

Mr Stuart M A Evans  
Fisheries Policy Branch  
Welsh Assembly Government  
Cathays Park  
Cardiff  
CF10 3NQ

F.11

15<sup>th</sup> August 2008

Dear Mr Evans

**A PROPOSAL FOR FUTURE MANAGEMENT AND ENFORCEMENT OF SEA FISHERIES IN WELSH WATERS**

The Committee welcomes the opportunity to provide a response to the WAG consultation released on the 6<sup>th</sup> June 2008 and appreciates the additional time allocated and the opportunity to have met with WAG officials on the 14<sup>th</sup> inst.

The Committees' concerns are briefly summarised in the following points:

- (i) *The Marine Bill by setting up Inshore Fisheries Conservation Authorities (IFCAs) will modernise and strengthen the system of Sea Fisheries Committees (SFC) which is tried and tested and has for many years delivered quality inshore fisheries and marine environment. The system incorporates all the principles of co-management and accountability expected of a modern management body. The Bill will also refine SFC membership and improve accountability to government.*
- (ii) *SFC duties and powers are clear under existing law and entirely sufficient to meet EU legal requirements but do need WAG to supplement them with comprehensive government advice and to deliver clear high-level policy and timely confirmation of byelaws and regulating orders.*
- (iii) *Whatever the selected delivery mechanism, the WAG will need to ensure that sufficient finances are made available to deliver the necessary services. The SFC funding formula via the Revenue Support Grant which "passports" money via Local Authorities to Welsh SFCs is the only model capable of guaranteeing sufficient funding for proper service delivery.*
- (iv) *(iv) Empowering a central government department or agency to deliver a replacement service requires extensive legislation and raises extremely difficult issues of policy. It is questionable whether such a service can match the existing SFC system let alone improve on it.*
- (v) *the Consultation Paper appears (a) to allow insufficient information and insufficient time for informed responses to consultation by those affected (Annexe B), (b) to proceed upon the bases of assumptions and statements which are inaccurate, and therefore contribute to flawed conclusions and (c) to contain SWOT analyses which are clearly both incomplete and incorrect in their identification of alleged advantages and disadvantages.*

These are developed in the text of the response which follows the paragraph numbering of the Consultation Paper itself.

There then follow a series of Annexes designed to give more detailed analysis of points made in this response. Specifically:

Annex A – The merits of Option 1 (IFCAs)

Annex B – Consultation aspects

Annex C – Habitats Directive assertions

Annex D – Summary critique of the WAG proposal (sent to fishermen)

**The Committee’s detailed response**1. Background :

Sea Fisheries Committees (SFCs) are statutory bodies whose powers and duties are well defined by the Sea Fisheries Regulation Act 1966 and other legislation. Their district boundaries, membership, and Local Authority funding apportionment are established by Statutory Instrument.

Membership comprises elected Local Authority members and WAG Ministerial appointees as persons having a knowledge and interest in fisheries and the marine environment.

2. The Marine Bill proposes that Inshore Fisheries Conservation Authorities (IFCAs) modernise SFCs in England by extending their powers and duties. In Wales WAG have proposed to do the work “in-house” and propose to abolish SFCs which is the subject of this consultation.
3. SFCs have been in existence for over 100 years and have been extremely successful. This is evidenced by the healthy state of the shellfish stocks and marine environment in Wales over which they preside. This contrasts with other species/areas. Their management regimes, especially in the intertidal, comprise an interlinking mosaic of locally based fishery management measures appropriate to local circumstance, built up over many years by reflecting sound local knowledge.
4. It follows that any decision to abolish SFCs should not be taken lightly or without clear, precise and fully developed alternative proposals. This is for the obvious reason that severe consequences are likely to ensue if the decision proves to be misjudged.

We do not consider that the consultation meets these criteria as described.

5. In the first instance the consultation does not clearly identify the options, and the reasons underpinning its recommendation that WAG (Option 3) is the way forward. In fact, Option 3 is so ill-defined and the information so sparse that we believe respondents will find it impossible to give intelligent consideration and make an intelligent response. The inclusion of a Regulatory Impact Assessment would have greatly assisted that process. For such radical proposals a minimum 12 week consultation period should also apply. The SWSFC expects that WAG will wish to redress these issues and at the same time take the product of the consultation responses conscientiously into account in reaching an ultimate decision. (Annexe B) This will ensure that the revised consultation meets both Government Guidance and UK law.

6. Reviews and funding

Para 4. The consultation refers to a number of previous Reviews and wrongly reports their conclusions with regard to the work of SFCs. All 3 reports agreed on the need to strengthen fishery management powers, enhance their duties and provide for their secure funding. SFCs welcome these conclusions.

The Marine Bill achieves precisely the modernising powers for which this SFC has lobbied for so many years as well as the necessary funding to enable SFCs to function effectively. DEFRA have accepted this in the form of Inshore Fisheries Conservation Authorities (IFCAs). It is therefore entirely illogical for WAG to suggest the dissolution of Welsh SFCs at this juncture.

7. Properly analysed, there is no absence of clearly defined duties on SFCs. Nor are financial resources a relevant issue in this respect. This is because any duty to meet EU law enables SFCs to levy upon Local Authorities which they have a legal duty to pay. Since most of the SFC budget comes from the WAG Revenue Support Grant mechanism introduced in 2001, there is no strong reason for a Local Authority to object.

8. References to ‘*some SFCs would argue that they are not properly funded .....*’ dates back to particular circumstance in 2001 when the resourcing of the SWSFC was unlawfully cash-limited by a Variation Order made by the Minister’s predecessor, which was subsequently quashed in judicial review proceedings. (R(SWSFC) v NAW ( 2001)).

In fact, real concerns exist about cuts to the Fishery Protection service in England. e.g. Fishing News (7<sup>th</sup> March 2008) carried a letter from Bill Wiggin, Shadow Fisheries Minister which suggests that *DEFRA has slashed MFA budget by 26% - from £31.9m to £23.5m and that since 1997 aerial surveillance have been reduced from almost 2500 hours to 1000 hours and could be as low as 600 within two years.* (Annexe E).

WAG have failed to identify and cost a service, and there is a real risk that budgetary cuts will follow in Wales also. Certainly the proposed WAG model is a far more risky proposition than is continuation of the current service under Local Authorities.

9. Habitats provisions

Para 5 states that “*There have been occasions (plural) when the SFCs (plural) have interpreted the obligations in a way which was not acceptable to the EU Commission, AND given that Ministers have no powers to instruct SFCs as to their activities, the Commission has questioned the Assembly’s lack of absolute control of fisheries in Wales*”

Para 6 states “*This relates to particular instances (plural) where some SFCs (plural) have failed to act to prevent possible damage, from fishing operations, ....*”

WAG officials have subsequently confirmed that their statement is erroneous and that they refer to a single event – the authorisation by SWSFC of dredging for Razor clams (*Ensis*) in Carmarthen Bay in 1999

10. The SWSFC is concerned that the Minister has appeared to base her preferred option in part on the alleged conduct of Sea Fisheries Committees in relation to the Habitats / Birds Directive.

We do not accept that any such allegations are well-founded. There is, indeed, a clear basis for contending that these claims ought to be laid at the door of WAG rather than the SFC and that ought to reflect upon WAG as a future management body. Importantly, and in any event, there is no sensible basis for contending that the SFC has acted in a way that should lead to its abolition. (See Annexe C)

11. As SFCs are a Relevant Authority and WAG is merely a Competent Authority, the disbandment of SFCs will leave the SAC Relevant Authority Groups (RAG) short of a member. Several of the RAGs have expressed concerns that this will lead to an inability to adequately manage the site through any management scheme and undermine the achievement of the conservation objectives. This risks infraction proceedings being brought upon UK government.

