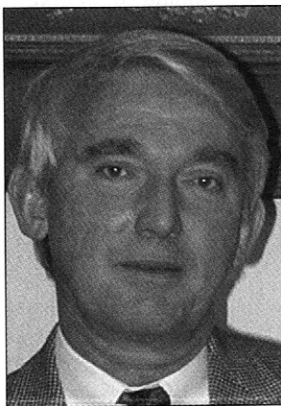


Stewardship of the Foreshore and Seabed

Michael Cunliffe, Scotland



Michael Cunliffe is Head of the Scottish Crown Estate.

The Crown Estate is part of the hereditary possessions of the Sovereign "in right of the Crown" – neither the private possession of the Sovereign nor the property of the Government. The Estate is managed by the Crown Estate Commissioners who have a duty to maintain and enhance its capital value and the income obtained from it. The net annual surplus is paid to the Exchequer for public use.

The Estate has interests in commercial property, agriculture and forestry, fish farming and marine holdings, as well as salmon fishings and mineral interests, including rights to gold.

I have been asked to describe the Crown Estate's role in the management of the foreshore and seabed in Scotland. I should emphasise that I am neither a politician nor a constitutional lawyer, so I shall confine myself to the questions of "what" and "how", without venturing into the more contentious areas of "why" and "whether".

First, the matter of ownership. While the UK does not have a written constitution and Parliament has not enacted any statutory statement on the ownership of the foreshore and seabed, it is clearly established law that they belong to the Crown: that is, to the Queen in her public capacity as Head of State. As has been stated by the Court of Session, "The whole weight of the authorities is in favour of the view that the Crown has a proprietary right in the solum of the seabed in the whole territorial waters of the UK". Territorial waters now extend for 12 nautical miles from the coast or from baselines joining points on the coast. The same principle of ownership applies to the foreshore, that is the area between high and low water marks, except where parts of the foreshore have been alienated (sold or given away) by the Crown. This has in fact happened, over the centuries, to about 45% of the UK foreshore, leaving around 55% in Crown ownership.

As the Scottish Law Commission's *Discussion Paper on Law of the Foreshore and Seabed* helpfully summarises,

The Crown is now regarded as having full ownership of the seabed and foreshore. This is considered to be a right which derives from the Royal Prerogative rather than the feudal system. The Crown's proprietary rights are qualified by the public's rights to use the sea and foreshore, which rights the Crown is obliged to respect.

The public rights are essentially those of navigation (including temporary anchorage), fishing for species other than salmon and, in the case of foreshore, recreation. These rights continue to apply to foreshore which is not in Crown ownership.

The Crown interest in the seabed and foreshore is managed by the Crown Estate, a statutory public body, while privately-owned foreshore is the responsibility of the owners, subject to the public rights and to statute law, for example the Planning Acts which extend down to the low water mark.

Crown Estate management is not necessarily exclusive, and it is possible to have concurrent layers of management with various bodies exercising different responsibilities. For example, where the Crown has leased rights to a tenant – such as a fish farmer or moorings operator –

the tenant will exercise management within the boundaries of the lease. Port and harbour authorities have powers to manage navigation within their statutory areas, and local authorities can, for example, make byelaws under the Civic Government (Scotland) Act to regulate activity on the foreshore or in inshore waters.

The Crown Estate has its origins, both in Scotland and in England, in the medieval role of the sovereign which did not clearly distinguish public and private aspects. In 1760 King George III reached an arrangement with Parliament by which he handed over the management of the greater part of the royal estates and the right to receive revenue from them, in exchange for a guaranteed annual income known as the Civil List. This arrangement has been re-ratified at each royal accession since then.

The Crown Estate comprises property held by the Queen "in right of the Crown", which is neither her private property nor the property of government departments. It includes the Crown interests in the seabed and foreshore, other than coal, gas and petroleum which are managed by the UK government under statutory powers. Management of the Crown Estate is the responsibility of the Crown Estate Commissioners, a statutory body established under the Crown Estate Act 1961.

There are eight Commissioners who are appointed by the Queen on the advice of UK Ministers. The current Chairman is Sir Denys Henderson, and there has usually been at least one Commissioner resident in Scotland, at present Ian Grant. The Commissioners are



Left to right: Wilbur Freeland, Helen Freeland, John Shaw, Norman Slater, Lesley Slater, Jose Mernane, Ole Lefman

responsible for the Crown Estate throughout the UK. The Estate comprises a very varied mixture of property including extensive urban commercial estates, tenanted farmland, forestry, some historic properties and Windsor Great Park, as well as the seabed and foreshore. The Crown Estate employs around 400 people, about one tenth of whom work in the Scottish Estates department which is managed from Edinburgh.

