

Consultation questions

Question 1

Has the management of Welsh seas received sufficient resource and strategic direction to enable sustainable management that supports the well-being of current and future generations? (250 words)

The management of Welsh seas has not received sufficient resource and strategic direction. Both the Welsh Government and Natural Resources Wales (NRW) have suffered cuts and are seriously under-funded in the area of marine management. Combined with voluntary redundancies and staff re-structures resulting in a loss of resources and expertise, this has led to a serious loss of strategic direction.

Welsh Government is committed to achieving ‘clean, healthy, safe, productive and biologically diverse seas’.¹ Only once we have achieved this are we able to fully realise the substantial economic, societal and wellbeing benefits of our MPAs.² Critically, it has been estimated that 50% of European Marine Site (EMS) features are in unfavourable condition.³ Management of damaging fishing activities is vital to reversing this negative trend, and our consultation response will focus primarily on this issue.

In relation to European marine protected areas, Article 6(2) of the Habitats Directive obliges Member States to avoid the deterioration or disturbance of habitats or species for which a European site (a Special Area of Conservation or a Special Protection Area), has been designated. Article 6(3) of the Habitats Directive provides that a plan or project may not be authorised unless it is certain that there will be no adverse effects on the integrity of a European site.

To this end and in recognition of the fact that current management falls short of the legal requirements, the Welsh Government has begun a review of the effects of fishing activities on Welsh European Marine sites, known as the ‘Assessing Welsh Fisheries Project’, (Fisheries Project). While the initiation of this project is most welcome, insufficient funding and resource has been allocated to this project, meaning that progress is moving at a glacial pace.

Welsh Government has so far failed to commit to a timetable for the delivery of the second phase of the Fisheries Project, which is to implement management measures for MPAs. This is not surprising, given it is our understanding that only a limit number of staff members at NRW have been assigned to carrying out the detailed assessments needed to inform management measures that will control the highest risk fishing activities in Welsh waters.

Lack of management of fishing in marine Natura 2000 sites constitutes a breach of the Habitats Directive, unless it can be proved that these activities are not having an adverse effect on a Natura 2000 site’s integrity. ClientEarth first raised concerns about this breach in 2008, but measures still

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69322/pb3654-marine-policystatement-110316.pdf

² See page 16 for links with wellbeing:

http://www.bbwt.org.uk/sites/default/files/files/Securing_The_Benefits.pdf

³ M. Hatton-Ellis, L. Kay, K. Lindenbaum, G. Wyn, M. Lewis, M. Camplin, A. Winterton, A. Bunker, S. Howard, G. Barter & J. Jones, 2012. MPA Management in Wales 1: Overview of current MPA management in Wales and a summary of new MPA management tools. CCW Marine Science Report 12/06/01, 56pp, CCW, Bangor



need to be put in place. At times, there have been gaps of more than a year between substantive communications. This clearly indicates that there has been a lack of prioritisation of this issue.

Please see our answer to Question 7 below for further information on the issues with the Fisheries Project.

Question 2

How should Area Statements, to be developed by Natural Resources Wales, cover Welsh seas? *(For example should the sea adjoining each welsh Local Authority be included in its Area Statement, or should the marine environment be considered separately in one or more marine Area Statements?)* (250 words)

ClientEarth does not wish to comment on this.

Question 3

How well are Wales' MPAs currently being managed? *(This can include aspects such as the condition of sites, staffing to deliver management, surveillance and enforcement activities and the data on the extent of activities taking place in MPAs)* (250 words)



Site condition and management

The extent/distribution and condition of designated features and typical species in Welsh marine sites is currently mainly unknown. This is due to a lack of available site-specific data, combined with the inherent difficulties associated with extrapolating empirical data from other marine sites with similar habitat types to reach conclusions about extent/distribution and condition.

There is also an issue with lack of historic data concerning extent/distribution of features and typical species, resulting in issues with agreeing/setting baseline values when establishing site conservation objectives. Together with the lack of data about current extent/distribution, this has led to many conservation objectives that are not based on sound scientific evidence, and/or that are qualitative rather than quantitative. This will hamper the ability to measure and achieve the conservation objectives.

