

Marine and Fisheries Agency

A Hampton Implementation Review Report

March 2010

Marine and Fisheries Agency

This review is one of a series of reviews of regulatory bodies focusing on the assessment of regulatory performance against the Hampton principles and Macrory characteristics of effective inspection and enforcement. It was carried out by a review team drawn from the Better Regulation Executive, Drinking Water Inspectorate and the Health and Safety Executive, in December 2009.

Further information about the reviews can be found at:

<http://bis.gov.uk/policies/better-regulation/improving-regulatory-delivery/implementing-principles-of-better-regulation/reviewing-regulators>

EXECUTIVE SUMMARY AND CONCLUSIONS

<p>Key findings from the review:</p>	<p>The review team found that, given the regulatory framework within which it operates, the Marine and Fisheries Agency (MFA) can demonstrate compliance with Hampton criteria in some key areas.</p> <p>Despite the constraints which originate from the prescriptive and largely European driven regulatory regime, the MFA's transition to the Marine Management Organisation provides an opportunity to embed Hampton principles appropriately into the heart of the new organisation.</p> <p>The very strict regulatory environment, particularly in the enforcement of fishery matters, has a major impact on the way the MFA carries out its work with the industry.</p> <p>There is a high focus on prescriptive standards of compliance with correspondingly fewer options for discretion in the way enforcement is carried out. The challenge for the MFA is to maintain the necessary level of proportionality and consistency in what could otherwise be seen by the industry as a very intrusive regime.</p> <p>There is evidence of increasingly sophisticated use of risk based targeting by frontline MFA staff.</p> <p>Some of the core stakeholders, especially the fishermen, are very hard to reach as a group. This creates challenges in fully engaging with them in the development of regulation and in consulting stakeholders during the development of policy.</p>
<p>Issues for follow-up identified during the review:</p>	<p>There is room for specific improvement in the following areas:</p> <ul style="list-style-type: none">• dealing with repeat offending - this appeared to be an issue in certain sections of the fishing fleet. The Agency should ensure that it uses its more severe sanctions fully to deal with this;• data collection - the existing move to greater electronic recording of key data ought to ease the record keeping burden which we found to be intense;• consistency of approach - the MFA should continue to strive for clarity in how it ensures a consistent approach in its coastal inspection teams, whilst

	<p>allowing these teams to exercise appropriate local discretion to deal with local specifics.</p> <p>The MFA should also focus on:</p> <ul style="list-style-type: none">• continuing to explore more novel ways to engage with the fishing community, e.g. in order to more fully explain changing data requirements and consistency of intervention in every coastal area; and• ensuring that the transition to the Marine Management Organisation does not result in the loss of valuable practical expertise and first hand experience of the fishing industry.
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INTRODUCTION

Introductory background information about the regulator such as the rationale for establishing it:

The Marine and Fisheries Agency (MFA) is an Executive Agency of DEFRA. It provides service delivery, inspection and enforcement activities to the fishing industry, those engaged on construction works and dredging at sea and other marine stakeholders in England and Wales. The agency is responsible for the protection of the English and some Welsh marine assets, although this will soon become the full responsibility of the Welsh Assembly Government. The management of Scottish waters fall to Marine Scotland.

The MFA's vision is to be:

'A trusted manager of sea fisheries and the marine environment recognised for our fairness and valued for our professionalism, expertise and high standards.'

The primary duties of the MFA are:

- Effective management and regulation of sea fisheries
- Licensing and monitoring of coastal and marine developments
- Protection of rare and valuable marine species and habitats

To fulfil these duties the MFA undertakes the following tasks:

- Licensing of the UK fishing fleet under the European Common Fisheries Policy (CFP) to control the number of vessels undertaking fishing activity
- Inspection of fishing vessels, equipment and catches under the CFP to ensure that the English and Welsh fish stocks are exploited in a sustainable manner
- Monitoring and licensing of Marine construction projects, including the removal and depositing of marine aggregates, under The Food and Environment Protection Act (FEPA) of 1985 to guarantee the protection of the marine flora and fauna
- Enforcement of Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 to protect marine species

