

Environment and Sustainability Committee

Meeting Venue:
Committee Room 3 – Senedd

Meeting date:
Thursday, 16 July 2015

Meeting time:
09.00

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



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Agenda

1 Introductions, apologies and substitutions

2 Environment (Wales) Bill – Stage 1: Evidence Session 16 (09:00 – 09:30) (Pages 1 – 19)

Julian Harrison, Project Director, Parc Adfer Energy Recovery Facility, Wheelabrator Technologies

Phil Short, Project Manager, Parc Adfer Energy Recovery Facility, Wheelabrator Technologies

Edward Woodall, Head of Policy and Public Affairs, Association of Convenience Stores

Dr Mark Lang, Federation of Small Businesses Wales

E&S(4)–22–15 Paper 1: Wheelabrator Technologies

E&S(4)–22–15 Paper 2: Association of Convenience Stores

E&S(4)–22–15 Paper 3: Federation of Small Businesses

3 Environment (Wales) Bill – Stage 1: Evidence Session 17 (09:30 –

10:00) (Pages 20 – 63)

Scott Fryer, Marine Campaign and Advocacy Officer, Wildlife Trusts Wales
Gill Bell, Wales Programme Manager, Marine Conservation Society
Gareth Cunningham, Marine Policy Officer, RSPB Cymru

E&S(4)-22-15 Paper 4: Wales Marine Link
E&S(4)-22-15 Paper 5: Wildlife Trusts Wales
E&S(4)-22-15 Paper 6: RSPB Cymru

4 Environment (Wales) Bill – Stage 1: Evidence Session 18 (10:00 – 10:50)

A short video of evidence gathered from the fishing sector will be shown at the start of this item.

Jim Evans, Wales Fisherman's Association
James Wilson, Bangor Mussel Producers

Break (10:50 – 11:00)

5 Environment (Wales) Bill – Stage 1: Evidence Session 19 (11:00 – 11:30) (Pages 64 – 70)

Mark Russell, Director, Marine Aggregates, British Marine Aggregate Producers Association
David Jones, Project Director, Marine Energy Pembrokeshire

E&S(4)-22-15 Paper 7: British Marine Aggregate Producers Association
E&S(4)-22-15 Paper 11: Marine Energy Pembrokeshire

6 Environment (Wales) Bill – Stage 1: Evidence Session 20 (11:30 – 12:00) (Pages 71 – 83)

Sarah Williams, Principal Advisor – Natural Resources & Ecosystems Programme, Natural Resources Wales
John Wheadon, Permitting Service Manager, Natural Resources Wales
Eleanor Smart, Marine Licensing Team Leader, Natural Resources Wales

Mary Lewis, Marine Advice Team Leader, Natural Resources Wales

E&S(4)-22-15 Paper 8: Natural Resources Wales

7 Papers to note

Environment (Wales) Bill: Further Information from the Farmers' Union of Wales
(Pages 84 – 87)

E&S(4)-22-15 Paper 9

8 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting

Lunch Break (12:00 – 13:00)

9 Environment (Wales) Bill: Discussion of Evidence (13:00 – 13:30)

10 How do we achieve a smarter energy future for Wales? – Discussion of Approach to the Inquiry (13:30 – 14:00) (Pages 88 – 95)

E&S(4)-22-15 Paper 10

Agenda Item 2

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Environment (Wales) Bill - Part 4: Collection and Disposal of Waste

A consultation response from Wheelabrator Technologies Inc. (UK)

1. For your views on whether the Welsh Ministers need further powers to require that certain types of waste are collected, treated and transported separately?
2. Do you agree that non-domestic premises should be required to put their waste out for collection in line with any separation requirements set out by the Welsh Government?
3. Whether you agree that the Welsh Government needs wider powers to ban some recyclable waste from incineration?
4. What will the impacts of these waste proposals be for you or your organisation?
5. Are there other waste proposals that you think should be included in the Bill?

1. In respect of household waste - given the huge strides being made by Wales already and the ever increasing recycling rate currently being achieved, there is a case for *'if it isn't broken, don't fix it'*. Wales already leads the way in recycling in the UK with collection authorities up and down the country providing multi-material recycling schemes to householders without the need for the proposed powers.

It's also worth taking into account the forthcoming local authority mergers being proposed by the Minister of Public Services, Leighton Andrews AM, as part of the recommendations put forward by the Williams Commission. Paragraph 3.39 of Sir Paul Williams' report on *Public Service Governance and Delivery* points out that collection costs already vary greatly. We believe additional regulation in this area will increase costs across the board during a period when it would be more prudent to allow the newly-merged authorities to focus on streamlining and improving the best aspects of their combined collection services.

When considering commercial operators. There could be a cost increase that will have an overly onerous impact on small to medium sized enterprises (SMEs). The impact on small businesses to separate, store and source collection for multiple waste streams could lead to them becoming less competitive in their respective markets. Again, with commercial waste recycling rates as high as they currently are, it seems perverse to 'rock the boat' at this point. The risk is that this additional burden could have a counter-productive effect on recycling rates in this sector.

WTI is not a waste collector in the UK, but relies upon the waste collection industry to collect, sort and separate waste in order to provide a residual fuel to our facilities. This will apply in respect of Parc Adfer and it is therefore essential that the views expressed by the collection industry are clearly understood and listened to as their experience and knowledge will be key in determining what can and will work.

2. Any further regulation on collection would be difficult to enforce and potentially overly punitive on SMEs – some of which we will hope to have as future customers.

As noted above, the responses to this consultation by the collection industry must carry a heavy weighting when assessing any changes.

For further information, please contact:

David Spencer, Communications Manager, Wheelabrator Technologies Inc. (UK)
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3. The Environmental Permit regime already has control over restrictions on waste types to Energy from Waste (EfW) facilities and landfill. The lack of sufficient market infrastructure for contaminated recyclable waste included in mixed loads will ultimately mean a ban on EfW could lead to higher exports, more fly tipping and/or illegal activities. The fact that Welsh Ministers already have banning powers under existing legislation also serves to underline the lack of requirement for these proposals.

In 2013/14 the UK's top ten exporters of RDF alone shipped over 2m tonnes of British resources overseas, estimates for 2015 show that this tonnage is likely to exceed 3m. The cost to the UK was up to £192m in transportation, shipping and processing fees, with the loss of resource capable of powering over 312,000 British homes or circa 1.3% of the UK population. Non-recyclable waste collected from homes and businesses in Ceredigion and Pembrokeshire is already being sent overseas. This is only viable as a short-term solution. Over the longer term it would be more responsible – from both an economic and environmental perspective – to manage this resource within Wales. Exporting this resource means the opportunity to use it to increase recycling rates, generate low carbon energy and unlock the supply chain opportunities associated with both of these processes for Wales-based waste management businesses is ultimately lost.

By increasing the opportunities for export via these proposed powers, Welsh Government may discourage private sector investment in EfW infrastructure in Wales and actively encourage waste export. These are both issues which are not part of the Wales Waste Strategy. Knock on impacts would include limiting energy security, removing potential investment opportunities in co-location of facilities requiring heat, steam, power or other by-products, and reducing the generation of renewable energy. Wheelabrator has seen first-hand that the Deeside area needs investment, jobs and energy. Indeed, the planning process revealed overwhelming support for Parc Adfer from the business community, industry groups and the public who understood the economic and employment opportunities this scheme represents.

Outright bans often restrict capabilities to react to changes in market conditions, which ultimately dictate how society's resources are used. Overly prescriptive bans on generic material streams and prescriptive additional burdens on business are unhelpful to the sector and to Welsh businesses in this respect.

The proposed powers are based on a stated purpose which is premature and unnecessary. The stated purpose to: *'Ensure that valuable recyclable materials/resources are not burnt'* is not aligned to market realities. It assumes that listed materials always hold market value, which is currently inaccurate. It's also premature in that such materials are unlikely to be sent to EfW facilities given other economic and policy measures in place. If such materials arrived at an EfW facility, they would be highly unlikely to have any real value and would likely be contaminated anyway. Banning materials from landfill and EfW would leave them nowhere to go if they were contaminated and there was no available EfW capacity.

The materials list is too simplistic. There are many different types and grades of paper, plastic, card and wood. The markets, viability and practicability of recycling some grades will of course vary over time. If for instance, 'plastics' are banned, what would happen to those polymers that currently don't

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have a robust market? Stockpiling of such materials when markets are depressed is also unhelpful to further market development and stimulation. Further stimulus to recycled product markets and

recycling technologies should be applied before any enforcement to use these markets is implemented via the proposed powers.

Whilst measures to ensure that viably recyclable materials are not landfilled or used as fuel are laudable, the approach here is overly onerous on those parties with little or no influence on the presentation of material for landfilling or recovery. It is unclear as to the proposed level of risk and responsibility that would fall on operators, waste carriers/collection authorities and companies sending waste to EfW facilities. This is of particular concern to Wheelabrator given its position as Preferred Bidder for the North Wales Residual Waste Treatment Project (NWRWTP) contract.

If implemented, the proposals as they stand would also distort the market. Anaerobic digestion and biomass facilities do not seem to be covered by the same duty. Uncontaminated wood, paper or card is as undesirable - if not more undesirable - to an AD plant as it is to an EfW facility. Indeed previous studies have shown that energy recovery is the best environmental outcome for low grade paper and card and this is far more efficient via EfW than AD. In addition, uncontaminated wood is a key fuel of biomass facilities.

4. Impacts on our organisation could be extremely damaging. The ban on materials from EfW, when included as part of mixed loads, could deter commercial operators from using our services. Imposing systems by which they are required to separate materials before sending to our facility will be costly. Alternative waste management facilities exist in England and they will happily accept this material without these activities being required, saving the commercial operators money.

The introduction of this Bill at this time presents a particular issue for Wheelabrator given the current ongoing discussions with the NWRWTP. The Welsh Government risks appearing to be pulling in opposite directions by, on one hand letting a contract for a residual waste treatment facility and on the other, removing the ability for this facility to operate effectively. The current legislative framework in Wales provides a cap on EfW of 30 per cent by 2025, effectively reducing the fraction that is to be treated in this way to those materials best suited to EfW anyway. With the aspiration to go further to 0 per cent EfW by 2050, the proposed bans will only serve to complicate an already successful waste policy in action. The proposals show a lack of faith and/or impact assessment in existent policy measures.

It is understood that some of these points could be clarified via the proposed guidance, but a level of ambiguity and uncertainty is still likely to remain regarding interpretation, enforceability and implementation. Guidance for operators, collectors, waste authorities and regulators may not prevent unnecessary cost and bureaucracy for little or unproven environmental, social or economic benefit.

5. If these bans were linked to the R1 formula and only applied to facilities that did not demonstrate that they are recovery facilities and not disposal facilities, this could be more understandable and acceptable. Wales, as with the rest of the UK, has identified the scope for increased amounts of

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renewable energy generation from waste sources, utilising a combination of viable technologies. The potential to deliver combined heat and power schemes at EfW energy projects could also significantly add to overall energy efficiency and Wales could develop best practice examples if these are encouraged.

It should also be noted that provisions within the Environmental Permitting regime make more than adequate provision for the practicable prevention of recyclable materials being sent for energy recovery.

Going forward, the implementation of current policy will mean that landfill will only be required as a contingency outlet and for the disposal of truly residual materials of low or no calorific value and that cannot be physically reused or recycled. The proposals introduce additional cost, bureaucratic burden and uncertainty at a delicate investment point for vital infrastructure in Wales and the delivery of the Wales' Waste Strategy itself. There is a very real risk that the proposed powers will discourage investment in infrastructure, and put in jeopardy the accompanying jobs and economic and service benefits.

NB: *Wheelabrator Technologies Inc. would be very happy to discuss in detail the issues raised in this consultation response with Welsh Government and we would be happy to accept any opportunity to provide oral evidence to the Environment and Sustainability Committee in due course.*

For further information, please contact:

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ACS Submission: Environment (Wales) Bill

1. ACS (the Association of Convenience Stores) welcomes the opportunity to respond to the National Assembly for Wales' consultation on the general principles of the Environment (Wales) Bill. ACS is a trade association, which represents over 33,500 stores across the UK, including Spar UK, Nisa Retail, Costcutter and thousands of independent stores.

Carrier Bags

2. ACS opposes the proposal in the Environment (Wales) Bill to extend the carrier bag charging scheme to include bags for life and other bags. The current scheme, which only required charging for single use bags, has been extremely successful in changing consumer habits and reducing bag use. There is no evidence to suggest that bag for life are being used as single use carrier bags. Extending the scheme to bags for life and other bags would also place additional reporting burdens on retailers.
3. ACS opposes the need for an obligation on retailers to pass on the net income from the bag charging scheme to charitable causes. Retailers have engaged positively with the carrier bag charging scheme and have passed on the income to good causes. There is no evidence to suggest that retailers are using the bag charging scheme as a revenue raising tool. ACS' Voice of Local Shops survey of independent retailers shows that Welsh retailers contribute significantly to charities and local communities with 85% undertaking work in their communities.

Waste Disposal

4. ACS believes that the collection and disposal of waste should remain a voluntary commitment for retailers. By imposing a requirement for separation of waste, this will place additional burdens on retailers such as training and implementation costs.

5. In this submission, ACS will be responding to questions under part 3 (Carrier Bags) and part 4 (Collection and Disposal of Waste) from the consultation document. Please see our detailed response below.

Part 3: Carrier Bags

Do you agree with the proposal that Welsh Ministers should have powers to raise a charge on all types of carrier bags not only single use bags?

Do you agree with the proposal that Welsh Ministers should have powers to raise different charges on different types of bags on?

6. ACS opposes the proposals that would allow Welsh Ministers the power to raise a charge on all types of carrier bags. The existing scheme is working well to change consumer habits, moving them away from single use carrier bags towards reusable bags. According to ACS' UK-wide member survey of carrier bag use, 56% of the respondents representing more than 2300 stores, sell bags for life, though in relatively low numbers.
7. All members who responded to the survey answered that they charge at least 10 pence for bags for life, and typically ranged between 10-20 pence; this would suggest that the price is sufficiently high so as to avoid customers substituting single-use bags to bags for life. This would also indicate that retailers are not dispensing bags for life for free, apart from when customers are replacing their worn out bag for life.
8. Given the higher charge that retailers already operate for bags for life in their stores and consumers' growing inclination toward reusing bags for life, it would appear that there is no need for other kinds of bags to be included within the scope of the levy. Instead, efforts should be made to ensure that consumers are continuing the trend of reusing bags for life.
9. Some retailers also offer at cost, other kinds of reusable bags to their customers, including hessian bags and cotton tote bags. It would be confusing to both retailers and consumers alike if certain bags (such as bags for life) were included in the levy and others were not included, or then included at a later stage. It is therefore preferable to continue with the current system.
10. By including more bags within the bag charging scheme there would also be additional burdens on retailers to record and report more information on the bags and what they are using the proceeds for. We urge the Welsh Government to carefully consider the additional burden this will place on retailers when the existing scheme is already working well.

11. To conclude, ACS supports Option D stated in the impact assessment “amend the existing powers in the Climate Change Act 2008 so that the regulations may require sellers to apply the net proceeds of the charge to any good cause but do not exercise the powers to amend the Single Use Carrier Bag (Wales) Regulations 2010”.

Do you agree that the profits from the sale of carrier bags should be directed to all charitable causes rather than just environmental ones?

12. ACS welcomes the proposal to allow the profits from the sale of carrier bags to be directed to all charitable causes rather than solely on environmental causes. However, we oppose the need for a duty and sanctions to be placed on retailers. Retailers across Wales have supported the carrier bag charging scheme in good faith and the opportunity to pass the net income from the charge is a positive outcome of the charging scheme.

13. ACS polling has shown that shops in Wales are most likely to raise money for charity, with 90% stating that they give money to good causes, in comparison with an average of 76% across Britain. Arguably, there is a strong correlation between this high percentage and the introduction of the carrier bag levy in 2011.

14. These results show that there is already a high compliance in Wales among convenience store retailers, despite the fact that a large number do not have to report back their proceeds to the Welsh Government as they have ten or fewer members of staff working in their stores. This would therefore suggest that the Welsh Government does not need to intervene further to encourage retailers to donate their proceeds to good causes.

Part 4: Collection and Disposal of Waste

For your views on whether the Welsh Ministers need further powers to require that certain types of waste are collected, treated and transported separately?

Do you agree that non-domestic premises should be required to put their waste out for collection in line with any separation requirements set out by the Welsh Government?

What will the impacts of these waste proposals be for you or your organisation?

15. ACS believes that Welsh Ministers do not need further powers to require that certain types of waste are collected separately. Many retailers already have recycling procedures in place in store to separate out waste. Imposing a

requirement on businesses to separate waste would place significant burdens on retailers and cause operational disruption in store.

16. For convenience stores this would be particularly burdensome because the small format nature of their stores means there is little space available to sort and separate out waste. The broadly accepted definition of a convenience store is one that is below 3,000 square feet. Independent retailers in general have the smallest stores, with 49%¹ of independent retailers trading out of stores below 1000 square feet. For these retailers it will be challenging to find space in store to manage the separation of waste.
17. There would also be significant costs incurred by retailers to invest and set up a system in store to manage waste safely. This would also require significant staff hours and the training of staff. For retailers that already operate a separation scheme for waste, they would have review existing procedures and incur costs changing these process to match the Government scheme. For retailers that operate a national level, it would be beneficial to have consistency with existing UK measures.
18. ACS supports Option 1 stated in the impact assessment “do nothing”. We however believe that businesses should be incentivised by the Welsh Government to implement their own recycling schemes on a voluntary basis.

For further information please contact Julie Byers, ACS Public Affairs Assistant via email Julie.Byers@acs.org.uk or 01252 533008.

¹ ACS Local Shop Report

General Principles of the Environment (Wales) Bill

FSB Wales Response

12th June 2015





National Assembly for Wales Environment and Sustainability Committee Inquiry into General Principles of the Environment (Wales) Bill

FSB Wales

FSB Wales welcomes the opportunity to present its views to the Environment and Sustainability Committee Inquiry into the General Principles of the Environment (Wales) Bill. FSB Wales is the authoritative voice of businesses in Wales. With 10,000 members, a Welsh Policy Unit, two regional committees and twelve branch committees; FSB Wales is in constant contact with business at a grassroots level. It undertakes regular online surveys of its members as well as a biennial membership survey on a wide range of issues and concerns facing small business.

Climate change is a critical issue for Wales, as indeed it is globally. Together with consumption patterns, the structure of our economy has one of the most significant impacts on climate change. FSB Wales argues that we need to shift our economic activities and growth stimulus efforts to a more distributed model, based around supporting the sustainable development of our local economies. Small businesses are typically more place-based, and present the most significant opportunity to localise economic activity, ensure community resilience and assist in tackling climate change. Any new regulations affecting business should take into account the principles of 'Better Regulation'. For further information about the approach FSB Wales recommends to regulation, please see our *Better Regulation for Wales* report.¹

Natural Resources Management

The Environment (Wales) Bill provides Welsh Government with a major opportunity to change the landscape of environmental regulation in Wales. Businesses across Wales frequently come into contact with Natural Resources Wales, it is therefore vital that in its role as a regulator it is acutely aware of the sensitivities of the business community. The Bill confers a number of additional regulatory powers on Natural Resources Wales and the Welsh Government. FSB Wales is concerned that the Bill does not provide sufficient detail on how it will impact SMEs in Wales. This is critical, as we believe a more localised economy is a greener economy, and small business are critical to this.

As we stated in our response to the Welsh Government's White Paper consultation on the Environment (Wales) Bill, the nature of the proposals suggest that the detailed policy and implementation will be devised and consulted upon via subsequent regulatory powers². FSB Wales believes this approach, while necessary in some instances, is not beneficial in the current context. There are potentially significant increases in regulatory burdens from the Environment (Wales) Bill that may not be subject to detailed scrutiny by the Assembly.