12. In the implementation of the Habitats and Birds Directives the major advantage of the SFC model over the alternatives set out in the consultation is that SFC officers have available to them a full range of scientific information directly relevant to each decision, and can, in accordance with European law, independently weigh up the advice received from the statutory nature conservation adviser against the best scientific information available. In the alternatives, because of the statutory relationship between central government and the nature conservation body a central government department like WAG is in practice only able to do this through the mechanism of a report of an inspector and/or assessors on a statutory appeal.

13. Accountability

If (Para 6) WAG believes that SFCs should be more accountable then they should use the Marine Bill to achieve this, and allow for SFC to be directed. Such is already the case for the MMO. (See clause 35).

There are indeed already powers of direction available in relation to the exercise of SFC powers in the critical area of European marine sites, e.g. under the Conservation (Natural Habitats &c) Regulations 1994.

The Minister already has, in effect, a power of direction in that she can (and in practice does) exercise powers under the Sea Fisheries (Conservation) Act 1967 in order to override a decision by a SFC to consent a particular fishing activity where there are differences of view as to the appropriate response to a question of law or science in relation to nature conservation. Those differences, of course, have not been resolved, as SWSFC have repeatedly requested the Minister (in particular by letter dated 17 January 2007) for clarification of the government position on the application of the principles of the Waddenzee judgment in relation to fishery management powers and duties generally (and SFCs specifically).

Finally, the Minister has the ability to influence SFC decisions through advice that it issues to Ministerial appointees upon the SFC.

14. Para 8 outlines four main areas where the need to change is suggested. These are mainly all covered by the Marine Bill, especially where IFCAAs are agreed. To the contrary, the management powers element gives rise to implementation issues in Wales, should WAG go for Option 3, the reasons for which are contained in this consultation response taken as a whole.

The jurisdiction of fishery manager is a separate issue from this consultation, unless it has already been decided that Wales has already defined Welsh waters? A review of IFCA boundaries is underway in England. This might yet suggest that Welsh waters be hived off from English waters. Either way, the boundaries and management arrangements for bordering areas in the Bristol Channel and River Dee need further consideration. This is particularly so for the Dee estuary where it would make management sense to manage the estuary as a unit attached either to Wales or to England. This consideration might best be undertaken as part of IFCA considerations of N W England IFCA or N Wales / Welsh IFCA.

15. Para 10 (and Paras 7 & 13) refers to public 'transparency' and 'accountability'. Since the WAG model is not defined, the Committee cannot make informed comment. The SFC model is, however, extremely transparent and accountable and it will be extremely difficult for any WAG model to meet these high standards. It runs under Local Government legislation, and half of each SFC comprises elected members. The remaining half are WAG appointed. It is for WAG to consider the accountability and expectations upon their appointees.

Furthermore IFCAAs (under clauses 165 & 166 of the Marine Bill) are to have additional accountability through the increased representation of other interests on an equal standing with local authority and fisheries representatives, and new periodic reporting requirements to government. Similarly the purpose of new SFCs (as IFCAAs) is to be broadened and better defined.

16. Para 11. A general statement that responsibilities need to be defined is unhelpful. The imposition in conditions of licences of requirements to comply with health and safety legislation is surely redundant: those duties are imposed by general legislation, and cross-compliance conditions merely blur the lines of responsibility rather than clarify them.
17. Reference to Welsh fisheries zone (see paras 7 & 8). Second phase : Proposed extension of Welsh Fisheries Zone to territorial waters has little bearing on this consultation except in one respect - that additional resources would be required and these might be taken from

those currently deployed on the management of inshore fisheries. (See SWSFC WFZ consultation response). WAG are already starting with less money than SFCs currently have. (See later). A Regulatory Impact Assessment would tease out such issues.

There are already some powers which can be exercised by SFCs inland, but the ability to pursue suspected offenders and fish taken by them or in their possession without territorial limit would be desirable. However, these reforms should be carried out on a basis which is common to England and Wales in order to ensure seamless enforcement across the boundary between the two countries.

18. Para13. The consultation should refer fully to the Bradley Review options, not ‘cherry pick’. The MMO option was not a Bradley consideration, it has arisen since.

It is not possible to ascertain from the consultation as to why a SFC scheme is thought to be any more or less **‘complicated’** than a WAG/NAW regime. In some respects ‘complication’ is a consequence of having democratic accountability and the involvement of experts in decision making as is the case for SFCs.

Nor is it possible to see how a WAG/NAW regime could be more **“transparent”** than the SFC model where, with the SFC model, there is regular and detailed reporting and discussion in the presence of the public with pre-circulated reports, and where the public local authorities and the fishing community have ready access to the participants in the decision-making process, and indeed can participate in discussion forums provided by the SFCs. In fact SFC meetings are public and fishermen are able to (and do) attend these meetings and with the consent of the chair, contribute. By contrast, Ministerial decisions are made on the basis of internal reports from officers without public participation or pre-circulation.

19. Para 14. It is agreed that **fishery management powers** need updating, but the consultation fails to refer to the opportunity provided by the Marine Bill to achieve precisely this. SFCs have been working with DEFRA on the Marine Bill since June 2006. It is of great concern that WAG (Fish) are not more engaged in the process, especially at this late stage where WAG specific policy might need to be incorporated into statute to make any WAG model work (see Part 3). Certainly, clarification of existing legislation is always desirable and could easily be achieved by NAW Guidance when sought. Sadly, this has frequently not been forthcoming, thus leaving the SFC to make its own judgements.
20. Para 15. It is suggested that WAG **supervision** *“could improve the consistency and effectiveness of inshore management arrangements and help address some of the current criticisms of SFCs”*. This presumes that WAG has provided any consistent view on inshore management which is capable of being adhered to, which is not the case. Indeed guidance on the very issue of fishing ‘plans or projects’ in European conservation sites has not been forthcoming. Obviously establishing an all-Wales management body will provide a new base for consistency, but the same can be quite easily achieved by various models under a Welsh Fishery Strategy if WAG has the desire to do so. Hitherto WAG has shown no interest in the matter.
21. SFCs are not aware of any significant differences of policy between them. Where policy deviates it is frequently a result of local circumstance, historical context or that there has been no driver for change and no problem caused by the situation. The new implementation plans under the Welsh Fishery Strategy and new IFCA reporting regime will cover these aspects.

It is suggested that WAG ought to concentrate on positioning itself with a “hand on the tiller” rather than trying to involve itself with the intricacies of management.

22. For the record, SWSFC maintains its position that WAG needs to further develop its Strategy Implementation plans under the nascent Welsh Fisheries Policy before it Reviews

the role of fishery managers. How else can it reasonably consider that the management, development and enforcement structure be fit-for-purpose?

23. The consultation is biased in that it does not refer to the very strong stakeholder criticism of WAGs current involvement as existing Fishery Policy manager. A more balanced appraisal would not suggest (by implication) that existing management by WAG is beyond criticism.
24. Para 16. It is suggested that the Minister lacks certain powers over the SFC, for example, to make a byelaw. However, as confirming authority the Minister may simply prepare and recommend the SFC to adopt a particular form of byelaw' etc. If the Minister should do this in the context of establishing national policy in a particular regard there is no reason to believe that the SFC would not submit such a byelaw for consideration by SFC members the Minister appoints and thence for approval.

When the Minister refers to setting clear duties, she would be doing what SFCs have requested for many years, in defining roles and powers in guidance (and preferably in legislation) particularly where there are serious doubts as to whether there is in fact legal power to bring forward byelaws in particular forms.