	<ul style="list-style-type: none"> • Ensuring the safety of navigation under the Coastal Protection Act 1949, to prevent any construction that may be a danger to shipping <p>In addition to the various regulatory activities the MFA administers two Grant funds to assist the fishing industry:</p> <ul style="list-style-type: none"> • The European Fisheries Fund which provides funding to assist the fishing industry in developing sustainable fisheries and reducing the environmental impact of fishing • A fund to assist fishermen to scrap their vessel and release their quota to others
<p>The legislation establishing the regulator:</p>	<p>The Common Fisheries Policy (CFP) enables MFA to license and enforce in the fisheries community. The history of fisheries protection goes back hundreds of years, but current EU legislation allows fishermen access to the waters of member states, with a small strip of coastal water reserved for local fishermen who had traditionally fished there. The CFP also creates a market place for trading fish and fish products. In 1976, member states decided to expand their marine exploitation rights from 12km to 200km from their coasts and the CFP needed to be revised. A revised CFP was introduced in 1983. 20 years later the CFP was subject to further revision to make fishing a more sustainable activity.</p> <p><i>Management of the UK fishing stocks</i> DEFRA has responsibility for the design of the enforcement regime for England and works with the Welsh Assembly Government on policy for Wales. Much of the regulation results from European Regulations produced in Brussels.</p> <p><i>Maintenance of the Marine Environment</i> The MFA is charged with the maintenance of the marine environment. It is supported in this by three pieces of legislation:</p> <ul style="list-style-type: none"> • The Coast Protection Act 1949 • The Food and Environment Protection Act 1985 Part II (FEPA) • The Energy Act 2004 <p>Ownership of the policy and design of regulation resides with DEFRA, with the MFA acting as the administrative agency on behalf of the Secretary of State. DEFRA also acts as the agency responsible for the initial consultations</p>

	<p>on these policy areas although MFA is also a respondent to the various consultations.</p> <p>The Marine and Coastal Access Act 2009 created the Marine Management Organization (MMO), which will come into being in April 2010 to act as the Government's strategic delivery body and its principal marine regulator in English territorial waters and the UK offshore area for matters that are not devolved. It will make decisions on the majority of marine developments and, where it is not the decision-making body, will be a key adviser on marine issues. It will also be the marine planning authority on behalf of government and the centre of marine management expertise contributing to sustainable development. The Act gives the MMO modernized enforcement powers and new simplified marine licensing arrangements. The MMO will take on the functions currently delivered by the MFA including enforcement, licensing and management of fishing activity under the CFP, licensing of marine activities and developments (such as wind farms, wave and tidal power, marine sand and gravel extraction) and contingency planning.</p>
<p>The regulator's statutory remit or objectives:</p>	<p>MFA contributes to the DEFRA-owned Public Sector Agreement (PSA) 28: <i>Secure a healthy natural environment for today and the future.</i></p> <p>The MFA contributes to this target by implementing policies that protect the Marine Environment of England and Wales to ensure that the fish stocks in England and Wales are exploited in a sustainable way.</p>
<p>The regulator's budget:</p>	<p>Approx £34 million</p>
<p>Number of staff:</p>	<p>Approx 200, based in London and at 18 port offices around the coast.</p>
<p>The sectors and number of businesses regulated either directly or indirectly:</p>	<p>Marine activities, including fishing, tourism and the extraction of oil and gas contribute to approximately 3 to 4% of UK GDP and employ half a million people. Marine construction, such as wind farms are worth £190 million to the UK economy. The value of the fish landed in the UK is estimated at £535 million.</p> <p>The UK fishing fleet on 1 November 2009 numbered 5,850 vessels of which 1,397 were boats over 10m length and 4,453 under 10m. In terms of employment, there were 12,761 fishermen in 2008 but the UK fishing sector employs some 25,000 people (including those in the processing and other fish-related trades). UK vessels</p>