¹ FSB Wales. 2014. *Better Regulation for Wales*. Available at:
<http://www.fsb.org.uk/policy/rpu/wales/images/better%20regulation%20wales.pdf>

² FSB Wales (2014). *Environment Bill White Paper Consultation Response*:
<http://www.fsb.org.uk/policy/rpu/wales/images/final%20environment%20bill%20white%20paper.pdf>



Carrier Bags

The Environment (Wales) Bill provides an opportunity to re-evaluate the nature and bureaucracy of the Welsh Government's carrier bag charge. The Welsh Government will be aware that proposals in England relate to firms with more than 250 employees. While FSB Wales does not advocate adopting the English proposals, the Welsh Government could re-examine the regulatory burden associated with the carrier bag charge and consider extending the current opt-out for firms with fewer than 10 employees to all SMEs. This would ensure the charge continues, but relieve SMEs of the accounting burden associated with the charge.

Collection and Disposal of Waste

FSB Wales believes small firms in Wales are ready and willing to play their part in increasing recycling rates in Wales in line with the Waste Framework Directive. It is envisaged that the Welsh Government would use the powers obtained via the Environment (Wales) Bill to place a requirement for waste producers to sort an additional three types of waste as well as food waste. FSB has previously voiced concerns on the issue of the waste collection market in response to the Waste (England and Wales) Regulations 2013³. Placing a duty to sort without intervening in the collection market could result in additional costs where customers are unable to realise savings from reduced residual waste collections⁴. Evidence provided in the Eunomia Reports in 2011 and 2013 suggested that proper intervention in the market could increase densities and lead to a reduction in collection costs for waste producers of around 25 per cent⁵.

This was based on the assumption that local authorities would be able to regulate the nature of competition in local areas and specify the number of operators who can operate in order to promote transparency of cost (potentially via weight based charging mechanisms) and increase collection densities. Given the scope of materials included in the proposals, moving towards a weight based charging mechanism could be required to ensure those firms who produce very little of certain waste categories are not being charged punitively by collection arrangements. This would also allow for greater flexibility in relation to size of firm. FSB Wales is concerned that this aspect has been neglected and we are not convinced that subsequent reliance on a communications campaign alone will produce the desired results.

As such, FSB Wales believes the Welsh Government should give more detailed consideration to this aspect of reform to accompany the Environment (Wales) Bill. If this issue is not examined further

³ FSB Wales (2012). *Amending the Waste Regulations 2011 on the Separate Collection of Recycling Consultation Response*.

⁴ *Ibid.*

⁵ Eunomia (2011). *Options for the Segregation and Collection of Welsh I & C Waste: Report to the Welsh Government*: <http://wales.gov.uk/docs/desh/publications/131014options-for-segregation-of-industrial-and-construction-waste-en.pdf>

Eunomia (2013). *Additional Policy Options Analysis for Welsh Government: Costs and Benefits of Extending Waste Framework Directive requirements, Waste Treatment Restrictions, Requirement to Sort and a Ban on the Disposal of Food Waste to Sewer*: <http://wales.gov.uk/docs/desh/publications/131021additional-waste-policy-options-en.pdf>



and resolved, there is a real danger that the costs of additional sorting and collection will be shouldered only by the firms producing waste, while the financial benefits would accrue at later stages of the recycling process. FSB Wales believes that any duty must take into account the size of firm and their capacity to respond to the duty's requirements. For instance, the additional space required to store recyclable materials before collection could place significant strain on businesses operating from small premises. A result could be that firms seek larger premises that would inevitably incur increased costs in rent and non-domestic rates. FSB Wales believes it is vital that the burden of regulation is placed in a way that minimises the impact on businesses.

Links between the Environment (Wales) Bill, the Well-Being of Future Generations Act 2015 and the Planning (Wales) Bill

FSB Wales believes there are major connections to be made between the Environment and Planning Bills and the Well-Being of Future Generations Act. As stated above, these legislative changes must not make the regulatory framework more burdensome for small businesses in particular. As we have argued, supported by the right investment and regulatory context, small businesses present a major opportunity to strengthen Wales' local economies. Research we have undertaken with the Centre for Local Economic Strategies shows that small business are far more likely to contribute to local prosperity than larger businesses⁶. A regulatory framework that places undue burdens on small businesses risks undermining this contribution.

The Well-Being of Future Generations Act opens up important opportunities to place-based approaches, resilience and sustainability. This must be underpinned by stronger local economies distributed across Wales, which act as the lifeblood of sustainable places. Place planning must put local economies at the heart of community futures, and this must be supported rather than hampered by legislation like the Environment and Planning Bills.

⁶ FSB and CLES (2013). *Local Procurement: Making the Most of Small Businesses, One Year On*.



Federation of Small Businesses Wales

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The Federation of Small Businesses Wales

The FSB Wales is non-profit making and non-party political. The Federation of Small Businesses is the UK's largest campaigning pressure group promoting and protecting the interests of the self-employed and owners of small firms. Formed in 1974, it now has 200,000 members across 33 regions and 194 branches. FSB Wales currently has around 10,000 members, a Welsh Policy Unit, two regional committees and twelve branch committees meaning FSB Wales is in constant contact with small businesses at a grassroots level in Wales.

Lobbying

From the Press and Parliamentary Affairs Office in Cardiff, FSB Wales campaigns with AMs, MPs and MEPs in Cardiff Bay, Westminster and Brussels in order to promote our members' interests. FSB Wales also works closely with local, regional and national media outlets to highlight our members' concerns. Development Managers work alongside members in our regions to further FSB Wales influence at a regional level. More widely, the FSB has Press and Parliamentary Offices in Westminster, Glasgow, Belfast and Brussels to lobby the respective Governments.

Member Benefits

In addition, Member Services is committed to delivering a wide range of high quality, good value business services to members of the FSB. These services will be subject to continuing review and will represent a positive enhancement to the benefit of membership of the Leading Business organisation in the UK.

Vision

A community that recognises, values and adequately rewards the endeavours of those who are self employed and small business owners within the UK.

The Federation of Small Businesses is the trading name of the National Federation of Self Employed and Small Businesses Limited. Our registered office is Sir Frank Whittle Way, Blackpool Business Park, Blackpool, Lancashire, FY4 2FE. Our company number is 1263540 and our Data Protection Act registration number is Z7356876. We are a non-profit making organisation and we have registered with the Information Commissioner on a voluntary basis.

Agenda Item 3

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Environment (Wales) Bill

June 2015

1. Summary of Key Points and Recommendations

- The Bill's provisions for biodiversity could be strengthened by the inclusion of targets and direct reference to biodiversity in the objective of sustainable management of natural resources
- The Bill should clarify how landscape and seascape protection, and their future stewardship, will be enhanced by new provisions on sustainable management of natural resources
- The principles of sustainable management of natural resources should include impacts on adjacent and other ecosystems, management within the functioning of their limits, the precautionary principle and principles for dealing with conflict; qualifying language should be addressed so as not to limit aspects of resilience
- NRW's statutory purpose requires strengthening and increased clarity
- General binding rules should be reinstated in the Bill
- More safeguards should be included in relation to the power to suspend statutory requirements for experimental schemes
- We welcome statutory climate change targets: effective monitoring and reporting will be key to ensuring that Welsh Government proposals and policies drive emissions reduction
- Annual reporting and the 40% emissions reduction targets should be retained from the current Climate Change Strategy
- The carrier bag levy should go to environmental charities operating in Wales
- We support the provisions on collection and disposal of waste
- We support the proposals to introduce charging for marine licensing and would welcome a clause that requires such fees to be directly reinvested back into the marine responsibilities of Welsh Government and NRW
- Sections defining harm to the marine environment and the use of this concept to trigger site protection notices require broader definitions
- A criminal offence should be created for failing to abide by the steps set out in site protection notices
- The Bill should include a separate 'statutory procedure' for variation or revocation of an Order in circumstances required under reg 63/64, to avoid significant delays under the section 75 procedure.

2. Part 1: Natural Resources Management

2.1. Biodiversity

2.1.1. WEL welcomes the Welsh Government's intention to introduce a strengthened biodiversity duty in Wales. This is necessary because policy commitments on biodiversity have not been delivered; the 2010 target to halt biodiversity loss, agreed under the Convention on Biological Diversity (CBD), was not met, and the biodiversity outcomes in the Wales Environment Strategy seem to have fallen by the wayside.

2.1.2. Revised goals were set under the CBD in Aichi in 2010, which led to the following commitments in the EU Biodiversity Strategy:

- **A headline target for 2020:** 'Halting the loss of biodiversity and the degradation of ecosystem services in the EU by 2020, and restoring them in so far as feasible, while stepping up the EU contribution to averting global biodiversity loss'; and
- **the 2050 vision:** 'By 2050, European Union biodiversity and the ecosystem services it provides – its natural capital – are protected, valued and appropriately restored for biodiversity's intrinsic value and for their essential contribution to human wellbeing and economic prosperity, and so that catastrophic changes caused by the loss of biodiversity are avoided.'

We are well on the way to 2020 and we need redoubled commitment from Government if Wales is to deliver against this target and not repeat the failure to meet the target to halt the loss of biodiversity by 2010, which prompted the 2011 Sustainability Committee [inquiry into biodiversity in Wales](#). The Committee recommended that interim targets be put in place to ensure the 2020 target is achieved, along with a fully funded and resourced biodiversity strategy. Neither of these recommendations has been taken forward and action for biodiversity is still woefully under-resourced. It does not appear that the Bill will change this.

1.1.1. Even with a strengthened biodiversity duty, we are concerned there may be little improvement on the ground for biodiversity because the structure of this duty allows other considerations to take precedence in decision making. The new duty is only stronger in its requirement to report on progress, which in itself is not a guarantee that more action will be taken on the ground.

1.2. Requirement for Statutory Biodiversity Targets

1.2.1. WEL has, for the past two years, strongly argued that biodiversity targets should be included in the Environment Bill. We believe that the Minister's justifications for the inclusion of climate change targets apply equally to biodiversity, in particular that 'including statutory targets will allow us to better evaluate progress [...] and confirm achievable targets to work towards.'

1.2.2. We believe that statutory targets for 2050 should be included, which achieve:

- an increase in biodiversity compared with current levels; and
- all protected sites to be in favourable condition (this is specified for 2026 under the Environment Strategy for Wales, so may be achievable as an interim target)

We believe there should be an interim target or targets, to be set within the National Natural Resources Policy.

1.3. Reporting and Measuring Progress on Statutory Biodiversity Targets

- 1.1.1. Progress towards the biodiversity target should be measured with reference to a national biodiversity index. It is important that a species measure is used or we will not know whether the new management approach benefits biodiversity. The national biodiversity index would be an index specified by the Welsh Ministers, which is an accurate record of the population trends of species identified as being of principle importance for the purpose of maintaining and enhancing biodiversity in section 7 of this Bill (which replaces the old Section 42 of NERC 2006). We have been assured by Welsh Government officials that the existing s42 list will remain the relevant list under this new section; any future revisions of the list must apply the same rigorous, criteria-based approach.
- 1.1.2. Reporting on progress towards the targets should form part of the five-yearly State of Natural Resources Report, with additional reporting required during the year of any interim target, but NRW should advise the Welsh Ministers annually on progress. This will allow the Assembly and other interested parties to hold the Government to account on progress in a transparent way.

1.2. Definition of Natural Resources

- 1.2.1. Whilst landscapes are no longer included in the definition of natural resources, as they were in the White Paper, we believe they do have an important role to play in the implementation of natural resource management processes. Landscapes are defined in the European Landscape Convention as 'an area, as perceived by people, whose character is the result of the action and interaction of natural and/or human factors.' These important relationships should be recognised in the Bill, as landscapes provide the overarching context within which natural resource and ecosystems management take place. This is particularly the case in Wales' Protected Landscapes, some of the most important 'hot spots' for ecosystems services. The opportunity these areas provide and their potential role as major deliverers of sustainable natural resource management (as recommended by the Independent Panel currently reviewing Designated Landscapes in Wales), should be recognised.
- 1.2.2. We are concerned that an unintended consequence of this omission is that landscapes and seascapes, particularly those in Protected Landscape areas, may not be given the consideration and protection that they deserve within the provision of the Bill. Likewise, they may not be given sufficient consideration by NRW as part of their function to sustainably manage natural resources in Wales. The Minister should clarify how landscape and seascape protection, and their future stewardship, will be enhanced by the Bill and how the special circumstances and future role of Wales' Protected Landscapes will be taken into account.
- 1.2.3. In order to strengthen the definition of sustainable management of natural resources, we believe that Sections 3 (1) (a) and (b) should be amended to 'contribute to' the achievement of the objective in Section 3 (2) rather than 'promote', which our legal advice tells us is a weaker formulation.
- 1.2.4. In order to ensure the objective in Section 3 (2) delivers for biodiversity we believe it should refer directly to biodiversity as well as ecosystem resilience, because:
 - species and habitats (biodiversity) are the fundamental components of ecosystems and as such are important indicators for the health of ecosystems: species declines may continue if attention is not paid at the appropriate scale for measurement of resilience;

- inclusion of biodiversity in the objective, as well as ecosystems, makes the objective more consistent with the biodiversity and resilience of ecosystems duty in Section 6; and
- inclusion of a reference to biodiversity makes the objective more consistent with Goal 2: A Resilient Wales, in the Well-being of Future Generations Act (WFG Act), which specifically refers to ‘a biodiverse natural environment with healthy functioning ecosystems’.

Section 26 of the Bill, or the explanatory memorandum, should clarify that the definition of ‘ecosystems’ is based on the Convention on Biological Diversity (CBD) definition: ‘a dynamic complex of plant, animal and microorganisms and their non-living environment interacting as a functional unit’.

- 1.3.1. Section 4, Principles of sustainable management of natural resources, should recognise the importance of biodiversity as well as ecosystems. Some important principles are missing from this list, including management of ecosystems ‘within the limits of their functioning’ and considering the effect of management decisions ‘on adjacent and other ecosystems’. These are included in the [CBD Principles](#). We also believe that inclusion of the precautionary principle would strengthen this section, and would be compatible with CBD Principle 9. It is important to include principles relating to the management of conflicts when making natural resource management decisions.
- 1.3.2. Given our concerns that certain important principles are missing, we have concerns with some of the qualifying language employed. In sections 4 and 6, certain aspects of resilience are specified ‘in particular’. Applying the usual rules of statutory interpretation, this operates as a limiting factor, and precludes any other aspects of resilience from being included (sections 391 to 393 Bennion on Statutory Interpretation 5th Edition). If these sections are not amended to be comprehensive then we recommend the addition of the words ‘(but without limitation)’ after ‘in particular’. This would ensure that important factors are not excluded.

1.4. General Purpose of Natural Resources Body for Wales

- 1.4.1. WEL is concerned that the new statutory purpose for NRW is weak. It requires NRW to ‘**seek to achieve** sustainable management of resources in relation to Wales’ but sustainable management of natural resources is defined as ‘using natural resources in a way and at a rate that **promotes** achievement of the objective’ in Section 3 (2). This means NRW’s purpose is essentially to ‘**seek to achieve to promote**’ the objective. The purpose could be strengthened by removing the words ‘seek to’, in combination with the amendments to the definition of sustainable management of natural resources suggested in paragraph 2.5.2.
- 1.4.2. The purpose in Article 4 (1)(a) refers specifically to sustainable management of natural resources in Wales. In Article 4 (1)(b), the application of the principles of sustainable management of natural resources is not confined ‘in relation to Wales’. Consequently, our legal advice tells us that NRW *can* take account of the resilience of ecosystems outside Wales, including (for example) diversity and connections between ecosystems in Wales and elsewhere, providing consistency with goal 7 of the WFG Act. This is not clear in the way the legislation is drafted, however.
- 1.4.3. A specific reference to the WFG Act duty to set and meet well-being objectives could help avoid confusion for public bodies about the hierarchy of obligations between the SD duty and the duties established by sections 5, 6 and 7. It would also be useful to clarify the differing definitions used in regard to public bodies between the WFG Act and sections 6(6) and 11 of this Bill. This would clarify for the

public bodies, as defined by the WFG Act, their responsibilities under this Bill. For example, the Natural Resources Body for Wales is not listed under section 6(6) as being subject to the biodiversity duty. It may be included as 'a public body' but this is not clear.

1.5. National Natural Resources Policy and the Area Statements

- 1.5.1. The National Natural Resources Policy (NNRP) has no requirement for consultation on its content. Welsh Ministers are able to include anything that they consider relevant to the sustainable management of natural resources. Welsh Ministers are required to have regard to the State of Natural Resources Report (SoNaRR) in the production of this policy, but we are concerned that this does not provide sufficient safeguards to ensure that the NNRP will benefit the environment. The lack of provision for public consultation contravenes the [Aarhus Convention](#) on the right to participate in environmental decision-making.
- 1.5.2. Once the NNRP is in place, it must be reviewed after each general election, but there is no specific time frame for review, and no requirement to take action if the policy is found to be in need of revision. It is important that this policy remains current, and that action is taken to deliver it. The Minister should clarify who will be responsible for delivering the NNRP, how progress will be reported on, and how the policy will drive action on the ground.
- 1.5.3. Section 9(2) of the Bill states that the NNRP should include what Ministers consider should be done in relation to climate change. There is no explanation in the EM about what this means. The Minister should clarify what will be included in the NNRP on climate change, and how this will differ from the five-yearly reports setting out how each carbon budget will be delivered under Section 39 of the Bill. Will the NNRP focus on adaptation to climate change, for example? We note there is no other specific reference to adaptation to climate change in the Bill.
- 1.5.4. There is no reference to the marine environment in section 9 or section 10, Area Statements. The Minister should clarify whether the NNRP will be used to inform policy on marine resource use in Wales or if it is the Welsh Government's intention to develop this separately within the Wales National Marine Plan (WNMP). Should the former be the case, further consideration will need to be given to the timescale for the adoption and review periods of the WNMP and that of the NNRP and how these will integrate. It is also unclear whether Area Statements would pertain to the Welsh marine area or if this will be solely fulfilled by the WNMP. If the latter is the case, it must be clear how terrestrial Area Statements would interact with the WNMP and how the land – sea interface would be managed.
- 1.5.5. We are concerned that section 10(1) appears to give NRW sole discretion on which areas of Wales require Area Statements. There is no requirement for consultation on the scale or type of area to be covered and no provision about the process to be followed when producing an Area Statement. There is also no timescale for when Area Statements must be produced, leading WEL to be concerned that, if no Area Statements were to be produced in the next few years, there would be no means of holding NRW to account for this. Furthermore, it is not clear what the actual product will look like: will it be akin to a spatial plan, and should it be subject to SEA and Habitats Regulations Assessment?
- 1.5.6. The EM states the intention for priorities identified in Area Statements to be incorporated into the local well-being plans introduced by the WFG Act, but this appears to be optional, rather than a requirement. There is no overt link between Area Statements and Local Development Plans, which we feel is an important

omission from the Bill. LDPs will have a significant impact on the implementation of Area Statements, as they control land use change which affects biodiversity, landscape and factors which influence flooding, soil quality and greenhouse gas emissions.

1.6. General Binding Rules

1.6.1. WEL is disappointed to see that General Binding Rules, as proposed in the White Paper, have been omitted from the Bill. We strongly feel that these would be a useful tool if used appropriately. We support their use in order to tackle diffuse pollution, alongside other offences, as they have a significant impact upon biodiversity including both nationally and internationally important sites (e.g. SSSIs, and SAC). General Binding Rules could help tackle poor environmental practice that is difficult to capture under the current regulatory system – particularly poor land management practices in rural locations.

1.6.2. The scale of poor land management practice is, [as evidenced by NRW](#), the reason why many water bodies fail the Water Framework Directive in Wales. General Binding Rules have the potential to bring equity and proportionality to regulation for relatively minor, but widespread, poor practice. They have the potential to encourage more sustainable land management practices and key environmental outcomes. Therefore, we are disappointed that the legislative hook has not been included within the Bill that allows for criminal and civil sanctions. These include restorative orders, stop notices, prison sentences and fines to suit the offence (e.g. a leaking septic tank may cost thousands to repair and small fines may not be sufficient incentive to create the required operator response).