Contrary to what is suggested, full consultation does take place on SFC byelaws. The 2005 proposed Skomer MNR No Take Zone byelaw is a good example of existing practices, the detail of which can still be viewed on [www.swsfc.org.uk](http://www.swsfc.org.uk)

Draft byelaws are not only fully canvassed in public documents of the SFCs before advertisement and the results of the consultation are then taken into account in the confirmation process which is a public process. Impact assessments have arisen as a recent advent. IFCA duties will meet all of these requirements to the satisfaction of DEFRA. It is not clear from the consultation why WAG take a different view.

25. Options. The three options are not fairly or consistently assessed. Bullet points are repeated to increase number; advantages could be perceived by some to be disadvantages etc, and characterisation of “disadvantages” appears clearly engineered to ensure that numbers of disadvantages appear greater than advantages for Option 1. Annexe A contains an alternative assessment of SFC Option 1, and Annexe D views on WAG Option 3.
26. Option 3 fails to recognise that WAG Fish are themselves a highly imperfect body. SWSFC files document that the department have failed to respond, in an adequate or timely manner, to a plethora of fishery management initiatives of the day.  
Any proper consultation will need to recognise, and then address these issues. Most importantly, because they demonstrate the amount of additional resources that the department needs in order to effectively implement any fishery policy. This is a review that must happen, independent of any SFC Review.
27. Para 18 notes that DEFRA have supported IFCA's, a conclusion which NAW do not suggest is incorrect and would do well to consider in detail.
28. Para 19 is, in fact, **an** argument for IFCA's in Wales. This is because it is precisely the inshore fleet which is managed by the SFCs, and therefore there is greater reason to apply the IFCA solution in Wales than there is in England. That being the case, the Minister has shown no basis upon which there should be any different and conflicting regime in relation to Wales.
29. Staffing: Para 20. It is good that WAG recognise the value of the expertise that lies with existing SFC staff.

TUPE provisions would apply as a matter of law, but cannot “ensure” staff retention. Furthermore, it is evident that insufficient consideration has been given to the transfer issues surrounding certain posts, namely Fishery Protection vessel crew, Biologist,

Biodiversity officer and senior policy staff for which informal liaison with WAG staff has identified issues regarding post or grading.

It is not clear on what evidence the Minister has based her view. Such reorganisations have the unfortunate consequence that many experienced officers do leave service in consequence of relocations, or difficulties of integration into different structures, even in pure local government reorganisations. Given losses of staff already suffered by WAG Fish, it would be undesirable to risk further losses of SFC staff and expertise through a reorganisation which has not been shown even arguably to be either necessary or desirable. A move to retaining SFCs (as IFCAs) is a means of ensuring that expertise is retained at a time when WAG Fish perhaps needs stability and an experienced hand.

30. Boundaries: It is not clear what is proposed within the WAG model, especially how management across Welsh boundaries is to be achieved. The River Dee is perhaps more problematical than the Bristol Channel. Mention is made of '*revocation of some sea fishery powers currently vested in the Environment Agency*' and (at Para 21) 'claw back' of some grant in aid from the EA, although we were under the impression that the EA undertook its sea fisheries responsibilities at a net cost that WAG would need to find.
31. The consultation is silent on **transitional and implementation issues**, which will test even the most experienced hand if Welsh fisheries are to be managed effectively in these changing times. There are no indications in the consultation on how WAG intend to achieve this and over what time frame. To the contrary, the processes are well advanced in England, with shadow IFCAs in the planning.

32. Funding

As the consultation document contains no detail on the WAG proposal and no RIA it is impossible to identify costings. In England, where IFCAs are to take on a wider role in the management of the marine resources under the Marine Bill, the partial Regulatory Impact Assessment (RIA) identifies a cost of £4-£6 million to be met by Local Authorities as part of 'New Burden' arrangements.

As WAG are to take on the role of the MMO, licensing and SFCs, then it will be proportionately greater in Wales. However, the consultation merely says that Option 3 '*would involve one-off set up costs which could be significant*'. It fails to mention running costs as these cannot be known until the WAG proposals have been 'fleshed out' and full RIA has been undertaken.

Assuming WAG is to undertake the full range of marine bill responsibilities identified by DEFRA for England, then even a pro – rata assessment would identify a "New Burden" requirement well in excess of £1million.

Para 21 identifies the Local Authority RSG (Revenue Support Grant) which WAG intend to top slice from LAs in order to run the WAG service. Unfortunately WAG will not be able to capture all of this as > 10% comes from the rates element.

In conclusion, WAG will commence its management of sea fisheries with a very large deficit, arising from New Burdens, EA deficit and 10% SFC shortfall. WAG suggests that after the initial set up costs, their proposal will be cost neutral. We consider otherwise and urge that the proposals be fleshed out and costed.

Annexe E outlines concerns about the funding of centralised fishery protection services and puts to rest the notion that a government based service shall be safe from cutbacks.

Para 15 infers that the WAG model is to be 'more effective' than current arrangements. There is no evidence for such a statement and perhaps indications to the contrary? Indeed it might suggest that the WAG plan has not been properly considered.

33. SFCs are involved in the distribution of European Grant on the behalf of the fishing industry, for example both SFCs are heavily involved in lobster V - notching schemes. It

seems unlikely that under a WAG model that this might continue. Even if it were operationally possible, WAG priorities over the years suggest that such initiatives will be fore-gone.

34. Legislation - Para 22

Whilst we are clear on execution strategy for IFCA in England, we are most unclear as to how the proposals for Wales may be implemented, and the extent to which they rely upon the Marine Bill or can proceed in its absence.

Some of these issues are identified in Para 38 and Annex A. It will be important that WAG identify which fishery management mechanisms they consider to be important, which they wish to continue with and how they intend to achieve this under the legislative framework available to it. To what extent will this involve changes via the Marine Bill and is there the time and staff available to identify and enact all of these changes?

A failure to achieve this may give rise to a high risk of fishery and environmental damage, and remedy will take time.

Furthermore, as fishermen have taken business decisions upon the basis of current legislation, they have legitimate expectation of certain practices continuing. To avoid infraction proceedings or judicial review, it will be important that WAG fully consider all issues.

We have no confidence upon current output that this has been done and, bearing in mind ongoing staff changes at WAG, even less confidence that it will be achieved in the future. In making this observation we are acutely aware of the resources dedicated to the task by DEFRA and met by ASFC and other SFCs and the size of the task.

35. Conclusion

**In respect of views requested for the first part of the consultation (pars 1-22 incl.) we believe that the introduction of IFCA(s) in Wales [as in England] represents the most appropriate way forward, with a minimum of execution risk for WAG. That does not rule out any further change in the future.**

**The number and structure of IFCA should be informed by further independent Review and consultation, [as is the agreed route in England].**

36. Regulating Orders

A view on paragraph 23 is requested. The future of Regulating Orders is an issue that we have identified to WAG since 2004 and it is disappointing that, at this late stage, a route map has not been identified.

The Marine Bill identifies Regulating Orders as a key management measure in taking forward the Bill's aspirations. To such an extent regulatory powers of grantees are to be strengthened, risk of public inquiry due to frivolous reasons reduced; and IFCA are to become the sole grantees.

To the extent that the paragraph raises the question of "the future of Regulating Orders" it appears to imply the question as to whether such Orders will have a future at all. The essential role of such Orders has been given in serious consideration of inshore fisheries management for some time, and if the Minister is contemplating abrogating existing Orders without replacing them with even more effective management structures, there must be serious concerns as to the damage that may be caused by this.

Whilst technically possible for local authorities and or a management group (including fishermen) to become grantee, we believe that even with the new Marine Bill enforcement powers, effective regulation will become impossible.