	<p>landed 588,000 tonnes of sea fish (including shellfish) in UK and foreign ports 2008 with a value of £629m. The largest landings in England and Wales came into the ports of Newlyn, Plymouth, Brixham and Leigh-on-Sea and the largest quantities of fish were taken from the Northern North Sea, West of Scotland and the English Channel.</p>
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THE HAMPTON VISION

“Both the Hampton and Macrory reports are concerned with effective regulation – achieving regulatory outcomes in a way that minimises the burdens imposed on business. Key to this is the notion that regulators should be risk-based and proportionate in their decision-making, transparent and accountable for their actions and should recognise their role in encouraging economic progress.”

Any findings relevant to whether the review team believes the regulator is risk-based:

The EU requirements that support the CFP enforced by the MFA are very prescriptive in nature which impacts on the regulator’s ability to apply the Hampton principles to its activities. There is however a strong risk-based approach evident in MFA activity. Failure to implement the regulations properly can result in infraction proceedings. The importance the MFA places on this activity is reflected in the Corporate Risk Register which identifies 4 key areas where the MFA could fall foul of EU requirements covering quotas, fishing gear, data collection and inaccurate data.

There was evidence of a strong commitment to targeting at different levels including deployment of marine and aerial surveillance, local sea fishery activity taking account of geography/seasonality and identification of individual vessels with a poor record of compliance.

There was also evidence that MFA directed the greatest resource to the areas of greatest need: the high risk activity at local level in one port office, for instance, accounted for 60% of targeted frontline effort.

Any findings relevant to whether the regulator is transparent and accountable:

Discussions with stakeholders suggested that the industry accepts (even if it may not necessarily like) that the CFP exerts a big influence on how fishermen and the MFA behave. There is a significant amount of business transacted over quota management both locally and nationally to stay within the limits.

The level of surveillance that the MFA can call on for vessels over 15m (fitted with VMS) gives them unprecedented access to valuable information about what fishermen are doing when they are at sea. Despite some perceptions within the industry that existing surveillance is intrusive, we saw evidence showing that the information gathered had been used effectively in specific cases to confirm suspicions and take action on illegal fishing.

For the smaller vessels (below 10m) there is no equivalent GPS-based oversight. This can give rise to a perceived lack of consistency between the supervision and management of inshore day boats and the rest of the

	fishing fleet. The allocation of quotas to these vessels is also managed in a different way.
Any findings relevant to whether the regulator encourages economic progress:	The CFP exists in order to achieve sustainable fishing. The direction of effort in England and Wales is to balance the size of the fishing fleet with the available opportunities to fish sustainably. In effect this will mean a continued reduction in the size of the fishing fleet and to balance this with increased efficiency, diversification and enhancing financial returns through the improvement in fish quality and the marketing of fish and fish products. The MFA helps encourage this through grant aiding projects and working closely with 'Seafish' which is a levy financed body that supports the fishing industry in a range of different ways. We concluded that the Agency believes that, left to their own devices, many fishermen would simply not choose to fish in sustainable ways. Fishermen's representatives, on the other hand, believed that fishermen were capable of a sensible approach to stock depletion.

DESIGN OF REGULATIONS

Hampton principles

“All regulations should be written so that they are easily understood, easily implemented, and easily enforced, and all parties should be consulted when they are being drafted”

“When new policies are being developed, explicit consideration should be given to how they can be enforced using existing systems and data to minimise the administrative burden imposed.”

Key findings on Design of Regulations:

The prescriptive arrangements that emerge from the CFP offer the regulator little room for manoeuvre. They specify in detail where vessels can fish, what they can catch, how much they can catch, what size the fish can be and how many days they can be at sea. There are technical conservation measures for juvenile and spawning fish, limits on mesh size and special stock recovery measures for ‘at risk’ stocks. This set of requirements defines sharp boundaries around what the fishermen are allowed to do and, as a direct consequence, dictates the areas on which the MFA needs to concentrate its efforts to secure effective oversight.

