

**WELSH ASSEMBLY GOVERNMENT CONSULTATION: A PROPOSAL FOR THE
FUTURE MANAGEMENT AND ENFORCEMENT OF SEA FISHERIES IN WELSH
WATERS**

Purpose of Report :

To discuss the Committee's response to the consultation.

Recommendation :

That the Committee considers how and to what extent it wishes to respond by the 4 August 2008 in consideration of the issues raised below and at **Annex A**. It is suggested that the IFCA model be supported for Wales as it is in England, at least until Marine Bill actions have "bedded in". There is nothing lost to doing so, and much to be gained.

Background

This long awaited consultation is attached at **Annex B** (as circulated on 5th June in draft form), and was published on 9 June 2008. The deadline for responses is 4 August. The consultation was first announced in September 2006 but has been repeatedly delayed until now.

The consultation follows a number of strategic reports that SWSFC members have considered in detail, including "Review of Marine Fisheries & Environmental Enforcement "Bradley Review" 2004 and Net Benefits Cabinet Office Review – A sustainable and profitable future for UK fishing (2004) and government responses. The overriding conclusions were that the fishing industry (& marine environment) had a good future, providing its management was given further prominence and support and certain environmental principles or "encompassing" principles were adopted. Much of this boiled down to having the "political will" to act appropriately.

SFCs were pleased that each of the Reviews recognised the role that SFCs had performed over a century in shaping the importance of inshore fisheries and the quality of the marine environment in Wales. This had fared relatively well compared to offshore fin fish managed by National governments largely under the EU CFP. The reviews also supported claims by SFCs for over 10 years of the need for a modern suite of management powers to replace the Victorian powers under which SFCs worked (with bolt on new responsibilities)

The draft Marine Bill does this and SFCs (through the Association of SFCs) have been working closely with Defra, their lawyers and Parliamentary draftsmen since the Defra Minister announced the modernisation and strengthening of SFCs in England (as Inshore Fisheries & Conservation Authorities, IFCAs) in June 2006. (**Annexe C describes an IFCA**).

It therefore comes as some surprise that, against the promotion of these new bodies in England, WAG should promote something different and untested in Wales. We looked to the consultation document to properly explain all the options that WAG has considered, the pros and cons of each, and why it has chosen to progress the "WAG centric" one. All options do have their advantages and disadvantages, including the WAG proposal.

But unfortunately, the WAG consultation does not present all options, is very light on detail, high on asserted value of its own option and does not treat all aspects equally.

The abolition of SFC is presented as the 3rd phase in a programme to establish a new management and enforcement regime. Phase 1 was the transfer 'in-house' of the Marine and Fisheries Agency staff in Wales and phase 2 will be the creation of a Welsh Fisheries Zone beyond territorial seas to median lines with the UK, Ireland and Isle of Man. (incidentally, the rushed consultation on which ended only on the 6th June – see item 9(c))

The basic tenet of the consultation is very similar to the briefing that officials made to the then Minister Carwyn Jones in July 2006. Mr Jones announced in September 2006 that he would be consulting on the proposition that Welsh SFCs would be subsumed in some way into WAG. Both SFCs complained that they had not been properly consulted on the proposal and that there was more to their work and the task in hand than “met the eye”.

WAG then began to meet with interested parties to “flesh out” the options, starting with SFCs / ASFC in November 2006. Unfortunately that meeting ran out of time to properly discuss the emerging issues. Nevertheless SFC Officers were able to emphasise the concerns raised with officials back in 2004 as part of a response to the “Bradley options”. There has been no dialogue with officials on these “matters of detail” since.

WAG held other meetings with interested parties in late 2006, including with industry, CCW, Wildlife Link, anglers and Local government. These meetings met with variable attendance and interest. Industry working groups were held in Aberystwyth on several occasions ostensibly initially focussing on the “Net Benefits” & “Bradley” responses, but taking soundings more widely. As a consequence of technical issues being raised, the industry group requested in 2006 that officers of SFCs and Environment Agency be invited to answer these queries directly. This was not allowed by WAG officials and the group subsequently disbanded.

