



Mike Hedges AM
Chair of Climate Change, Environment & Rural Affairs Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

Sent via email

10th June 2019

Dear Mr Hedges,

RE: Further evidence on fisheries licences

Further to our oral evidence to the CCERA Committee on Thursday 6th June for the [follow up work on Marine Protected Area management](#), we are writing to provide further information on fisheries licences in relation to factory fishing (annex 1).

This was prompted by the following question:

If we leave the EU and if the Welsh Government gets control of licensing of fishing in Welsh waters, what's to stop them simply only issuing licences for small-scale fishing and simply not issuing licences for factory fishing?

We have also provided a second briefing on European Marine Sites and Marine Conservation Zones (provided as an attachment to this email). We share this in response to some evidence from other attendees that suggested European Marine Sites could be converted into Marine Conservation Zones. Our briefing outlines why we consider European Marine Sites and the Nature Directives to be vital to the network of Marine Protected Areas in Wales. Please note that this briefing pre-dates the consultation on environmental governance and principles in Wales, which is relevant to the final paragraph.

We thank you again for the opportunity to input into the Committee's inquiry on Marine Protected Area management.

Yours sincerely,

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Annex 1: Briefing on fisheries licences

Fisheries licences after Brexit

The UK Fisheries Bill, as currently drafted, makes it clear that each administration is responsible for the licensing of its own vessels¹. The Bill also provides powers to Welsh Ministers to license foreign fishing vessels within Wales and the Welsh zone². In preparation for a possible exit before the UK Fisheries Bill receives Royal Assent, the Fisheries Administrations have also introduced secondary legislation³ to allow control of foreign vessels in UK Waters in the interim. Under this new legislation, from exit day, fishing in the Welsh zone by a foreign fishing boat is prohibited unless authorised by a licence granted by the Welsh Ministers.

However, in response to the Committee's fourteenth conclusion on the Legislative Consent Memorandum for the UK Fisheries Bill⁴, the Minister highlighted that Welsh Government "*do not have the means to license other UK vessels in our waters as they will be licensed by their respective administrations (although their actions can be controlled, as necessary, via subordinate legislation specific to the activity that needs to be controlled).*" Based on this, our current understanding is that the licence (and licence conditions) of fishing vessels from the rest of the UK in Welsh waters shall not be under the control of Welsh Ministers. It should therefore be noted that the ability of Welsh Ministers to control factory fishing in Welsh waters by non-Welsh, UK vessels after Brexit may be limited; it will be dependent on the powers contained within the legislation under which they may choose to bring forward subordinate legislation. Clarity from Welsh Government as to which powers it would use to control fishing activities by these vessels, if required, is needed.

It may be the case that securing legislative competence for the Welsh Zone for the Welsh Assembly, could provide greater control over the types of fishing activity in this area; if this was used to bring forward a Welsh Fisheries Bill that sought to do so. However, concerns have been raised regarding the Welsh Government's proposed method for securing this competence (via the UK Fisheries Bill)⁵.

Enhancing sustainability of fisheries in Wales post-Brexit

As highlighted in our oral evidence to the Committee, enhanced sustainability of fisheries in Wales could also be achieved through allocation of any new quota according to criteria developed in accordance with the Wellbeing of Future Generations Act. We were pleased to see that the Minister agreed with this⁶ in her response to the Legislative Consent Memorandum on the UK Fisheries Bill. It should be noted however, that allocation of *existing* quota is complicated by the existence of Fixed Quota Allocations. Welsh Government describes⁷ Fixed Quota Allocation as follows:

"We apportion quota within the UK fishing industry using fixed quota allocation units. This allocation of quota:

- *is held per vessel*
- *allows the holder to catch their share of the quota for fishing stock*
- *is not given to vessels under 10m*
- *follows various adjustments applied by the Fisheries Administrations...*

Once the quota has been allocated, there is an amount left over. This forms the 'pool' against which the under-10m vessel fleet can fish. Again, this pool is split between the four UK Fisheries Administrations, as set out in the UK Fisheries Concordat of 2012."

Additional considerations

¹ UK Fisheries Bill. Clause 10. Power to grant licences in respect of British fishing boats

² UK Fisheries Bill. Clause 12. Power to grant licences in respect of foreign fishing boats

³ The Sea Fish Licensing (Wales) Order 2019

⁴ **Conclusion 14:** The Welsh Government should provide further details about how it intends to use licensing conditions for UK vessels to secure adherence to environmental standards in the Welsh zone. In particular the Welsh Government should set out how licence conditions will be used to address plastic pollution and other, related matters.

