control.

Any alternative management approach which is to be acceptable at a local level must be locally led. This will have both time and cost implications for the community and individuals within it. These implications will need to be taken into account in considering how the management and running of a regulatory scheme will be funded.

Existing Management Tools

Fisheries Regulating Order

Originally legislated for in the Sea Fisheries (shellfish) Act 1967, there is only one regulating order (RO) in effect at present, operating to 6 miles around Shetland. A proposed order for the whole of the coast of Highland Region was rejected following examination in 2006.

ROs permit an organisation to be set up to regulate various parameters on shellfish capture within a specified area. For some reason 6 miles from the coast appears to be a favoured distance, but it looks as though there is no reason for this to be the case. Parameters which can be affected are wide ranging and amount to total control of the shellfish fishery (it is important to note that to date nephrops has been excluded from RO as it is TAC controlled fishery).

Fishing is controlled via licences issues by the organisation.

Objections to ROs have included:

- Are too large and non-specific;
- No demonstrable need;
- Creation of difficulties for new entrants and those increasing boat size; similarly dealing with succession, loss of a vessel, short/medium term absence from the fishery.
- Short term licence - financial implications with banks
- Consolidation of licences to fewer bigger boats
- Appeals against loss of a licence
- Boundary issues, assessing what stock is caught out with the area but landed within and what is caught within the area but landed elsewhere.
- If trading of licences is allowed, those with deepest pockets will accrue them.

SAC Regulation

The European Habitats Directive, Directive 92/43/EEC, (EHD) guides EU nation states on measures to be taken to protect species and habitats. Nation states are obliged to designate areas of specific types of habitat and/or areas where certain species are found, through measures such as Special Areas of Conservation and Special Protection Areas. The EU requires that a given percentage of a habitat area or a population of a species are covered by designations. If a nation fails to designate sufficient area of each habitat to meet the EU guidelines it is possible sanctions may be taken against it. Without going overly into the detail, it is against this background the SOB SAC has been taken forward, as a means of ensuring the UK meets the EU requirements for seals, sandbanks and reefs. The EU has never asked for additional reefs of the type in Mingulay, hence the local mystification over its designation, when both the species and habitats in question are amply covered in other designated areas. This arbitrary application of EHD is seen as a demonstration of the inconsistent approach taken by SNH with regard to this and other designations.

There are specific sections covering the management of marine SACs (mSAC). These are (to paraphrase):-

33. Requires SNH to advise other authorities of the conservation objectives of the site and operations which may cause deterioration of the qualification interest.

34. Creation of a management scheme for a site, where this will benefit the site (some sites do not need one).

35. Establishing a management scheme can be done by relevant authorities or by the Ministers.

36. Allows SNH to make bylaws to protect a site.

Management Schemes are generally only needed where there are a lot of different users. As a rule management schemes are drawn up with relation to existing activities and their impacts on the designation feature. There is a presumption against activities which negatively impact the designation feature. Where information is available on mSACs which have management plans, it is apparent the membership of the group is strongly skewed in favour of authorities and QUANGOs with token local representation.

What is and is not allowed within an SAC? There is no specific format for establishing a case for or against an activity within a mSAC. For any given activity SNH guidelines suggest that if the question

“Can it be ascertained that the integrity of the Natura site will not be adversely affected?”

can be answered in the positive, *with no reasonable scientific doubt about the conclusion*, then there is no reason why that activity should not go ahead.

On establishment of a mSAC each activity known to be undertaken within the designated area must demonstrate that it can answer the above question in the positive. Activities which do not pass the test are either managed to a level where they meet the test or are banned. It should be noted the onus on providing proof that a given activity has no ascertained impact falls on the party undertaking the activity rather than on any individual suggesting that activity is not compatible with the designation interest.

New activities occurring within the designation also need to pass the “can it be ascertained..?” question as part of the planning process.

Sites are reassessed periodically (every 6 years?) to check that the designation interest is not deteriorating as a result of any new or existing activity within the designation.

Objections to mSAC management planning include:

- No clarity on who makes management decisions. mSAC management group? SNH? Local Authority?
- Assessment of sites is neither comprehensive nor scientific. Part of the Mingulay Reefs designation appears to have been determined by the presumption that the habitat would be present (Mingulay 3), when the true extent was unknown;
- Loss of local control of marine assets and resources;
- Decision making being distant and controlled by organisations/authorities with little or no local knowledge or understanding of impacts;
- Presumption against new or innovative development;

- The burden of proof of impacts is with the developer, in the marine environment this can be exorbitantly expensive, effectively pricing out local developers from new activities within the designated area. Notably, well resourced developers can “out science” the authorities and are able to continue development within the mSAC, e.g. Marine Harvest in SOB. In essence the designation of an SAC can take control of development of resources out with the reach of local individuals and communities, while leaving the field open to better resourced and often distant organisations and businesses.

Discussion

It appears that based on existing examples, neither an RO nor an SAC Management agreement will meet the needs of the communities in and around the Sound of Barra (or the East Mingulay Reefs). The RO approach only deals with shellfish fisheries (not including Nephrops). The RO does not deal with other activities and it is not clear how or if it interacts with aquaculture. An SAC management agreement would cover all activities within the proposed designated area, which would not necessarily be viewed as a natural boundary for a management regime by other interested parties.

Prior to examining alternatives to these two approaches, a number of areas need further discussion.

Management Area

The area of the proposed SAC for SOB has been defined by SNH. While it is possible some activities out with the proposed SAC could be controlled if they impacted on the designation interest this is unlikely. Equally should the SAC be brought forward there may be some negotiation over its boundaries which may see the total area reduced.

