

Cynulliad Cenedlaethol Cymru | National Assembly for Wales

Y Pwyllgor Newid Hinsawdd, Amgylchedd a Materion Gwledig | Climate Change,
Environment and Rural Affairs Committee

Gwaith dilynol ar reoli Ardaloedd Morol Gwarchoddedig yng Nghymru | Follow up work on
Marine Protected Area management in Wales

MPA 10

Ymateb gan : Blue Marine Foundation

Evidence from : Blue Marine Foundation

Key Points

- (i) Since taking over direct responsibility for the Welsh marine environment, the Welsh Government has failed to integrate fisheries management and marine conservation as effectively as has been achieved by relevant English authorities, particularly Inshore Fisheries and Conservation Authorities (IFCAs).
- (ii) A key contributing factor to this failure is that whilst MCAA created a clear statutory framework for England's IFCAs, Welsh Government resisted the imposition of similar management duties for Wales.
- (iii) The National Assembly for Wales has not used its legislative powers to create a suitably robust Welsh regime.

1. I am a geographer recently retired from a senior lectureship in the University of the West of England, Bristol. This written evidence is based on a qualitative study undertaken between April 2016 and February 2017 of key informants and secondary documents concerned with the management of the Welsh marine environment in the pre and post Marine and Coastal Access Act (2009) (MCAA) era. The study was co-authored with Ms Kerry Lewis, at the time of the study, a Lecturer in Law in Aberystwyth University and Mr Blaise Bullimore, a retired marine conservationist with many years' experience working in the Welsh marine environment in a variety of capacities. The study was undertaken for academic purposes and financed as part of my personal staff development research budget. As far as I am aware, it is the only independent academic research that has been undertaken on post-MCAA Welsh marine management over the time-scale we studied. In undertaking our research, we had hoped that it might be of some use in informing the evolving dialogue concerning Welsh marine management. The full study may be accessed at: http://eprints.uwe.ac.uk/34112/1/Managing%20Welsh%20inshore%20marine%20env_AT-KL-BB_amended%20May2018%20%281%29.pdf

A further paper, based on the report has since been published in the journal 'Marine Policy'.

January 2019, Vol 99, pp 359-368 available at:

<https://www.sciencedirect.com/science/article/pii/S0308597X1830438X>

2. I have been asked to submit evidence to your committee by the marine conservation NGO, BLUE though I am not a member of that organisation.
3. With reference to the Terms of Reference, you will see from the date of our study that it would be difficult for me to comment on ToR 1 as our study terminated in February 2017. However, I believe that many of the difficulties experienced in Wales with respect to making progress on improved

management of the Welsh marine environment in its widest sense may only be understood in the context in which MCAA has been implemented in Wales compared to the rest of the UK. This, I believe, comes under part of ToR 2, especially with respect to the 'strategic direction' of marine management.

4. The Marine and Coastal Access Act 2009 (MCAA) introduced a new system of marine management in the UK, its provisions covering the inshore (0–12 miles) and offshore (12–200 miles) regions. MCAA was deemed necessary to ensure "...clean healthy, safe, productive and biologically diverse oceans and seas, by putting in place better systems for delivering sustainable development of the marine and coastal environment" (Boyes & Elliott, 2015). Although MCAA created a 'Welsh Zone', extending the jurisdiction of the Welsh Ministers for certain functions to the median line, discussion of the impacts of MCAA on Wales is notably absent in the published literature. On the introduction of MCAA, the Welsh Government (WG) assumed full responsibility for the management and enforcement of sea fisheries around the Welsh coast, delivered by a new, highly-centralised, in-house Fisheries Unit reporting directly to the Minister. In 2013 this Unit was merged with WG's Marine Branch to form the Marine and Fisheries Division (MFD).
5. **How has MCAA been implemented in England?** (I set out the English system here to facilitate a clear comparison with the Welsh regime).

4.1. Part 6 of MCAA: Management of inshore marine fisheries and conservation

4.1.1. England: Inshore Fisheries Conservation Authorities (IFCAs)

MCAA confers power on the Secretary of State to create inshore fisheries conservation districts in England (MCAA, 2009) (Section 149), for each of which there must be an Inshore Fisheries Conservation Authority (Section 150). Membership, powers and duties of IFCAs are comprehensively set out. Two **duties** are imposed on an IFCa: firstly, managing the exploitation of sea fisheries in its district (Section 153); secondly, ensuring that the conservation objectives of any Marine Conservation Zone (MCZ) in its district are furthered, without being compromised by its fisheries management duties (Section 154). In England, the key duties of an IFCa are to manage the exploitation of the fishery and to protect any MCZs in its district. IFCAs also have powers, including making byelaws (Section 155) for the purpose of performing these duties, as well as enforcement powers (Sections 165 & 166).