Background information such as the regulator’s role in developing regulations:

DEFRA represents the UK interests in the negotiations on fishery management in Europe with an annual Fisheries Council meeting every December. It works closely with the MFA and the Devolved Administrations to ensure that as far as possible the regulations are proportionate and practical to enforce from a regulator’s point of view.

Example(s) of good practice:

DEFRA officials continue to explore innovative ways of engaging with the fishermen and the fishing industry, which is often hard to reach. DEFRA tackle this through local road shows or other means of engagement. An example is the SAIF (Sustainable Access to Inshore Fisheries) project which is developing a strategy for long term sustainability in English inshore fisheries. Membership is wide ranging, including the fishing sector, fisheries management, retail and conservation bodies.

<p>Review findings:</p> <p>The extent to which the review team believes the regulator is acting in line with the Hampton principles:</p>	<p>We concluded that there is limited room for MFA to change the CFP approach to enable them to better meet this Hampton principle. There seems to be little prospect of a significant shift in the EU regulatory design approach that would make the regime more self-regulating than it is at present.</p> <p>DEFRA appeared to actively seek data and input from MFA staff on technical issues to assist in the UK position in negotiations. However it was felt that requests for input and support in developing regulations could occur earlier in the process. It is anticipated that the new policy planning arrangements at DEFRA will result in earlier engagement of MFA expertise.</p>
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ADVICE AND GUIDANCE	
<i>Hampton principle</i>	
<i>“Regulators should provide authoritative, accessible advice easily and cheaply”</i>	
Key findings on Advice and Guidance:	<p>The MFA relies heavily on use of its website to make advice available, but also use a range of printed material including ‘Fishing Focus’ which is distributed via ‘Fishing News’. Help and advice is also available at each port office or from Fishery Officers on the quayside.</p> <p>One of the persistent challenges for MFA is to update fishermen on any changes to quotas etc. without swamping them with too much unnecessary detail.</p> <p>The key document that allows fishermen to operate – the fishing licence – is awarded via a cumbersome arrangement. It can be dealt with by post, but fishermen feel much more comfortable visiting an MFA port office where help and advice is given. Changes/variations to licences are sent out by post from their port of administration. The actual process of changing license ownership was slightly opaque to us.</p>
Background information such as the means by which the regulator provides advice and guidance:	<p>The MFA provides detailed advice on fisheries management. It does not provide guidance on fishing practice. Another consequence of the EU-driven context is that the MFA has to push a lot of important information to the industry in order to enable them to comply with specific and detailed quota etc changes.</p> <p>The MFA has actively engaged with the print and television media to communicate key messages to stakeholders and the wider public.</p> <p>Feedback from stakeholders in the construction and aggregates industry indicated that guidance and documentation was readily available via the Agency’s website.</p>
Review findings: The extent to which the review team believes the regulator is acting in line with the Hampton principle:	<p>The MFA has a significant challenge in communicating with the disparate spectrum of individuals and organisations that it regulates. The primary delivery tool for advice and guidance are local coastal teams of Fishery Officers. The MFA staff are relied upon heavily to communicate very complex regulatory requirements to stakeholders. This is often not helped by the language used by policy initiatives from central or European Government</p>

