

ANNEX B



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Yr Adran Materion Gwledig
Department for Rural Affairs

9 June 2008

Parc Cathays, Caerdydd, CF10 3NQ
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Dear Stakeholder

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

1. This consultation document seeks your views on a proposal by Elin Jones, Minister for Rural Affairs, that the Welsh Assembly Government assumes full responsibility for the management and enforcement of sea fisheries around the Welsh coast. In preparing this document we have taken account of issues raised by key stakeholders during a series of pre-consultation meetings.
2. The management and enforcement of fisheries in Wales is undertaken by Welsh Assembly Government Fisheries Inspectors, 2 Sea Fisheries Committees (SFCs) and the Environment Agency (EA). SFCs were originally established through the Sea Fisheries Regulation Act 1888, since replaced by the Sea Fisheries Regulation Act 1966. In the south there is the South Wales Sea Fisheries Committee and in north the North Western and North Wales Sea Fisheries Committee which covers the north Wales coast and part of the English coast as far north as Cumbria. The EA acts as a SFC in the Dee Estuary in the north and the Severn Estuary in the south.
3. The Welsh Assembly Government Fisheries Inspectors operate under EU, UK and Welsh fisheries legislation and are supported by the Royal Navy Fisheries Protection Squadron and aerial surveillance. SFCs are joint committees of local authorities and are empowered to make byelaws for the management and conservation of their districts' fisheries and marine environment, and they also enforce some UK and EU legislation. Their byelaws can regulate fishing activity such as use of gear, fishing seasons, minimum landings sizes, and the byelaws have to be submitted to Ministers for consideration and as appropriate confirmation before being enacted. The EA has similar powers.
4. The structure and role of SFCs in England and Wales has been considered in a number of reports in recent years, including the Prime Minister's Net Benefits report (March 2004), the Defra report on the Review of Marine and Environmental Enforcement (November 2004), and the English Inshore Fisheries Working Group Report (March 2005). All three reports made recommendations for the modernisation of the inshore fisheries



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management system in England and Wales, and examined a number of options including the possibility of a single marine management agency which could combine the SFC functions with the functions of the Defra Marine and Fisheries Agency (MFA). It was accepted throughout these documents there is a need to improve the management and enforcement of inshore fisheries.

5. The production of these reports prompted the Welsh Assembly Government to reconsider its responsibilities and obligations for fisheries in the marine environment, particularly in respect of its EU obligations for compliance with the various environment and habitats directives in relation to fishing activities. Although ultimate responsibility for these obligations rests with the Welsh Assembly Government, SFCs are obliged to observe them when managing the fisheries. There have been occasions when the SFCs 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.
6. This relates in particular to instances where some SFCs have failed to act to prevent possible damage, from fishing operations, to habitats or species in areas designated under the Habitats Directive. Some SFCs would argue that they are not properly funded to carry out their management role but the real problem is that there is an absence of clearly defined duties for SFCs and this means that it is difficult to hold them accountable for any inaction. The result is that if a SFC fails to carry out its EU obligations, it is the Member State (in Wales the Welsh Assembly Government) which is held accountable and which has to defend any European Court action.
7. Therefore, the Welsh Assembly Government proposes to establish a management and enforcement regime which ensures it meets with all its statutory obligations and is uncomplicated and transparent. In developing such a regime 3 main phases have been identified to achieving this:
 - First phase – The transfer of the Defra Marine & Fisheries Agency (MFA) previously working in Wales into the Assembly Government. The administrative responsibility for the provision of fisheries enforcement capability of EU, UK and national legislation had historically been provided by Defra (and MAFF before that) on behalf of the Assembly Government, through an agreement made in 1979. The transfer was completed on 1 April 2008 and the Assembly Government is now administratively responsible for the fisheries inspectorate.
 - Second phase – This concerns the proposal to create a 'Welsh Fisheries Zone'. The Assembly Government presently has competence for fisheries matters within the territorial sea adjacent to Wales (i.e. out to 12 nautical miles from baselines). The proposal is to create this zone which would extend Welsh Assembly Government competence for fisheries to the median line with the Republic of Ireland to the west, to the Isle of Man in the north, and to a small area in the southwest. The proposal is currently out to consultation with all key fisheries stakeholders in the UK and is due to end on 6 June 2008.
 - Third phase – The main focus of this consultation is in respect of the future of inshore fisheries management and enforcement and subsequently the future of Sea Fisheries Committees currently operating in Wales.
8. In considering the future of inshore fisheries management and enforcement the Minister considered four main areas concerning the need to change. These are:
 - the purpose and duties of inshore fisheries management and the jurisdiction within which management and enforcement of fisheries should operate;
 - the powers of inshore fisheries management bodies to make and enforce local rules in the form of byelaws;
 - the institutional options for future inshore fisheries management bodies; and
 - the degree of supervision which should be exercised over those bodies.