1.7. Power to suspend requirements for experimental schemes

1.7.1. WEL is concerned about the power under Section 22 to allow Welsh Ministers, upon application of NRW, to suspend statutory requirements for experimental schemes. Whilst we understand that there may be good reason for needing this power, we believe that extra safeguards need to be included to ensure that any suspension of statutory requirements does not cause unacceptable risk of damage to the environment. We would like to see the following:

- more rigorous requirement for consultation, with the Bill identifying certain statutory consultees who should always be consulted on certain types of schemes;
- requirement for a risk assessment process to be developed; and
- controls on the types of experimental schemes that can qualify.

As NRW will be able to use external persons to carry out experimental schemes, there should be full transparency about whom these ‘other persons’ are, so that any commercial or third party interests are declared.

2. Part 2: Climate Change

2.1. Carbon Budgets

2.1.1. WEL welcomes the introduction of statutory climate change targets in the Bill. We strongly believe that statutory targets will drive forward action on climate change in Wales. We have included some key points to note from WEL’s point of view on this section, but we would like to also state support for Stop Climate Chaos’ more detailed evidence on this part of the Bill.

2.1.2. The EM does not clearly state that the provisions in the Bill will replace the Wales Climate Change Strategy, with its 3% annual emissions reduction targets. The Minister should clarify whether the current Climate Change Strategy will cease to operate or will continue until 2020 to meet the 40% reduction target set in the Strategy. We would like to see the 40% target retained as an interim target under the Bill. We believe that the strengths of the current strategy are that it disaggregates actions in areas of devolved competence from wider actions, enabling a focus on the effectiveness of Welsh Government policies. The Welsh Government also reports annually on progress with the strategy, which enables scrutiny and accountability.

2.1.3. We believe the main advantages of the provisions laid out in the Bill are the requirement for the Welsh Government to set out proposals and policies for how each carbon budget will be met, and the requirement to set out compensatory measures if a budget is not met. Currently, reporting on progress of the Climate Change Strategy does not give a clear idea how Welsh Government policies are contributing to emissions reduction, because many of the indicators used to measure progress have incomplete data or do not relate directly to the actions detailed in the 2010 Delivery Plan. Also, the delivery plan has not been comprehensively reviewed for effectiveness or updated when programmes have come to an end, e.g. Sustainable Travel Towns.

2.1.4. We have some points of concern with the detail of the provisions, particularly when comparing them to the UK Climate Change Act. The main ones are:

- In Section 33 (3) the Welsh Ministers are given a power to ‘set a limit on the net amount of carbon units by which the net Welsh emissions account for a period may be reduced’ as a result of crediting or debiting carbon units. In the UK Act this is a duty. If a limit were not set, we are concerned there would be a risk that a large proportion of the budget could be met by trading carbon units rather than reducing emissions in Wales.
- If Wales exceeds its carbon budget, Welsh Ministers must lay a report detailing proposals and policies to compensate for excess emissions in later budgetary periods. We welcome this provision, but believe it could be strengthened by including a deadline in the Bill.
- We are concerned that there is no limit on the proportion of unused carbon budget can be carried forward to future budgets. If, for example, a carbon budget is easily met due to economic factors, rather than as a consequence of Welsh Government policies and actions, then the next budget could be much larger as a consequence, removing the motivation for further action. We believe this stores up problems for the future and we are already seeing the consequences of this with the current 3% annual target, with initial large reductions as a consequence of the economic downturn and subsequent rising emissions in recent years.

3. Part 3: Charges for Carrier Bags

3.1. WEL welcomes the proposal to raise a charge on all carrier bags. The average number of plastic carrier bags found on Welsh beaches in 2014 was over 80 items/km (MCS, 2014). We are aware that the ability to raise a charge on single use bags in Wales has produced a significant behavioural change in reducing the amount of single use bags. That said, the more durable, longer-lasting ‘Bags for Life’ are less biodegradable and therefore have a greater impact on the environment. These should therefore be included in the charge, in order to ensure that single use bags are not displaced by other types of bags which are only used once. We would like to see a minimum pricing policy to encourage them to truly be used as a Bag for Life. This should be applied regardless of material to ensure a

consistent policy. We suggest the minimum charge should be at least triple that of the single use bags. This would make consumers clear that these have a larger environmental impact and also sends out a much stronger message that they should be reused.

- 3.2. WEL strongly disagrees with the proposal for the carrier bag levy to go to all charities. We would like to see the levy go to environmental charities and environmental improvement schemes given that the remit of these charities involves helping to support our natural environment and, in many cases, work to directly mitigate the negative impact of plastic carrier bags. We also advocate the need for Welsh-raised carrier bag money to go to environmental charities operating in Wales, given that Wales may not, in many cases, be directly benefitting from this charge.

4. Part 4: Collection and Disposal of Waste

- 4.1. WEL supports the proposals relating to the collection and disposal of waste and agree that Ministers require these extra powers to require the separate collection of waste if they are to implement imminent EU requirements for the separate collection of metal, paper, plastic and glass, as some local authorities still collect these together. We also support the power to ban certain recyclable materials from incineration as it is important that materials are recovered rather than lost to the economy.

5. Part 5 & 6: Fisheries for Shellfish and Marine Licensing

- 5.1. WEL agrees with the proposals to introduce charges for marine licensing, including for the reasons set out in Part 6, 72 (A) of the Bill; monitoring of an activity authorised by the license, and monitoring in accordance with complying to conditions attached to a licence. We also welcome provisions under Part 6, 79 for licensing authorities to request deposits on account of fees payable and provisions to charge a supplementary fee for activities undertaken by the licensing authority.
- 5.2. That said, it is currently unclear within Part 6 of the Bill who will be the beneficiary of fees charged for marine licensing where Welsh Ministers are the licensing authority. For instance, will fees be allocated to cost recovery of that specific function (i.e. cost recovery for environmental regulators such as the NRW) or could fees accrued be spent within other Welsh Government departments? We would welcome a clause that requires such fees to be directly reinvested back into the marine responsibilities of Welsh Government and NRW to remove any ambiguity. We believe this is important to enable sufficient resourcing for the Welsh Government and NRW marine teams to carry out all of their duties.
- 5.3. We believe there should be a requirement for commercial marine users to provide data collected as part of their application to the public domain once an outcome of a plan or project has been determined. It is well known that there is a paucity of data in the Welsh marine area and evidence gaps are resulting in regulator and developer uncertainty as well as resulting in risk of damage to areas of sea that are under-researched and/or under-monitored.
- 5.4. 'Harm' in section 76 is at present too narrowly drafted. This section 76 definition is important because it feeds into the new sections 73 and 74. The definition at s76 (a) should say 'an adverse effect or risk of an adverse effect on the integrity of the site alone or in combination with other plans or projects' to bring it in line with Article 6 (3) Habitats Directive. The suggested inclusion of the phrase 'plans or projects' would also then need to be explained in s76. We would suggest a new insertion into new s76 to read 'Plan or project has the same meaning as under the Council Directive 92/43/EEC on the conservation of natural habitats of wild fauna and flora'.

- 5.5. We believe that section 74 could be significantly improved: under s5B(1) as inserted by section 74 the Welsh Ministers have a discretion to serve a site protection notice if 'harm' to a EMS has occurred or is likely to occur. We would argue that it would be appropriate for the power to be triggered not only when 'harm' has occurred or is likely to occur, but also where harm may occur (as appears to be desired, according to the EM). Therefore we would suggest that the language in 5B(1) be altered to read: 'if it appears [...] that harm to a European marine site has occurred or may occur.' This wording lessens the evidential burden of harm that the Welsh Ministers must prove before they act.
- 5.6. As currently worded, there is no criminal offence created if a person fails to abide by the steps set out in the site protection notice as envisaged in s5B(2). There is only a power under s5D(1) for the Welsh Ministers to do what the site protection notice states and to recover costs from the person responsible. This is ineffective as the Welsh Ministers will not wish to take this financial risk. A criminal offence therefore must be created.
- 5.7. Sections 5B(2) and 5B(4)(c) refer to a site protection notice requiring the grantees to 'take steps', but this needs to be expanded to cover 'ceasing any stated activities'. Furthermore, there is an appeal mechanism where site protection notices have been served (s5C). However, the provisions are silent as to:
- the time limit by which the appeal must be brought. This must be addressed (an appeal period of 28 days is normal); and
 - whether the steps/prohibitions in the site protection notice remain in force pending the outcome of the appeal. The latter is essential so as to ensure protection of the European marine site.

New section 75 contains a mechanism whereby an Order made by the Welsh Ministers can be varied or revoked, which is helpful, but this ability depends on the Welsh Ministers first serving a site protection notice and that notice not being appealed or any appeal being complete. Whilst the intent is sound, it is likely to be a delayed process since delays will occur by the relevant person bringing an appeal. There are 'review' provisions in Part 6 of Conservation Regulations 2010 (see regulations 63/64). Under regulation 63 when a European site/European marine site is designated, any existing consent for a plan or project must be reviewed. The review must be carried out under 'existing statutory procedures' or, if none exists, under directions from the 'appropriate authority'. It would be very helpful if the new legislation could include a separate 'statutory procedure' for variation or revocation of an Order in circumstances required under reg 63/64, which did not involve the risk of significant delays under the section 75 procedure. An amendment is needed to section 5E to say, in essence, that 'where we are dealing with a reg 63 situation then the power to vary/revoke is not dependent on first serving a site protection notice'.

- 5.8. Although we broadly support the proposals for marine licensing and shellfisheries with the Bill, legislation to sustainably manage the marine environment in Wales already exists and has done so for many years through the provisions within the EU Birds and Habitats Directives, EU Marine Strategy Framework Directive, and more recently, through the adoption of the Marine and Coastal Access Act (England and Wales). The Marine and Coastal Access Act (MACA) provides the legislative tools to effectively manage fisheries in Welsh inshore waters within their environmental limits and in a sustainable way. WEL believes that the greatest benefit to the protection and sustainable development of the Welsh marine area will only be realised through the timely and effective implementation of existing legislation. The Welsh Government is committed to delivery of a review of fisheries bye-laws to new regulation orders under MACA by 2015, and WEL believes that delivering this commitment is a priority, if Wales is to secure sustainable fishing practices now and in the future.

Wales Environment Link (WEL) is a network of environmental, countryside and heritage Non-Governmental Organisations in Wales, most of whom have an all-Wales remit. WEL is officially designated the intermediary body between the government and the environmental NGO sector in Wales. Its vision is to increase the effectiveness of the environmental sector in its ability to protect and improve the environment through facilitating and articulating the voice of the sector.

The following WEL members support this document:

Afonydd Cymru
Amphibian and Reptile Conservation
Bat Conservation Trust
Buglife Cymru
Butterfly Conservation Wales
Campaign for the Protection of Rural Wales / CPRW
Keep Wales Tidy
Landscape Institute Wales / Sefydliad Tirwedd Cymru
Llais y Goedwig
Marine Conservation Society
Oxfam Cymru
Plantlife Cymru
RSPB Cymru
Vincent Wildlife Trust
Wildlife Trusts Wales
WWF Cymru
Ymddiriedolaeth Genedlaethol / National Trust

Registered Charity Number / Rhif Elusen Gofrestredig: 1022675
Chair / Cadeirydd : Bill Upham **Director / Cyfarwyddwraig : Susan Evans**

National Assembly for Wales
Environment and Sustainability Committee
EB 28
Environment (Wales) Bill
Response from Wildlife Trusts Wales



In addition to the evidence below, Wildlife Trusts Wales have contributed to, and endorse, Wales Environment Link (WEL) evidence.

SECTION 1 – RECOMMENDATIONS FOR INCLUSION

INTRODUCTION

Despite current policy, strategies and legislation to protect and enhance biodiversity it is in a state of major and continuing decline (Welsh Government's Nature Recovery Plan¹, the UK National Ecosystem Assessment², State of Nature Report³ etc). For example, the State of Nature highlights that 60% of the 3,148 species that were assessed had declined in the last 50 years and 31% have declined strongly. A new Watchlist indicator assessing the state of 155 priority species showed that numbers had declined by 77% in the last 40 years.

Wales, along with other nations, have failed to hit its national and international agreed commitments and **non-statutory targets** (See Environment Strategy for Wales⁴) to:

- halt biodiversity loss by 2010, agreed under the Convention on Biological Diversity (CBD)(**The Environment and Sustainability Committee held an inquiry into that failure**⁵) and
- ensure that 95% of all international sites are in favourable conservation status (FCS) by 2010 and 95% of Sites of Special Scientific Interest (SSSI) in FCS by 2015 – with all sites being in FCS by 2026⁶. (**NB. A rapid review in 2006 judged that conservation features at only 47% of Welsh (SSSIs) were in favourable condition**⁷)

It is worth noting that the decline of biodiversity is not because traditional conservation efforts have failed. This decline is due to the enormous scale of the challenge caused by;

- the failure to sufficiently integrate nature conservation into Government policy areas such as agriculture and economic development
- a lack of significant long-term funding
- a lack of leadership to gain the political momentum to tackle the issues causing the decline in biodiversity and
- a lack of accountability and no consequences for the failure to meet non-statutory targets.

We welcome Welsh Government's intentions to tackle some of these issues. The Environment Bill is an opportunity to reinforce the 'Resilient Wales' goal of the Well-being of Future Generations (WFG) Act. It can give a new statutory driver to recover biodiversity and restore the services that we need from it. However, in order to achieve this goal, we believe that there are a number of key elements missing from the Bill – namely:

- statutory biodiversity targets;
- mechanisms for delivery for action to halt the loss of biodiversity and to restore it;
- consequence's for not delivering on the above; and
- sufficient independent scientific advice/ consultation

Statutory independent scientific advisory panel

Part 1 of the Bill proposes

- new biodiversity duties (Clause 6(1) and 7(3)) for public authorities and Welsh Ministers
- the creation of a number of new reporting commitments, biodiversity lists, a State of Natural Resources Report, Area Statements and a National Natural Resources Policy and

¹ Draft Nature Recovery Plan <http://gov.wales/docs/desh/consultation/140910-nature-recovery-plan-consultation-en.pdf>

² UK National Ecosystem Assessment <http://uknea.unep-wcmc.org/>

³ State of Nature Report <http://www.wildlifetrusts.org/news/2013/05/22/state-nature-60-uk-species-decline-groundbreaking-study-finds>

⁴ Environment Strategy for Wales (2006) <http://gov.wales/docs/desh/publications/060517environmentstrategyen.pdf>

⁵ Committee Report on the Inquiry into Biodiversity (2010) <http://www.assembly.wales/Laid%20Documents/CR-LD8384%20-%20Sustainability%20Committee%20Inquiry%20into%20biodiversity%20in%20Wales-31012011-208859/cr-ld8384-e-English.pdf>

⁷ From 2006 CCW Rapid Review of SSSI in Wales - As reported in the UK NEA - Chapter 20: Status and Changes in the UK's Ecosystems and their Services to Society: Wales downloaded from <http://uknea.unep-wcmc.org/Resources/tabid/82/Default.aspx>

- NRW and/or Welsh Ministers to implement the policies or Area Statements and encourage others to take such steps.

However, many of these processes have very few consultation requirements (if any). For example, there is no duty for Welsh Government to consult on the National Natural Resource Policy (CL9) even with NRW. This detracts from greater scrutiny and may constitute an inappropriate manner of rulemaking contrary to the **Aarhus Convention**⁸ which provides the right to participate in environmental decision-making. This states that “**Arrangements are to be made by public authorities to enable the public affected and environmental non-governmental organisations to comment on, for example, proposals for projects affecting the environment, or plans and programmes relating to the environment, these comments to be taken into due account in decision-making, and information to be provided on the final decisions and the reasons for it**”.

To increase accountability and transparency, we **recommend** that

- the Bill sets up an **statutory independent scientific advisory panel** – a **Biodiversity Commission** - to advise on all the new requirements in Part 1 of the Environment Bill and WFG Act Resilient Wales Goal. In practice would be the **Welsh Biodiversity Strategy Board** thus requiring little new resources. However, as these groups include environmental NGOs, amongst others, Welsh Government should compensate NGO participants for their time and associated expenses.
- The Commission should be chaired by a **new independent Biodiversity Commissioner** who should report to the Wellbeing and Future Generations Commissioner.
- The Commission and Commissioner have the same rights and responsibilities as the other Commission and Commissioners.

As biodiversity and ecosystem services are our life support systems, biodiversity at least requires a position on a par with the other Commissioners.

Biodiversity targets

We **recommend** that the Environment Bill has an opportunity to make statutory the **current commitments under the Environment Strategy for Wales (p36)**⁹ and the **EU Biodiversity Strategy**¹⁰, namely :

1. To ensure that all **designated sites** are truly in favourable conservation status (FCS) by 2026 (or have the management in place by 2026 to allow FCS to be achieved)
2. **A headline target for 2020:** "Halting the loss of biodiversity and the degradation of ecosystem services in the EU by 2020, and restoring them in so far as feasible, while stepping up the EU contribution to averting global biodiversity loss.";
3. **2050 vision:** “By 2050, European Union biodiversity and the ecosystem services it provides – its natural capital – are protected, valued and appropriately restored for biodiversity's intrinsic value and for their essential contribution to human wellbeing and economic prosperity, and so that catastrophic changes caused by the loss of biodiversity are avoided.”

Targets two and three could be implemented by a **15% increase in biodiversity by 2050** with interim targets set every five years. We would also **recommend** that the Bill require NRW to implement the Lawton Review¹¹ - Making Space for Nature - by Sir John Lawton. This report into protected sites found that they need to be **‘better, bigger, more and connected’** to secure wider ecological resilience.

The Environment Strategy for Wales foreword was given by the then Minister for Environment, **Carwyn Jones AM**, where he pledged his “**ongoing commitment to delivering the vision set out in the Strategy**” (e.g. halting the loss of biodiversity by 2010, and FCS by 2026). We hope that this is still the case, and that the revised targets will be put into the Environment Bill.

Whilst setting targets is relatively easy, monitoring and measuring against the targets will be more difficult. There is currently a monitoring system in place for designated sites. Regarding species and habitats, we already have a lot of information and we are developing a set of indicators to measure progress towards the Resilient Wales Goal which should be used to monitor and measure the Biodiversity targets – thus no duplication of effort is required. This indicator(s) may be based on one or more of

⁸ Aarhus Convention - <http://ec.europa.eu/environment/aarhus/>

⁹ <http://gov.wales/docs/desh/publications/060517environmentstrategyen.pdf>

¹⁰ <http://ec.europa.eu/environment/nature/biodiversity/comm2006/2020.htm>

¹¹ <https://www.gov.uk/government/news/making-space-for-nature-a-review-of-englands-wildlife-sites-published-today>

- the biodiversity list required under Clause 7 of the Bill (NERC Act section 42 list),
- the Watchlist Indicator from the State of Nature,
- the Red Lists for threatened species
- Welsh Government Sustainable Development wild bird lists and index and or
- Living Planet Index

Also, this reporting and monitoring can be improved over time as better data (and data on more groups of species) becomes available. By 2050 we would have also 35 years of State of Natural Resources Reports. Progress towards the targets could be reported in the new Wellbeing Plans, National Natural Resources Policy and State of Natural Resources Report, thus no new reporting mechanism is required.

Why? Statutory targets help drive political change, prioritise action and direct funding. For example,

- Environment Bill includes targets to reduce greenhouse gas emissions by 80% by 2050. In announcing this commitment, the Minister Carl Sargeant AM stated **“Including statutory targets will allow us to better evaluate progress, provide certainty to help drive investment...and confirm achievable targets to work towards”**.
- Section 3 of the Waste Measure 2010¹² sets targets for Local Authorities in respect of recycling and makes those that do not meet them liable to a **financial penalty**. For every 1% missed from Welsh Government targets, Local Authorities get fined £400,000¹³. Statutory targets in waste helped take recycling from a less than 10% in 2000 to a Wales average of 54.3% today. The Minister Carl Sargeant AM stated **“We are still the only UK government that has set statutory recycling targets and this focus is delivering results”**¹⁴.