	<p>An example of this is the “guidance sheet” issued by the MFA’s Northern district to the large visiting fleet who come to prosecute the Winter Nephrop (prawn) fishery. This guide takes into account any regulation changes negotiated and agreed by policy at EU meetings in Brussels at the beginning of the year. It explains in layman’s terms the requirements under cod recovery and the differing regulations either side of the 55 degree line. Giving advice on mesh sizes and catch composition has proved a valuable tool in increasing understanding of the regulations and encouraging compliance.</p> <p>Although there are natural local variations due to differences in the operating arena of stakeholders (for example different fishing ground and species), the way in which core consistency of this communication was maintained remained opaque to the review team. This presents some danger of inconsistency in approach or regulatory creep in some localities if unchecked.</p> <p>We recommend that the MFA should continue to strive for clarity in how it ensures a consistent approach across its coastal teams of Inspectors, whilst allowing these teams appropriate adaptation relevant to the nature of local duty holders.</p>
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DATA REQUESTS	
<i>Hampton principle</i>	
<i>“Businesses should not have to give unnecessary information or give the same piece of information twice.”</i>	
Key findings on Data Requests:	<p>There is a heavy requirement both on fishermen, industry and the Agency to provide extensive, up to date and accurate data to allow proper management of current marine stocks and to respond to any emerging pressures.</p> <p>Fishermen have to maintain logbooks and submit landing documentation, confirming details of their catch. Sales data has to be provided by buyers and sellers of fish who must be registered in order to carry out this role. Part of this can be seen as normal and basic book-keeping but, in the wider context of the CFP, it is also an essential part of the regulatory regime.</p> <p>The MFA has to maintain accurate aggregate data about the activities of the fishing fleet for annual returns to Brussels.</p>
Background information such as the data required by the regulator; the means by which business can return data, etc:	The present system is paper-based, but the MFA will have to roll out an e-based system in 2010 for larger vessels (over 15m). A significant paper-based system will remain for smaller boats, as this data is required by European legislation so the options for reducing this burden are limited. Recent changes in EC legislation, however, will ensure that the e-based system is progressively rolled out to all vessels down to 12m in size.
Example(s) of good practice:	The Common Fisheries Policy places a substantial data collection burden on Member States. The MFA is doing all it can to transition to appropriate electronic collection of data. The MFA is managing this transition to ensure the transition takes into account the absorptive capacity of duty holders within the industry.
Review findings: The extent to which the review team believes the regulator is acting in line with the Hampton principle:	The regulatory burden on fishermen is significant, but we concluded that it is currently outside the MFA’s capability to significantly reduce it, because of the very specific requirements imposed by the European Union under the CFP.

INSPECTIONS	
<i>Hampton principle</i>	
<i>"No inspection should take place without a reason."</i>	
Key findings on Inspections:	<p>Inspections, at sea or in port, form a key part of the MFA's role. The MFA works very closely with the Royal Navy in training and preparing Royal Navy personnel so they are ready to perform their duties as British Sea Fishery Officers, undertaking inspections at sea. This training ensures that inspections are carried out in a fair and consistent manner.</p> <p>The inspections are of a prescriptive nature and this can, at times, cause tension between the MFA and certain sections of the fishing industry.</p> <p>Targeting of specific vessels or species type, within the context of the overall CFP, is agreed locally based on regional risk assessments.</p> <p>Dual enforcement regimes exist between the MFA and Sea Fishery Committees; these are not necessarily complementary and there does appear to be scope for more joined up working.</p>
Any relevant background information such as the number of inspections and the number of businesses inspected; the regulator's risk model etc:	<p>The MFA publishes a Code of Conduct for fishermen about what to expect if there is an inspection at sea or in port.</p> <p>There is a dual enforcement role carried out with the Sea Fishery Committees. We could see no good reason for this overlap and, outside of a small number of specific local initiatives, little evidence of co-ordination of inspection and enforcement activities.</p> <p>We noted that there is commitment by the MFA to the Joint Deployment Plan for EU Member States to coordinate their fisheries protection activities.</p> <p>MFA figures show the following pattern of sea, aerial and land-based interventions in 2008/09:</p> <ul style="list-style-type: none"> • 10,905 aerial sightings • 2,848 Royal Navy sightings • 9,359 inspections on land and at sea • There were 74 fisheries offences prosecuted