Under the Habitats Regulations (Conservation of Habitats and Species Regulations 2010 (SI 2010/490)), all public bodies (including IFCAs) must exercise any functions which are relevant to nature conservation to secure compliance with the EU Habitats Directive. IFCAs are also identified as a 'relevant authority', with power to establish or contribute to establishing management schemes for European Marine Sites (EMS) (Habitats Regulations 6 & 36).

Where an IFCa district adjoins a Welsh inshore region, it "...must take the steps it considers appropriate to co-operate with the Welsh Ministers" (Section 174). The remit of IFCAs is therefore founded on the basis of the need to integrate conservation objectives with one of the key anthropogenic pressures impacting the marine environment: fisheries.

6. **Wales: Inshore fisheries and marine conservation: the role of the Welsh Government**

For Wales, the position is set out in a much shorter Chapter (MCAA (2009) Chapter 3 Part 6. Welsh Ministers have the power to make any provision which an IFCA could make under section 155 (MCAA (2009) (Section 189)), i.e. make byelaws for the purpose of managing the exploitation of the fishery and furthering the conservation objectives of MCZs, **but powers are discretionary, and Welsh Ministers cannot be required to exercise them. In relation to Wales, MCAA is silent as to duties equivalent to those imposed on IFCA: in other words, in Wales, there is no statutory requirement to manage the exploitation of the fishery resource, or to further the conservation objectives of MCZs, or to co-operate with adjoining English IFCA.**

The underlying reasons for this situation relate to the devolution settlement. During the passage of MCAA, the Welsh Minister for Rural Affairs adopted the position that it was politically unacceptable for Westminster to impose duties on the Welsh Ministers:

“...there seems to have been a great deal of interest in the duties placed, or not placed, on Welsh Ministers as they relate to IFCA in the Marine Bill. ... I do not agree with the principle that UK legislation should put duties on Welsh Ministers. Giving us powers... is important, but placing duties on us is not appropriate for UK legislation... Welsh Ministers will be accountable to the Assembly and to the people of Wales... on any implementation of powers” (Jones, E. 2009). The Minister and WG's lawyer argued that the democratic accountability of Welsh Ministers was greater than IFCA, and that there would be little difference between the Welsh and English management regimes. Consequently, no duties were imposed on Welsh Ministers under MCAA.

Under the Habitats Regulations, whereas IFCA are ‘relevant authorities’ in respect of EMS management, and historically the Welsh Sea Fisheries Committees had been, the WG Marine & Fisheries Division is not. As noted above, relevant authorities may exercise their EMS management functions in collaboration with others, and in Wales generally do so through long-established (though non-statutory) relevant authority groups (RAGs). Despite WG's separate duty as a ‘competent authority’ to contribute to EMS conservation¹ and its earlier assurances that proposed changes arising from MCAA would not affect its participation in RAGs², WG Marine & Fisheries Division has, since MCAA, declined to contribute to the work of RAGs in Wales (Interview sources: Marine Conservation Managers). Loss of the Welsh fisheries management authority from RAG membership undermines fully integrated and collaborative management approaches.

Despite having the legislative competence to do so since 2011, NAW has not imposed enforceable IFCA-style duties on WG. Under the MCAA framework, there remains a weakness, as the executive powers on WG cannot be enforced. NAW could address this lacuna in the Welsh inshore fisheries and marine conservation regime by bringing forward primary legislation setting out a more robust

¹ Welsh Ministers are identified as both appropriate and competent authorities in the Habitats Regulations 3(1) and 7(1)b respectively. As such, their duties toward EMS management include those in Regulation 9: “The appropriate authority and the conservation bodies must exercise their functions under the enactments relating to nature conservation so as to secure compliance with the Habitats Directive” (Regulation 9(1)) and “A competent authority must, in relation to a marine area, exercise any of their functions which are relevant to marine conservation, so as to secure compliance with the requirements of the Habitats Directive.” Regulation 9(3).