Recently, the Minister wrote to Local Authority Chief Executives asking them to maintain their ecological expertise so that they could undertake their forthcoming duties (WFG Resilient Wales Goal) and their existing duties (NERC Duty) let alone the new duties under the Environment Bill. We believe that the response that the Minister received was broadly ‘give us more money’. However, we are aware that the Sustainable Development Grant from Welsh Government to Local Authorities is in many cases being used, almost exclusively to meet waste targets with little or no money spent on, or hypocathed to, biodiversity – leading to ecological jobs being lost or under threat.

Welsh Government has highlighted the benefits of statutory waste targets¹⁵ including providing more green jobs and increasing skills as well as ensuring that everybody can contribute. We believe that these outcomes and more can be achieved through setting biodiversity targets – see the EU Report on the **Economic benefits of Natura 2000**¹⁶ and the DEFRA report on the **Benefits of Sites of Special Scientific Interest**¹⁷. The DEFRA report has estimated that every £1 spent on maintaining SSSIs, it delivers £8 worth of benefits to the economy and society - this is likely to be an underestimation. These reports highlight the significant **multiple benefits** including economic benefits from restoring our most precious sites and biodiversity. However, as previously noted only 47% of Welsh SSSIs are in favourable condition.

Therefore, we **recommend** that the Bill set consequences for non-delivery of the targets.

General Binding Rules

We are disappointed that the General Binding Rules have not been included within the Bill – but acknowledge they are proposed as a possible experimental measure (CL22). We support the use of General Binding Rules in order to tackle offences such as diffuse pollution which has a significant adverse impact on biodiversity including both nationally and internationally designated sites such as SSSIs. General Binding Rules could help tackle poor environmental practice and diffuse pollution which is currently outside current regulatory system – particularly poor land management practices in rural locations.

The scale of poor land management practice is, as evidenced by NRW¹⁸, the reason why many water bodies fail the Water Framework Directive in Wales. General Binding Rules have the potential to bring equity and proportionality

¹² The Waste Measure 2010

http://gov.wales/topics/environmentcountryside/epq/waste_recycling/legislation/measure2010/?lang=en

¹³ See Capital Times [https://www.cardiff.gov.uk/ENG/Your-Council/News/Capital-](https://www.cardiff.gov.uk/ENG/Your-Council/News/Capital-Times/Documents/Capital%20Times%20June%202015%20English.pdf)

[Times/Documents/Capital%20Times%20June%202015%20English.pdf](https://www.cardiff.gov.uk/ENG/Your-Council/News/Capital-Times/Documents/Capital%20Times%20June%202015%20English.pdf)

¹⁴ <http://www.letsrecycle.com/news/latest-news/wales-hits-record-54-recycling-rate-201314/>

¹⁵ http://gov.wales/topics/environmentcountryside/epq/waste_recycling/zerowaste/?lang=en

¹⁶ http://ec.europa.eu/environment/nature/natura2000/financing/docs/ENV-12-018_LR_Final1.pdf

¹⁷ <http://randd.defra.gov.uk/Default.aspx?Menu=Menu&Module=More&Location=None&Completed=1&ProjectID=17005>

¹⁸ <http://naturalresources.wales/media/1785/water-strategy-for-wales.pdf>

to regulation for relatively minor, but widespread, poor practice. They have the potential to encourage more sustainable land management practices and key environmental outcomes.

This model has been used to great effect in Scotland enabling resources to be freed up to concentrate on serial offenders.

Stronger Wording

In many places the Environment Bill uses weak language which in turn could create weak policy or get-out clauses. Examples include:

- ‘consider the appropriate scale...
- ‘Promote and engage...
- ‘take account of all relevant evidence and gather evidence in respect of uncertainties
- Take account of...
- Seek to achieve
- Have regard to
- For contributing
- They consider relevant
- As it appears to them
- Reasonably practicable
- otherwise have an adverse effect on the exercise of the public body’s functions

We would like stronger language used such as ‘give effect to...’, ‘must ensure’, ‘achieve’, ‘deliver’. However, we are unsure of the legal definitions and would **recommend** that the Committee to look into the definitions of the above wording and suggest appropriate language that will clearly **drive action** to recovery nature.

SECTION 2 – SPECIFIC COMMENTS ON THE BILL

CL2 (a) Natural resources

Natural Resources are partly defined as ‘animals, plants and other organisms’. The Explanatory Memorandum states that the list does not include description of scale at which individual components exist such as habitat or landscape. The list is supposed to be building blocks of ecosystems. However, biological diversity (biodiversity) is the basis of ecosystems. Therefore, we **recommend** that ‘animals, plants and other organisms’ should be changed to ‘biodiversity’. This will also have the effect of creating consistency within the Bill (e.g. CL6 – Biodiversity and resilience duty) and external commitments such as the EU Biodiversity Strategy to halt the loss of biodiversity by 2020. The term ‘Biodiversity’ is consistent with the Explanatory Memorandum as it does not imply scale but is *the* building block of ecosystems.

CL5 - General purpose of NRW

We have previously evidenced a number of concerns regarding NRW’s purpose to the Committee. Principally, a reduction in ecological expertise and that NRW ‘**has a wider statutory purpose**’ putting perceived socio-economic considerations ahead of environmental protection.

As Wales’ **Statutory Nature Conservation Body** (SNCB), NRW is required to show clear, strong and strategic leadership on the natural environment as well as protecting **and enhancing biodiversity**. Therefore, we would like to see the re-establishment of NRW’s primary responsibility, the protection and enhancement of the environment including biodiversity.

As such, based on legal advice obtained by RSPB, we **recommend** ‘*seek to*’ should be omitted as it is weak language. In addition, WTW **recommend** that the general purpose of NRW, to align with the WFD Act and their role as the SNCB, should include, ‘The Body must;

- achieve, deliver and champion the **Resilient Wales Goal** of the Well-being of Future Generations Act.
- apply the ‘**Sandford Principle**’ “*If it appears that there is a conflict between economic, social or environmental purposes, NRW shall attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area.*”

CL3 - Sustainable management of natural resources

CL (1) - As the general purpose of NRW (CL 5 of the Environment Bill) is to achieve sustainable management of natural resources as defined by CL3 – we **recommend** that CL3(1) 'sustainable management of natural resources should include;

- ensuring the maintenance and enhancement of biodiversity (as per the CL7 list of the Environment Bill – currently NRW are not charged with this duty).
- ensuring that the EU Biodiversity Strategy is achieved in Wales
- ensuring that all statutory designated sites are favourable condition by 2026 and implement the Lawton Review – Making Space for Nature
- ensuring Wales has a coherent and resilient ecological network
- the 'Sandford Principle'
- adaptation to climate change

We also **recommend**, based on legal advice obtained by the RSPB that in CL3(1)(a+b) 'promotes is' replaced by 'contributes to'

CL3(2) - The resilience of ecosystems appears to be explained later under principles of sustainable management (CL4). The Explanatory Memorandum gives a purposive approach to interpretation – which gives the objective a potentially very wide remit. This then can deliver tensions within the interpretation of the Bill between e.g. windfarms on peatland delivering a resilient climate via renewable energy but degrading peatland adding to climate change. Therefore, the use of the Sandford principle, in CL5, gets around those tensions.

The Environment Bill or the Explanatory Memorandum should also clarify that 'ecosystems' is based on the CBD definition: "a dynamic complex of plant, animal and microorganisms and their non-living environment interacting as a functional unit".

In order to make sure that there is consistency within the Bill on biodiversity, that the Bill delivers for biodiversity and based on legal advice obtained by the RSPB be we **recommend** that the objective is strengthened by being changed to "*The objective is to maintain, enhance and restore biodiversity and the resilience of ecosystems and the benefits they provide and, in doing so, contribute to meeting the needs of present generations of people without compromising the ability of future generations to meet their need*"

CL4 – Principles of sustainability management of natural resources

CL4(a) require NRW to "Manage adaptively, by planning, monitoring and reviewing action", however there is no requirement to act following review. Therefore, we **recommend** a change that requires NRW to act following review, assisted by the Biodiversity Commission and Commissioner.

The Bill should recognise the importance of biodiversity – the building block of ecosystems - as well as ecosystems. Therefore, we **recommend**, based on legal advice obtained by RSPB, that "*The condition of biodiversity (species and habitats) within ecosystems*" is added to section 4(g). We also **recommend** this section should include the management of ecosystems '*within the limits of their functioning*', the precautionary principle and considering the effect of management decisions '*on adjacent and other ecosystems*'.

CL6 Biodiversity and residence of ecosystems duty

The duty states "*A public authority must **seek to maintain and enhance biodiversity in the exercise of its functions in relation to Wales, and in so doing promote the resilience of ecosystems, so far as consistent with the proper exercise of those functions***".

While this duty is stronger than the existing duty to "*have regard to the purpose of conserving*" biodiversity (s. 40 NERC Act 2006) it still leaves a lot of unanswered questions, namely:

- **What is the mechanism for delivery of action?**
- **What will this legislation require public bodies to do differently?**
- **What are the deliverables**
- **What are the consequences for non-delivery?**
- **Is 'so far as consistent with the proper exercise of those functions' a get out clause?**

The only mandatory action under this Clause is to publish a report on what Public Authorities have done to comply with the duty before end of 2019 and before the end of every third year thereafter. We **recommend** earlier and more frequent reporting is needed. Indeed, **there are very few mandatory requirements** to do anything other than produce reports, statements, or policies within this Part 1 of the Bill. What we need is to enable action,

monitor and report against such action, and for there to be clear consequences for non-compliance (e.g. similar to the recycling targets).

We believe that duty could be stronger – therefore we **recommend**

- CL6(1) changed to – (a) *A public authority must maintain, enhance and restore biodiversity in the exercise of its functions in relation to Wales, and in so doing, promote biodiversity and the resilience of ecosystems, so far as is consistent with the proper exercise of those functions.*
(b) A public authority achieve the ‘sustainable management of natural resources’ and apply the ‘principles of sustainable management of natural resources’ which have been given meaning by section 3 and 4 respectively of the Environment (Wales) Act 2016.
- CL6 (2) includes ‘*The condition of biodiversity (species and habitats) within ecosystems*’.
- CL6 (5) should be changed to
 - (a) *“A public authority to which subsection (1) applies must publish an annual report on what it has done to comply with the duty in that subsection in the previous year, and what deliverables will be achieved in the forthcoming year to comply with the duty, including what resources will be allocated to fulfilling their duty. This report should be produced following consultation with the Biodiversity Commission and Commissioner and NRW”*
 - (b) *A public authority to which subsection (1) applies should have sufficient ecological expertise and allocate appropriate resources to deliver their new duty.*

In the case of local authorities, **as per the Minister letter to Local Authorities recently**, we **recommend** that CL6(5)(b) should require them to have sufficient staff and resources to implement their duties under Land Use Planning and the new Biodiversity Duty (e.g. Biodiversity Enhancement Officers and Planning Ecologists). Other Public Authorities should be required either have their own ecological experts, or at the very least, to have access to ecological expertise (e.g. local Wildlife Trusts or Biodiversity Enhancement Officers acting as paid consultants via a Service Level Agreement).

We **recommend** that the Bill include **consequences for non-delivery**, such as penalties e.g. 1% of public authorities budget is deducted annually and put into a Welsh Nature Fund.

CL7 – Biodiversity lists and duty to take steps to maintain and enhance biodiversity

Welsh Ministers are to publish a list of living organisms and types of habitat which are of principal importance for the purposes of maintaining and enhancing biodiversity (the ‘list’). This list is likely to be the current NERC section 42 list. However, the Bill does not appear to

- a) Require Welsh Ministers to consult with anyone other than NRW – however, it is not clear if CL4 (c) requires NRW to consult with external organisations such as environmental NGOs.
- b) Require other public authorities to maintain and enhance the biodiversity on the list (currently they don’t even have to regard to the list).
- c) Detail how Welsh Ministers will a) take such steps as appear to them to be reasonably practicable to maintain and enhance features on list b) encourage other to take such steps.

Similar to CL6, the duty still leaves a lot of unanswered questions. **Therefore, we recommend that**

CL 7(1) be changed to - *The Welsh Ministers must, in consultation with NRW and the Biodiversity Commission, prepare and publish a list of the living organisms and types of habitat which in their opinion are of principal importance for the purpose of conserving, enhancing and restoring biodiversity in relation to Wales”*

CL7(2) *Before publishing a list under this section the Welsh Ministers must consult the NRW and the Biodiversity Commission as to the living organisms or types of habitat to be included in the list*

Section CL7(3) be replaced by “Without prejudice to section 6 and in consultation with NRW and the Biodiversity Commission

- a) *the Welsh Ministers must, maintain, enhance **and restore** the living organisms and types of habitat included in any list published*
- b) *all public authorities must, maintain, enhance and restore the living organisms and types of habitat included in any list published under this section.*
- c) *Welsh Ministers and public authorities must publish an annual report on what it has done to comply with the duty in CL7(3)(a+b) in the previous year, and what deliverables will be achieved in the forthcoming year to comply with the duty, including what resources will be allocated to fulfilling their duty.”*

We **recommend** that the Bill include **consequences for non-delivery**

CL8 – Duty to prepare and publish state of natural resources report

There is no detail on the content report. We are also concerned about the capacity for NRW to solely report on and prepare reports on the state of the natural resources in Wales. We are concerned that it will be difficult

- for NRW to report objectively on their own performance or be critical of other public bodies
- for NRW to report on the state of natural resources given the significant loss of ecological expertise within the organisation.
- To report using data that comes from environmental NGOs whose funding is not secure and, or the significant amount of voluntary recorders that are organised through environmental NGOs

Therefore, we **recommend** that NRW should consult with, and co-produce, the State of Natural Resources Report with the Biodiversity Commission and Commissioner. We **recommend** that Environmental NGOs, and long term scientific studies (e.g. guillemots on Skomer), are properly funded to deliver the required data. In addition, we **recommend** that the report should highlight the obstacles to the targets and duties within the Bill being achieved.

Clarity is required on how SoNaRR will deliver sufficient monitoring and reporting on the marine environment, given the paucity of baseline data. We seek clarity on how Wales' **marine environment** will be monitored and reported on to improve the current data and meet the 2020 target of Good Environmental Status under the Marine Strategy Framework Directive.

CL9 - National Natural Resources Policy (NNRP)

There is no duty to consult on contents of policy, even with NRW. In addition, the duties are weak as they only require; "Welsh Ministers must take such steps as appear to them to be reasonably practicable to implement the policy" and "Welsh Ministers must encourage others to take such steps"

We **recommend** that

- Welsh Ministers consult with, and co-produce, the NNRP with the NRW and the Biodiversity Commission and Commissioner.
- all Public Bodies should be required to implement, and report on, the NNRP

WTW would like clarification on whether the NNRP will include **marine** resources or is it the Welsh Government's intention to only include marine resources within the Wales National Marine Plan (WNMP)? Also, how will the NNRP be integrated within current and emerging marine policy?

CL10 - Area Statements

There is no duty for NRW to consult on Area Statements – the geographical area they cover, the number of Area Statements in Wales or the content of the statement.

NRW can ask other public bodies to provide information or other assistance in preparing area statements (CL 14). Public bodies must oblige unless it is incompatible with their own duties or would "*otherwise have an adverse effect on the exercise of the public body's functions*". The latter point could be used as a get-out clause, leaving the system open to abuse, if the public body stated that they don't have the time or resources to comply with the request. Also, while NRW are tasked with implementing the area statements but there is currently no requirement for Welsh Ministers to implement them.

We **recommend** that

- NRW consult with, and co-produce, the Area Statements with the Biodiversity Commission and Commissioner.
- there needs to be better controls on what constitutes having an 'adverse effect'
- a general duty is included for all public authorities (including Ministers) to take account of, and implement, area statements.
- the Bill includes the same requirements on public bodies to cooperate with the WFG Commissioner and that there are consequences from a refusal to co-operate?

It is not clear within the Bill whether Area Statements would pertain to the Welsh **marine** area or if this is solely fulfilled by the WNMP. If the latter is the case WTW would seek clarity in how terrestrial Area Statements would interact with the WNMP and how the land – sea interface would be managed.

CL 12 Directions to Implement Area Statements

The Bill does not give Welsh Ministers the power to direct themselves to address the Area Statements e.g. putting resources into achieving the area statements. Therefore, we **recommend** that the Bill is amended to allow Welsh Ministers to direct themselves.

CL22 - Power to suspend statutory requirements for experimental schemes

We support powers that allow NRW to achieve sustainable management of natural resources. However, we are concerned that this clause could open the door to practices that will have a negative impact upon the environment especially as statutory requirements could be suspended for up to 6 years. For example,

- trialling biodiversity offsetting which has been shown to lead to a net loss of biodiversity¹⁹.
- the case study within the Policy Intent Statement to enable NRW on behalf of Welsh Ministers to suspend the 'balancing duty' between forestry operations and nature conservation.

Therefore, we would **recommend** that, prior to suspending statutory requirements, NRW and Welsh Ministers consult with the Biodiversity Commission and Commissioner. Also, that the power to suspend statutory requirements for experimental schemes should include a requirement to monitor the impact of suspension of the statutory requirements and to revoke the suspension if it is suspected that undue damage is being caused.

CL57 - Charges for Carrier Bags

The single-use carrier bag charge was introduced as a type of 'green levy' to enable behaviour change by encouraging a reduction in the usage of plastic bags because they have a significant negative impact upon the environment due to:

- The use of **natural resources** in production - plastic bags are made from polyethylene, a product of petroleum, which is a non-renewable resource.
- They are not **biodegradable** and take hundreds of years to breakdown - when they do eventually breakdown, it's into a "plastic dust" which contaminates wildlife, the soil and the water, the towns and countryside, the oceans and the seas.
- Plastic bags are responsible for the **suffocation** and deaths of animals through unintentional digestion or inhalational - animals mistake them for food and can die as ingested plastic bags obstructed their digestive systems.
- **Entrapment** – many terrestrial animals and marine life get entangled in plastic bags and starve to death as a result.

The justification for the inclusion of 'bags for life' and minimum charging on all types of carrier bag is well made in the explanatory memorandum. However, **we are disappointed that, given the significant environmental harm caused by plastic bags, the Environment Bill calls for the proceeds of the carrier bags to go to 'any good cause' rather than 'environmental good causes'**. We believe that legislation that reduces the number of environmentally harmful carrier bags produced (and littered) should benefit organisations that work to protect the environment. Without such link, there is no connection between cause and effect and does not re-enforce attitude and behavioural changes. The possible adverse effect of the inclusion of social criteria (any good cause) would be to create a new social norm that would associate buying plastic bags with 'doing good'.

We could not imagine if a Health (Wales) Bill was introduced and included a levy on junk food in order to reduce the levels of obesity in Wales, it would legislate that the money raised be spend on 'any good cause' rather than 'health initiatives to combat obesity and associated health issues'. Spending a 'junk food levy' on pollution prevention would do little to challenge people to consider the impact of junk food on obesity levels.

We also disagree with the explanatory memorandum that just because sellers have an existing relation with non-environmental charity is sufficient justification for not requiring them to apply the net proceeds to purposes that will benefit the environment. This requirement does not 'cut across existing relationships', it merely alters them – if a seller has an existing relationship with a charity there are many other ways that relationship can flourish (being their charity of the year, staff volunteering or salary sacrifice, in-store promotion days such as bag packs). In addition, the current proposals enable sellers give to 'good causes' outside Wales rather than requiring the proceeds to be kept in Wales. Whilst social issues may be more emotive and attractive in the public eye for charity giving, environmental charities have a much greater wider social and economic reach that is often gone unrecognised.