The Assembly elections in May 2007 effectively stymied any rapid progress. In the subsequent re-allocation of Ministerial seats, Elin Jones AM replaced Carwyn Jones as Rural Affairs minister. She subsequently took the opportunity to review her portfolio, including meeting with SFCs in January 2008, an action the previous Minister chose not to take up.

Opportunity for Wales?

The fact that fisheries and marine environmental protection are responsibilities fully devolved to the Welsh Assembly Government provides significant opportunities for their further management within Welsh waters.

SFC and Defra officers have worked hard on the draft Marine Bill to ensure that it delivers the fishery management and enforcement provisions requested by SFCs for over 15 years. This provides tremendous opportunity for future management of marine resources.

The question arises as to whether WAG have fully considered all the work that is currently undertaken, how efficiently and cost effectively this is done and the extent to which WAG has the capability, capacity and will to continue to do the job? That starts with recognition of what function and work SFCs currently undertake.

Consultation issues?

Officers consider that the consultation raises a number of issues which are yet to be addressed by WAG. Before respondents can reasonably respond on an informed basis it is considered very important that they receive the answers to the valid questions raised below and for public examination at **Annex A**.

The following immediate general concerns are raised by category:

a) Critique of consultation

- Lack of proper consideration of a range of management options. Its SWOT analysis is weak, incomplete and not supported by the evidence.
- Bias is exhibited towards a particular preferred option. The disadvantages of retaining SFC(s) are emphasized compared with the advantages.
- It damns any SFC response through a “they would say that” attitude.
- Options, including the preferred WAG option, are not explained. e.g. regarding accountability, accessibility, capability and a range of other matters as in **Annex A**.
- The assertion that retaining SFC would not meet the WAG aims for a transparent and uncomplicated system is not justified. Any new authority under any system must also meet these objectives.
- Options are not “stress tested “ as to their deliverability. In fact, the proposed WAG model is just not explained. Respondents might wish to be cautious in responding on something they are told so little about.

- The paper starts from the premise that Welsh SFCs ought to be disbanded and inevitably sets about justifying its actions in a manner which criticizes SFCs and therefore current and historical members and staff.
- The lack of cost benefit analysis attached to the consultation goes against government policy. Similarly the fore-shortened 8 week consultation period. It suggests a hasty exercise to meet parliamentary Marine Bill deadlines. Is that any way to dissolve successful management bodies that have existed for over a century?
- It omits to mention the importance of intertidal and recreational fisheries managed entirely by SFCs.
- It omits to describe how Welsh boundary fisheries are to be managed, most particularly the Dee estuary.
- We are informed that legal issues arise both over the nature of the matters considered in the consultation and therefore the legitimacy of any subsequent decisions.
- Similarly, where the consultation document cites failure to deliver Habitat Directive provisions (paras 4 and 5). The document is not specific but there is no evidence presented that the EU Commission has been dissatisfied with the way SFC have interpreted the obligation of EU environment and habitats directives. From the case work where we are aware there has been dialogue with the Commission, the SWSFC is very confident that it has acted properly and has closely followed independent legal advice. In fact, we have evidence that, ironically, it is WAG / Welsh Office that has acted improperly, and incurred the wrath of the Commission. Moreover, on a number of accounts it still runs the risk of infraction proceedings.
- The proposals are silent with regard to various other important matters, like :
 - Fishery protection vessel capacity and coverage.
 - provision of scientific expertise to underpin decision making.
 - collection of fishery statistics.
 - response to developments. Will WAG fill the gap occupied by SFCs in providing informed response? Could WAG do so (e.g. Water Framework directive?). Is the loss of an informed voice by 2 SFCs recognised?
 - member of Special Area of Conservation relevant authority groups (that deal with SAC management plans).
 - continuation of Marine Stewardship Council accreditation (of Burry Inlet cockle fishery). This is one of the measures of Environmental sustainability in WAGs Environment strategy.
 - Whether WAG can (in a practical and legal entity sense) or will (in a capacity or intentional sense) develop fishery initiatives. SFC lobster V-notching comes immediately to mind, where SFCs have managed & implemented EU spending of > £1m over recent years on behalf of shellfish industry.
 - Will WAG support continuation in house of CCW sponsored Biodiversity posts? If this is to be left to CCW to do internally, the intention of the posts is entirely lost!
- The Marine Bill provides WAG the ability to direct fishery managers to undertake certain actions of EU importance. Such clauses are not unusual. The arguments put forward for action in the consultation are entirely spurious.
- The consultation grossly underestimates the extent to which the Minister might “on occasions” be drawn into some local management issues! We expect such matters to occupy a great deal of Ministers and AMs time and to give rise to great frustration of constituents who are likely at times to take the law into their own hands. At such times they will no doubt lament the fact that the “SFC deflector shield” has been lost!
- Regulating and Several Orders – The document is shy (para 23), even at this late stage, of saying how these are to be retained or managed in the future. We are advised that WAG cannot, in law, both