A major criticism of the RO process has been that the areas for proposed ROs have been very large and based on geographical grounds rather than the need to regulate fishery effort. In setting the area of any management arrangement there must be a rational appraisal of the extent of the fisheries it will cover. Boundary issues would also have to be addressed, i.e fish caught within a managed area and landed out with it and vice versa.

Management scope

While the management of a proposed SAC requires that any activity which may impact on the designation interest, that of an RO can only consider the interest of non – TAC shellfish fisheries. In developing a management arrangement, the scope of activities it would cover needs to be considered, if these extend beyond the defined parameters of a SAC management group or a RO organisation it may be necessary for a new type of order to be defined. With innovative thinking this may offer opportunities and perhaps protection of local interests.

Licencing

Licencing is not an issue for the management of SACs. In consultation documents SNH has indicated it does not see the need for control of static gear fisheries at this time. An RO

would however require licencing. There are a number of issues relating to licencing which would need to be cleared up before any management arrangement could be put in place.

Management group/board/committee

This is a key area for consideration in any management agreement. The primary stakeholders must be well represented in the management of the resource to ensure the local interest is fully considered in the decision making process. The roles of group members need to be defined with those representing authorities providing support and guidance rather than directing the group/board/committee.

Resource Management

One of the justifiable fears arising from the proposed designation is that the adoption of novel activities and practices are inherently discouraged on the precautionary principle. The basis of any management agreement must be that new practices which do not appear to be damaging to the designation interest will be encouraged. Equally a management agreement should encourage the sustainable exploitation of any reasonable commercial opportunity where it will not have a lasting measurable impact on environmental quality of the area.

Aquaculture

Aquaculture seems to fall between stools. There is a clear impact from fin fish farming which is measurable and part of the consenting process. Shellfish aquaculture has a lesser environmental footprint but never-the-less impacts on the area available for other activities. In the Shetland RO there is little interaction between fisheries and aquaculture. An agreement in the southern Hebrides might take another view.

Opportunities

It is worth considering what opportunities a management agreement might offer to stakeholders. Below there is a suggested approach by which an opportunity might be developed to diversify income from the agreement area. Please note this is one suggestion which could either be further developed or replaced by one or more alternatives.

Possible alternative approach

An RO can only deal with activities relating to shellfish fisheries, which restricts its scope. A tailored management agreement might be enabled to consider how to improve opportunity for active fishers within the agreement area. This might include broadening the species available, enabling a return to a more traditional approach to fishing, i.e. fishing for a wide range of species, appropriate to the season and value of catch. An example might be allowing fishermen within the managed area to fish herring or mackerel by traditional methods. This need not seriously impact national quotas but might enable fishers to divert effort when crabs are soft or prices are depressed due to over-supply; alternatively fishers might be enabled to take advantage of seasonally available fish which are no longer available on a commercial basis due to restrictions on licences. A similar approach might be taken with baited line fishing for demersal fish. These activities are unlikely to impact on either national or local conservation interests but would broaden scope, enabling local fishers to be more

flexible in their approach and perhaps enhancing security of income. Additionally fish caught through the scheme could be marketed as a distinctive heritage product with catch and geographical provenance offering opportunities in sales and marketing of high value products. Finally, there may be opportunities to augment stocks within a management agreement, for example by breeding and releasing lobster or other high value fish species.

Key points for a management agreement

1. Objective – to find an agreed approach to managing resources to ensure current activities are sustained, new development and innovation are possible while maintaining a high quality environment, where important features are conserved and enhanced.
2. Extent – must be agreed on the basis of a wide range of considerations, including conservation interests; the range of each commercial fishery; other commercial interests.
3. Scope – which sectors does the agreement manage? Which species can be included? Look to develop opportunities to “add value” rather than be purely a regulatory body.
4. Management – the constitution of a management group needs to be led by the local community and also reflect the commercial interests within the area covered, with support from formalised national, regional and sectoral interests. While the management group will need to recognise its responsibility to the objectives of the agreement, the “powers that be” need to trust the group to deliver objectives, while recognising and fulfilling their supporting role.
5. Cost – the cost of the developing and running a management agreement must be minimised for those on whom controls are being placed. This simply seeks equity with agriculture where there are incentives to stakeholders managing and enhancing environmental habitats and species on behalf of the nation.
6. Regulation – of the agreement area must be specific to the area and its circumstances; flexible and capable of dealing with novel developments; transparent with a clear defined appeals process. It is assumed a management agreement will require some form of licencing with all that goes with that. Any licencing system must be demonstrably fair and objective.

In Summary

At present there is no formal management regime for fisheries around the Southern Hebrides or indeed with proposed designation areas, other than national rules and licencing. The proposal to designate areas has forced the issue of control and management of local resources to the fore. While there is resistance to the imposition of a management regime on the area, there is a strong view that any distantly controlled approach would be unacceptable. There is also apprehension among the main user group, fishermen, that a management approach will increase their burdens while offering little of value in return.

The currently available management approaches are management through SAC management groups and regulating orders. On examination neither of these approaches fits well with the stakeholders.

A novel approach might meet the needs of all interested parties. To succeed this approach needs to meet conservation objectives while minimising burdens and restrictions placed on the main stakeholders. This would see a management agreement with broader reach than an RO and would propose the development of a fishery based on traditional approaches, allowing small boats to move

between species as season and price dictates. Fishing methods would reflect the sustainable management approach with catch limits for each licence. It is almost certain that legislation will be required to enable a proposal with the scope outlined in this paper, but that such a proposal would provide an innovative approach and may achieve the needs of conservation interests while meeting those of the local community.

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