⁵ Letter from Welsh Government to CCERA, dated 27th March 2019. *Climate Change, Environment and Rural Affairs Committee report on the Legislative Consent Memorandum in relation to the UK Fisheries Bill.* [Online] Available at:

<http://www.senedd.assembly.wales/documents/s86861/Paper%20to%20Note%20-%20Correspondence%20from%20the%20Minister%20for%20Environment%20Energy%20and%20Rural%20Affairs%20-%2027%20Marc.pdf> [Accessed 10.6.2019]

⁶ Letter from Welsh Government to CCERA, dated 27th March 2019. *Climate Change, Environment and Rural Affairs Committee report on the Legislative Consent Memorandum in relation to the UK Fisheries Bill.* [Online] Available at:

<http://www.senedd.assembly.wales/documents/s86861/Paper%20to%20Note%20-%20Correspondence%20from%20the%20Minister%20for%20Environment%20Energy%20and%20Rural%20Affairs%20-%2027%20Marc.pdf> [Accessed 10.6.2019]

⁷ Fishing quota allocations [Online] Available at: <https://gov.wales/fishing-quota-allocations> [Accessed 10.6.2019]

- The term “factory fisheries” typically refers to fishing vessels with processing and freezing facilities onboard. We do not know the extent of this practice in Welsh waters, however, we would stress that other vessels also have the potential to take vast quantities of fish in a non-sustainable manner.
- Following our departure from the EU, we would welcome greater protections for forage fish species in Wales and are seeking reassurances from Welsh Government that no new fishery for such species will be developed. Forage fish, prey fish or low trophic fish, are small fish species (such as herring, sprat and sandeel) upon which larger animals prey for food. As such, these species are vital for the resilience of the wider ecosystem, providing a crucial trophic link between plankton, seabirds, cetaceans and other top predators in the marine food web.
- The replacement of European funding pots presents an opportunity to further incentivise sustainable practices.



Briefing: European Marine Sites and Brexit in Wales

Summary

- Welsh waters are rich in **wildlife and biodiversity**;
- Marine protected areas (MPAs) have a **vital** role to play in the conservation of habitats and species in the marine environment, and supporting a healthy functioning marine ecosystem upon which many Welsh communities and businesses depend;
- Ecologically coherent networks of MPAs are needed;
- The vast majority of **MPAs in Wales have been designated under European legislation**;
- Different approaches are taken to identify and manage European and domestic MPAs. **Both are crucial to ensuring Wales's marine biodiversity is safeguarded for future generations.**

Welsh seas matter

The waters around Wales contain a staggering variety of species and habitats. They provide a home for amazing wildlife including bottlenose dolphins (the Cardigan Bay population is one of only two resident populations in the entire British Isles), over half of the world's Manx shearwaters and nationally scarce species such as delicate pink sea fans. Much of this special wildlife is found within marine protected areas (MPAs); nonetheless, many of Wales' marine site features are not in favourable condition¹ and need our protection.

Much of our current site protection comes from European law

Wales' MPAs include sites designated under European, as well as domestic legislation. **Currently over 61% of Welsh waters is within MPAs designated under European law. However, to date less than 2% is designated under domestic law²** (see table 1).

Table 1. Marine Protected Areas in Wales³

Marine protected area classification	Designated under	Number in Welsh waters ²	% coverage of Welsh waters ⁴
Special Areas of Conservation (SAC) with marine components	Directive on the Conservation of Natural Habitats and of Wild Fauna and Flora (EU)	15	(44.3%)
Special Protection Areas (SPA) with marine components	Directive on the Conservation of Wild Birds (EU)	12	(17.1%)

¹ Natural Resources Wales. Indicative feature condition assessments for European marine sites (EMS) [Online] Available at: <https://naturalresources.wales/guidance-and-advice/environmental-topics/wildlife-and-biodiversity/find-protected-areas-of-land-and-seas/indicative-feature-condition-assessments-for-european-marine-sites-ems/?lang=en> [Accessed: 06.07.18]

² A Welsh Government led process to designate some additional Marine Conservation Zones under the UK Marine and Coastal Access Act is expected to commence in 2018.

³ Pers comms. NRW. (2018)

⁴ Offshore and inshore waters

Marine Conservation Zones	Marine and Coastal Access Act (England and Wales)	1	(0.04%)
Special Sites of Scientific Interest (SSSI) with marine components:	Wildlife and Countryside Act (UK)	107	(1.3%)

Yellow – Sites underpinned by European legislation. Green – sites underpinned by domestic legislation

The European Nature Directives are fit for purpose

European Marine Sites have been designated in Wales under the Nature Directives⁵. In 2017, following a major review and public consultation, the European Commission announced that these Directives were fit for purpose but in need of better implementation:

*“The Commission has made public the results of its fitness check for the two nature directives on birds (Directive 2009/147) and habitats and species (Directive 92/43). It has found them to be **fit for purpose but in need of better implementation**. The Commission’s fitness checks serve to examine whether directives are still relevant or should be amended, in particular in view of deregulation, and **continue to be acceptable to economic operators...**”*

The four countries of the UK, including Welsh Government, submitted evidence to this fitness check⁶, highlighting their importance:

*“The Article 12 & 17 reports provide evidence of **the direct contribution that the Directives have made towards ensuring biodiversity**. The implementation of the Directives has also had a range of incidental benefits for broader biodiversity...”* [emphasis added].