grant, oversee and daily manage Regulating Orders. The fishing industry would also have difficulty taking on this task, even with new enforcement powers in the Marine Bill, nor have they shown any inclination to do so in the past. Similarly it is likely that the EU Commission would wish to make representation to ensure that habitat protection was not lessened. It is of little surprise, given these issues and the perceived future importance of Regulating Orders as a fishery effort control mechanism, that Defra have indicated that IFCA's are to be the sole managers of Regulating Orders in England, post Marine Bill.

Furthermore, the current position of Crown Estate Commission will be a complicating factor in any consideration of Several or Regulating fisheries at this time.

b) Implementation issues

- Officers are expected to transfer from SFC to WAG under TUPE arrangement. The negative bias and future employment transfer leads to a situation where officers feel constrained in what they might say if they want to maintain a future job.
- No costings are given. The document says that “some new set up costs” may arise. Some central funding for new burdens will have to be provided under any extended management system proposed under the Marine Bill. In England a provision of £4 – 6m has been accepted and will be made available to funding coastal local authorities via “new burden” arrangements. Ironically, in Wales the RSG arrangement means that this money WILL find its way to the funding local authority. Funds must be provided and assurances given by the Assembly that the costs will be met. WAG are silent on the matter.
- No consideration is given to assets and their transfer, nor capital expenditure. Not least of which any planned coverage of Welsh waters by Protection vessel(s). This needs laying down, costing and a WAG budget commitment.
- Informal discussion with WAG officials has indicated that there will be some significant cost savings to be made. As SFCs are accepted as giving such a cost effective, responsive service, there are fears that it will cost far more to deliver a poorer service. In reality all options must be properly costed by thorough independent review.
- Officials have hinted that industry will have to pay more for the services currently undertaken by the SWSFC, licensing under the Burry Inlet Regulated Cockle fishery and Appropriate (environmental) Assessments especially. For the latter, there will be no fishing if no assessment is undertaken.
- A key area will be what fishery management legislature might be enacted by WAG? Is there capacity to extend management control to all current areas of SFC management? If so, would it be undertaken or ditched? Will it have the same flexibility as have current SFC discretionary powers? What are the consequences if not? These are not just “matters of detail” to be the subject of further later consideration. They will have great practical and legal implication especially for practising commercial fishermen. They really need to know, for example, if large trawlers are going to be able to fish to the shore or if “grandfather rights” are going to be extinguished, and before responding to the consultation.
- There will be many matters of detail and law that are not for consideration here. Are WAG “rookies” newly settling in Aberystwyth going to have the capability to transact this business? Is it safe to assume that transferred SFC expertise will be on hand to bale them out?

c) Issues of principle

- The alternative IFCA model promoted in England is being tested and is based upon the proven SFC model strengthened by the Marine Bill. Ironically, having done the work and waited 15 years for new powers, how ironic that WAG would wish to “pull the rug” now!
- To the contrary, to the extent the proposed WAG model has been tested, user experience is often not very good.
- The Marine Bill is yet to sort out the difficulty between the Salmon act (which makes fixed netting illegal in tidal waters except where authorised by SFC byelaw) and drift nets which are illegal under specified byelaw. There are risks that either all fixed netting becomes unlawful overnight or that

salmon protection is undermined. Neither will be palatable. The solution lies in 2 pieces of interacting legislation and 2 management bodies (EA & SFCs) into which WAG intends to interject.