(A) Purpose, duties and jurisdiction of inshore fisheries management

9. Questions related to the purpose, duties and jurisdiction of inshore management bodies arise whatever the institutional structure.
10. The purpose of inshore fisheries management currently performed by SFCs is not sufficiently defined and SFCs are not under any clear duty to carry out that purpose; their powers are permissive. We consider that inshore management bodies should have clearly defined duties related to achieving sustainable development of fisheries and the marine environment generally within their jurisdiction, in respect of fish stocks, the impact of fishing on the marine environment and the economic development of the fishing industry. This would be consistent with and flows from the aim and objectives proposed by the various reviews. Clearly defined duties and responsibilities for inshore managers would make them more accountable.
11. Responsibilities also need to be better defined in areas where inshore fisheries management functions overlap with functions of other bodies. One such area is health and safety, where we would advise against seeking specific new powers for inshore fisheries management bodies, but rather look to provide broad discretion to impose conditions on permits or licensing schemes, to comply with relevant health & safety legislation.
12. On jurisdiction, SFCs currently have management responsibilities out to 6nm adjacent to the Welsh coast. The committees are of the view that the seaward limit under a new inshore management system should be extended to 12nm. This would correspond conveniently with the Assembly's current responsibility for the sea out to 12 miles but, however, given the aim of the consultation on the proposed Welsh Fisheries Zone, and that fisheries do not recognise an arbitrary boundary set by a 3/6/12 mile limit, there is a need for a management regime which operates throughout the area of Welsh fisheries. In this respect, fisheries managers would then need the authority and powers to enforce the full range of Common Fisheries Policy requirements. However, we believe the landward limit - currently the high water mark in many cases - should be extended inland so that inshore managers can pursue infringements away from the coast (for example, where undersize cockles are transported inland).

(B) Institutional options for future inshore fisheries management body

13. *Net Benefits* and the *Bradley Review* considered the need for institutional change. At the most ambitious, abolishing SFCs and transferring existing responsibilities for inshore fisheries management to a national body such as the EA (the Agency responded positively to that Bradley Report recommendation) to Defra's MFA (on an agency basis) or to a Marine Management Organisation (MMO); all these options were equally applicable in England and Wales. Any option that involved retaining SFCs in some shape or form would be more straightforward but would not fully meet the Welsh Assembly Government aims for a transparent and uncomplicated regime of fisheries management and enforcement.

(C) Powers to make and enforce regulations

14. The powers needed by inshore fisheries managers to make and enforce regulations will need to be updated under all institutional options. However, analysis of what this role involves in relation to existing legislation suggests that the changes in powers needed are not that great. There are a few gaps in existing legislation in relation to issues like charging, data requirements, effort limitation and research, but what is needed is in large part clarification of existing legislation and making explicit what is currently implicit.

(D) Degree of supervision

15. A decision is needed on whether provision is required for supervision of inshore managers. Scope for supervision by the Assembly Government could improve the consistency and effectiveness of inshore management arrangements and help address some of the current criticisms of SFCs.
16. One solution would be for Ministers to take powers to intervene, for example to instruct an inshore fisheries manager to make a byelaw. A less interventionist solution would involve giving inshore fisheries managers more responsibilities and increasing their accountability, for example by setting clear duties and by requiring them to undertake Regulatory Impact Assessments (RIAs) and full consultation in respect of proposed byelaws.

Options

17. In progressing a decision on the future of inshore fisheries management, the Minister considered 3 main options, which are:

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

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

- **Option 2** - Abolish SFCs and transfer responsibility for inshore fisheries management in Wales to the EA.

Advantages	Disadvantages
<ul style="list-style-type: none"> • Simplify enforcement. • Could make better use of existing resources and reduce duplication of effort. • Strengthen the opportunity for operational efficiencies. • Reduce the number of organisations the fishing industry has to deal with. 	<ul style="list-style-type: none"> • Inconsistent because although the EA has indicated an interest in assuming responsibility it would be on a Wales only basis. Difficult given that the Agency operates in both Wales and England. • Risk that complex legislative changes would not be delivered against the Marine Bill timetable. • Would require some new set up costs. • Fails to answer the criticism that where the EA currently acts as an SFC, its priorities rest with salmonids rather than all marine species.

- **Option 3** - Bring the function in-house to create an all Wales fisheries management and enforcement body.