Decisions about management measures must take into account both the site's conservation objectives and any other relevant data. The lack of effective objectives and data generally are therefore also hampering the ability to devise and implement effective management measures that will lead to sustainable management of MPAs.

There is also an issue with lack of clarity among decision-makers about the relevant legal requirements. For example, in the case of European sites, where there is a lack of evidence to rule out adverse effects on site integrity, the precautionary principle (embedded in Article 6 of the Habitats Directive) should be applied when making decisions about management measures. However, it is our experience that this principle is not being consistently applied.

Surveillance (including extent of activities taking place in MPAs) and enforcement

Fishing activities are a key pressure on marine sites. The costs associated with surveillance of these activities, both in terms of tracking fishing effort generally and for enforcement purposes in the case of closed/restricted areas, are very high. At the moment, insufficient funds are allocated to overcome the challenges associated with adequate surveillance and enforcement, some of which we have listed here:

- There is limited knowledge of the activities of vessels measuring under 12m, as these are not fitted with Vessel Monitoring Systems (VMS).
- Other types of surveillance (e.g. sightings, on-site questionnaires etc.) are less accurate than VMS and cannot be relied on for mapping fishing effort at the scale needed to implement effective management measures or for enforcement purposes.
- There is room for improvement in monitoring for trends in fishing effort and activities.

Staffing issues

We have already set out our comments relating to staffing and resource issues in our response to Question 1 above.

Question 4

What are the key issues affecting the effective management of multi-use MPAs? (250 words)



The National Assembly has not defined ‘multi-use MPAs’ for the purposes of this consultation. This consultation response assumes that this is a reference to MPAs that are open to sustainable uses. This is by contrast with MPAs where no human activity is permitted – commonly known as ‘no-take zones’.

In this context, the following are key issues affecting effective management of MPAs:

1. Lack of adequate/available site-specific data concerning site condition/feature/species extent/distribution and/or failure to use all available data to inform appropriate, quantitative conservation objectives for sites and effective management measures to regulate potentially damaging activities in line with relevant legal requirements.
2. Lack of resource and relevant expertise within Welsh Government and NRW. This is particularly the case in terms of adequate understanding of legal obligations and procedures – for example the ‘appropriate assessment’ procedure required under Article 6(3) of the Habitats Directive.
3. Failure to adequately engage with and achieve buy-in from local communities affected by management decisions.
4. Failure to implement early and adequate consultation about proposed management measures with a wide range of stakeholders, including industry representatives and NGOs, to enable their effective participation in the decision-making process.
5. Lack of resources to enable adequate surveillance and monitoring of activity levels and types to inform management measures and enable effective enforcement.
6. Lack of funding allocated to resolve the above issues.

These issues are explored in further detail in our answers to the above and below questions.

Question 5

Do existing Welsh MPAs currently provide the right protection for the conservation of Welsh marine biodiversity? (250 words)



No, we do not believe that Welsh MPAs currently provide the right protection for the conservation of Welsh marine biodiversity.

Designation

The Welsh Government remains in breach of its obligations to designate MPAs to form an ecologically coherent network, under the OSPAR Convention, the Convention on Biological Diversity, the Birds and Habitats Directives and the Marine Strategy Framework Directive. For example, the Commission has recently commenced legal proceedings against the UK for its failure to designate protected areas for the Harbour Porpoise. This follows on from a recommendation made by the JNCC in 2016 that five such sites should be designated – three of which were either fully or partially in Welsh waters.

Further, a recent report issued by the JNCC found that “*There are a small number of shortfalls in the protection of habitats and species of conservation interest that Welsh Government could address to both ensure that MPAs in Welsh waters adequately represent the features on the Welsh MPA list, and also to contribute to the ecological coherence of the wider MPA network*” (p.2, ‘Assessing the contribution of Welsh MPAs towards an ecologically coherent MPA network in 2016’, H. Carr, H. Wright, A. Cornthwaite, J. Davies, JNCC, 2016).

Management measures

- European Marine sites

We have set out the legal requirements of Article 6 of the Habitats Directive in our response to question 1 above, and also referred to the precautionary principle embedded in Article 6(3) in our response to question 3.