² In reply to a consultation response asking “How will the new structure be represented on SAC Relevant Authority Groups? WAG will need to be a Relevant Authority, not just a Competent Authority”, WG's response was “There is no reason why WAG could not be a member of these groups”. Welsh Government response to the consultation on the Government's proposal for the future management and enforcement of inshore fisheries in Welsh waters, 12/09/2008: This document is no longer available on the WG website.

statutory framework for Wales with enforceable duties placed on the Welsh inshore fisheries manager, including mechanisms to deliver conservation objectives and to work collaboratively with other marine managers.

7. **Conclusions:** The post MCAA Welsh system centralised decision-making, creating a more remote, less responsive management structure than had existed previously.
8. MCAA did not create marine conservation duties for WG and the NAW has not used its legislative powers to create enforceable duties akin to those of the IFCAs. The sole MCZ in Wales is Skomer Island and the Marloes Peninsular, automatically designated as such under MCAA in 2014 (Part 5) because it was previously a Marine Nature Reserve. With an area of a little over 13 km² it occupies just 0.08 per cent of Wales' territorial seas. Despite the MCZ designation, neither it nor anywhere else in Wales is protected from all forms of fishing or other disturbing or damaging activities; consequently, there is no area in Wales that can be studied to demonstrate the outcomes of comprehensive protection from fishing or other disturbances (Bullimore, 2017). In theory Wales has the largest proportion of its marine area designated as MPA in the UK, it has failed to achieve even one per cent of the IUCN 20–30 per cent target of each marine habitat designated as Highly Protected (“No Take”) Marine Protected Areas by 2012³.

Thus, in Wales, the inshore fisheries management regime responsible for managing some of the most damaging impacts in marine protected areas, has side-stepped its responsibilities with respect to improving their management and condition by failing to implement less damaging fishing activities⁴. Although a substantially greater proportion of the Welsh inshore marine environment is under an MPA designation and therefore, on paper, better protected than those of England or Scotland, in practice, proactive management is lacking and this apparent protection is often ineffective. This is exacerbated by what is now acknowledged as resource and capacity constraints⁵, delaying WMFAG's priority work streams on fisheries and the introduction of improved management measures for EMS to ensure compliance with the Nature Directives⁶. However it could be argued that an equally important reason is that, in its inshore fisheries management function, WG has not engaged meaningfully with the EMS RAGs, despite having being invited multiple times, reflecting its tendency to separate fisheries from marine management⁷.

9. The fundamental weakness in the adoption of MCAA in Wales was the failure to create enforceable IFCA-style duties. The view that there would be greater democratic accountability in Wales than in England has not been realised, resulting in extremely slow progress with respect to fisheries,

³ Recommendations of the Fifth IUCN World Parks Congress, Durban, South Africa.

http://www.uicnmed.org/web2007/CDMURCIA/pdf/durban/recommendations_en.pdf

⁴Welsh Government are working with Natural Resources Wales on a project to evaluate the impacts of fishing on features of Marine Protected Areas (MPAs) in Wales but there have been significant delays in Welsh Government's delivery on this and, as yet, no decisions or public communication on management required by the assessments. Wales Environment Link, June 2018, Response: CCERA Committee Inquiry on the Impact of Brexit on Fisheries in Wales, p 5. <http://www.waleslink.org/sites/default/files/180618_wel_response_to_ccera_fisheries_inquiry.p> df

⁵ Wales Environment Link, June 2018, Response: CCERA Committee Inquiry on the Impact of Brexit on Fisheries in Wales, p 3.

⁶ Natural Resources Wales, 2016. Assessing Welsh Fisheries Activities Project. <<https://naturalresources.wales/about-us/our-projects/marine-projects/assessing-welsh-fishing-activities/?Lang=en>>

⁷Wales Environment Link, June 2018, Response: CCERA Committee Inquiry on the Impact of Brexit on Fisheries in Wales, p 4–5. <http://www.waleslink.org/sites/default/files/180618_wel_response_to_ccera_fisheries_inquiry.p> df

marine conservation management and the creation of MCZs. The failures are exacerbated because the 'emergent public' has failed to emerge with sufficient force to ensure that its elected representatives have acted⁸.

References

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⁸Despite the fact that there is widespread support amongst the British public for new laws that ensure we fish responsibly and protect the marine environment, with 79 per cent believing governments have a moral duty to ensure sustainable fishing. Client Earth, 2018. Press release: British public overwhelmingly support greater fisheries protections after Brexit. <<https://www.clientearth.org/british-public-support-fisheries-protections-brexite/>>