Domestic legislation was designed to complement, and not to replace the Nature Directives

The UK Marine & Coastal Access Act (MACAA), passed in 2009, introduced new legislation for the better general protection and management of UK seas, including a duty⁷ to designate Marine Conservation Zones (MCZs) to form part of the UK’s MPA network. The MCZ provisions in the MACAA were designed to complement the existing protection in the marine environment, creating additional opportunities to protect nationally-important biodiversity. They were not designed to replace the provisions under the Nature Directives for European Marine Sites (EMS). Indeed, the MACAA is clear that EMS are also part of the UK network.

Marine Conservation Zones offer vital protection to nationally-important species and habitats. Nonetheless, the designation, management and monitoring processes required by MACAA are different and less stringent than those required under the regulations that implement the Nature Directives. As such, a direct conversion of European Marine Sites into Marine Conservation Zones, as currently defined, would risk a significant loss of environmental protection.

⁵ European Union’s Directive on the Conservation of Natural Habitats and of Wild Fauna and Flora and European Union Directive on the Conservation of Wild Birds

⁶ Evaluation study to support the Fitness Check of the Birds and Habitats Directives: UK submission. [Online] Available at: http://ec.europa.eu/environment/nature/legislation/fitness_check/evidence_gathering/docs/Member%20State%20Stakeholders/Nature%20Protection%20Authorities/UK/MS%20-%20UK%20-%20NPA%20-%20EGQ.pdf [Accessed: 06.07.18]

⁷ See relevant sections 116 – 124 of the Marine & Coastal Access Act 2009

Marine protected area networks and Brexit

It is expected that the UK will remain a signatory to the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR) following EU exit, and therefore that Wales will continue to be bound by the requirements of this Convention. Under OSPAR, the UK is committed to contributing to an ecologically coherent network of MPAs in the North East Atlantic; this, in turn, is linked to international commitments under the World Summit on Sustainable Development and Convention on Biological Diversity. Both Marine Conservation Zones and European Marine Sites⁸ are part of this network. Furthermore, our EMS are part of the EU-wide Natura 2000 network, the largest co-ordinated network of protected sites in the world⁹.

Wales' approach to marine protected areas following our departure from the EU should uphold its OSPAR obligations and its commitment to an ecologically coherent UK network, whilst also recognising the need to maintain (if not enhance) the current level of protection currently afforded to our European Marine Sites, which is not sufficiently replicated by OSPAR. Careful consideration should also be given to the role of Wales' (and all of the UK's) European Marine Sites with regards to the ecological coherence of the Natura 2000 network.

Welsh Government's commitments to biodiversity and ecosystem resilience

The Welsh Government has committed to maintaining environmental standards post-Brexit. And indeed, Wales has world-leading legislation for sustainability, with the Environment (Wales) Act (2016) and the Well-being of Future Generations Act (2015) setting out Wales' commitment to biodiversity, ecosystem resilience and sustainable development. It is, therefore, essential that Wales champions European Marine Sites, as a vital way to safeguard our most precious marine life for the future. This will be achieved by **retaining and effectively managing these special sites, designating national sites to complement them and ensuring the ecological coherence of the UK network.**

An ecosystem-based approach to all decisions affecting the marine environment is needed. Welsh Government's current work programmes on marine spatial planning and future fisheries policies are further opportunities to embed this. At the same time, as Wales prepares to leave the EU, it must also ensure that all law and decision making, whether by governments or the courts, is underpinned by strong environmental principles.

Those principles that are set out in the EU treaties, such as the precautionary principle¹⁰, are fundamental to the success of MPA management practices which will deliver ecological, social and economic benefits for future generations. We welcome the Welsh Government's commitment to enshrine the environmental principles in law and address the governance gap that will arise when the UK leaves the EU at the first proper legislative opportunity¹¹. The oversight and enforcement roles currently played by the European Commission are among those that must be replaced by robust new arrangements.

⁸ As well as Ramsar sites and SSSIs with marine components

⁹ European Commission. Natura 2000. [Online] Available at: http://ec.europa.eu/environment/nature/natura2000/index_en.htm [Accessed: 06.07.18]

¹⁰ The Precautionary Principle is described as follows: "the precautionary principle is detailed in Article 191 of the Treaty on the Functioning of the European Union (TFEU). It relates to an approach to risk management whereby if there is the possibility that a given policy or action might cause harm to the public or the environment and if there is still no scientific consensus on the issue, the policy or action in question should not be pursued. Once more scientific information becomes available, the situation should be reviewed". EUR-LEX. Precautionary principle. [Online]: Available at: https://eur-lex.europa.eu/summary/glossary/precautionary_principle.html [Accessed: 06.07.18]

¹¹ Commitment by Julie James AM during the Stage 3 debate of the Legislation Derived from the EU Bill.

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 a respected intermediary body between the government and the environmental NGO sector in Wales. Our vision is a healthy, sustainably managed environment and countryside with safeguarded heritage in which the people of Wales and future generations can prosper.

This briefing represents the consensus view of a group of WEL members working in this specialist area. Members may also produce information individually in order to raise more detailed issues that are important to their particular organisation.