There are no local authority Regulating Orders in Wales, and only one involving the EA, which is only now coming into initial implementation.

These Orders are crucial to achieving compliance with obligations in relation to European Marine Sites (SAC & SPA) as most lie within estuaries, and the grantees of the Orders need professional and legal expertise and public sector responsibilities in order to fulfil these obligations. The assumption that the role of regulator of existing Orders and orders awaiting the Minister's decision can readily be devolved upon different industry representation groups without relevant experience, and those representation groups constituted as relevant authorities for the purposes of the Conservation (Natural Habitats &c) Regulations 1994 appears to be based on hope rather than any serious expectation. Given the expressed concern of the Minister for consistent application of regulatory controls in European sites, the creation of *ad hoc* authorities to manage the most sensitive environments within those sites would appear to be entirely counter-productive and contradictory. In fact if local authorities joined up to cover cross border estuaries, what would in fact be created is a partial SFC (i.e. covering only some fish species)!

We consider that as Orders are fundamental in delivering compliance with the conservation objectives for Habitats and Birds Directives, there is high risk of EU infraction proceedings if WAG take a wrong decision.

The appearance is given that the Minister is prepared to contemplate the creation of serious difficulties of environmental enforcement and compliance with European obligations. This is in order to dispose elsewhere to any convenient inheritor of a function of the SFCs solely on the basis that such provision would facilitate the abolition of the SFCs without replacing them with an IFCA. The realisation that that inheritance might not be successfully devolved then leaves WAG with the consideration of the possible powers on the part of WAG as a last resort to be able to micro-manage centrally local environments in a context where knowledge of local conditions local environmental and local people is critical.

No consultation in this area can be meaningful unless there are fully worked proposals as to which successor bodies would be able to have this responsibility thrust upon them, and with what funding and expertise they would be able to manage the regulated fisheries as well or better than the SFCs. That the Minister is able to propose as preferred option, measures which produce such total uncertainty as to how the responsibility for Regulating Orders can be taken forward is clear evidence of predetermination.

We are disappointed that no mention is made of Several Orders or combined Regulating and Several Orders. Also, that no mention is made of the Marine Stewardship Council accreditation of the Burry Inlet Cockle Regulating Order managed by the SWSFC, and how this might continue. This is especially so, considering MSC accreditation is one of the lynch-pin measures of marine sustainability in the Wales Environment Strategy! Ironically another is SFC / ICES assessment of the state of fish stocks. (ICES barely comment on Welsh waters)

We are fearful that WAGs cash shortage and 'open secret' that Burry Inlet licence holders ought to pay more for their licences, will jeopardise their future. This should be an explicit part of costings in the RIA to enable existing licence holders to comment.

The future ability of grantee/industry to undertake 'appropriate assessments' and implications if they do not (i.e. no fishing) and of how the advice of CCW is treated in each circumstance, are also instrumental in consultees being able to take an informed decision. The consultation is silent on all these aspects.

In the above context, the legal challenge by Crown Estates to the Beaumaris Regulating Order, and implications therein to other Orders, is therefore viewed with concern.

37. Environment Agency (EA)

Para 26 asks for views on the proposal that EA retain its powers for salmonid fisheries management out to 6 miles.

We consider that the consultation does not adequately identify plans for the future role of EA, either as above looking at powers, duties and boundaries or in the context of comments made in Para 21 (funding), Para 23 (Regulating Order) or Para 24 (SAFF is presumed to refer to the Salmon and Fresh Water Fisheries Act?).

The Marine Bill proposes to revoke certain sections of the fishery legislation which are referred to. It is unclear to us what proposition WAG are consulting on and why this appears to be in isolation from the important changes in the Marine Bill. The SWSFC will be happy to respond when WAG clarify these points.

Further general points (not necessarily broached in the consultation)

38. It is assumed that WAG will wish to have the full range of legislative tools available to it from the statutes currently in force, particularly Statutory Instruments under the Sea Fish (Conservation) Act 1967 and such other measures as are introduced via the Marine Bill currently navigating through Parliament. It is also assumed that these measures will need to be at least as good as those present in England.

Sea Fishery byelaws introduce a range of fishery regulations, some of which have obvious commonality with national (and EU) measures. It is not anticipated therefore, that given adequate change to legislation through the marine bill mechanism, there will be any difficulty introducing SIs to replace such byelaws as fish minimum sizes or technical gear restrictions. Nevertheless, as Annex A indicates in more detail, there is a significant transition hurdle to be negotiated in such a process and the consultation gives no indication as how this might be achieved. We are fearful that there is now insufficient time available to do so as the Marine Bill is introduced to Parliament. We are also concerned that whilst SFCs and DEFRA have been engaged in the process since June 2006, WAG has only informally invited Welsh SFC representation from 10<sup>th</sup> July 2008.

This is a complex process. If the task were to be rushed, the inevitable unforeseen consequences could be serious.

39. We question whether the **working practices** of the Civil Service can be flexible enough to respond to the delivery of enforcement services in this environment or, indeed with the cost effectiveness of the current SFC arrangement.

Nowhere is this more evident than in the use of fishery patrol vessels (See Annexe A)

40. It is surprising that such important matters as outlined above and in Annexe A are not covered by the consultation. Consultees will have difficulty providing an informed consultation response without more information on WAGs intent and priorities.

Fishermen will need certainty to be able to plan actions as the future of their businesses will depend upon it.

Of perhaps most seriousness it is unclear if WAG have the powers to deliver effective fishery management or the time to make the necessary legislative change by way of the Marine Bill. Even if they have, SWSFC analysis suggests that WAG will encounter serious difficulties and challenges in maintaining parity with the services provided by SFCs in Wales, let alone surpassing them which must be the aim of this Review exercise.

Summary of points made in the Committees Response

The following is a summary of the main points raised in the Committees response:

Errors / omissions

- Fishery Review outcomes are incorrectly reported.
- SFC duties are clear, although Government guidance is frequently requested.

- Marine Bill text clarifies some issues.
- There have not been occasions where the SFCs have interpreted obligations in a way which was not acceptable to the Commission. There has been one incident where the outcome can be debated and is not a rational justification to end the SFC service in Wales.
- The single Habitats Directive decision referred to (Razor clam dredging in Carmarthen bay ) is a misrepresentation of the facts (see Annexe C), the consideration of which has negative implication for the proposed WAG model.
- Policy Options are not all covered, are incomplete and presented in a biased way.
- SFCs do consult widely on propositions e.g. See Skomer MNR No Take Zone byelaw.
- No mention is made in the consultation of the level of public concern as to the current level of service provided by WAG.
- Welsh waters are effectively inshore. This strengthens the retention and strengthening of SFCs, not their dissolution.

### Funding

- A Regulatory Impact Assessment is needed so as to enable the consultation to identify then properly address funding issues.
- Most of SFC money is “passported” from Government to SFC via Local Authorities using the Revenue Support Grant mechanism underwritten by SFC statutory instrument. In that way it is more certain than WAG departmental funding.
- WAG would therefore only receive c 90% of SFC levy upon “claw back” and hence would start with a deficit.
- It is understood that Environment Agency perform SFC functions at a cost to them, hence further cost to WAG in any centralised model.
- We believe it would cost WAG more to achieve less.
- Upon proper evaluation therefore the WAG proposal would have both significant set up and running costs.
- Associated with Marine Bill proposals, IFCA in England are to receive £4 - £6m extra funding reflecting “New Burdens” upon Local Authorities. The proposal is silent on this and one assumes that WAG still need to review the wider responsibilities and costings of marine bill function and how these are to be distributed between WAG and fishery (or “sea fisheries resource”) provider.
- The provision of fishery management services generally in Wales requires more funding and must be reviewed (regardless of this consultation).
- Extension of Welsh Fishery Zone offshore should be funded from new money and not negatively impact upon the management resources of the inshore zone.

