

Climate Change, Environment and Rural Affairs Committee
National Assembly for Wales
Pierhead Street
Cardiff
CF99 1NA

22 June 2017

Dear CCERA Committee Chair and members,

INQUIRY INTO THE MANAGEMENT OF MARINE PROTECTED AREAS IN WALES

Further to my letter of 14 April commenting on NRW's evidence to the Committee, having now watched the Cabinet Secretary's appearance before the Committee on 14 June, I again feel compelled to write drawing attention to misleading and disingenuous statements.

I had hoped for a far more positive and relevant contribution from the Cabinet Secretary (CS). Sadly she appeared both unfamiliar with most of the issues and poorly prepared. She both made errors and seemed dependent on Graham Rees (GR) putting words into her mouth. These shortcomings were magnified by plausible-sounding, but nevertheless misleading and disingenuous contributions made by GR.

The avoidance and circumvention of questions, or simply going off at a tangent, by both the CS and GR in their responses was both obvious and unacceptable. Many responses were disordered and full of displacement activity. Conscious this inquiry is into MPA management, I struggle to recall either of them actually speaking about MPA management at all. "Sir Humphrey triumphant" neatly summed it up.

I have every confidence that you and your fellow Committee members saw through much of the dissembling; however, my conscience obliges me to make the following comments.

Lack of focus on MPA management

Despite being given every opportunity, the CS failed to actually address MPA management. From the answer to the Chair's very first question, which failed to identify any legislation that requires designation and management of MPAs or marine environmental protection, her responses were focused on fisheries and the National Marine Plan rather MPA management.

Despite references to maintaining and enhancing the resilience of marine ecosystems (very roughly paraphrased from OSPAR targets) and "correct and healthy networks" to protect seas (possibly paraphrased from the UK High Level Marine Objectives) her answers also focused on the socio-economic benefits that might be provided by MPAs rather than achieving the conservation goals of MPAs.

The CS referred several times to "balance" between the economy and conservation. However, although she emphasised economic activity she failed to provide any counter balance about how protection and conservation might be achieved.

The subject of the inquiry was repeatedly avoided through references to the long overdue national marine plan (the drafts on WG's website are economically focused with little reference to MPA management) and vague references to undefined strategic solutions.

When her responses came close to addressing MPA management, they were non-specific, repeatedly referring vaguely to a “strategic” approach (despite being pressed for clarification of what this meant), and it was not made clear which MPAs were under consideration (*ie*, whether it was the suite of marine Special Areas of Conservation and Special Protection Areas (European Marine Sites, EMS) designated under the European Habitats and Birds Directives well over decade ago, or possible new MCZs designated under the Marine and Coastal Access Act (MaCAA)). Wales’ only existing MCZ, the re-designated Skomer MNR, which is well managed and successful albeit hampered by limited protection measures, did not get a mention (I refer to my letter of 14 April in respect of responsibility for its management).

Her response to the question how the Cardigan Bay scallop dredging decision aligned with the principles of the WBFG Act listed social and economic considerations, and “supporting coastal communities”, but unacceptably made no mention of environmental protection or MPA management, despite again identifying the need for balance between the economy and conservation.

Her response to a question on engagement by stakeholders was limited only to consideration of fishing interests despite being brought back to MPA management through a follow up question.

WG’s failure to provide any explanation or examples of MPA management effort to deliver the objectives and meet the targets of the Convention of Biological Diversity, OSPAR, the Marine & Coastal Access Act, the Habitats Directive or the UK High Level Objectives and Marine Policy Statement, all of which WG has publicly committed to, was unacceptable in the context of the inquiry.

Regardless of the objectives – environmental, social or economic - as made clear by Lynda Warren, Sue Gubbay and myself in evidence, if there is negligible input to MPAs by way of management, nothing will come out in terms of benefit – neither environmental, social nor economic.

Responsibilities for MPA management

The focus on the “relevant authorities” responsibilities for MPA management was misleading and created a false premise for the discussion and understanding of other issues.