Therefore, we **recommend** that the Bill enact Schedule 6 of the Climate Change Act as amended by the Waste (Wales) Measure 2010 which requires the sellers to apply the net proceeds to purposes that will benefit the environment. However, the Bill should make it explicit that the proceeds are used to help the Welsh environment or we will continue to see biodiversity loss and species extinction in Wales.

¹⁹ Curran et al 2014 Is there any empirical support for biodiversity offset policy?

http://ec.europa.eu/environment/integration/research/newsalert/pdf/biodiversity_offsetting_habitat_386na3_en.pdf

It is worth noting that environmental charities have a direct (and indirect) social and economic impact, as well as contributing to the natural environment. Projects (often based in some of the most deprived areas of Wales) have delivered much wider benefits. This is the basis of our very successful partnership with the Co-operative Food.

The **Welsh Wildlife Heroes** campaign is run by Wildlife Trusts Wales and funded entirely by the money collected from the single-use carrier bag charge in The Co-operative food stores in Wales. This funding is being used by the six Wildlife Trusts in Wales to focus the **Welsh Wildlife Heroes** campaign towards:

- Empowering the people of Wales, especially in **Communities First** areas, to become wildlife heroes by working with them to create wildlife friendly gardens, improve the greenspace within their community and school as well as increasing their access to the environment.
- Supporting native species and improving habitats for some of Wales's rarest and most endangered wildlife.

We would therefore like to invite the Committee to visit a Welsh Wildlife Hero community event to show you how the single use carrier bag levy is helping both Welsh communities and the environment.

CL 72 – 76 Marine

The definition of 'harm' is defined too narrowly and we **recommend** that it should instead say "an adverse effect or risk of an adverse effect on the integrity of the site alone or in combination with other plans or projects" to bring it in line with Article 6(3) Habitats Directive.

Currently Welsh Ministers can only serve a site protection notice if "harm" to a European Marine Site (EMS) has occurred or is likely to occur. We **recommend** that this process should be triggered also where "harm may occur".

It is unclear under CL74 as to how the cost will be recovered for damage to an EMS as there is no legal basis for a criminal offence and therefore no legal requirement for cost recovery.

Under CL 74 5B (2) and 5B(4)(c) there is reference to "take steps" we **recommend** that this wording to be strengthened as this current wording still allows for harmful activity to take place within EMS.

CL77 – 81 Marine

WTW welcome the proposal under CL78 to introduce further charges for marine licencing and the associated monitoring activities under the licence, interpretation of results of monitoring and costs of dealing with the licence. We also welcome the proposals under CL79 for the licencing authorities to seek a deposit and where necessary charge supplementary fees for the work undertaken.

However, we are concerned that these proposed charges will not be fully equivalent to cost recovery. We would **recommend** full cost recovery to ensure that the marine teams of both the Welsh Government and NRW are sufficiently resources to fulfil all of their functions.

It is also unclear within Part 6 of the Bill if the fees and charges that taken under the marine licencing duties will be reinvested within the Welsh Government and NRW marine departments or if they will be available to other departments? We **recommend** the need for these fees to be directly reinvested back into the marine departments to support future marine work including licencing.

We **recommend** that the proposal under part 6 is improved to enable an increase in the **evidence base** for the marine environment to inform future licencing decisions and activities in the marine environment (e.g. marine energy or mineral abstraction). This could be achieved via a mechanism within the Bill for the licencing authority to charge a fee or levy to contribute towards research/evidence gathering. The Bill could also provide a statutory duty for developers to release data on the marine area to the public domain once the outcome of the plan or project has been determined. These or similar mechanisms would aid the marine regulator and competent authorities in combating the paucity of data within the marine environment, this would in turn reduce the risk of damage to sensitive marine systems.



yn rhoi giving
cartref i nature
fyd natur a home

**Evidence from RSPB Cymru to the Environment & Sustainability Committee
Environment (Wales) Bill**

June 2015

RSPB Cymru is part of the RSPB, the country's largest nature conservation charity. The RSPB works together with our partners, to protect threatened birds and wildlife so our towns, coast, seas and countryside will teem with life once again. We play a leading role in BirdLife International, a worldwide partnership of nature conservation organisations. The RSPB has over 1 million members, including more than 51,000 living in Wales.

Our evidence on the Environment Bill focuses on the areas where we have identified the need for improvement if the Bill is to deliver for Wales' wildlife. We also support the evidence submitted by Wales Environment Link.

- 1. Part 1: Sustainable Management of Natural Resources** The Environment (Wales) Bill is not up to the task of halting the loss of Wales' biodiversity and putting it on the road to recovery, due to a critical gap in the natural resources management approach. We do not believe that the new approach to sustainable management of natural resources (SMNR), as set out in the Bill, will address the specific needs of species and habitats that are being lost from Wales.
2. Our primary aim in proposing changes to Part 1 is to ensure that delivery for biodiversity is properly integrated into the new approach, and integral to how we measure success. We call for:
 - a statutory target for biodiversity recovery to secure Government leadership and a focus on outcomes;
 - specific references to biodiversity to be added to the objective and principles of the sustainable management of natural resources (SMNR); and
 - improvements to the new general biodiversity duties.
3. In addition, we consider the process created for SMNR (national policy and area statements) is weak and unlikely to drive action as currently drafted.
- 4. Statutory Targets for biodiversity**

The Well-being of Future Generations (Wales) Act made an important advance in formally recognising that maintaining and enhancing a biodiverse natural environment is a goal of sustainable development, with responsibility for delivery shared by public bodies in Wales. This is necessary if we are to tackle biodiversity loss and improve the health of our natural environment. However, in focusing on making biodiversity a shared responsibility Government is in danger of neglecting its leadership role in relation to the direct steps that are needed to tackle declines and restore biodiversity in line with international commitments.
5. The *State of Nature* report found that many of the species suffering dramatic declines are those with specialist habitat requirements, dependent on appropriate management and protection of

their habitats. The objective of SMNR, as set up in the Bill, is to maintain and enhance the resilience of ecosystems and the benefits they provide. We are concerned that this will result in a focus on broad habitat types, based on the ecosystem services identified as priorities. Indeed, this is suggested by a case study in the statement of policy intent, which goes so far as to suggest that considering biodiversity conservation may act as a blockage to NRW fully undertaking its role in relation to SMNR

(<http://www.senedd.assembly.wales/documents/s40639/Policy%20Intent%20Statement.pdf>).

6. The Bill must be amended to make explicit that halting and reversing species declines is a required outcome of SMNR. Otherwise, not only will the new approach fail to benefit priority biodiversity; it could make matters worse for biodiversity by failing to take species' needs properly into account in developing priorities, and by diverting attention and resources away from implementing existing nature conservation legislation.
7. It is a concern that even in the draft Nature Recovery Plan (NRP) published for consultation last year, the Government said little about delivery for priority species. This reflects either: a belief – in our expert view wrong, as we repeatedly stated in discussions of the Wales Biodiversity Strategy Board during the drafting of the NRP – that an approach based on natural resources can automatically be assumed to deliver benefits for species under pressure; or: a decision that addressing species declines in Wales is not a priority.
8. Public attitude surveys carried out by the European Commission suggest that most people in the UK consider biodiversity loss to be a serious problem. Further, most believe that we have a moral obligation to stop it, as well as recognising that biodiversity and nature provide the basis for our wellbeing and quality of life¹. At the time of writing, close to 215,000 people have communicated with the European Commission asking that the Nature Directives not be weakened through the current review process which opened in May: protecting nature matters to people.
9. Policy commitments on biodiversity have not been delivered; the 2010 target to halt biodiversity loss, agreed under the Convention on Biological Diversity (CBD), was not met, and the biodiversity outcomes in the Wales Environment Strategy seem to have fallen by the wayside.
10. Revised goals were set under the CBD in Aichi in 2010, which led to the following commitments in the EU Biodiversity Strategy:
 - **A headline target for 2020:** 'Halting the loss of biodiversity and the degradation of ecosystem services in the EU by 2020, and restoring them in so far as feasible, while stepping up the EU contribution to averting global biodiversity loss'; and
 - **the 2050 vision:** 'By 2050, European Union biodiversity and the ecosystem services it provides – its natural capital – are protected, valued and appropriately restored for biodiversity's intrinsic value and for their essential contribution to human wellbeing and economic prosperity, and so that catastrophic changes caused by the loss of biodiversity are avoided.'
11. We have a potentially strong and comprehensive suite of tools to protect and restore nature in both European and domestic legislation – yet these tools are under resourced and not properly implemented, and biodiversity continues to decline. The Environment Bill is an opportunity for the National Assembly to demonstrate its commitment to the recovery of biodiversity in Wales, in line with our international obligations, by setting statutory targets.
12. ***We recommend that the Bill should require the Welsh Ministers to ensure that by 2050, biodiversity has increased by 15%, as measured by a national index based on priority***

¹ European Commission 2013 Flash Eurobarometer 379. Attitudes towards biodiversity. November 2013.

species. This index would need to be based on population trends of priority species that are rare or declining, based on the current 'section 42 list' (which will in future fall under s7 of this Bill) – like the UK Watchlist Indicator described in the State of Nature report. It is challenging to identify a Wales specific indicator due to a paucity of data for many species and groups, but we are confident this can be achieved, and improved upon over time. It would need to be supported by more comprehensive monitoring programmes. The suggested increase of 15% is meaningful and reasonably ambitious considering the effort that will be required to halt long term species declines. There is precedent for this sort of long-term statutory target in the UK Climate Change Act, reflected in Part 2 of this Bill.

13. **We also recommend a target to achieve favourable condition of Wales' protected sites.** We know that our protected sites are the best places for nature, but that they have been allowed to deteriorate largely through absence of appropriate protection or management. Protected sites already deliver multiple benefits² and are the logical starting point for securing wider resilience.
14. **Further provisions in the Bill should require that milestones towards these statutory targets be set** every five years in the National Natural Resources Policy, and reported against in the SoNaR reports to be prepared every five years by NRW. In order to implement the National Natural Resources Policy effectively, NRW would have to identify the priorities for biodiversity delivery and means of achieving them within Area Statements.
15. The Environment Bill is based on how important nature is to all of us, and we must ensure that nature itself benefits from this new approach. We believe that underpinning existing legislation by including statutory biodiversity targets in the Bill is the only way to ensure future Welsh Governments use their influence across the board so as to ensure biodiversity conservation and recovery are delivered.
16. **Sections 3 and 4: Objective and Principles of Sustainable Management of Natural Resources (SMNR)** The objective of SMNR (s3) is '*to maintain and enhance the resilience of ecosystems*'. As discussed above, we are concerned that focusing the objective at the level of ecosystems could mean that measurement of success occurs at too coarse a scale to encompass changes in species populations. Species and habitats are the building blocks of ecosystems, but may not be considered integral to resilience depending on how this is measured.
17. The principles of SMNR (s4) reflect that nature has intrinsic value which needs to be considered, and set out a number of aspects of ecosystem resilience including diversity between and within ecosystems. As such, they do not appear to *prevent* attention being paid to biodiversity at a fine scale; however, they do not *require* it either, and as we have already mentioned we are not confident that the Government intends this. If the SMNR approach is going to be an effective tool for halting and reversing biodiversity decline, we believe these sections must directly refer to biodiversity. Based on legal advice we suggest the following amendments:

3(1) *In this Part, "sustainable management of natural resources" means –*

- a) *using natural resources in a way and at a rate that contributes toⁱ achievement of the objective in subsection (2),*
- b) *taking other action that contributes toⁱⁱ achievement of that objective, and*
- c) *not taking action that hinders achievement of that objective.*

3(2) *The objective is to maintain, enhance and restoreⁱⁱⁱ biodiversity^{iv} and the resilience of ecosystems and the benefits they provide and, in doing so, contribute to meeting^v the needs of*

² E.g. RSPB 2014 Special Sites: Resilient Ecosystems

present generations of people without compromising the ability of future generations to meet their needs

To 4(g) we suggest adding a new point:

4(g)(vi) The condition of biodiversity (species and habitats) within ecosystems^{vi}

Explanation:

i and ii) 'Contributes to' is more results focussed than 'promotes'.

iii) Inserting 'restore', rather than focusing only on the present and the future, also places emphasis on the past and the need to address historic damage and declines.

iv) Inserting 'biodiversity' makes explicit that conserving biodiversity is required as part of SMNR. It makes the objective of SMNR consistent with the 'biodiversity and resilience of ecosystems' duty in s6 of the Bill, and also better reflects the wording of the Resilient Wales Goal in s4 of the Wellbeing of Future Generations Act 2015, which refers to '*a biodiverse natural environment with healthy, functioning ecosystems*'.

v) Inserting 'contribute to' recognises that SMNR alone will not meet the needs of present generations.

vi) This addition seeks to ensure that the specific biodiversity within an ecosystem is considered in relation to resilience.

18. Section 5: General purpose of the Natural Resources Body for Wales

Our legal advice is that the formulation of the purpose is weak. The words '*seek to*' should be omitted. In combination with the amendments to section 3 suggested above, this would give NRW a more result- focussed duty.

19. Sections 6 and 7: Biodiversity and resilience of ecosystems duty

The duties at s6 and s7 are to replace the duties at s40 (as it applies to Wales) and 42 of the NERC Act, respectively. The s6 duty is arguably more strongly worded than s40 of the NERC Act ('*seek to maintain and enhance biodiversity*' as opposed to '*have regard...to the purpose of conserving biodiversity*'), and introduces a new reporting requirement. However, we would stress that this requirement to report is based on actions taken, rather than on results achieved.

Consequently, the combination of s6 and s7 does not appear markedly stronger – in terms of securing results – than the existing combination of NERC duties, which have not resulted in the action required to halt biodiversity loss. We suggest some amendments to both duties below, but as discussed above we believe this part of the Bill should be strengthened by inclusion of statutory targets for biodiversity recovery.

20. The s6 duty is reframed around the '*resilience of ecosystems*' and we believe that amendments are necessary to make it clear that actions should be taken specifically to benefit biodiversity (species and habitats).

We suggest the following amendments to s6:

6(1) A public authority must seek to maintain, enhance and restoreⁱ biodiversity in the exercise of its functions in relation to Wales, and in so doing, promote biodiversityⁱⁱ and the resilience of ecosystems, so far as is consistent with the proper exercise of those functions.

To 6(2) we recommend adding a further item to the aspects of the resilience of ecosystems, as per our comments above in relation to the principles of SMNR:

6(2)(f) The condition of biodiversity (species and habitats) within ecosystemsⁱⁱⁱ

Explanation

- i) Adding 'restore' is reflective of s40(3) of the NERC Act which defines conserving biodiversity as '*restoring or enhancing a population or habitat*'.
- ii) The current drafting does not refer to biodiversity and the resilience of ecosystems equally but makes the resilience of ecosystems the desired outcome of maintaining and enhancing biodiversity. The amendment seeks to make it clear that outcomes for biodiversity (species and habitats) are also the aim of this duty.
- iii) This reflects our proposed addition of s4(g)(vi) above

21. The s7 duty is very similar to the duty Welsh Ministers already have in s42 of the NERC Act (the key difference being that Ministers are required to apply the principles of SMNR in implementing the s7 duty; these would need to be amended to better reflect biodiversity, as we have argued in relation to s4).

We suggest the following amendment to s7 to reflect the requirements of the existing NERC duty:

7(1) The Welsh Ministers must prepare and publish a list of the living organisms and types of habitat which in their opinion are of principal importance for the purpose of conserving, enhancing and restoring biodiversity in relation to Wales.

22. Our comments on the subsequent sections should be considered in the context of our suggested amendments above; without these amendments we are concerned about the impact of Part 1 (at least the missed opportunity for positive impact; possibly negative impact in practice) in relation to biodiversity.

23. Section 8: State of Natural Resources Report – SoNaRR

We welcome the duty on NRW to report on the state of Wales' natural resources and the extent to which SMNR is being achieved. This would need to be amended to reflect the requirement to report against statutory biodiversity targets. We also suggest an amendment to make it clear that SoNaR Reports should reflect not only positive performance, but obstacles preventing achievement of SMNR, as follows:

8(1) NRW must prepare and publish reports in accordance with this section containing its assessment of the state of natural resources in relation to Wales, including its assessment of the extent to which sustainable management of natural resources is being achieved including any obstacles which are preventing achievement and how those obstacles may be addressed.

24. It must be clear that, in considering obstacles to progress, NRW must not be limited to commenting on its own functions. For example, it should be made clear if the policy or practice of the Welsh Government or another public body is causing negative impacts or barring progress.

25. Section 9: National Natural Resources Policy (NNRP)

We suggest the words '*contributing to*' should be omitted from s9(1) so that Welsh Ministers are required to set out their general and specific policies *for achieving* SMNR.

26. We welcome the fact that Ministers are able to include anything in the NNRP that they consider relevant to SMNR, as this appears to recognise that a broad range of issues and functions could be relevant to the achievement of SMNR – not only 'environmental' ones. We also welcome the requirement for Ministers to take steps to implement the NNRP and encourage others to do the

same (s9(4)), but we are surprised and concerned that the Bill does not say more about how the NNRP should influence actions. For example, there is no general duty on public bodies to take account of the NNRP, and no specification that it should become a material consideration in the planning process. How is 'setting priorities and opportunities' (EM s89) going to actually make anything happen?

27. There is no indication in the Bill or the EM that the NNRP will have spatial elements, although it is intended to provide direction for delivery of SMNR by the Welsh Ministers (EM paragraph 89). If it is to be spatially expressed in any way it will need to be subject to Strategic Environmental Assessment (SEA) and Habitats Regulations Assessment (HRA).
28. We are also concerned that the Bill makes no specifications about the process to be followed in formulation of the National Policy, and how it will be validated and adopted.
29. Notwithstanding the requirements in s9(4), it is clear that NRW will be the key body implementing the policy in practice (by virtue of the body's general purpose at s3, the duty to prepare SoNARR (s8) and the duty to prepare area statements (s10)), and that other public bodies will also need to take action if it is to be effective. We are surprised, therefore, that s9 does not include a duty on Ministers to consult at least NRW in developing the NNRP. (It is evident in other environmental legislation that key regulators are consulted on the same policy which they are required to implement and regulate, e.g. the Committee on Climate Change under the UK Climate Change Act 2008). We recommend this section is amended to introduce a requirement to consult NRW, the range of public bodies, and other interested parties prior to publication of the NNRP or a revision thereof.
30. We note that s9(2) refers specifically to what Welsh Ministers consider should be done in relation to climate change. There is no specific mention in Parts 1 or 2 of the need to support climate change adaptation, and we question whether this reference in s9(2) is sufficient. We would expect this to be explained at least in the EM, with reference to the forthcoming Natural Environment Sectoral Adaptation Plan.
31. **Sections 10-15: Area-based implementation of the national policy**
We believe the provisions around area statements are weak, and there is a risk they will end up being little more than area-based work plans for NRW with little or no influence over the activities of other bodies. This is alarming considering the Explanatory Memorandum states that area statements will be the '*delivery mechanism for implementing priorities and opportunities at a local level*' (EM paragraph 89).
32. If the NNRP is to be a high level, non-spatially expressed policy, the area statements will be critical in setting out what actually needs to happen on the ground. Critically, if the area statements are to *implement* the NNRP, they need to influence what is done by bodies other than NRW, because NRW's functions and powers are unlikely to cover all of the issues that the NNRP should cover (since Ministers are empowered to include *anything they consider relevant* in the NNRP). The EM (paragraph 99) describes area statements as an '*evidence base*', but surely they need to be more.
33. There is no requirement for area statements to cover the whole of Wales; we believe there should be. Criteria for NRW to consider when selecting which areas to prioritise for development of area statements would also be helpful.
34. We need some clarity as to how the NNRP and area statements will interface with the Wales National Marine Plan and potentially influence marine management.