Management measures must be designed to meet the above legal requirements. At present, the Welsh Government is failing to meet these requirements in relation to Welsh MPAs. We are still waiting for detailed appropriate assessments of fisheries impacts and implementation of management measures for European marine sites in Welsh waters, to be undertaken/implemented as part of the Fisheries Project. In addition, there have been procedural irregularities. For example, the Welsh Government’s recently announced decision to re-open Cardigan Bay to scallop dredging preceded the detailed appropriate assessment of the activity’s impacts that is required by law (and we are still waiting for this assessment).

This legislation is designed to provide protection for biodiversity, and the Welsh Government’s failure to abide by it is resulting in a lack of adequate protection for Welsh marine biodiversity.

Question 6

What lessons can be learnt from current MPA management activity in Wales (including designation, implementation and enforcement)? (250 words)



Despite a large area of inshore waters being included within MPAs,⁴ the marine environment around Wales continues to decline. Designation without investment in proper management measures and enforcement for these sites is failing in the delivery of positive conservation outcomes.

There is a lack of funding, resources and expertise to enable effective management and monitoring. European Marine Site Officers are trying their best to deliver, and they have produced some excellent initiatives – however, they are too under-resourced to provide all that is needed.

Case-studies of MPA management, published in 2008, specifically identify a lack of expertise as a cause of failures in management.⁵ Poor communication and low aspirations in preventing damage to features were also identified as issues. We have not seen anything to demonstrate that these issues have since been remediated.

In addition to a lack of clear understanding of the legal requirements, the statutory process required for management of activities is often lengthy and cumbersome, and does not always enable effective mechanisms for making further changes at short notice if these are required.

Wales already has a large amount of expertise and best practice; small networks of people mean that this can be easily

The Welsh Government and NRW also need to co-operate with the UK administrations to ensure effective cross-border management of MPAs.

Question 7

Are there MPA examples or practices elsewhere that Wales can learn from? (250 words)

⁴ Please note that protection is only conferred to the features and not the site as a whole

⁵ Jackson E.L., Langmead O., Evans J., Ellis R. & Tyler-Walters H. 2-008. Protecting nationally important marine Biodiversity in Wales. Report to the Wales Environment Link from the Marine life Information Network (MarLIN). Plymouth: Marine Biological Association of the UK



In 2012, the Department for Environment, Food and Rural Affairs (Defra) announced a 'revised approach' to the management of commercial fisheries in European Marine Sites (EMS). The objective of this revised approach is to ensure that all existing and potential commercial fishing activities are managed in accordance with Article 6 of the Habitats Directive (which applies to sites classified for the protection of birds as well).

On the other hand, the Welsh Government has taken until October 2016 to publish the principles and prioritise report underpinning its equivalent 'Assessing Welsh Fisheries Project'. During this delay, damaging fishing activities have been allowed to continue largely unchecked.

Like the Welsh project, the English 'revised approach' uses a matrix-type approach, whereby fishing activity and feature interactions have been categorised at a generic level, based primarily on peer-reviewed evidence. The resulting matrix has been used to provide regulators with a prioritisation tool, with activity-feature interactions sorted into: (i) high ('red') risk interactions; and (ii) medium ('amber') or low ('green') risk interactions. The equivalent colours used in the Welsh matrix are 'purple' for high-risk interactions, 'orange' for medium-risk interactions, and 'green' for low-risk interactions.

The English 'revised approach' has clear advantages over the Welsh approach, for the following reasons:

1. A decision was taken by the English Government to introduce management measures for 'red' risk activities immediately, without the need to first undertake a detailed assessment under the Habitats Directive. This is because it is accepted that the 'red' or 'purple' high-risk interactions are those that will certainly have adverse effects on site integrity and therefore management measures will be needed. The Welsh Government on the other hand is delaying the process of introducing management measures for high-risk activity significantly, by choosing to first undertake detailed assessments that will not be completed until April 2017 at the earliest. In the mean time, damaging fishing activities are continuing, in breach of Article 6 of the Habitats Directive.
2. The Welsh Government has failed to set out a clear timetable for progressing the Welsh Fisheries Project and, most importantly, implementing management measures in relation to 'purple' risk activities.
3. During the initial phases of the project, a project board was established. This included industry representatives, but no NGO representatives from the conservation sector. The Welsh Government therefore blocked effective participation in decision-making for NGOs with an interest and relevant expertise.