- Provision of impartial advice e.g. on the effect of fishing on marine conservation interests. A particular concern arises where WAG (having no marine biological competence) routinely accepts CCW advice (as “our advisers”) as being as of a matter of fact. In reality, biological systems are not that certain. The consequences may be, that fisheries may be prevented under a WAG regime, rather than be managed. Such impartial expert consideration of such issues by SFCs may even have given rise to the misinterpretation offered by WAG at section 4 & 5 of the consultation. (viz Habitats directive).
- Transitional arrangements – for staff, Committee, continuing legislation, funding, scientific support, capital equipment etc. These considerations are well advanced between ASFC, SFC, M&FA and Defra and their legal representatives, but are yet to escape WAG in Cathays Park. Our experience is that difficulties are to be expected, and the tasks are not ones to be rushed.

Matters of detail

Officers will be able to explain some further concerns regarding more specific legal aspects and more technical issues concerning transitional arrangements and the potentially difficult task upon WAG of continuing some of the fishery management provisions now undertaken through SWSFC byelaw. Detailed debate on some of these aspects has been ongoing for sometime with Defra and their lawyers, but is yet to even commence with WAG.

Conclusions

The conclusion of the above history, lack of information provided in the consultation, lack of WAG consideration of the above matters which WAG have been aware of since 2004 lead us to the conclusion that the proposals are not properly being considered.

Therefore, there exists a high degree of implementation risk, especially in the time available to meet the Marine Bill plans in England. That the proposals are now apparently being rushed through, ought to give rise to serious wider concerns.

The fact that the WAG fishery dept is in turmoil following the stated intended departure of most staff (& therefore loss of expertise) as it transfers from Cardiff to Aberystwyth offers further risk. It takes > 3 years to train a new recruit to marine fishery management assuming even a strong marine background. Further SFC staff may leave.

IFCAs in Wales, as England, provide the low risk route. WAG “can have its cake and eat it” by adopting IFCAs and seeing how they shape up over the next few years.

Recommendations

1. That the Committee considers how and to what extent it wishes to respond by the 4 August 2008 in consideration of the issues raised. Further consideration by Extraordinary Meeting of the full Committee is suggested.
2. Notwithstanding the above, IFCAs be promoted by SWSFC as the preferred model in Wales, as they are in England. At least, until such time as WAG flesh out its plans and offer assurances that meet the above concerns.
3. That the Committee make available the above report and any immediate views to any interested parties.

Annex A - Broad issues in a public context.

Annex B – WAG consultation document.

Annex C – Marine Bill extracts – What is an IFCA?

WAG consultation main issues

1. Institutional arrangements and Accountability

SFCs are currently made up almost entirely of local elected representatives plus persons appointed for their knowledge and understanding of local fisheries, both of whom have full participatory and voting rights in deciding fisheries policy. Some fishery decisions involve members in many hours of active debate before leading to a conclusion. Replacing this input with 'stakeholder opinion' from whatever source will have the effect of reducing the influence of the fishing industry and risks losing the fisheries focus of the arrangement which follows.

Local fisheries benefit from having decisions made locally. In a number of instances, it is difficult to see how Central control will improve management or secure the confidence of those at distance from the decision.

We agree that inshore management should have its duties, responsibilities and accountability clearly defined. Local fishery management can develop quite easily within National Strategy and SWSFC is most pleased to see WAG early developments in this field. We see these matters are set out for IFCA in the Marine Bill but not in the consultation for the Minister's proposal.

2. Regulations

SFC byelaws introduce a number of regulations which benefit inshore fisheries. It is not possible for National legislation as currently framed or proposed in the Marine Bill to replace all of such inshore measures. Where they can, it will be necessary in some instances to confine their applicability thereby recreating the 'arbitrary' boundaries for which the current system is criticised.