### General

- WAG is not a Relevant Authority (unlike SFCs). SAC objectives may be undermined as a consequence with risk of infraction. Remedy requires change to the UK Habitats Regs. (1994).

- Welsh Coastal Maritime Partnership and other groups would lose a member if SFCs are dissolved.
- Consent applications, reviews and consultation responses would receive lesser input if SFCs are dissolved, thus placing greater burden upon government depts, other agencies and the fishing industry.
- Grant opportunity will be lost if SFCs are dissolved (e.g. Lobster V-notching, CCW and possibly others).
- SFCs enter into ecological debate with CCW over fishery impacts and is a positive characteristic. As CCW is statutory adviser to WAG who tend to receive the advice “as taken” then future fishery decisions would form a completely different landscape.

### SFC Workings

- Transparency : It is difficult to see how a WAG model could be more transparent than a SFC.
- Accountability: SFCs are accountable and this will be furthered by the Marine Bill.
- Direction : If WAG have concerns regarding delivery of objectives or law, then these can be met through the introduction of direction clauses in the Marine Bill (cf MMO). It is not necessary to promote the dissolution of SFCs on these grounds, nor has DEFRA done so.
- Delivery: Can be enhanced through reporting schemes with WAG “hand on the tiller”.
- Consistency: Can be achieved where required through WAG under the new and developing Wales Fisheries Strategy. No issues have been raised with SFCs in the past.
- Guidance: Frequently sought of WAG by SFCs but rarely adequately given. WAG resourcing requires review to make sure that it can deliver current functions before it takes on new ones.
- Complication: SFCs are no more or less complicated than the WAG model. Democratic accountability comes at a cost to simplicity.
- Experts : SFCs have expert members implicitly involved in all decision making, the same cannot be said for WAG. Revised IFCA's will see gains in technical expertise.
- SFC experience risks being lost in any Review process.
- As WAG have lost their own staff following a move in operational base to Aberystwyth, the loss of further staff would have significant implication for service delivery.
- The Welsh Fishery Strategy and species implementation plans ought to be developed first, then decide upon the best delivery mechanisms. Horse before the cart.

### Staffing and Enforcement

- SFC staff have, as acknowledged, a vast experience. They are highly motivated.
- Flexible working practices are well established within a taxing environment (unsociable hours, working time directive, austere environment etc). This is a tested system.
- In house biological support. Uncertainty as to how WAG model could buy in advice so as to be aligned to decision requirements. Speed us often of the essence.
- The range of extensive advice is integrated into the decision making process.

- Prosecution mechanisms maintained. (SWSFC record is very good one, that WAG would doubtfully meet).

### Legislation

- Fishery management controls would need to be replaced by WAG. Document is unclear as to extent and mechanism.
- Will WAG controls cover “sea fisheries resources” as will IFCA’s?
- Can Welsh SIs adequately replace SFC byelaws? Issues appear to arise with respect to minimum fish sizes, shore fishing and vessel size controls.
- Marine Bill provisions will be able to cover some aspects. But it is unlikely that there is sufficient time to do so from such a slow start. Indeed at this late stage we are unconvinced that the issues have been identified. A high degree of execution risk therefore arises.
- Discretionary function is essential within legislation as with Welsh SFC byelaws. Can SIs offer such? Even if they did, would a WAG model be able to action such management, especially in SACs where “appropriate assessment” requirements arise?
- The Review would give rise to the need to review existing SFC byelaw boundaries. Not a straightforward task, and best done over a period of time and with extensive preplanning.
- Risk of “lowest common denominator” fishery legislation arising from any review.
- Would historical operators, mussel seed fishermen etc lose out? Risk of Judicial Review warrants a cautious approach.
- Health and safety is not a matter for consideration as part of sea fishery legislation as it is covered by other legislation managed by other bodies. SFC decisions can (and do) however reflect H & S advice from others.

### Consultation

- Inadequate information on options.
- No cost benefit analysis or Regulatory Impact Analysis.
- Lack of time to respond.
- Risk of Judicial Review.

### Regulating Orders

- Importance underestimated.
- Several Orders and combined Orders not considered.
- WAG approach suggests predetermination of SFC outcome.
- Concerns arise that in practice no single body other than SFCs could run them.
- Extent of funding from public purse vs cost recovery from licence holders a contentious subject not broached in the consultation but with significant implication.
- Coverage of other species / methods if other agencies take over the Orders. Actually increases complexity etc.
- Burry Inlet Marine Stewardship Council accreditation ignored. WAG would lose one of its environmental sustainability indicators.

### Environment Agency

- Consultation is not clear on intent, but a variety of issues arise : balancing migratory fish protection with *bona fide* sea fishing, funding, boundaries (especially river Dee) .

### Overall Conclusion

When the Minister has considered the issues therein we believe that she will share the views of this Committee that the Inshore Fisheries Conservation Authority (IFCAs) solution in Wales is the way forward, [in line with decisions already taken by DEFRA in England]. Such a move will address many of the other issues we have raised which have not yet been addressed by WAG Fisheries Policy Unit. This will remove some of the execution risk of reviewing SFCs at a time of intense activity in the marine environment and when WAG Fish have a depleted number of qualified staff in post following their relocation to Aberystwyth.

SWSFC

August 2008

### Annexe A

#### The merits of Option 1 (IFCAs)

The Consultation summaries Option 1 as :

- **Option 1** - Modernise SFCs and give some role of supervision to central government whilst retaining local input to decision making.

<b>Advantages</b>	<b>Disadvantages</b>
<ul style="list-style-type: none"> <li>• Scope to address some of the current problems with SFC performance through legislative changes without major institutional upheaval.</li> <li>• Retains local input to decision making.</li> <li>• Retains inshore managers whose sole focus is inshore issues.</li> <li>• Consistent with DEFRA approach.</li> </ul>	<ul style="list-style-type: none"> <li>• Does not provide a comprehensive management strategy for inshore waters.</li> <li>• Relies too heavily on the ability of local authorities to adequately fund SFCs.</li> <li>• Likely to represent a new burden on local authorities that would need to be funded.</li> <li>• Would not address the calls for uniform management throughout Welsh waters.</li> <li>• Will require some legislative changes but these would be accommodated in the Marine Bill.</li> <li>• Would require some new set up costs for a new supervisory role for Welsh Assembly Government.</li> </ul>

The assessment in the consultation of Option 1 as stated requires considerable refinement and correction. We have already dealt with some of the issues raised in the superficial SWOT analysis of Option 1 in the main text of this response, and some of the issues have been raised in earlier paragraphs in specific response to the consultation text.

However it is convenient to deal at length here with some very important advantages of Option 1 which are not raised elsewhere in the consultation.

#### 1. Value of existing Regulations and regulatory structures

Current regulation consisting mainly of Byelaws enacted under the Sea Fisheries (Regulation) Act 1966 will remain in force and will not have to be replaced by new and as yet undefined legislation. Similarly existing regulations in course of adoption can continue to formal adoption without procedures under new legislation having to be restarted from scratch.

These are all issues that have been raised with WAG as long ago as November 2004, for which we are still to receive any response even at this very late stage.

Sea Fishery byelaws introduce a range of fishery regulations, some of which have obvious commonality with national (and EU) measures. To retain these structures requires no legislative provision: to replace them will require not only specific changes to legislation through the marine bill mechanism, but complex transitional provisions, in respect of which the consultation gives no indication as how this might be achieved or indeed if the time is available to do so.