Although not specified, WG’s use of the term “relevant authority” was clearly in the context of EMS management under the Habitats Regulations ¹.

The Regulations unmistakably identify where responsibilities for management lie:

- Regulation 9(1): “The appropriate authority and the nature conservation bodies must exercise their functions under the enactments relating to nature conservation so as to secure compliance with the requirements of the Habitats Directive”.
- Regulation 9(3): “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

¹ The original *Conservation (Natural Habitats, &c.) Regulations 1994* and current consolidated amended *Conservation of Habitats and Species Regulations 2010*; relevant clauses are reproduced in annexe to this letter.

The concept of “relevant authority” in other MPA legislation is elastic; it is defined in several different ways in the MaCAA, where clause 125(11) specifically identifies as a relevant authority “in relation to an MCZ in Wales, the Welsh Ministers” in specific circumstances.

with the requirements of the Habitats Directive”.

The Welsh Ministers are unambiguously identified as both “appropriate” and “competent” authorities by Regulations 3(1) and 7(1)(b) respectively.

The responsibilities of competent authorities (CAs) for MPA management depend on their functions. CAs with limited functions in respect of marine environmental management (*eg* local authorities and even NRW, which actually has very few ²), have correspondingly limited EMS management functions.

The CS’s assertions about NRW statutory duties were misleading. Whilst she clearly – and correctly - stated that NRW need to fulfill their statutory responsibilities first, she appeared unaware of the limited nature of NRW’s statutory responsibilities for MPA management and implied that those duties are greater than they actually are.

WG have crucial relevant functions, *eg* as fisheries manager and the responsibility for marine spatial planning; consequently it is indisputable that they have fundamental responsibilities for MPA management, as indeed the context of several of the Committee’s questions clearly recognised.

Relevant authorities (RAs) are simply a subset of competent authorities. The status of “relevant authority” assigns no more responsibility or duty than is assigned to all “appropriate” and “competent” authorities by the Habitats Regulations. The only difference is that they are provided with the option (Regulation 36), of exercising their functions "so as to secure compliance with the requirements of the Habitats Directive" through a management scheme. Working together as RAGs is simply an efficient way of integrated and collaborative working and was recommended by government guidance.

Relevant authority groups (RAGs) have no statutory basis and no legally defined constitution, remit or authority. There is nothing inherently magical about them; they are simply a good practice means of collaborative working. In England these groups chose to call themselves management groups and many of them have government departments and other "non-RAs" as members.

On several occasions whilst a RAG EMS Officer, I attended meetings or presentations in which WG officials repeatedly stated that WG was not an RA, as if this implicitly absolved it from management responsibilities and prevented it working collaboratively with RAGs. GR repeated this claim, in the same context during this session.

However, in response to further questioning, GR’s statements that “WG are one of the management authorities, alongside all of the others” and that “Within that {Management Steering} Group we’re all jointly responsible for management of MPAs” revealed his clear awareness and understanding that WG does indeed have direct management responsibilities relevant to MPAs. Nevertheless, throughout the session both he and the CS spoke as if WG were almost bystanders compared to the other authorities.

The constant repetition that WG is not an RA is a red herring, an irrelevant distinction that appears intended to distract from WG’s responsibilities. Given that WG have more functions relevant to marine conservation (not least fisheries management), than any of the other competent authorities including NRW, WG’s attempts to imply that failures to undertake

² The *Natural Resources Body for Wales (Functions) Order 2013*, as amended by the *Environment (Wales) Act 2016*, section 5; the only specific duties for NRW in the Habitats Regulations additional to the general requirements of Reg 9(1) are the provision of conservation objective advice (Reg 35), and some duties for condition assessment (Regulation 48(4)), including carrying out monitoring if directed by WG (Reg 48(6)).

appropriate MPA management lie with authorities with lesser management responsibilities are indefensible.

Further, given the efforts and financial contributions to support collaborative working made by relevant authorities over the last two decades, that the Cabinet Secretary has written to the very authorities struggling to make collaboration on MPA management work to “remind them of their responsibilities”, whilst defaulting on WG’s own, is reprehensible.