35. There is no general duty for public bodies to take account of area statements in delivering their functions. The EM states that the Welsh Ministers' direction making power at s12 will ensure other public bodies contribute to implementation. Is it therefore envisaged that the Minister will direct public bodies to implement area statements as a matter of course (s12), or assumed that public bodies will do so under encouragement from NRW (s10(4)(b))?
36. The only clear direct link made in the Bill with another process is that an area statement should be taken into account in development of a Local Wellbeing Plan (LWP). How important this link will be in terms of securing action will surely depend on how detailed and specific LWPs turn out to be. We believe the Bill should be made clear that area statements should influence, for example, local development plans and the targeting of rural payments (such as Glastir) by the Welsh Government. As for the NNRP, there is no stipulation around the process to be followed in developing area statements, such as consultation with public bodies and people who could be affected by their implementation, and how they might be validated and adopted. It appears the whole of this process is to be owned by NRW, with no formal adoption or endorsement by the Welsh Government.
37. There is no real indication of what sort of product an area statement is, but surely it will have to be spatial if it is to be meaningful. If this is the case, we assume it will be captured under requirements for SEA and HRA, and we would like the Bill to specify this.
38. The list of public bodies in section 11 does not include the Welsh Ministers, but the Welsh Ministers will have a critical role in implementation (e.g. as a licensing/consenting authority, and as the body responsible for rural payments).
39. **Section 16: Land management agreements**
We welcome the enhanced powers for NRW to make land management agreements, although we have a potential concern that the financial resources available to NRW for the purpose of entering such agreements may not be greater than that which is currently available for entering land management agreements for the current, smaller range of purposes. Thus, the broader applicability of the power could mean NRW committing fewer resources to management agreements for protected sites, for example. Protected sites are crucial to nature conservation, as well as providing a range of valuable benefits to society (thus we would argue they are crucial in the context of SMNR), but their management is critically poorly resourced. This reinforces the need for statutory biodiversity targets, and to ensure that biodiversity (species and habitats) is properly reflected in the definition and principles of SMNR.
40. We are disappointed that the Bill does not make provisions for General Binding Rules, which we believe are a useful tool in enforcing environmental standards necessary to tackle, e.g. diffuse pollution.
41. **Sections 22 and 23: Experimental schemes**
We are alarmed by a case study provided to explain the policy intent of the Bill³ which suggests one such experimental scheme could be to suspend the 'balancing duty' whereby NRW is required endeavour to *achieve a reasonable balance between— (a) the development of afforestation, the management of forests and the production and supply of timber..., and (b) the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiological features of special interest.*

³ <http://www.senedd.assembly.wales/documents/s40639/Policy%20Intent%20Statement.pdf>

42. This duty provides vital protection from unsustainable forestry practices under the section 1 duties of the Forestry Act that remain. The balancing duty was introduced following decades of unsustainable forestry practices driven by the section 1 duty towards timber production, afforestation and forestry. It is also important to retain this duty so that Welsh Government continues to address its domestic, European, EU and international long-term commitments to biodiversity and sustainable forestry policy, regulation and practice, not to mention the Wellbeing of Future Generations Act. We strongly disagree with the implication that a requirement to conserve biodiversity could be a blockage to achieving SMNR. We believe, and our experience bears out, that species' requirements can be integrated into habitat or ecosystem objectives. This is critical in relation to forestry where pressure to plant more trees, if not planned carefully, could lead to inappropriate planting on important habitats such as ffridd. This case study suggests that integration is not being properly considered, and lends further weight to our concern that addressing biodiversity loss is not a priority for the Welsh Government.
43. In the light of this we consider that additional safeguards are required in these sections of the Bill. The only limit on the scope of the research and the experimental schemes under s22 is that they must be relevant to NRW's functions and must be likely to contribute to SMNR. Besides the shocking interpretation we have found in the above case study, this leaves open the possibility that the s22 power may be exercised in a way which not only furthers the exercise of NRW's functions but which incorporates the commercial interests of third parties.
44. There should be requirement for more rigorous consultation by Ministers before making provisions to support experimental schemes. This should include consultation with members of the Wales Biodiversity Partnership.
45. Further, we Ministers should be required to undertake some form of risk assessment in deciding whether to make provisions.
46. **Part 3: Charges for carrier bags**
We welcome the proposal to raise a charge on all carrier bags. We are disappointed, though, by the decision to legislate for the funds raised through the carrier bag levy to be disbursed to any good cause. The Environment Bill sets out new ambitions for managing Wales' natural environment, against a backdrop of dwindling funds for the environment in general and nature in particular. We fail to understand why the Welsh Government would choose not to make a clear link between this levy on an environmentally damaging product and projects capable of contributing to the Government's own ambitions around improving the environment.
47. **Part 5: Fisheries for shellfish**
The provisions in Part 5 relate to the protection and management of European Marine Sites, and as such we consider it crucial that they are as robust as possible. We suggest a number of amendments based on legal advice.
48. This new legislation potentially makes easier the process by which the Welsh Ministers can make "Shellfishery Orders", because s72 now allows this to happen without the Welsh Ministers first making secondary legislation. This could therefore potentially increase the making of these Orders by the Welsh Ministers.
49. When making these Orders, the Welsh Ministers will also be subject to Part 6 of the Conservation of Habitats and Species Regulations 2010 (on appropriate assessment etc), to the extent that an Order is a "plan" or a "project". Both the "assessment" regulations 61/62 and the "review" regulations 63/64 will apply.

50. We are concerned that the definition of 'harm' in s76 is too narrowly drafted. This s7 definition is important because it feeds into the new provisions inserted by s73 and s74 into the Sea Fisheries (Shellfish) Act 1967. Section 73 provides that an Order made by the Welsh Ministers must contain provisions considered appropriate by the Welsh Ministers for the purpose of preventing any "harm" to any European marine site. Section 74 provides for the service by Welsh Ministers of "site protection notices" to prevent activities that harm, or are likely to harm, a European marine site. We recommend the following changes to s76 to bring it in line with Article 6(3) Habitats Directive.

5F (1)(a) an adverse effect or risk of an adverse effect on the integrity of the site alone or in combination with other plans or projects

The suggested inclusion of the phrase '*plans or projects*' would also then need to be explained in s76. We would suggest a new insertion into s76 (2) to read:

Plan or project has the same meaning as under the Council Directive 92/43/EEC on the conservation of natural habitats of wild fauna and flora.

5F (1)(c) should be amended by deletion of the final words "or the Wild Birds Directive (as applicable)", because it has been held by the Appeal Court in Scotland in a court case brought by the RSPB in 2000 that the reference in Art 6(2) Habitats Directive to "in relation to the objectives of the Directive" is a reference to the Habitats Directive, not to the Wild Birds Directive, even when one is relating Art 6(2) to a SPA: see *Royal Society for the Protection of Birds v Secretary of State for Scotland* 2000.

51. Under s5B(1) as inserted by s74, the Welsh Ministers have a discretion, not a duty, to serve a site protection notice if "harm" to a EMS has occurred or is likely to occur. It is appropriate for the power to be triggered not only when 'harm' has occurred or is likely to occur but also where harm may occur. Para 257 of the Explanatory Memorandum supports the need for this change as it makes clear that "may harm" ought to be covered; in our view the Bill does not say that currently. Therefore we would suggest that s74 be amended as follows, which would lessen the evidential burden of harm that the Welsh Ministers must prove before they act.

5B(1) If it appears to the Welsh Ministers that harm to a European marine site has occurred or may occur, as a result of any activity.

52. There is no criminal offence created if a person fails to abide by the steps set out in the site protection notice as envisaged in s5B(2). There is instead only a power under s5D(1) for the Welsh Ministers to do what the site protection notice states and to recover costs from the person responsible. We doubt the Welsh Ministers would wish to take this financial risk, so we believe a criminal offence must be created.

53. s5B(2) and s5B(4)(c) refer to a site protection notice requiring the grantees to '*take steps*', but this needs to be expanded to also cover '*ceasing any stated activities*'. That is, a site protection notice may need to prohibit activities in certain situations, not just require steps to be taken. Para 257 of the Explanatory Memorandum states that "It is noted that a SPN can include a requirement to take action as well as a requirement to abstain from taking certain action" however our legal advice states that this is wishful thinking, as the Bill is not clear enough to draw to this conclusion.

54. There is an appeal mechanism where site protection notices have been served (s5C). However the provisions are silent as to:

- the time limit by which the appeal must be brought. This must be addressed (an appeal period of 28 days is normal); and
- whether the steps / prohibitions in the site protection notice remain in force pending the outcome of the appeal. It is essential that the steps / prohibitions do remain in force pending the outcome of the appeal so as to ensure protection of the European Marine Site. Section

5C(4) *suggests* that it is intended that the site protection notice should continue unless expressly suspended, but this still needs to be made much clearer.

55. Section 75 contains a mechanism whereby an Order made by the Welsh Ministers can be varied or revoked. We note that this ability depends on the Welsh Ministers first serving a site protection notice and that notice not being appealed, or any appeal being complete. This is likely to be a delayed process since delays will occur by the relevant person bringing an appeal.
56. We suggest a separate process should apply in relation to the “review” provisions in Part 6 of Conservation Regulations 2010 (regulations 63/64). Under regulation 63 when a European site/European Marine Site is designated then any existing consent for a plan or project must be reviewed. The review must be carried out under “existing statutory procedures” or, if none exists, under directions from the “appropriate authority”. It would be very helpful if the new legislation could include a separate “statutory procedure” for variation or revocation of an Order in circumstances required under regulations 63/64, which did not involve the risk of significant delays under the section 75 procedure. This could be achieved through an amendment to section 5E to make clear that under a regulation 63 situation, the Ministers’ power to vary or revoke an order is not dependent on first serving a site protection notice.
57. **Part 7: Miscellaneous Section 83: Land drainage**
Section 83 removes requirements to publish notices of changes to drainage districts and charges in local newspapers, and does not appear to replace these with any other means of communicating the changes. As a land owner, we would query this: in theory, for example, drainage district boundaries could be expanded to include our reserves which could result in our being charged for work that might be detrimental to wildlife. We would suggest there should be some requirement for interested land owners and residents to be informed in writing of any major changes.

Agenda Item 5

Environment & Sustainability Committee

Environment (Wales) Bill – Part 6: Marine Licensing

Evidence from the British Marine Aggregate Producers Association

Background

1. The British Marine Aggregate Producers Association (BMAPA) is the representative trade organisation for the British marine aggregate sector and a constituent body of the wider Mineral Products Association. The Mineral Products Association (MPA) is the trade association for the aggregates, asphalt, cement, concrete, dimension stone, lime, mortar and silica sand industries. With the recent addition of British Precast and the British Association of Reinforcement (BAR), it has a growing membership of 480 companies and is the sectoral voice for mineral products. MPA membership is made up of the vast majority of independent SME quarrying companies throughout the UK, as well as the 9 major international and global companies. It covers 100% of GB cement production, 90% of aggregates production, 95% of asphalt and over 70% of ready-mixed concrete and precast concrete production. Each year the industry supplies £9 billion of materials and services to the £120 billion construction and other sectors. Industry production represents the largest materials flow in the UK economy and is also one of the largest manufacturing sectors. BMAPA represents 11 member companies of MPA who collectively produce around 90% of the 20 million tonnes of marine sand and gravel dredged from licensed areas in the waters around England and Wales each year.
2. Marine dredged sand and gravel is principally used by the construction industry, and the marine contribution provides around 20% of overall sand and gravel demand in England, 46% of overall sand and gravel demand in Wales and 90% of fine aggregate demand in South Wales – with wharves located in Newport, Cardiff, Port Talbot, Swansea, Burry Port and Pembroke. The absence of alternative natural sand deposits in South Wales means that marine aggregate supplies play a key role in supporting economic development and regeneration in the region.
3. Marine dredged sand and gravel also provide a strategic role in supplying large scale coast defence and beach replenishment projects – over 25 million tonnes being used for this purpose around the coastline of Britain since the mid 1990's. With the growing threats posed by sea level rise and increased storminess, the use of marine sand and gravel for coast protection purposes will become increasingly important.
4. In the near future, marine sand and gravel resources can be expected to play a key role in supporting the successful delivery of major infrastructure projects associated with Government policies related to energy security and climate change, such as tidal power developments, port developments and offshore wind farms. The coastal location of many of these developments means that the sector is ideally placed to supply the large volumes of construction aggregate and fill material that will be required.

5. In all cases, the marine aggregate sector is dependant upon identifying and licensing economically viable sand and gravel deposits to secure sufficient reserves to maintain long term supply to existing and well established markets. The location of such deposits is extremely localised around the waters of England and Wales, restricted to their geological distribution and their geographical position related to the markets location.

6. At present 740km² of seabed is licensed for marine aggregate extraction, of which around 99km² is dredged in a typical year. This represents around 0.08% and 0.011% of the total UK continental shelf area (867,000km²) respectively. In this respect, the marine aggregate sector is responsible for managing a significant area of the UK seabed.

Evidence

7. In response to an invitation to provide oral evidence to the Environment and Sustainability Committees' considerations around Part 6 of the Environment (Wales) Bill, this paper is intended to provide some background to the marine aggregate sectors position on marine licensing in Wales, and particularly the proposed changes to the charging structure around this function.

8. Marine aggregate operators have had to pay licence fees to allow recovery of the full costs of administering the process for licence applications since the introduction of the Marine Mineral Regulations (in their various national forms and any subsequent iteration thereafter) since 2007. Over the period since this date, the sector has had considerable experience of the licensing systems in both Wales and in England – whether applying for new licence areas or seeking to renew existing licences. The sector has also been subject to annual compliance/monitoring charges over this period.

9. During the development of the Marine Mineral Dredging regulations, the industry's prime concern surrounded the ability of the new statutory licensing regime to deliver meaningful improvements in the decision making process without sufficient resources within Government to be able to perform against clearly defined timescales. This included the industry making a clear statement that they would be prepared to financially support the provision of adequate resources and staff within Government through the licensing process, on the basis that this would allow the regime to function more effectively – this though was on the understanding that a better level of service would be provided.

10. The original 2007 licensing regimes introduced various fee structures to cover the time and effort incurred for regulators and their scientific advisors, but not for other Government advisors that provide a statutory function. Experience has shown that the process as a whole will only move as quickly as the resources and capacity available in all the key statutory participant organisations allows – particularly for pre-application discussions, which fall outside of their statutory function. Otherwise, only limited improvements in the timeliness of the service delivery for the wider licensing process will be possible. In the case of the English regime, the improvements in the delivery of the licensing process for marine minerals were only realised thanks to additional external funding being provided to resource-constrained statutory advisors to enable sufficient resource

and capacity to support the timely delivery of the pre-application stages of marine aggregate casework.

11. The development of the first fixed fee rates (both in England and Wales) served to illustrate that there was no accurate understanding of the time and effort required by regulators and advisors to support the licensing process. As a consequence there are reasonable grounds to suggest that the fees paid by the marine aggregate sector were significantly higher than the time and effort expended by regulators/advisors to deliver the functions required, and that these fees were essentially used to subsidise service delivery for other licensing functions. Throughout the period when operators had to pay fixed fees in support of their applications or for monitoring/compliance (both in England and in Wales), there was never a review to demonstrate that the fees paid aligned with time/effort actually expended. Given the sector has spent in excess of £1 million in licence fees over this period across England and Wales combined, the failure to review has been disappointing.

12. While the Welsh system for marine mineral licensing has retained a fixed fee arrangement throughout, the English licensing system transferred to an hourly rate for advice at both pre-application and formal application stages in 2010, with the adoption of the amended Marine Works Regulations. Since the transfer to an hourly fee rate under the English licensing system, where time and effort of both regulators and advisors now have to be recorded, the fees charged to date for casework would suggest that the actual costs being incurred now are c.50% less than the original fixed fees.

13. Given licensing fees should only recover the costs associated with administering the service related to the application in question, the justification of the fees being paid must be supported through greater transparency and accountability around the time and effort being expended by regulators and their advisors. It also has to be recognised that the charging of fees (particularly significant ones – whether lump sum or hourly rate) fundamentally changes the nature of the transaction between applicant and regulator, turning it into a more commercially based transaction, with all the associated expectations (and potential for challenge) around quality of service and advice, delivery performance and value for money. This applies irrespective of whether the hourly rate fee totals for casework prove to be lower than the original fixed fees. The significance of this change in relationship must not be underestimated.

14. Consequently, suitable governance arrangements need to be established to allow an applicant to challenge the timeliness or quality of service and/or advice provided by regulators or advisors for which they are being charged – even at the voluntary pre-application stage of the application process. Without an effective mechanism or governance structure that allows applicants to challenge or question the value for money or quality of service they receive, we would suggest that there is no incentive or motivation to change established practices and therefore drive improvements in the services that are being provided. This point is particularly relevant given that regulators and advisors are interacting with applicants that represent ‘captive customers’, unable to go elsewhere for the services being provided for which they are being charged.

15. Monitoring performance over time is key. Therefore, suitable key performance indicators (KPI's) need to be developed for every stage of the licensing process for which fees are charged – not just the formal application stage – and progress against these reported on a regular basis. In order to account for the wide range and variety of licensing casework that is being delivered, KPI's should differentiate between low-risk and/or straight forward casework and also more complicated casework. There is also a need to focus not only on where performance has been good but also why any failures occurred – as it is from these that lessons will be learned and from which the overall delivery service should improve.

16. Finally, there should be a reasonable lead-in time for any new funding arrangements to allow applicants to plan their budgets accordingly. This should include the licensing authority providing estimates of the likely licensing fee costs based on historic performance levels for similar cases.

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1st July 2015

The Committee Clerk
Environment and Sustainability Committee
National Assembly for Wales
Cardiff Bay, CF99 1NA.
Sent by email to SeneddEnv@Assembly.Wales

12th June, 2015

Dear Clerk,

RE: Consultation on the Environment (Wales) Bill

Marine Energy Pembrokeshire (ME^P) welcomes the opportunity to comment on the general principles of the Environment (Wales) Bill.

1. The Marine Energy Pembrokeshire working group contains all wave and tidal developers who are interested in Welsh Territorial Waters and includes Welsh Government, The Crown Estate, Pembrokeshire County Council, Welsh European Funding Office, Natural Resources Wales – Marine Licensing, The Port of Milford Haven, RenewableUK, Marine Management Organisation, Tidal Energy Limited, Marine Energy Limited, Wave Dragon, Pelamis, Marine Current Turbines, OWEL, Marine Power Systems, OpenHydro, Minesto, Tidal Stream, Atlantis, SeaCatt, Swansea Bay Tidal Lagoon, Seabased, Carnegie, Ledwood, Mustang Marine, Nova Innovation, Wave Power, Repetitive Energy, Instream, Harris Pye, Pembroke Port, Anglesey Energy Island, the Energy Technology Institute, Offshore Catapult, Low Carbon Research Institute, Seacams, Innovate UK, Menter Mon and Wave Hub.

PLEASE NOTE Whilst all of the above are integral members of the working group the comments raised within this letter **do not contain their individual or organisational input or viewpoint as MEP members.**

In summary, our response at this stage of the bill, focussing on relevant key areas of ME^P remit is:

2. We supports the approach of sustainable management of natural resources at a national and local level, creating a statutory framework for action on climate change including targets and enhancing the powers available to NRW to undertake experimental schemes. Marine energy as a significant natural resource for Wales should be specifically included. We expand on our points below particularly relevant to Marine Licensing (Part 6).

3. The Bill is an opportunity to have more effective planning of regulatory processes and a more predictable and consistent framework for environmental decision making. Industry comment on the potential complexity with devolved and non-devolved planning in the wave and tidal stream sector e.g. Marine Licenses are decided by Welsh Ministers with the Marine Management Organisation providing a Section36 License.

4. Specifically on marine licensing in Wales, in 2014, following recommendations from the MEP working group, a consenting subgroup was established with the primary aim of reviewing best practice on a UK level and providing recommendations to Welsh Government and NRW on how Wales can streamline the consenting process.