For example, whilst the Marine Bill is being written very much on the basis of having IFCA's and their enhanced byelaw making powers in place, no such provision is envisaged for WAG Fish. This has several potential pitfalls which WAG will want to overcome:

- IFCA's will manage "sea fisheries resources" i.e. are wider than just sea fish that are covered by the fishery legislation. Is there a "lacuna" here? How might this impact on the expectation of management in marine conservation zones, SSSIs, European Marine Sites and to meet Water Framework Directive provisions?

*By contrast the position with regard to existing regulation is in the view of the Committee clear, and the particular points where the Committee have pointed out repeatedly to WAG that controls are inadequate can and will be addressed through the Marine Bill. Option 1 provides this route forwards.*

- the question arises to what extent SFC/IFCA byelaws could be replicated in practice by SIs, and constitute an adequate proxy? SFC byelaw needs are currently being exhaustively tested by SFCs with DEFRA to ensure that they meet modern expectations. By contrast replacement SIs will be entirely untried and untested, and risk unsatisfactory outcomes and extensive litigation.

*To replace the byelaw structures will create major uncertainties throughout the fishing industry and those who interact with it. Fishermen will need responses and planned actions as the future of their businesses will depend upon it. Option 1 provides the most straightforward solution.*

- **Discretionary byelaws?** One particular aspect which will raise particularly difficult issues of replication is the very important and often SFC used tool (especially in Wales) of *discretion* built into shellfish minimum size byelaws whereby the size may be suspended or reduced in the light of rapidly changing circumstances on intertidal shellfish beds. SIs, in contrast, do not allow such flexibility and we are concerned that, for example, remedial thinning of shellfish or seed collection to supply the aquaculture industry are both opportunities that may be lost. Even if they did, the discretion must be properly and fairly implemented (and in SAC – subject to "appropriate assessment" which will involve substantial delays).

In this respect byelaws which have already gone through the processes of appropriate assessment and review have advantages over regulatory alternatives, and similar issues arise in relation to SFC gear fishing authorisations.

- Complex issues also arise in the implementation of statutory instruments in relation to setting (shell)fish sizes in relation to **shore fishing**.

*Option 1 appears the only current solution?*

- Another central plank of many Sea Fisheries Committees' vessel management schemes is restriction of the **dimensions of fishing boats** that may fish within a District. We are not aware that such restrictive measures are available through current statute and unless existing regulatory structures are retained there is a risk that inshore grounds will become open to fishing from large boats where previously only those with historical rights gained access. Many of these users operate on **historical (grandfather or sunset) rights**. In the absence of sea fishery byelaws those rights will disappear.

*Option 1 is clearly the most straight forward solution, although SIs could be developed under a Welsh Fisheries Strategy.*

Current byelaw regulation is based upon the two SFC districts across Wales. In some cases the management of fisheries has evolved upon different lines. Any replacement regulatory structure faces difficult and controversial issues arising from both regional and local variations in existing regulation. Any 'lowest common denominator' approach taken will have the effect of diluting the conservation value of current byelaws and any attempt to standardise regulation across Wales will have serious consequences in relation to fisheries in which currently regulation is less stringent.

*Whilst SFCs as IFCA are to have powers and responsibilities in the Marine Bill strengthened and widened, it is not clear how or if WAG will be able to avail itself of such powers considered so necessary to meet the challenges of inshore fisheries and marine environmental management. This is especially pertinent for any agency or body that might enforce Regulating Orders (para 23). Option 1 provides the most immediate solution.*

## 2. Expertise

The existing Sea Fisheries Committees (SFCs) ensure that a range of experts are closely and directly involved in the practical management decisions affecting sea fisheries and the marine environment

SFCs rely heavily on in-house **marine biological and environmental expertise** in close liaison with industry and CCW to inform their management decisions, particularly in relation to intertidal (shore) fisheries. This function has become increasingly important as the challenges of fisheries management have developed within, for example, Special Areas of Conservation (SAC).

The integration of science and management in sea fisheries committees and replacement IFCA is in sharp contrast with the relationship of managers and scientists in central government, where scientific services are in many cases based in external agencies at least one step removed from decision-makers.

This is particularly useful for nature conservation bodies who are able to draw on and benefit from this combined expertise and interact with it in constructive scientific dialogue.

SFCs are involved in many other representative groups. It is unclear if WAG could be similarly involved and if so, whether it would be? Memberships of SAC Relevant Authority Groups (RAG) and Wales Coastal Maritime Partnership (WCMP) come to mind, the former requiring a statutory change if the wish of the RAG groups are to be met.

*Option 1 provides the most obvious and immediate solution.*

## 3. Habitats Directive Implementation

Relevant Authority Groups (RAG) collectively implement management schemes for European Marine Sites. These schemes acknowledge that fishing activity has one of the greatest human ecological impacts, and requires managing. The participation of SFCs in RAGs enables representation of both management and fisheries science input in the implementation of the Habitats Directive.

Each SAC RAG has expressed a concern at the loss of SFC as a Relevant Authority on the group which they see as being essential to achieve the site conservation objectives within an acceptable level of socioeconomic impact.

Alternative structures to Option 1 would require dual representation by both fishery managers and fisheries science. Neither WAG nor CEFAS are currently a relevant authority (they are competent authorities) and will not be involved unless the UK Habitat regulations are amended, and neither would be able to provide the local input which senior SFC officers are able to do. This matter has been flagged to WAG since 2004.

*Option 1 is the only one that provides an immediate solution without the need to make any legislative change.*

#### 4. Fishing industry involvement in decision making

The fact that fishermen and fisheries industry representatives serve as members of SFCs, and will continue to serve as members of IFCAs, allows the knowledge and experience of the industry to be fed into decision-making alongside nature conservation advice in a way which is not possible for any other government body. The presence on the Committee of fishermen's representatives and of marine biological support adds vital knowledge at the point that decisions are made. The value of this "testing" process at this point should not be underestimated.

*Option 1 provides a full and immediate response. It is not at all clear how the WAG model can accommodate a mechanism whereby fishermen and other experts were implicitly involved with (local) decision making.*

#### 5. Enforcement and operations

The operation of enforcement and other resources both on shore and at sea to deliver a continuing level of protection to fisheries and the marine environment is absolutely essential, and is presently delivered by the SFCs.

By contrast, the role of Central Government in fisheries management has historically been one of a mainly administrative role on shore and at landing ports. Operational enforcement at sea has been the purview of SFCs and the Royal Navy Fishery Protection Squadron. The nature of inshore fisheries is such that activity is much harder to police, taking place in near shore conditions that are locally dangerous at any time of the day or night when tide and weather allow.

*The assurance of continuing efficacy and cost-effectiveness of SFCs is a major advantage of Option 1, given that alternatives within central government structures are untried and will be inherently more difficult to adapt to the flexibility of the requirements of delivery of enforcement services in this environment.*

#### 6. Sea going operations

A particularly important aspect will be the operation of an **inshore sea going enforcement** presence. This is a very important consideration because the current dedicated Fishery Protection Vessels that each SFC have command > 25% of the budget and employ dedicated and specialised staff, the future of whom must be considered.

Furthermore, to continue to run these vessels requires expert knowledge, the likes of which currently does not exist elsewhere. In particular the planning aspects for deploying these

large resources, also for repair and maintenance and capital replacement - are aspects which challenge both SFCs.

If smaller inflatable craft were run in the alternative (as has been suggested to us by WAG Fish), then a range of different considerations come into play, not least of which are effectiveness of cover, credibility of deterrent and the health & safety of employees and terms and conditions of their employment.