MPA Management Steering Group (MSG)

Given that the MSG is the Group that the CS claims to rely on most, it is disappointing that she seemed to know so little about it (or that she or even the Group’s chair were able to correctly identify how long it has been in existence).

The MSG is not just chaired by WG, but its membership is loaded with WG Marine and Fisheries Division staff, who also provide the secretariat. Independent stakeholders (excluding NRW) representing local authorities, National Parks, ports, water authorities comprise well under half the membership, but have considerable relevant experience and expertise having been engaged in EMS management for almost two decades as members of one or more RAGs.

These independent MSG members regularly commented to myself, when an RAG EMS officer, and to other EMS officers, that the minutes of the Group’s meetings often poorly reflected their recollections and notes, and poorly represented discussions and agreements.

Given the heavy numerical skew of the membership toward WG and NRW and that WG both drive the agenda and maintain the official record, assertions about Group agreements and advice need to be treated with caution and carefully scrutinised to ensure that independent members’ views and advice have not been not overridden and their presence in the Group not exploited as a mechanism to rubber-stamp WG officials’ views and proposals for presentation to the CS, particularly in the context of the CS’s claimed “absolute” support for the Group and acceptance of its advice.

The specific assertion by GR that there was a lack of appetite amongst the MSG members for a proposed seven area funding model, because it was “too challenging for the management authorities”, and the implication that the Group unanimously reject that option in favour of a "strategic" all-Wales solution was disingenuous and misleading since:

- both WG and NRW are two of those management authorities on the MSG and had considerable influence over the decision;
- the specific formula proposed equal contributions from all authorities regardless of their geographical or functional involvement in MPAs; thus a local authority with very limited relevant functions in a part of one MPA would have been required to contribute the same as authorities with functions across all MPAs (including NRW) and the list of proposed contributors excluded WG. It was this proposed formula that the independent members considered unfeasible rather than the principle of the seven area approach.

GR’s clear evasion of Simon Thomas’s direct question whether WG were prepared to make a financial contribution was indefensible.

Resources

The CS appeared to make contradictory assertions about whether she perceived funding for MPA management to be an issue or not, twice reversing her statements following input from

GR. This inconsistency undermines confidence in her statements.

The CS's assertions that NRW have sufficient resource to undertake their monitoring functions and other statutory duties, despite the evidence to the contrary from NRW and other witnesses to the inquiry, were misleading, unsupported by evidence and unsustainable. Her casual dismissal of NRW's and other witnesses' identification of resource shortfalls for site condition monitoring as "special pleading" was unacceptable.

WG's responses to questions about RAG funding, performance and spending were wholly uninformed:

- Throughout my time as a RAG EMS officer and, I understand, since, WG M&FD and NRW were kept fully apprised of what RAGs and their officers were doing, how they were working and what they were delivering; therefore the assertions that WG did not understand what they were doing are unjustifiable.
- The CS's claim that WG did not understand what RAGs (or their officers) were doing or delivering can only mean that she had not been informed by her officials.
- The attempt to suggest that money was being wasted on paying for office space when officers of all RAGs have been hosted as in-kind contributions by various relevant authorities around Wales for two decades is unacceptable.
- The assertion that some RAGs failed in NRW's bidding process for "project based" funding was entirely misinformed and inaccurate. No opportunity had been available to amend bids and, despite formal complaints, NRW had not permitted any appeal against rejections of bids.
- The reference to "NRW's" "prioritized improvement plans" failed to acknowledge that the information base for them was drawn mostly from RAG management schemes and the crucial role which RAG EMS officers had played in the prioritisation process.

Other comments

Through her reference to "favourable areas", a phrase which has no meaning in this context, the CS's inability to identify even one kind of MPA by name suggests poor knowledge and understanding, and that she regards the issue with inadequate seriousness.