The 1961 Act sets out the duty of the Crown Estate Commissioners as being to maintain and enhance the value of the estate and the return obtained from it, with due regard to the requirements of good management. The Commissioners have therefore to balance three different objectives: the value of the assets, the annual income which, net of expenses, is paid to the Treasury, and the exercise of good stewardship, showing due regard to the environment and to local communities. So far as the marine estate is concerned, monetary value is really a function of income and we do not attempt to set a price on vast tracts of seabed which the Crown would never sell and which have no realistic prospect of earning revenue in the foreseeable future.

Having described some of the background, I will move on to the main topic which is marine estate management. As I have said, the Scottish foreshore and the seabed in Scottish territorial waters are managed from the Edinburgh office. As well as a general marine management section, there is a specialist section dealing with fish and shellfish farming. We are assisted for part of the work by two firms of chartered surveyors who act as managing agents for substantial parts of the Scottish coast, other than in relation to fish farming. Managing agents are the primary contact with tenants and potential tenants for these areas, and also carry out valuation work for the whole of the coast.

The Crown Estate exercises what we describe as a "landlord function" in relation to seabed and foreshore. What do we mean by that?

First, the landlord's role is distinct from the regulatory role of central and local government. The primary responsibility for deciding what marine development should be allowed in what location, and of balancing public with private interests, should rest with elected representatives. A variety of mechanisms, some statutory and others administrative, exist for this purpose. In many cases, environmental impact assessment has to be carried out as part of the process. I have already referred to the need for planning permission for development above the low water mark. For mineral extraction, a process called the "Government View Procedure" is applied, under which Scottish Ministers, after public consultation, decide whether an application

should be approved. For renewable energy developments such as offshore windfarms, consent under the Electricity Acts is likely to be required. All installations in the sea which are likely to affect navigation require the consent of Scottish Ministers under the Coast Protection Act 1949.

For fish farming, there is an Interim Scheme for authorising development in which the Crown Estate plays a part, but where the key decision-making role lies with the local authorities. The intention is to put this onto a statutory footing when an opportunity can be found for legislation in the Scottish Parliament.

As a general principle, the Crown Estate's policy is to facilitate development by leasing areas of the seabed and foreshore, subject to all statutory and other permissions being obtained, and provided it is compatible with the interests of our existing tenants. We would not, for example, allow moorings to be placed over the top of a pipeline. In terms of the Crown Estate's statutory responsibility for good management, we aim to achieve an orderly use of the public resource which the foreshore and seabed represent. In certain fields such as yacht moorings, this involves working closely with other bodies to ensure that suitable areas are used to best effect and conflicts are minimised. The Crown Estate employs a Moorings Officer to carry out this work on the West Coast.

The Crown Estate also has, as I have mentioned, a statutory responsibility to enhance the return obtained from the estate, and this involves levying rents for the use of the foreshore and seabed. This does not make us universally popular, but does ensure that the public benefits financially from the use of the resource. In the last financial year, the Scottish marine estate (including fish farming) produced a gross turnover of £5.6 million. As I have said, the whole of the net surplus goes to the Treasury.

Occasionally the Crown Estate sells areas of seabed or foreshore. This happens mainly when permanent reclamation is being carried out, creating in effect new land.

I have already mentioned some of the types of development that take place on the seabed and foreshore. They include dredging of minerals, particularly aggregates used for reclamation and construction; pipelines carrying oil, gas, water or wastewater; power and telecommunication cables; port and commercial developments such as piers and jetties, reclamation for port operations or industrial use; renewable energy developments, particularly wind turbines generating electricity; leisure facilities including marinas, slipways and moorings; fish farms,

principally salmon but also halibut, cod and sea trout; shellfish farms growing mussels, oysters and scallops; and conservation uses such as bird reserves.