Advantages	Disadvantages
<ul style="list-style-type: none"> • Would provide a coherent approach to managing Welsh inshore waters. • Would enable Welsh Assembly 	<ul style="list-style-type: none"> • Adverse reaction from Welsh SFCs. • Would require detailed negotiations with Welsh Local Government

<p>Government to exercise a coordinated all Wales control over local inshore fisheries management.</p> <ul style="list-style-type: none"> • In general, welcomed by the key stakeholders, including most of the Local Authorities and Welsh fishing industry. • Provides scope for better use of resources. • Local input into decision making would be via the industry direct, rather than relying, as now, on Ministerial appointees to the committees. • Annual running costs could be met from funds currently made available to local authorities in membership of SFCs. 	<p>Association, although we believe that it would not be adverse to the proposal.</p> <ul style="list-style-type: none"> • Would involve one-off set up costs which could be significant. • There could be occasions when Ministers are drawn into some local management issues. • Will require some legislative changes but these could be accommodated in the Marine Bill.
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18. In England, Defra were faced with a similar decision on the future of inshore fisheries management and they decided to strengthen SFCs by giving them clear terms of reference and revised strengthened powers to do the job. The proposal in the Marine and Coastal Access Bill, currently out to consultation, is to remove the 1966 Act and replace with new powers and obligations through the Marine Bill to create Inshore Fisheries and Conservation Authorities.

19. The Defra decision is based in part on the fact that England has two distinct fleets, the inshore fleet and the offshore fleet which require two distinct management and enforcement regimes. In Wales the fleet is predominantly an inshore fleet and therefore the aim of one management and enforcement body is far more appropriate and attainable than in England.

Proposal

20. Having considered the various options the Minister is proposing that all existing management and enforcement functions are brought in-house. This would result in the abolition of both Welsh Sea Fisheries Committees and the revocation of some sea fishery powers currently vested in the Environment Agency. The new regime would be part of Welsh Assembly Government's current Fisheries Unit, and would look to integrate current SFC functions with those of the existing sea fisheries enforcement team. It would be the intention of the Welsh Assembly Government to retain staff currently employed by SFCs and the integration would be in accordance with the Transfer of Undertakings (Protection of Employment) Regulations 2006, otherwise known referred to as TUPE. As well as protecting employment this would also ensure that the vast expertise which such staff possess, would be retained.

Funding

21. SFCs are currently funded by levy on the constituent Local Authority members. The local authorities themselves are funded through a combination of revenue support grant (RSG) provided by the Assembly Government and council tax raised locally. The amounts allocated to SFCs in the local authority settlements are not ring fenced but are notionally identified as part of the process of determining the distribution of the RSG. As local authorities would be losing the SFC burden then the proposal would be that the RSG element identified for SFCs would be retained by the AG to fund the new organisation. The EA is funded in part by Government Grant in-aid and by income from sales of inland permits. It is proposed that the Government's grant in-aid contribution for this work would again be retained by the Assembly for the new organisation.

Legislation

22. SFCs and the EA currently operate under local byelaws which have to be confirmed by the Minister before they can be enforced. The proposal is that those byelaws would need to be converted as appropriate into Welsh Statutory Instruments which would be enforced by the existing staff and by the integrated staff who

have or will attain British Sea Fishery Officer (or equivalent) powers which will enable them to enforce all EU, UK and Welsh fisheries legislation within Welsh waters.

23. Another aspect of legislation which needs to be considered is the future of Regulating Orders. These are Orders which in the main have been granted to SFCs and EA to regulate shellfish activities within specified areas. The EA and the local authorities might well wish to retain their responsibilities for these fisheries but if that is not the case then we would look to other organisations such as industry representation groups to perhaps take forward that responsibility. We will also be investigating what provisions might be available which would allow the Welsh Assembly Government to undertake those local management activities.
24. The EA currently has powers under the SAFF 1975 to manage and enforce salmonid legislation out to 6 nautical miles and the Welsh Assembly Government proposal is that the EA would retain these powers in Welsh waters.

Powers

25. The powers required to enable the proposed changes are either covered by current legislation or will be derived from new powers proposed in the Marine and Coastal Access Bill.

Your views

26. We would be grateful for your views on:
- the proposal for the Welsh Assembly Government to assume full responsibility for the management and enforcement of sea fisheries around the Welsh coast;
 - the proposal that the Environment Agency retain its powers for salmonid (Salmon and Trout) fisheries management out to 6 nautical miles; and
 - the future management of Regulating Orders;
27. This consultation has been sent to all key stakeholders in Wales (see Annex 1), and appears on the Welsh Assembly Government website.

How to respond

28. We would prefer to receive responses by email to:

FisheriesMailbox@wales.gsi.gov.uk

but are also happy to receive comments by post to:

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29. The Welsh Assembly Government intends to publish the responses to this document. Normally, the name and address (or part of the address) of its author are published along with the response, as this gives credibility to the consultation exercise. If you do not wish to be identified as the author of your response, please state this expressly in writing to us.

Deadline for responses: 4 August 2008

Yours sincerely,

Stuart Evans
Fisheries Unit