On the latter point, we are aware that the RNLI retire staff at 45 years of age from inflatable craft use because of specific occupational risk, and at 55 years from offshore lifeboats. Any review must consider the significant practical application of this.

RIB operations raise certain H&S risks as the recent incident involving a RN deployed RIB on the south coast graphically illustrates. On this occasion the RN Fishery Protection vessel was close at hand, and another RIB was deployed. Contrast this to the solo operation suggested by WAG Fish as a part of their strategy. Corporate manslaughter laws have tightened in recent years.

The implication is of unsafe operations or of necessity operations only in calm conditions inshore or of the deployment of dedicated Protection Vessels at significant cost.

The fact that the two SFCs have run larger Fishery Protection Vessels for a considerable periods of time which have also been subject to periodic detailed reviews (the results of which are available), represents the outcome of long experience of the need for substantial FPVs to police their 6 mile districts. It then follows that it is the extension of the SFC enforcement service which is required in relation to WAGs 12 mile boundaries and beyond, rather than the replacement of the service with untried combinations e.g. of RIBs and Naval Patrol Vessels.

*This is an area that would be totally new to government departments. It is why, centrally, it is provided by the Royal Navy offshore. But it would neither be practical nor cost effective to utilise Navy vessels inshore. It is a difficult area and one on which SFCs and even Environment Agency struggle - even with their vast long term experience. If WAG are to operate a sea going force then Option 1 provides the simplest, most cost effective and efficient option. If WAG wish to promote any other option, then this really does require their further thought and pre-planning.*

### Conclusions

Option 1, for a whole host of reasons as stated, provides the only immediate and practical means by which inshore fishery management services can be provided at the equivalent, and with Marine Bill function, improved level of delivery requirement.

The Committee would set out their position in the following revision of WAGs SWOT analysis:

<b>Advantages</b>	<b>Disadvantages</b>
<ul style="list-style-type: none"> <li>• Cheaper, more effective and efficient than WAG Option 3.</li> <li>• Financing less politically dependent.</li> <li>• Scope to improve SFC performance and accountability through legislative changes.</li> <li>• Minimal institutional upheaval.</li> <li>• Retains local input to decision</li> </ul>	<ul style="list-style-type: none"> <li>• Likely to represent a new burden on local authorities that would need to be funded. (but will be contained within RSG grant and covered by New Burdens agreement)</li> <li>• Replacement of capital asset, principally Patrol vessels, will require further consideration (but would require financing in any model)</li> </ul>

<p>making.</p> <ul style="list-style-type: none"> <li>• Measured actions to local issues within National framework.</li> <li>• Retains inshore managers whose sole focus is inshore issues, now expanded on the environmental side.</li> <li>• Consistent with DEFRA approach.</li> <li>• Requires relatively little change to legislation, which DEFRA and SFCs have in hand.</li> <li>• Consistency across boundaries (epic estuaries) with DEFRA.</li> <li>• Builds upon the current recognised weaknesses of SFC legislation.</li> <li>• More certain outcome, low execution risk or risk of Review.</li> <li>• Reduced risk of EU infraction because both IFCA and WAG retain powers and responsibilities.</li> <li>• IFCA model retains democratic accountability &amp; involvement of experts in decision making.</li> <li>• Meetings in public, fishermen can attend.</li> <li>• Impartial and informed decision making.</li> <li>• Fishery and environmental decision making enhanced by greater proportion of members being appointees.</li> <li>• Clearer view on the application of biological advice to inform decisions.</li> <li>• Builds upon current SFC officer expertise.</li> <li>• Fishery officer activity model is flexible and tested (WAG would be unknown).</li> <li>• Sea going presence confirmed, tried and tested.</li> <li>• Regulating &amp; Several Orders maintained with no drama.</li> <li>• Byelaws cover all purposes and maintain flexibility.</li> <li>• Membership of organisations and</li> </ul>	<ul style="list-style-type: none"> <li>• Will require some legislative changes but these would be accommodated in the Marine Bill.</li> <li>• Consistency of Welsh approach will be maintained by WAG under Welsh Fishery Review, not directly by WAG Minister.</li> <li>• Risk of divergent policy between WAG and IFCA especially on EU duties (minimised by New power to direct).</li> <li>• Number of agencies on the ground not minimised – several uniforms and offices.</li> </ul>
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<p>MSC accreditation maintained.</p> <ul style="list-style-type: none"> <li>• Grant aid schemes maintained.</li> <li>• SFC approachability maintained.</li> <li>• Maintained fishery records.</li> <li>• Extra source of advice to government, developers etc.</li> <li>• Balancing development v conservation within Ministerial overview.</li> <li>• Minister not drawn into most local issues</li> <li>• Prosecution actions maintained.</li> <li>• Allows a phased approach at a time of great change.</li> <li>• Retains the options to review and progress WAG model in the future following further assessment of IFCA performance.</li> </ul>	
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## **Annexe B**

### **Consultation aspects**

1. Any consultation which proposes such a radical change in governance in relation to coastal waters in place of arrangements which have been tried and tested over more than 100 years, and which has potentially enormous impacts on an industry sector which is an historic part of national heritage, should be a thorough affair and follow Government guidance.

<http://www.berr.gov.uk/files/file44364.pdf> - Code of Practice

<http://www.berr.gov.uk/bre/policy/scrutinising-new-regulations/preparing-impact-assessments/page44077.html> - Guide to impact assessments

2. Even impartial observers offer comment that the consultation appears to be biased to deliver a preconceived outcome, and to be superficial.

Its obligation is to let interested parties know in clear terms what the proposal is and exactly why it is under positive consideration.

This consultation contains no information so as to enable the commentator to reach any valid judgement as to the merits of the proposed Option 3 (Bring SFC function in-house to create an all Wales fisheries management and enforcement body) over any other Option.

3. It amounts to merely a statement that Option 3 ought to be pursued without explaining what is exactly proposed by Option 3, and how fishery and environmental management is to be delivered, by whom, in what form and at what cost. Accordingly, not only are commentators unable to form a view as to the merits of the various alternatives, but they cannot consider the degree of execution risk for the delivery of the un-stated objectives and of any unintended consequences. The information given to consultees is wholly insufficient to enable them to make an intelligent response.

4. Moreover, the consultation fails to meet its own Governments 'Code of Practice on Consultations' in both content and approach. In particular:
- The consultation period has been foreshortened from 12 weeks without any good reason being stated. Where time is reduced, clarity of content ought to be strengthened. Reasons for the shortened timetable have not been given.
  - It is not an effective consultation in that it does not identify the management proposal nor properly compare and contrast that with existing management.
  - It contains no Regulatory Impact Assessment (RIA) which, if undertaken, would highlight the costs, benefits and risks of the proposal, upon which the respondents might comment (let alone challenge as is the guidance).
  - The issue is particularly sensitive or controversial and the potential cost upon business/public sector exceeds the £5m threshold that requires that a RIA be made available to public scrutiny.
  - The RIA must take account of the full range of costs and benefits; economic, social and environmental, and in a monetised form if possible. The costs falling on other Government departments should also be included. Total one off costs should be identified and averaged over the number of years of benefit.
  - Key assumptions, sensitivities and risks underpinning the analysis should be highlighted.
  - Without an RIA no baseline will have been laid down, against which future performance of the preferred model can be reviewed.
  - The case for Governmental appropriation of the sea fisheries function from transparent local democratically controlled management has not been made.
5. In the Committee's view, the consultation, together with its prejudged conclusion, should be abandoned and reworked at such a time when the consultation can contain comprehensive details of all alternatives under consideration. Only in those circumstances can the legal preconditions of fair consultation be achieved, viz:-:
- that the proposals are at a formative stage (not preconceived).
  - that the consultation gives sufficient reasoning to enable all parties to give intelligent consideration and response
  - that adequate time is given for full consideration of the proposals
  - that the Minister is approaching the matter with an open mind can and will conscientiously take the responses to the consultation fully into account when the ultimate decision is taken.