The consenting subgroup contains representatives from industry who have experience in the consenting process in Scotland, Wales and Northern Ireland, along with NRW (Advisory and Licensing), Welsh Government (Energy Policy) and The Crown Estate.

5. These recommendations have been sent to Welsh Ministers, NRW and Amber Rudd, MP and maybe relevant for the Environment and Sustainability Committee. Below are those most potentially relevant to the Environment (Wales) Bill.

R 1 Risk-based proportionate and phased approach to consenting

6. ME^P recommends that Welsh Government should adopt a policy to enable NRW to take a risk-based, proportionate approach to consenting for marine renewable energy projects. A risk-based approach would ensure that **proportionality** is considered in regulatory decision making and enable smaller, early stage and shorter-term projects to progress without being restricted due to unnecessary levels of precaution in the consenting processes.

7. An example of a risk-based approach to consenting is Marine Scotland’s **Survey, Deploy and Monitor Licensing Policy**. This approach recognises that the level of required environmental data should be proportionate to the type and size of the project and the potential risks associated with the device at a particular location. It therefore allows for a phased approach to wave and tidal developments, whereby the initial deployment of a small number of devices can be gradually scaled up to a commercial scale array. In-built learning objectives and environmental monitoring from each phase of development informs subsequent stages.

8. An example of this type of phased approach is the MeyGen tidal stream project in the Pentland Firth. Ultimately, this approach could reduce the cost and time of monitoring and data collection for lower-risk proposals (which is crucial for early stage projects) and provide a clear consenting route map for larger projects. This should simplify the process, facilitating earlier consenting decisions, thus making Wales more attractive. Industry feedback indicates a belief that there is stronger policy support in Scotland through the provision of a risk-based approach to consenting. **Proposed Action – Welsh Government and NRW to review a risk-based, phased approach to consenting and consider its application in Wales.**

R 3 Develop a consenting framework with indicative timescales

9. Industry state that the consenting process in Scotland has been more prescriptive with defined stages and timetables. The process is smoother and timescales are followed. ME^P recommend the development of a framework for all stages of the consenting process up to award of license, to include indicative timescales from NRW Marine Licensing Team. This would provide developers with

increased clarity as well as providing them with confidence that the regulator will be working to the same structured timetable. **Proposed Action – NRW to develop a framework with timescales that are achievable.**

10. The above are 2 of 7 recommendations that could be assisted in the Environment (Wales) Bill that considers compliance is appropriate to the extent of environmental risk.

11. Charges for further aspects of the Marine License process should consider the nascent as yet, non-commercial aspect of marine energy (wave and tidal stream) and be proportionate to the resources and timescales of delivery.

12. MEP would be happy to elaborate and be engaged further in the process and welcomes the opportunity to comment.

13. MEP welcomes the collaborative approach thus far from Welsh Government and NRW in engaging with MEP and industry. Having representatives from the NRW Marine Licensing Team and Advisory team together with Welsh Government Energy Policy as part of the consenting sub-group is very positive and “unique from an industry perspective”. MEP believes that Wales has the potential to be a world-leader in the marine energy market – as a significant generator and, just as importantly, as an exporter of marine energy knowledge, technologies and services. Welsh Government and NRW has a key role to play in enabling the consenting process to be as efficient as possible.

Yours sincerely



David Jones
MEP Project Director



Cyfoeth Naturiol Cymru / Natural Resources Wales

Written evidence to Environment and Sustainability committee – General principles of the Environment (Wales) Bill.

June 2015

SUMMARY

The creation of Natural Resources Wales (NRW) was the first step towards the integrated management of Wales' natural resources. We are developing Natural Resource Management (NRM) as the core approach to the delivery of all our responsibilities. Nevertheless, not all our functional legislation facilitates this way of working. We welcome the introduction of the Environment Bill as it represents the key second step on the journey towards integrated and sustainable management of natural resources. This Bill, along with the Wellbeing of Future Generations Act and the Planning Bill, places sustainable development at the heart of strategic decision making across Wales not just in NRW but across the wider public, private and third sector. **Everyone** will need to grasp the new ways of working set out in the Environment Bill if we are to find innovative solutions to the biggest challenges facing the natural resources of Wales.

The need for the legislation:

1. Our air, land, water, wildlife, plants and soil – our 'natural resources' – provide us with our basic needs, including food, energy, health and enjoyment. When cared for in the right way, they can help us to reduce flooding, improve air quality and supply material for construction. They also provide a home for some rare and beautiful wildlife and iconic landscapes, which improve our wellbeing and boost the economy via tourism.
2. But these natural resources are coming under increasing pressure – from climate change, from a growing population and from the need for energy production, amongst others.
3. Decades of work to understand, protect and improve our environment have taken us a long way.
4. Yet despite this, the continuing decline in biodiversity and the threats to the ability of our natural resources to continue to deliver benefits to society, poses a significant risk to the well-being of Wales. The evidence we present in our report *Snapshot of the State of Wales' Natural Resources* (Annex 1), underlines the **need for a step-change in the approach to natural resource management by all parts of the public, private and third sector in Wales.**
5. Much of the environmental legislation governing the work of NRW is functional and does not facilitate more integrated and flexible approaches to the management of our natural resources.

6. Part One of the Environment Bill builds on the best Welsh and international evidence base. We believe the provisions will facilitate a **flexible and adaptive** approach to secure the integrated and sustainable management of natural resources in Wales.
7. The definition of sustainable management of natural resources in Section 3 and the principles set out in Section 4 of the Bill are clearly aligned to the Ecosystem Approach principles defined by the UN in the Convention on Biological Diversity. We support the definition and principles.
8. Section 5 of the Bill refines our general purpose to align it to the definition of sustainable natural resource management and the principles. We are happy with the proposed changes, as the new purpose aligns much more closely with our long term vision for our organisation. Nevertheless, we recognise that the **new purpose will not change our underpinning functional legislation** but provides a more helpful framework to develop NRM ways of working.

Implementation

9. The management of our natural resources is a **shared responsibility** not just the concern of NRW.
10. At the moment public bodies and other organisations are focussing on their specific responsibilities or duties under the WFG Act and perceive that the proposals in the Environment Bill relate solely to NRW. Unless this gap in understanding is addressed, it is likely to create major challenges for implementation.
11. Under the WFG Act, the formation of Public Service Boards (PSBs) and inclusion of NRW as a core member provides an important opportunity to join up and integrate approaches to implementation.
12. However PSBs will not necessarily represent the interests of land managers (agriculture and forest/woodland), the business sector or environmental NGOs. Other arrangements may need to be developed to ensure these groups can participate effectively.
13. Area Statements could provide us with an opportunity to streamline the number of other plans that we and others produce.
14. Co-production and collaboration is central to how we propose to develop the State of Natural Resources Report and Area Statements. Annex 2 and 3 set out our propositions of how we want to work with others to produce them.
15. We are concerned that Section 15 of the Bill is too open ended and raises the expectation that NRW will provide information and lead on the implementation of area statements on behalf of other public bodies. Clarification is needed to set limits around the assistance that NRW could be asked to provide.

Financial Implications of the Bill

16. The provisions in the Environment Bill are central to our purpose of delivering an integrated approach to the sustainable management of natural resources in Wales. As the NRW business case demonstrates, efficiency savings will be realised in the longer term for us and our partners.
17. However, in the **short to medium term, implementation of the requirements in the Bill will require us to dedicate significant staff time to get through the initial increase in work.**
18. This investment is essential if we are to realise savings and efficiencies in the longer term. As we develop a better understanding of the likely costs we will discuss funding with Welsh Government.
19. Thereafter, NRM will be embedded across the organisation and will be at the heart of everything we do.

The Environment (Wales) Bill is a once-in-a-generation opportunity. Taking a joined up approach to managing our natural resources will help us to tackle old problems in new ways. To find better solutions to the challenges we face – and create a more successful, healthy and resilient Wales, now and in the future.

1. Introduction

1.1 Many of the proposals in the Bill are central to the role and remit of NRW. Our response is divided into eight sections in line with the Parts of the Bill. We have used the Committee's term of reference to structure our response. We have addressed questions two and three in our sections on 'Proposals' and 'Implementation'. Question four is addressed for each part, in paras 2.4, 3.2, 5.4, 6.2, 7.2 and 8.5 below. We do not think it is our role to address question five. We have provided more detail on the proposals on sustainable natural resource management, waste and flood risk management. The covering note cross references the different sections of this submission with the terms of reference and consultation questions defined by the Environment and Sustainability Committee.

2. Part one – Sustainable management of natural resources

2.1 The need for the legislation

2.1.1 Our air, land, water, wildlife, plants and soil – our 'natural resources' - provide us with our basic needs, including food, energy, health and enjoyment. When cared for in the right way, they can help us to reduce flooding, improve air quality and supply materials for construction. They also provide a home for some rare and beautiful wildlife and iconic landscapes we can enjoy and which boost the economy via tourism.

2.1.2 The scale of the challenges facing our natural resources in Wales is demonstrated in our report, *Snapshot of the State of Wales' Natural Resources* (Annex 1) which sets out the latest evidence from our monitoring of natural resources across Wales. Decades of work to understand, protect and improve our environment have taken us a long way. But these natural resources are coming under increasing pressure – from climate change, from a growing population and from the need for energy production.

2.1.3 In 2010, Wales, alongside other administrations in the UK and Europe, failed to meet international biodiversity targets agreed under the UN Convention on Biological Diversity¹ and triggered a number of government led reviews in Wales², Westminster³ and Brussels⁴⁵. The policy and scientific consensus that emerged underlined the need for a more **integrated** approach to the management of natural resources, focussing much more explicitly on the **benefits** to society of **resilient ecosystems** and the need for flexible, **adaptive management**.

2.1.4 Much of the environmental legislation governing the work of NRW is functional and does not facilitate the integrated, flexible and adaptive approaches to the management of our natural resources identified as so important in the policy and scientific evidence. The proposals in the Environment Bill, along with the WFG Act, Planning Bill, and UK Marine and Coastal Access Act (2009) provide the legislative framework to drive adaptive management of our natural resources in Wales allowing us to look at the whole picture.

2.2 Proposals for Sustainable Management of Natural Resources

¹ 2010 Biodiversity Target: <https://www.cbd.int/2010-target/about.shtml>

² <http://www.assembly.wales/Laid%20Documents/CR-LD8384%20-%20Sustainability%20Committee%20Inquiry%20into%20biodiversity%20in%20Wales-31012011-208859/cr-ld8384-e-English.pdf>

³ <http://uknea.unep-wcmc.org/Resources/tabid/82/Default.aspx>

⁴ EC 2020 Biodiversity Strategy: <http://ec.europa.eu/environment/nature/biodiversity/comm2006/2020.htm>

⁵ EC Green infrastructure Strategy: http://ec.europa.eu/environment/nature/ecosystems/index_en.htm

2.2.1 If we are to secure new solutions to old problems we must encourage innovation and creative problem solving by working with others. The Environment Bill along with the WFG Act and Planning Bill facilitates such an approach. We anticipate the need for additional legislation in the future as we gather more evidence and learn from the early implementation of Area Statements.

2.2.2 The definition of sustainable management of natural resources in S3(1) and S3(2) and the principles set out in Section 4 of the Bill are clearly aligned to the principles defined by the UN Convention on Biological Diversity. We support these proposals.

2.2.3 S5(2) of the Bill refines our general purpose to align it to the definition of sustainable natural resource management and the principles. We are happy with the proposed changes, as the purpose aligns much more closely with our long term vision for the organisation:

Proud to be leading the way to a better future for Wales by managing the environment and natural resources sustainably.

Nevertheless, it is important to recognise that the proposed change will not alter our underpinning functional legislation. The revised purpose serves an important role in clearly defining a framework in which we can develop NRM ways of working across the organisation and with other parts of the public, private and third sector in Wales.

2.2.4 We welcome the proposals in Section 6 of the Bill for a revised biodiversity duty for Public Bodies. Strengthening the current biodiversity duty is critically important because it will ensure that the wider public sector integrate the principles of sustainable management of natural resources and the resilience of ecosystems within their decision making processes. The improved accountability resulting from the introduction of tri-annual reporting on compliance with the duty will also address a gap identified in the 2010 Defra review of the biodiversity duty.

2.2.5 On the specific requirements in the Bill for the sustainable management of natural resources, we welcome the proposals in Section 8, 9 and 10 of the Bill which set out a flexible legislative framework to facilitate **adaptive management** of our natural resources:

1. The **State of Natural Resources Report (SoNaRR) will be developed by NRW** and will set out the current evidence base and the potential risks to the ability of natural resources to deliver long-term benefits for the wellbeing of Wales. Developed collaboratively, SoNaRR will help set the scene, will look ahead, and will prompt and be a catalyst for change. Our proposal for developing the first statutory SoNaRR is contained in Annex 2.
2. The **National Natural Resources Policy (NNRP) will be developed by Welsh Government** and will need to set the vision and “plan” for managing the issues and opportunities associated with Wales’ natural resources. We believe this document plays a critical role. It needs to be clear on:
 - a. priorities and outcomes **without** prescribing the activity or means of delivery;
 - b. tackling conflicts at the national level through the integration of policy;
 - c. alignment of funding mechanisms.

In practice, we believe that the NNRP will be critical to driving integration and efficiency, addressing the conflicts and strategic challenges around the use and management of natural resources at national and local levels. If this does not happen there is a risk that Area Statements will get bogged down, trying to resolve issues locally when they really need to be addressed nationally.

3. The **Area Statements developed by NRW** will facilitate local action and delivery of the national priorities using the NRM approach. Developed **collaboratively**, Area Statements will be evidence based – drawing upon evidence at the catchment and landscape scale as well as more local information. It will drive action to the appropriate level of decision making. We will use them as vehicle to engage people, communities and stakeholders in decision making. It will also need to put in place systems to **monitor** activity and report on outcomes. In the last 18 months we have set up three NRM trials to test and develop practical approaches to the implementation of NRM across Wales, to inform future development of Area Statements. Our proposal for taking these forward is contained in Annex 3.
4. The **second SoNaRR** will then capture the evidence obtained from both local delivery (Area Statements) and the overall national picture.

2.2.6 The Area Statements will also help us understand any barriers to adopting a more integrated approach to the management of natural resources. For example, working with a particular group of people in a place may highlight that a specific piece of legislation is driving a way of working that has a negative impact on the environment. Using this evidence, NRW will review if our guidance or interpretation of the law is the cause of the problem. In this situation we would work with stakeholders to revise our guidance, in line with our commitment to adaptive management. If the under-pinning legislation is the source of the problem, then the provisions in S22(1c) and S23(3) of the Bill will allow us to put a case to Welsh Ministers to temporarily suspend the specific piece of legislation. If we secure Ministerial agreement, we expect to continually monitor and review progress and will report to Ministers with recommendations which either support a future case for legislative change or not. These provisions therefore allow for adaptive management and governance.

2.2.7 Co-production is one of the central principles of sustainable management of natural resources as reflected in Section 4c of the Bill. We are committed to working collaboratively with a wide range of stakeholders in order to better identify environmental problems and solutions. This is not always simple or straight forward and we welcome the provisions in Sections 12, 13 and 14 of the Bill to place a clear duty on the wider public sector to work with us to prepare SoNaRR and Area Statements. Although we recognise that we must support other parts of the public sector with the provision of information and evidence, we are concerned that Section 15 is too open ended, and raises the expectation that NRW will provide information and lead delivery of Area Statements for other public bodies.

2.2.8 We welcome Sections 16-21 that set out revised powers for entering into management agreements for the achievement of any of our functions. Our current powers are limited to nature conservation, landscape and recreation interests. We consider this change will complement the set of tools needed to manage natural resources adaptively. Some examples of how these may be applied include:

- Permitting flooding of land in order to complement or even reduce the need for hard flood defences.
- Management agreement with landowners to block up drains to restore peat bogs. Furthermore funding could be derived from water companies if a saving in water treatment costs for sediment removal was identified.
- Management agreement with a private woodland owner to manage their woodlands and sell timber, or to include sales of timber in NRW e-sales auctions i.e. act as a broker for private woodlands and timber purchasers.

These could potentially be considered forms of “payments for ecosystem services”.

2.3 Implementation

2.3.1 We are concerned that public bodies and businesses may not yet fully appreciate the importance of looking at the Environment Bill alongside the WFG Act, Planning Bill, and Marine and Coastal Access Act, and do not understand the linkages and flows of information between the “products” produced under each piece of legislation. At the moment organisations are focussing on their specific responsibilities or duties under the WFG Act and perceive that the proposals in the Environment Bill relate solely to NRW. Unless this gap in understanding is addressed now, it is likely to create major challenges for implementation. Of equal importance is the risk of duplication, missing major opportunities for streamlined and efficient sharing of information and evidence.

2.3.2 Under the WFG Act, the formation of PSBs and inclusion of NRW as a core member, provides an important opportunity to join up and integrate approaches to enable the implementation of provisions in the Environment Bill. We recognise the value of using the PSBs to foster a common understanding of the opportunities and benefits in a particular place. There will be opportunities to share evidence from both SoNaRR and the Area Statements to inform the preparation of needs assessments and well-being plans. However, it is important to recognise that PSBs will not necessarily represent the interests of land managers (agriculture and forest/woodland), the business sector or environmental NGOs. These are potentially significant gaps. It may therefore be necessary to develop other governance mechanisms linked to PSBs to facilitate decision making or in some cases, create separate processes.

2.3.3 Our approach to Area Statement will need to be flexible. It will vary according to the priorities identified in the National Natural Resources Policy, the type of resource at stake, the location and the stakeholders involved (see Annex 3). We will draw on the learning from catchment approaches to managing our water environment. Catchment approaches are evolving to consider landscape scale solutions as they address such difficult issues as diffuse pollution. We recognise that our underpinning environmental evidence will normally be at a catchment or a landscape scale. But we may need to translate this to different spatial scales to make it more meaningful and compelling for the people, communities and decision makers we need to work with in the spirit of the principles of sustainable natural resource management.

2.3.4 We recognise that the Area Statements could provide us with an opportunity to streamline the number of other plans that we and others produce. It means that issues which have traditionally been covered in a separate functional plan could be included in the Area Statement and no longer be produced separately. This will be a change for our staff as well as affected partners and stakeholders. Nevertheless, it is important to recognise that a number of plans that we produce are required under EU Directives with clearly defined requirements. Subsuming these within the Area Statements will require a longer time frame. The scope for including other plans within an Area Statement will also be very sensitive to the geographical scale and the timetable for their production. This will require careful negotiation with Welsh Government as well as other partners and stakeholders.

2.3.5 We believe the requirement in the Bill S10(6) for NRW to consider whether “another plan, strategy or similar document should be incorporated into the Area Statement” is appropriate, and should extend to plans and strategies beyond the jurisdiction of NRW. The drive to ensure integration can be aided further through the use of the S13 power to issue guidance to other public bodies, and the S14(2) power for NRW to request assistance. It

may be simpler and stronger to have a duty on public bodies to consider for themselves where and how they could implement measures through their existing plans and programmes.

2.4 Financial implications of Part 1 – Sustainable Management of Natural Resources for NRW

2.4.1 Through the development of the Regulatory Impact Assessment (RIA) by Welsh Government in the summer and autumn of 2014, NRW staff have provided advice and evidence to inform the approach, assumptions and costs underpinning the Natural Resource Management aspects. We provided the best information available to us at the time. The RIA sets out four options for implementation of the Area Statements. We acknowledge that these were developed as illustrative examples and should not be seen as NRW's preferred approach. As we have refreshed our own NRM transformational programme, we have developed a better understanding of the scale of the changes we need to implement such as IT, staff training, new systems and process to develop Area Statements. These will undoubtedly incur additional costs which we are currently estimating.

2.4.2 As the NRW business case demonstrates, efficiency saving will be realised in the longer term for us and our partners. Nevertheless, in the short to medium term the Environment Bill will require us to invest staff time and money to realise savings and efficiencies in the longer term. Thereafter, NRM will be embedded across the organisation and will be at the heart of everything we do. As we develop a better understanding of the likely costs we will discuss funding with Welsh Government.