The consultation alludes to the transfer of responsibility for some important inshore fisheries to new as yet unidentified authorities thereby complicating the management regime.

3. Funding

Funding of SFCs has been a difficult issue for some considerable time. Both SFCs in Wales face particular difficulties and WAG will inherit these and the costs of rectifying them. It would be reassuring to see the Minister's financial commitment expensed on the implementation plan accompanying her proposal.

In point of fact, now the Revenue Support Grant mechanism has bedded in and is more widely understood, if a SFC has a statutory duty then whatever it levies upon a contributory council will (very largely) be met through adjusted Grant from Government that must be passed on to the SFC as a matter of law consequent of the funding SI. That suggests any funding issue is one of support for the SFC by Local Authorities. That support will be assisted by the Government's new found desire to manage the marine environment, whereas in the past NAW supported the LAs in leaving the SFC membership or reducing their funding!

The consultation also alludes to significant set up costs for a new regime but these are not quantified. The status of EA fisheries grant and loss of an element of SFC Revenue Support Grant requires clarification.

4. Timing

It is suggested that the dual SFC approach in Wales is replaced by direct WAG control. This 'quantum leap' in management approach is suggested at a time of significant internal change within the WAG Fisheries Unit. Perhaps an appropriate 'half way house' would be the adoption of the Marine Bill IFCA approach on an all Wales basis, operating on a close-cooperation arrangement with WAG. This would allow the establishment of an all Wales body whose future could be considered at more settled time.

The following is a copy of the Committee's webpage inviting an interested audience to delve a bit further before providing a response:

WOT?! NO SEA FISHERIES COMMITTEE?!

Elin Jones, the Assembly's Rural Affairs Minister is proposing to abandon over 100 years of successful inshore fisheries management in favour of WAG doing the job itself.

<click here> or <click here> to see the consultation (4th August 2008 deadline)

Sea Fisheries Committees (SFCs) are a network of local management regulators covering the coast of England and Wales. Through the Marine Bill currently proceeding in Westminster, England intends to modernise and beef up its SFCs and call them Inshore Fisheries and Conservation Authorities (IFCAs) and will be asking them to take a bigger role in protecting the marine environment. We think WAG should do the same.

<click here> to learn about IFCAs

In Wales, inshore fisheries are managed by SFCs in the North and South. The Minister proposes bringing those organisations within the Welsh Assembly Government and expanding the influence of the Assembly out into the Irish Sea in an expanded 'Welsh Fisheries Zone'.

Is this a good idea? What could it mean for the coastline of Wales and those who work and play there?

At the moment SFCs are made up of elected local Authority councillors to keep an eye on how the money gets spent, and local fishery and environmental experts appointed by WAG for their local knowledge.

Who will be making the decisions under WAG's new regime? How will anyone get a say in how things happen? Will they happen either locally or at all?

Has the Assembly actually got all the tools, knowledge and information base to do the job or are we to be left with gaps in which the marine environment could be damaged? Conversely will fishing be stopped?

Local government is hardly flush with cash but can the Assembly be relied upon to maintain the service of Officers and Patrol Vessels protecting our coastal waters? What say will you have in how that is spent?

Can anyone remember when a service was done better by Central Government?

Where will the priorities lie? Fishermen, anglers, tourists and conservationists all have a call on the marine environment. How are the conflicting uses to be resolved? What's going to happen to your hobby or maybe your job? How much more will you have to pay for it?

These are just a few of the questions we need answers to. Make sure your concerns are addressed by responding to Elin's consultation (by 4th August) and tell her what you think!!!

What does the SWSFC think?

We think that WAG needs to make a better case for dissolving SFCs and provide answers to a whole range of questions. It has no need to rush the process. In the meantime, IFCA's in Wales afford the more certain outcome. More detail is given below:

[Briefing to Committee](#) < click here >

[Draft Minutes](#) <click here soon>

[SWSFC Response](#) < click here soon >