Question 8

The majority of Wales' MPAs are designated under the EU Habitats Directive. How should the Welsh Government's approach to MPA management take account of the UK's decision to leave the European Union? (250 words)



First of all, we note that there are currently no proposals to make changes to the legislation that protects European marine sites (EMSs) and as such these protections continue to apply and must be adhered to. However, we acknowledge that the Habitats and Birds Directives are not EEA required laws and therefore continued UK compliance with these Directives in the long term is particularly uncertain, no matter which post-Brexit path the UK chooses.

However, we should not do away with these sites and the framework that helps to protect important parts of our marine ecosystem. Undoubtedly the EMSs are valuable MPAs which protect precious marine habitats and species, many of which are recognised internationally as particularly vulnerable. EMSs secure some of the most important areas for biodiversity.

The strong arguments in favour of using spatial measures to protect the vulnerable species and habitats remain relevant, despite the result of the EU Referendum. An ecologically coherent network of MPAs in our national waters boosts the health of the marine environment as a whole, allowing damaged, degraded areas to recover and build resilience against current and future pressures. Alongside the fundamental role of a healthy ecosystem in producing seafood, benefits of well-managed MPAs include recreation, a sense of well-being, the capture and storage of carbon, nutrient cycling and processing of wastes.

The selection process for EMSs differs from the criteria for MPAs designated under UK domestic legislation (Marine Conservation Zones) in a number of ways, and the protection afforded by the English network of MPAs is stronger as a result of having a combination of types of MPA.

The management rules relating to EMSs are also robust, which helps to ensure a high standard of protection. These levels of protection should be maintained post-Brexit to secure the continued recovery of historically degraded habitats in many EMSs. In relation to the pressure on marine ecosystems from damaging fishing practices, although there is much more to be done we are starting to make progress on this under the Welsh Government's Assessing Welsh Fisheries Project. This should not be abandoned.

High level political decisions on the nature of the UK's future relationship with Europe will dictate the necessary legal mechanics for keeping the framework that underpins EMSs in the UK, but this is certainly possible. Keeping EMS alongside other types of MPA within the Blue Belt will certainly help to protect the bequest of a healthy marine environment for future generations and will help to secure compliance with international legal obligations.

Question 9

If you had to make one recommendation to the Welsh Government from all the points you have made, what would that recommendation be? (250 words)



We would advise the Welsh Government to put an immediate stop to the most damaging ‘purple risk’ fishing activities taking place in European MPAs. In connection with this, the Welsh Government also needs to allocate additional funds to the Assessing Welsh Fisheries Projects so that it has adequate resource to function effectively. There is an urgent need for the Welsh Government to commit to a timetable for implementation of management measures in MPAs.

Question 10

Do you have any other comments or issues you wish to raise that have not been covered by the specific questions? (250 words)

It is the Welsh Government’s duty to ensure that MPAs are being managed in a sustainable way, in line with Section 3 of the Well-being of Future Generations (Wales) Act 2015, which requires public bodies to carry out ‘sustainable development’. In other words, public bodies must act in a way that seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.

At the present time, management of Welsh MPAs falls far short of this principle, due to the issues raised in our responses to the above questions. If prompt action is not taken to ensure sustainable management of Welsh MPAs in accordance with the relevant legal frameworks, negative impacts on biodiversity will have knock-on effects for generations to come. If MPAs are well-managed, they will also result in significant social and economic benefits derived from marine goods and services which will continue to be realised for generations to come. The UK National Ecosystem Assessment calculated the contribution of marine biodiversity in the UK alone to be £1.7bn per year. The Natural Capital Committee’s second State of Nature report also highlighted the key role that MPAs can play in fostering the kind of recovery required to ensure that the full benefits of a healthy marine environment are realised. For example, the report suggested that the restoration of marine fisheries to historic stock levels seen from the 1930s-70s, in part through the introduction of MPAs, could be worth up to £1.4bn per year of additional value.

The current (lack of) management is a clear violation of the requirements of a number of international conventions and laws on the environment (including the OSPAR Convention, and the Convention on Biodiversity), EU laws (in particular, the Birds and Habitats Directives and the Marine Strategy Framework Directive) and also Wales’ own national legislation, as demonstrated above.