3. Part Two: Climate change

3.1 The need for the legislation

3.1.1 We believe the Part 2 provisions provide an appropriate framework for the development of climate change targets and carbon budgets for Wales. In early 2014 we recommended the consideration of statutory Welsh climate change targets. In the Ministerial briefing we stated that "Statutory emission reduction targets in Wales would raise their profile, but more importantly would be a clear signal across government departments and beyond of the imperative of ensuring they are met".

3.1.2 Statutory emission reduction targets foster long term and robust strategies, policies and investments by the public sector, business and industry to ensure their compliance with the targets. It provides a greater degree of certainty for business, acting as a clear signal of future intent that should provide confidence for expansion of the green economy.

3.1.3 Other devolved administrations that have climate change mitigation targets also have provisions for adaptation as well. The UK Act includes statutory requirement for a 5-yearly reviewed National Adaptation Plan for England and the Scottish Act makes requirement for Scottish Ministers to produce an adaptation programme, report on progress and update.

3.1.4 We recognise that Part 1 of the Environment Bill includes principles of 'manage adaptively' 'take account of the short, medium and long-term consequences', 'take account of the resilience of ecosystems' including 'the adaptability of ecosystems'. We also note that the NNRP must consider climate change mitigation and adaptation. It follows that the Area Statements will need to specifically address climate change. The WFG Act by implication also requires public bodies to consider long-term and preventative measures in the exercise of their duties under that Act. Together we acknowledge this constitutes a programme for adaptation.

3.1.5 However in the absence of a specific National Adaptation Programme, Welsh Ministers may wish to consider whether by integrating programmes for adaptation into these functions, all sectors are covered. Careful monitoring will need to take place to assess whether there may be gaps. If any gaps emerge appropriate mechanisms should be put in place to address those gaps.

3.2 Financial implications of Part 2 for NRW – Climate Change

3.2.1 We will inevitably be drawn into activities in relation to Part 2 of the Bill in several ways, for example, providing information and advice in the setting, monitoring and achievement of targets. This would be consistent with our current roles and functions.

3.2.2 In our remit letter for 2015-16 Welsh Government has provided us with £825,000 specifically to examine how we might become a “carbon positive” organisation. In undertaking this work, we expect to gain a better understanding of the financial implications for NRW.

4. Part Three: Charges for Carrier Bags

4.1 We are supportive of the additional powers for Welsh Ministers to charge for other carrier bags. We believe this change will further support the incentive for reuse, thus safeguarding valuable resources. Reducing the number of bio-degradable carrier bags in use across Wales will, over time, reduce the number littering our rivers, beaches and marine environments and inadvertently entering the food chain. This measure provides a useful mechanism to establish and raise awareness of the behaviour change necessary to deliver Welsh Government ambition for zero waste.

4.2 We would support a policy preference for environmental good causes to benefit from the proceeds of the carrier bag charges. We recognise a possible role for NRW to work with environmental charities to help inform how such monies could be put to best use to maximise the benefits for the environment and people of Wales.

4.3 There are no cost implications on NRW of this Part.

5 Part Four: Collection and Disposal of Waste

5.1 The need for the legislation

5.1.1 We believe the proposals will assist delivery of Towards Zero Waste policy objectives and increase the quantity and quality of recyclates, supporting the establishment of a circular economy in Wales.

5.1.2 The focus of many of the policy and legislative drivers to date has been on municipal waste. This has been very successful, with Local Authorities collectively achieving 54% recycling rate last year. However, household waste accounts for just 16% of the overall waste produced in Wales. The vast majority of waste is generated by the industrial, commercial, construction and demolition sectors. The proposals will apply to all waste streams and hence has implications for all sectors.

5.1.3 The existing separate collection regulations are limited in effectiveness as they only place a requirement on waste collection operators, including private companies, social

enterprises and local authorities, to provide their customers with separate collections for paper, metal, plastic and glass. There is no direct responsibility for the producer to participate.

5.1.4 Any change to waste legislation must take care to avoid any perverse environmental or economic outcomes. Such issues could result, in part, from the lack of suitable treatment /reprocessing facilities within Wales and further afield. Whilst we strongly support the principles of waste recovery and the obvious benefits to the economy and environment of Wales from the appropriate recycling of wastes as a resource, this can only be in the context of wastes being managed appropriately, with necessary environmental safeguards.

5.2 Proposals for separate collection and disposal of waste

5.2.1 We believe the proposals in Section 66 to require non-domestic premises to put their waste out for collection, will provide a clearer and more enforceable framework.

5.2.2 We support the proposals for materials, such as food waste, to be collected separately. This will divert these materials from disposal at landfill or incineration, enabling a useful resource to be captured and recovered/recycled. Any proposed changes would require detailed modelling and the benefits of international experience where available, to ensure that all potential outcomes - positive and negative - are identified to avoid perverse consequences.

5.2.3 The inclusion of wider powers to ban some recyclable waste from incineration set out in Section 68 is sensible and working in conjunction with proposed landfill bans, would provide a useful additional driver to ensure resources are not wasted. This will also provide flexibility for the Welsh Government to modify the legislative regime in support of future policy objectives. The consequence of any future proposed changes would need to be fully considered (as in this case) before introduction.

5.2.4 In addition, when considering Local Authority Recovery Targets, Landfill Allowances Scheme and landfill tax, it is not yet clear that further regulatory interventions are necessary. We would like to see further voluntary measures to increase participation in recycling (for businesses) and by the waste industry considered alongside proposals for regulation and enforcement. These measures aim to change behaviour and so there is also a need for education to effect behaviour change, by Welsh Government, waste service providers (private sector and Local Authorities), and other appropriate bodies including NRW.

5.3 Implementation

5.3.1 We will continue to work with Welsh Government to provide technical information and to advise on the practical implications of the proposed changes. It is likely that the provisions will require NRW to produce advice, guidance and training for our staff as well as for our customers. Some permits and compliance assessment tools will need to be varied to take account of the additional requirements. These new duties will also require additional inspection of waste producers.

5.3.2 To ensure that the implementation of these requirements are effective it is important that Welsh Government provide adequate funding to the regulator to enable an appropriate compliance and enforcement regime.

5.3.3 Whilst we support the proposal in Section 67 to ban food waste from disposal at sewer, we do not believe NRW is the most appropriate body to regulate. We would have limited interaction with the businesses affected by this requirement; sewerage undertakers or Local Authority food hygiene inspectors may be better placed to regulate this.

5.3.4 Some small businesses may have limited space for separate recycling bins for all the waste streams. Also, if only small quantities of some waste categories are produced, small businesses may have difficulty obtaining a waste contractor at an economic rate. Early feedback from companies surveyed as part of the 2012 waste arisings survey has indicated that companies are already recycling and segregating where it is economic to do so, whereas small businesses find this more challenging. There may be opportunities to innovate. For example, drawing on initiatives from Europe where street-level recycling schemes operate for small businesses. Collection system providers could also adapt their service with encouragement from Welsh Government, prompting the markets to respond and adapt to these changes so that this material is appropriately managed and recycled and recovered in a timely fashion, avoiding unnecessary stockpiling of material.

5.3.5 We are happy to work with Welsh Government and the Waste and Resources Action Programme to consider how we can aid waste producers, particularly small businesses, and to ensure that waste management service providers understand the new requirements and adapt their waste management practises.

5.3.6 Within our offices and facilities we want to help the move towards a circular economy in Wales, though our own actions in relation to our own use of resources. We already actively manage our waste aiming to minimise waste at source and ensuring any waste we do produce is stored securely, segregated and transferred for recycling. We are happy to share the experience we have had with others.

5.4 Financial Implications of Part 4 Collection and disposal of waste for NRW

5.4.1 We have worked with Welsh Government in their development of the indicative regulatory impact assessment to consider the implications of the waste provisions on NRW. We are happy that the indicative costs presented provide a reasonable reflection of the costs we may incur implementing these new regulatory duties. The provisions included in the Bill will allow Welsh Government to develop regulations. Additional information related to the implementation of these regulations will also be available. We understand that the regulations will be subject to a further RIA. This process will refine the cost estimates and provide us with greater certainty on the likely costs we will incur.

6 Part Five: Fisheries for shellfish

6.1 Need for the legislation

6.1.1 We believe the changes proposed in the Bill will help to enhance the management and protection of marine protected areas and the wider marine environment.

6.1.2 Currently the Sea Fisheries (Shellfish) Act 1967 grants the Minister the powers to issue a certificate to the grantee of a Several or Regulating Order to cease activities within the prescribed area in which their rights are exercisable, only if they are not properly cultivating the ground. The new proposals will strengthen and widen the Minister's ability to intervene in the operation of a Several or Regulating Order if it is perceived the grantee's activities or external circumstances such as impacts from non-native species are causing environmental harm by the issuing of a Site Protection Notice.

6.2 Financial implications of Part five for NRW – fisheries for shellfish

6.2.1 There are minimal cost implications on NRW of this Part. NRW may be required to provide evidence to help determine whether environmental harm would occur.

7 Part Six: Marine Licensing

7.1 Need for the legislation - Marine Licensing

7.1.1 We agree that having a wider suite of charging powers will allow NRW to achieve greater cost recovery in undertaking its delegated functions under the Marine Licensing regime. This will enable NRW to continue to offer services such as more thorough pre-application advice, which will benefit both the applicant and NRW's licence determination process. In summary, it will allow NRW to provide a marine licensing regime that has fairer charges and is fit for purpose. We are part of a Welsh Government Working Group developing the approach to implementation working with marine stakeholders across Wales.

7.2 Financial implications of Part six for NRW – Marine Licensing

7.2.1 The powers will enable cost recovery therefore having a positive financial impact on NRW.

8 Part Seven: Miscellaneous

8.1 Need for the legislation - Flood risk management committee

8.1.1 We believe that it is appropriate to disband the current FRMW committee and replace it with a new committee that advises at a Wales wide basis on the whole of the flood risk management agenda. NRW is one of 28 statutory flood and coastal risk management authorities and our current committee's remit is limited to the activities of NRW on managing river and coastal flood risk. The management of local sources of flooding such as surface water and coastal erosion is led by Local Authorities in partnership with water and sewerage companies. A wide range of infrastructure operators and resilience partners play key roles. Therefore it is sensible to have a committee, led by and responsible to Welsh Ministers, with the remit to look at the complete picture, to ensure investment is targeted and action delivered in the most efficient and effective way.

8.1.2 We believe it is very important for the new committee to be a key conduit for advising on the strategic direction for flood risk management. This includes advising on the shaping and implementation of WG's national Flood and Coastal Erosion Risk Management Strategy, discussing the resolution of barriers to effective flood risk management and sharing of good practice approaches.

8.2 Need for the legislation - S83. Repeal of requirements to publish in local newspapers etc.

8.2.1 We welcome the repeal of what is now an outdated form of communication. It will enable NRW to offer a more bespoke and effective approach to how it consults local communities on proposals relating to its management of Internal Drainage Districts (IDDs), such as boundary revisions, the raising and allocation of drainage rates etc.

8.3 Need for the legislation - S84. Power to make provision for appeals against special levies

8.3.1 We welcome the addition of this appeal mechanism to the Welsh Ministers regarding the special levies charged to Local Authorities by NRW.

8.3.2 Following the transfer of functions of the Welsh Internal Drainage Boards, NRW now sets these levies, along with land owner rates, to recover costs incurred from the exercise of functions relating to land drainage within our IDD's. Therefore we recognise the need to create an alternative mechanism for Local Authorities for arbitration on NRW's IDD levy setting.

8.4 Need for the legislation - S85. Power of entry: compliance with order for cleansing ditches etc.

8.4.1 We welcome the intention to clarify that agents authorised by the Welsh Government have the right of entry to land to enable investigation of alleged non-compliance with an ALT Order in cases where access is refused by a party to that Order. There was previously no mechanism to allow for entry to land to enable investigation

8.5 Financial Implications of Part 7. Miscellaneous – Flood Risk Management for NRW

8.5.1 The typical annual costs for the running of NRW's current committee are circa £21,000. As the new committee's remit and function will be to advise the Welsh Government, with its Chair responsible to Welsh Ministers and secretariat provided by WG, it will be appropriate for NRW's flood Grant-In-Aid to reduce by that amount.

8.5.2 NRW estimates it costs £40,000 in staff time preparing papers and attending its current committee meetings. A significant proportion of that work involves monitoring and reporting project and financial progress on its annual flood risk management capital and revenue programme. The Bill's proposals for the scrutiny of that work to come under the remit of NRW's Board means this work will continue at current levels, but reporting to a different body. NRW is expected to play a key role in the Welsh Government's new committee, due to our all-Wales remit to collate and supply data on flood risk management implementation on a strategic and operational basis. As such, we see the Bill's proposed changes to NRW's roles as cost neutral in terms of NRW's future governance requirements and input to the new committee.

9 Part 8: General

9.1 We have no comments or observations on this section.

10 Schedules

10.1 We acknowledge the inclusion of Schedule 2 Para 8 – which makes an amendment to WFG Act so that it refers to the potential role of Area Statements as an importance evidence base to support the well-being needs assessment.

10.2 There is a key opportunity here for the Environment Bill to help provide further clarity around the links to the land-use planning, and marine planning systems in line with our comments in para. 2.3.1 above. For example, we would suggest a similar amendment to the S3. Planning (Wales) Act to ensure that s60 (5) of the Planning and Compulsory Purchase Act (2004) (PCPA) includes reference to the NNRP.

10.3 A similar clause could be inserted at Section 6, in PCPA - 60I (6) referring to Area Statements.

10.4 Consideration should be given to inserting a paragraph in Schedule 6 (3) of the Marine and Coastal Access Act (2009) "Marine plans to be compatible with certain other plans" to draw reference to the National Natural Resources Policy.



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Agenda Item 7.1

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Annwyl Mr Jones

Further to yesterday's National Assembly Environment and Sustainability Committee evidence session, please find below examples of potential conflicts and overlaps between the Well-being of Future Generations (Wales) Act 2015 and the Environment (Wales) Bill which could cause problems, as requested by the Committee.

I trust Committee members appreciate why the complexity of the Act coupled with the limited staff resources the FUW has to cover a plethora of policy areas makes citing such specific examples at short notice impossible.

Yn gywir

Nicholas Fenwick

Head of Policy

Sections of the Well-being of Future Generations (Wales) Act 2015	Sections of the Environment (Wales) Bill	Comments
<p><u>3 Well-being duty on public bodies</u></p> <p>(1) Each public body must carry out sustainable development.</p> <p>(2) The action a public body takes in carrying out sustainable development must include—</p> <p>(a) setting and publishing objectives (“well-being objectives”) that are designed to maximise its contribution to achieving each of the well-being goals, and</p> <p>(b) taking all reasonable steps (in exercising its functions) to meet those objectives.</p> <p>(3) A public body that exercises functions in relation to the whole of Wales may set objectives relating to Wales or any part of Wales.</p> <p>(4) A public body that exercises functions in relation only to a part of Wales may set objectives relating to that part or any part of it.</p> <p><u>4 The well-being goals</u></p> <p>A prosperous Wales</p> <p>An innovative, productive and low carbon society which recognises the limits of the global environment and therefore uses resources efficiently and proportionately (including acting on climate change); and which develops a skilled and well-educated population in an economy which generates wealth and provides employment opportunities, allowing people to take advantage of the wealth generated through securing decent work.</p> <p>A resilient Wales</p> <p>A nation which maintains and enhances a biodiverse natural</p>	<p><u>6 Biodiversity and resilience of ecosystems duty</u></p> <p>(1) A public authority must seek to maintain and enhance biodiversity in the exercise of functions in relation to Wales, and in so doing promote the resilience of ecosystems, so far as consistent with the proper exercise of those functions.</p> <p>(2) In complying with subsection (1), a public authority must take account of the resilience of ecosystems, in particular the following aspects—</p> <p>(a) diversity between and within ecosystems;</p> <p>(b) the connections between and within ecosystems;</p> <p>(c) the scale of ecosystems;</p> <p>(d) the condition of ecosystems;</p> <p>(e) the adaptability of ecosystems.</p> <p>...</p> <p><u>10 Area statements</u></p> <p>(1) NRW must prepare and publish statements (“area statements”) for the areas of Wales that it considers appropriate for the purpose of facilitating the implementation of the national natural resources policy.</p> <p>...</p> <p><u>12 Welsh Ministers’ directions to implement area statements</u></p> <p>(1) The Welsh Ministers may direct a public body to take such steps as appear to them to be reasonably practicable to address the matters specified in an area statement under section 10(3).</p> <p>...</p> <p><u>13 Guidance about implementing area statements</u></p> <p>(1) In exercising its functions, a</p>	<p>The <i>well-being goals</i> identified in the Well-being of Future Generations (Wales) Act cover a diverse range of areas including prosperity and language.</p> <p>The <i>well-being objectives “designed to maximise its contribution to achieving each of the well-being goals”</i> will be similarly diverse but presumably more detailed.</p> <p>Section 6 of the Environment Bill places a duty on public bodies to maintain and enhance biodiversity and promote the resilience of ecosystems by taking account of the diversity between and within ecosystems; the connections between and within ecosystems; the scale of ecosystems; the condition of ecosystems; and the adaptability of ecosystems.</p> <p>In terms of a number of the well-being goals and likely well-being objectives, there is a clear overlap with those duties identified in Section 6 of the Environment Bill, while in relation to some of those goals and objectives there may be a direct conflict – for example where prosperity and the Welsh language may be compromised by actions aimed at complying with Section 6.</p> <p>As such, there is a lack of clarity regarding where the balance between Sections 3 and 4 of the Well-being of Future Generations Act and Section 6 of the Environment Bill should lie, what should take precedent, and how the two pieces of legislation should interact given potential conflicts and overlaps.</p> <p>Within areas established under Section 10 of the Environment Bill (Area Statements) such overlaps and in particular conflicts (with well-being goals and objectives established under the Well-being of Future Generations Act) are</p>

<p>environment with healthy functioning ecosystems that support social, economic and ecological resilience and the capacity to adapt to change (for example climate change).</p> <p>A healthier Wales</p> <p>A society in which people's physical and mental well-being is maximised and in which choices and behaviours that benefit future health are understood.</p> <p>A more equal Wales</p> <p>A society that enables people to fulfil their potential no matter what their background or circumstances (including their socio economic background and circumstances).</p> <p>A Wales of cohesive communities</p> <p>Attractive, viable, safe and well-connected communities.</p> <p>A Wales of vibrant culture and thriving Welsh language</p> <p>A society that promotes and protects culture, heritage and the Welsh language, and which encourages people to participate in the arts, and sports and recreation.</p> <p>A globally responsible Wales</p> <p>A nation which, when doing anything to improve the economic, social, environmental and cultural well-being of Wales, takes account of whether doing such a thing may make a positive contribution to global well-being.</p> <p>...</p> <p><u>18 Commissioner's general duty</u></p>	<p>public body must have regard to any guidance given to it by the Welsh Ministers about steps that should be taken to address the matters specified in an area statement under section 10(3).</p>	<p>likely to be exacerbated.</p> <p>The Future Generations Commissioner, Advisory Panel and Public Service Boards have various duties in terms of the well-being goals and objectives, yet there is no clarity as to how these would deal with possible the possible or likely conflicts referred to above.</p> <p>As already stated, the above are just some examples of concerns regarding conflicts and overlaps between the Well-being of Future Generations Act and the Environment Bill, a lack of clarity regarding which is likely to add to the already formidable costs of implementation.</p>
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The general duty of the Commissioner is—

(a) to promote the sustainable development principle, in particular to—

(i) act as a guardian of the ability of future generations to meet their needs, and

(ii) encourage public bodies to take greater account of the long-term impact of the things that they do...

36 Well-being duty on public services boards

(1) Each public services board must improve the economic, social, environmental and cultural well-being of its area by contributing to the achievement of the well-being goals.

Agenda Item 10

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