<p>Example(s) of good practice:</p>	<p>A laminated code of conduct to give to fishermen is a sensible way of confirming the basis on which an inspection is being carried out.</p>
<p>Review findings:</p> <p>The extent to which the review team believes the regulator is acting in line with the Hampton principle:</p>	<p>Inspections provide assurance that the MFA is implementing the detailed requirements of the CFP through a high level of intervention.</p> <p>There is potential for a lack of consistency in approach between the various agencies involved in coastal inspections (EA, SFCs, MFA, Royal Navy) although we note that national co-ordination meetings do occur and the evolution of the Marine Management Organisation should improve co-ordination still further.</p>

SANCTIONS	
<i>Hampton & Macrory principles</i>	
<i>“The few businesses that persistently break regulations should be identified quickly, and face proportionate and meaningful sanctions.”</i>	
<i>“Regulators should be transparent in the way in which they apply and determine administrative penalties.”</i>	
<i>“Regulators should avoid perverse incentives that might influence the choice of sanctioning response.”</i>	
<i>“Regulators should follow up enforcement actions where appropriate.”</i>	
Key findings on Sanctions:	<p>The MFA operates a clear step-wise approach to sanctions which appeared to be well understood by both local enforcement officers and the regulated community.</p> <p>There is clear evidence of repeat offenders in the regulated community.</p>
Background information such as a summary of sanctions available to the regulator and any data on sanctions imposed by the regulator:	<p>Sanctions available to the MFA range from oral advice through to prosecution. A new fixed penalty system was introduced in April 2008 to offer a penalty notice instead of a criminal prosecution. The penalties range from £250 to a maximum of £4,000.</p> <p>The sequence of ramping up enforcement before resorting to the courts is as follows:</p> <ul style="list-style-type: none"> • Verbal re-brief – first offence • Written re-brief/advisory letter • Official written warning • Administrative penalty <p>There is evidence of systemic criminal activity in some areas of MFA work which is not necessarily commonplace under different regulatory arrangements. There is also evidence for high levels of repeat offending. Both demonstrate the scale of economic gain that can arise from illegal fishing.</p> <p>The most effective and punitive sanction is to withdraw or amend a fishing licence.</p>

<p>Example(s) of good practice:</p>	<p>We learned of a recent example of good <u>local</u> cooperation between the MFA, SFC and the Police to obtain the necessary evidence to secure convictions for repeat offences against trawlers fishing in inshore waters.</p>
<p>Review findings:</p> <p>The extent to which the review team believes the regulator is acting in line with the Hampton principles and Macrory characteristics:</p>	<p>The MFA appears to prosecute a low number of offences compared to the volume of inspections it carries out. This may, of course, indicate that there is a generally high level of compliance with the specific requirements.</p> <p>We recommend, however, that this pattern of activity is carefully reviewed to see if efforts should be devoted to the repeat offenders more systematically.</p>

FOCUS ON OUTCOMES	
<i>Hampton principle</i>	
<i>“Regulators should measure outcomes and not just outputs.”</i>	
Key findings on Focus on Outcomes:	<p>The CFP is itself an attempt to create sustainable fishing through management of quotas and fishing activity. The MFA contributes to this outcome through its specific enforcement activities.</p> <p>The equivalent PSA target (28) covers similar ground.</p>
Background information such as the regulator’s key objectives:	<p>Key current output measures of MFA activity include:</p> <ul style="list-style-type: none"> • Inspection targets – frequency and type of intervention • Prompt processing of licenses • Prompt data management and processing • Number of sample fish landings taken and analysed • Prompt processing of grant applications
The extent to which the review team believes the regulator is acting in line with the Hampton principle:	<p>The MFA currently demonstrates that its enforcement activity is linked to the achievement of an outcome-based requirement.</p> <p>Local monitoring is very much output rather than outcome based, although the team acknowledges the difficulty in activity measuring outcomes in such a varied and disparate operating environment.</p>

**Appendix 1:
Review team
membership**

Jim Foster is a Deputy Chief Inspector in the Drinking Water Inspectorate

David Snowball is Regional Director for Yorkshire and the North East in the Health and Safety Executive

Neil Warsop is Deputy Director of the Better Regulation Executive in the Department for Business Innovation and Skills

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