WG's response to the question on the division of responsibilities between conservation and other functions within M&FD was scarcely credible. Whilst the CS was unable to make a split, GR claimed that the whole Division is engaged in the conservation function in one way or another but gave no explanation or evidence in support. My personal experience of the Division since its creation makes his statement very difficult to accept. However, GR's response to the follow-up question ("it's all about sustainable management of natural resources") emphasizes the points made above, that WG's focus is on economic outcomes from MPAs at the expense of the conservation and environmental protection objectives of MPA legislation and conventions.

The CS's reference to commissioning research was an inappropriate answer to the question about site condition monitoring and it suggested a lack of knowledge or understanding of the range and amount of marine environmental monitoring carried out to enable reporting on the condition of designated MPAs.

The reference to collaboration with the JNCC (Joint Nature Conservation Committee, not, as stated, Commission) and the country conservation agencies in respect of condition monitoring and beginning work which will bear fruit later this year is misleading. The

agencies have been collaborating and working to common standards for almost 20 years; it is therefore unclear to what GR referred.

Whilst Jenny Rathbone made it clear the fisheries protection vessel days-at-sea statistics I had referenced were for the former South Wales SFC district, the figures Andy Fraser quoted in rebuttal were for overall, all-Wales, days at sea (*ie.* including former North Wales SFC district); *ie* they are not comparable.

Throughout my time as a RAG EMS officer, WG officials repeatedly claimed during meetings that they simply represent their Minister's views and were unable to make to agreements without Ministerial clearance. Of course it was recognized that such "Sir Humphrey" assertions of merely being humble functionaries belied the influence of civil service officials. Nevertheless, it was transparently clear during this session how much they influence and shape those Ministerial views.

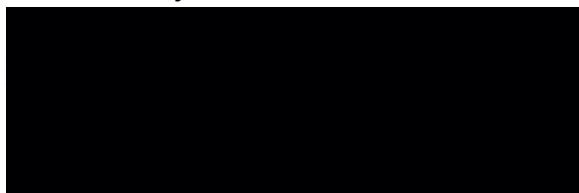
Since it appears that the CS is so highly dependent on her civil servants for advice, guidance and information, I can only assume that the errors and misrepresentations she made during this session were largely based on briefings from her M&FD officials. I find it both very difficult to understand why, and indefensible that civil servants should be so disingenuous and labour so transparently to circumvent both the letter and spirit of the relevant marine environmental legislation (both UK and international) and cherry-pick objectives from WG legislation (particularly WBFGA) and policy.

To be brutally frank, I find the obvious dishonesty exhibited to be an insult not only to the intelligence of the Committee, but also to the honorable witnesses that gave scrupulous evidence during this inquiry, to the hard work and effort of the many officers and management authority representatives that have striven to deliver MPA management for many years whilst being undermined by WG officials and, lastly, to the future generations whose living environment the WBFG Act is intended to protect.

To fully identify all the dissembling from the WG session would take me several more pages but I am conscious I have trespassed on your patience sufficiently already. I would be pleased to expand on or further explain any of the foregoing points on request.

Should this letter be placed on the public record, I would be grateful if my personal contact details were redacted.

Yours sincerely,

A large black rectangular redaction box covering the signature area.

Blaise Bullimore

Annexe. Extracts from the CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2010

Interpretation

3.—(1) In these Regulations—

“the appropriate authority” means the Secretary of State in relation to England, and the **Ministers in relation to Wales**

Competent authorities

7.—(1) For the purposes of these Regulations, “competent authority” includes—

(a) any Minister of the Crown (as defined in the Ministers of the Crown Act 1975(a)), government department, statutory undertaker, public body of any description or person holding a public office;

(b) the **Welsh Ministers**;

Exercise of functions in accordance with the Habitats Directive

9.—(1) The **appropriate authority** and the nature conservation bodies **must exercise their functions under the enactments relating to nature conservation so as to secure compliance with the requirements of the Habitats Directive.**

(3) 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.

36.—(1) The relevant authorities, or any of them, **may** establish for a European marine site a management scheme under which their functions (including any power to make byelaws) are to be exercised so as to secure in relation to that site compliance with the requirements of the Habitats Directive.