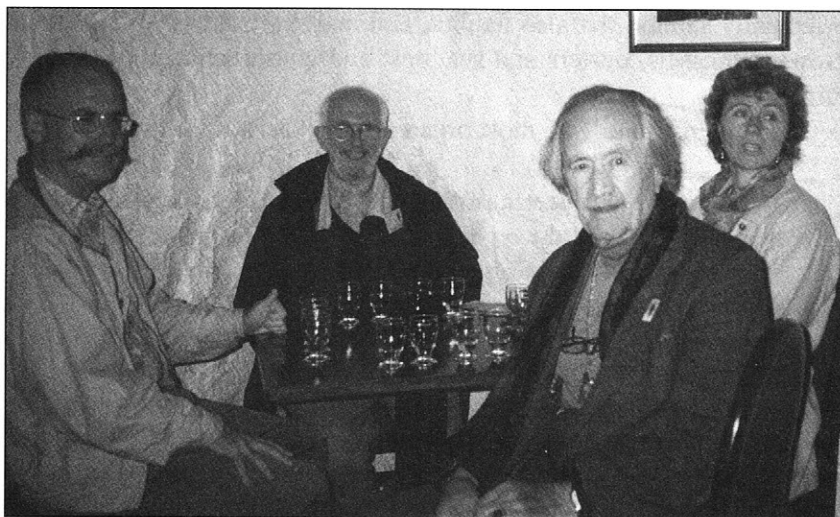
The Crown Estate, like most organisations, has a vision statement:

To employ the highest standards of stewardship and good management of land, buildings and the organisation, and to maintain and enhance the value of the estate and the return from it, in accordance with the Crown Estate Act 1961.

This is not always easy to achieve, as we have both to act commercially and to have due regard to our wider responsibilities. In terms of practical activity, we aim both to look after what we have – in terms of the physical assets, their income-generating capacity, and our relations with tenants and other stakeholders; and to look out for new opportunities. The latter is perhaps more relevant to our urban and rural estates, but has some validity for the marine estate also. For example, the Crown Estate has played an important part in stimulating the development of offshore windfarms.

In terms of our marine stewardship role, I have outlined some of the ways in which the Crown Estate aims to exercise responsible management of the limited resource which is the UK seabed and foreshore. This is not our responsibility alone, but one which we exercise in partnership with the UK Government, Scottish Executive, local authorities and other public bodies such as Scottish Natural Heritage and the Scottish Environment Protection Agency. Within that framework, concern for the environment and concern for the wellbeing of local communities are vital considerations. These can often be quite difficult to balance: for example, fish farms provide valuable local employment opportunities in remote areas with few alternatives, but must be sited where their impact on the natural environment is minimised.

As part of its stewardship, the Crown Estate reinvests a proportion of revenues in a variety of activities with environmental and social benefit. About £200,000 a year is spent on research and other activities geared to assessing and mitigating the environmental effects of fish farming. We operate a Coastal Community Projects Scheme under which a wide range of community groups and voluntary bodies can apply for grants to assist in projects such as improved access to Crown foreshore and the sea, public facilities for coastal recreation and environmental improvements. We also play an active part in the Scottish Coastal



Francis Peddle, Svend Dinsen, Victor Allen, Linda Janes-Peddle

Forum and a number of estuary fora around the Scottish coast, including financial support for some of their activities.

I should explain that the Scottish Coastal Forum and the estuary fora are part of the voluntary approach to Integrated Coastal Zone Management which applies in Scotland. They bring together, nationally and locally, the various organisations who have an interest in the management and development of the coastal zone, both on land and in the sea. They promote consultation and information exchange, and a joint approach to planning so as to achieve the best use of coastal resources.

Clearly the Crown Estate has to be sensitive to the public and political context in which it operates. We aim to operate in an open and accountable way. Formal accountability is by the Commissioners via Ministers, principally the Chancellor of the Exchequer, to the UK Parliament. However, there is a variety of other routes and mechanisms through which we seek constructive engagement with our stakeholders, including the Scottish Parliament and Executive, local authorities, public bodies, tenants and their representative organisations, and community and voluntary groups. Commissioners and staff undertake a series of visits throughout Scotland and we have frequent meetings with the wide range of bodies I have mentioned. We publish extensive information via leaflets and newsletters, press releases and our website (www.crownestate.co.uk). We also use a range of methods to monitor relevant areas of news and of policy development.

Cunliffe Stewardship of the Foreshore and Seabed

In conclusion, I have tried to present a brief outline of the Crown Estate's marine role in Scotland. The key features are Crown ownership of the seabed and more than half of the foreshore; management by the Crown Estate, working closely with central and local government, other public bodies and communities; the contribution of all the net revenue to Treasury funds in support of public spending; and our commitment to exercise the highest standards of stewardship in carrying out our role.

I hope this has been of interest, and that it helps to inform your discussions.