## Annexe C

### Habitats Directive assertions

1. Paragraphs 5 and 6.

Where the document refers to 'habitats directives' it is considered that WAG means either/or of CD 92/43/EEC 'On the conservation of natural habitats and flora' (the Habitats Directive) or CD 79/409/EEC 'On the conservation of wild birds (the Birds Directive). These are transposed into UK law by SI 2716 (1994) The Conservation (Natural Habitats & c) Regs, referred hereto as 'The UK Regs'.

2. Para 5 states that "*There have been occasions (plural) when the SFCs (plural) have interpreted the obligations in a way which was not acceptable to the EU Commission, AND*

*given that Ministers have no powers to instruct SFCs as to their activities, the Commission has questioned the Assembly's lack of absolute control of fisheries in Wales"*

Para 6 states "This relates to particular instance (plural) where some SFCs (plural) have failed to act to prevent possible damage, from fishing operations, ...."

3. Officials have now confirmed to us that the above statement is a misrepresentation of the facts. They say that they refer to a single specific instance, that being in 2001 from the issue by SWSFC of restricted permissions to deep dredge for razor clams (*Ensis*) in Carmarthen bay.

That being the case, the claims bear further analysis because it is illuminating of the proposed WAG fishery model.

4. Firstly, it reflects very badly upon WAG that they seek to influence the consultation through the use of such means. It also demonstrates a lack of scrutiny of the supply of such erroneous information which leaves the Minister exposed.
5. Secondly, both SFCs in Wales refute the original charge that they have interpreted their obligations in a way which was not in accordance with current understanding of European environmental legislation.

Neither SFC is aware of any instance where either SFC has failed to act to prevent possible damage. To the contrary, they have been proactive and through their permit and authorisation schemes, have been the leading SFCs in the development of standards of environmental management in European marine sites.

So far as we have been told, there is no evidence for any damage to scoter duck or any other features in Carmarthen bay.

6. Thirdly, the situation, as appertains, applies equally to England and DEFRA. Yet they have sought to strengthen SFCs and extend their powers as IFCA's. This is despite DEFRA having had to take more "intervention action" in the use of section 5 orders (1967 Sea fisheries conservation act) than has been the case in Wales.
7. Fourthly, Government appoint members to SFC and is not without some influence. Will it confirm that it did not offer any advice to them as to the conduct of their duties and of WAG / EU apparent concern? {The Director is aware of a conversation with WAG officials, and of his offer, as marine biologist, to contribute to discussion with the Commission}.
8. This section appears to be an important part of the consultation document because respondents are given an impression that SFCs are not acting properly (even legally) at highest (EU) level. It therefore bears further analysis.

Not least of which, when informed with the facts it may lead to the consultee taking a different view as to the suitability of the WAG model to manage (on a sole basis) fisheries in Wales.

9. SWSFC is aware of only one instance where a decision has raised the interest of the Commission, that of its July 1999 decision to allow restricted dredging for *Ensis* (razor fish) in its district but especially Carmarthen Bay and which gave rise to a Commission 'Reasoned Opinion'.

In this case, without resorting to detail:

- The SWSFC acted in advance of decisions to designate the site as SAC and SPA.
- Commission in fact found against UK government in the case of its non designation as an SPA for scoter duck.
- The decisions were pre ECJ decision C-127/02 (7/9/2004) 'Waddensee' judgement which concluded that the management of fishing was a 'plan or project'.

- It is the UK government that, in the eyes of the Committee, is failing to manage fishing vessel licences it issues, in accordance with that judgement.
  - It is UK government that has failed to adequately transpose the Habitats Regulations.
  - It is WAG that has failed to respond to requests from the SWSFC for guidance on fishing as a “plan or project” or to support adequacy of SFC funding from Local Authorities.
10. Interestingly in the case of the *Ensis* decision it was WAG who eventually decided that as equal competent authority with the SFC, it would exercise its duties as it was obliged to do. It did so by preventing fishing, minus any assessment so far as we are aware, rendering such action potentially reviewable.
11. The action WAG did take (SI 607 (2003)) failed to amount to an exercise of *any* control over *Ensis* dredging in either that SAC or others in Wales.

Ironically, the situation remains controlled by SWSFC byelaw and conditions therein; the very ones that WAG now seek to revoke and which are not at all mentioned in the consultation. The Commission might retain an interest in all these aspects, especially if it thinks it might have been misled.

12. **Conclusion:**

Given that the issue of alleged breach of European legislation is central to the Minister’s argument for Option 3, it appears that the issue of the powers of independent judgment and decision-making of SFCs may be the driver behind the decision to consult on far-reaching and ill-defined alternatives to converting the SFCs into an all-Wales ICFA(s).

The unbalanced ( and indeed fallacious) presentation of these issues in the consultation, and the conclusions proposed to be drawn suggest that, on a fair and honest appraisal of a SFC record of conscientious application of European law within existing inadequate SFC powers, the public, once fully informed, might reach a different view from the consultation. Similarly, the Minister should and would come to a different view on a full re-consultation.

Moreover the erroneous analysis in this area casts some doubt over other important areas and assumptions in the remainder of the consultation, especially in the absence of a laid down and costed plan.

Accordingly, and in receipt of the above facts, the public might also consider the future of fisheries and marine environmental management by WAG (Option 3(as proposed.)) in a different light than if the Minister’s preamble in the consultation were accepted as a fair account.

**Annexe D**

**Summary critique of the WAG proposal (sent to fishermen)**

Either attached as separate .pdf (e-mail) or as on [www.swsfc.org.uk](http://www.swsfc.org.uk)

**“Patrol Day reductions” – Fishing News 7<sup>th</sup> March 2008**

**FISHING NEWS LETTERS PAGE – 7th March 2008**

**“Patrol day reductions**

MOST people will struggle to believe the claims from the MFA that the planned reduction in the Royal Navy Fishery Protection Squadron’s patrol days has nothing to do with cuts by DEFRA (*FN* 22 February, ‘FPS patrols cut’).

The MFA spokesman could have been unaware that in Written Parliamentary Answers ministers had confirmed the cuts to patrol days were as a result of ‘the available budget’. But given the fact that DEFRA, the department that has become the byword for incompetence, slashed the coming year’s MFA budget by a staggering 26% - from £31.9m to £23.5m, I am surprised that the MFA is even bothering to cover up for government cuts.

The MFA spokesman also claimed that the 1000 hours of aerial surveillance were unaffected. But the current contract with Direct Flight ends next year and discussions on the future of aerial surveillance cover have yet to begin.

Since 1997 aerial surveillance hours have reduced from almost 2500 and if there is a new contract, as with the FPS patrol days, which were almost 1200 in 1997 and could be a few as 600 within two years, we can expect to see further cuts driven by financial pressures rather than operational needs.

Over the next couple of years, the MFA will face considerable challenges. It needs to ensure that the regulations on electronic recording and reporting are implemented and it is tasked with trying to salvage a decent amount of quota for the 10m and under fleet following DEFRA’s complete failure to develop the Quota Management Change Programme.

These cuts will not help the MFA to do its job and nor will they help fishermen.

On top of its failure to deliver our European Fisheries Fund while the rest of Europe receives its portion, DEFRA is once again sending out the message that the Labour government does not care about our fisheries.

**Bill Wiggin MP**

**Shadow Fisheries Minister”**