

The Impact of the Marine and Coastal Access Act (2009) on Welsh Inshore Fisheries and Marine Management.

Abstract

This paper 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. 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). 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, and, subsequently, the National Assembly for Wales has not used its legislative powers to create a suitably robust Welsh regime. Furthermore, the suspension in 2016 of the stakeholder 'Inshore Fisheries Groups' has partly dismantled the relatively weak co-management regime in Wales. Although the Welsh Marine Fisheries Advisory Group remains, its scope has been much reduced. Post MCAA, the Welsh system has centralised decision making, creating a more remote and less responsive management structure than had existed previously.

Keywords

Marine and Coastal Access Act; Welsh Government; co-management; deliberative democracy; political pragmatism; devolution

1. Introduction

Inshore waters up to six nautical miles from the coast fall outside the scope of the EU Common Fisheries Policy. Under the Sea Fisheries Regulation Act 1966, which consolidated fisheries regulation Acts dating from 1888, the inshore fisheries around the coast of England and Wales had been managed and enforced by twelve Sea Fisheries Committees (SFCs), which had powers to make byelaws to restrict or prohibit fishing, taking of fish and methods of fishing, as well as regulating fisheries for shellfish¹. SFCs had the power to appoint fishery officers who had enforcement powers against vessels involved in sea fishing². Although SFCs had been operating for over 100 years, the aim of a 2004 review of marine fisheries and environmental enforcement, the 'Bradley Review'³, was to recommend options for the most effective organisation of enforcement to meet conservation objectives and the long-term needs of the fishing industry in England and Wales. It noted that "...local control and stakeholder involvement in Sea Fisheries Committees is a critical factor"^{4,5} and concluded there was a place for such committees, albeit in need of modernisation⁶ and development in terms of their functions to be reflected in a name change such as "Inshore Fisheries and Environmental Managers"⁷. The report recommended a single Welsh SFC⁸.

Subsequently, on 3 April 2008, UK Government published a draft Marine Bill addressing marine conservation zones, spatial planning, licensing, enforcement and coastal access for recreational

40 purposes, as well as inshore fisheries management. During its passage, Welsh Government (WG) put
41 forward its own agenda for the management of Welsh inshore fisheries.

42 The outcome was the Marine and Coastal Access Act 2009⁹ (hereafter referred to as MCAA) which
43 introduced a new system of marine management in the UK, its provisions covering the inshore (0-12
44 miles) and offshore (12-200 miles) regions. MCAA was deemed necessary to ensure “...*clean healthy,*
45 *safe, productive and biologically diverse oceans and seas, by putting in place better systems for*
46 *delivering sustainable development of the marine and coastal environment*”¹⁰. It created the
47 independent Marine Management Organisation to deliver marine functions in relation to England
48 and for non-devolved UK matters. MCAA also established a marine policy framework for the UK,
49 including provisions for a joint, high-level UK Marine Policy Statement and regional marine plans¹¹.

50 MCAA covers marine planning, licensing, creation and management of Marine Conservation Zones
51 (MCZs), management of inshore fisheries, enforcement powers and coastal access. MCAA does not
52 apply uniformly across the whole of the UK, the arrangements for the management of inshore
53 fisheries are different in England, Wales, Scotland and Northern Ireland.

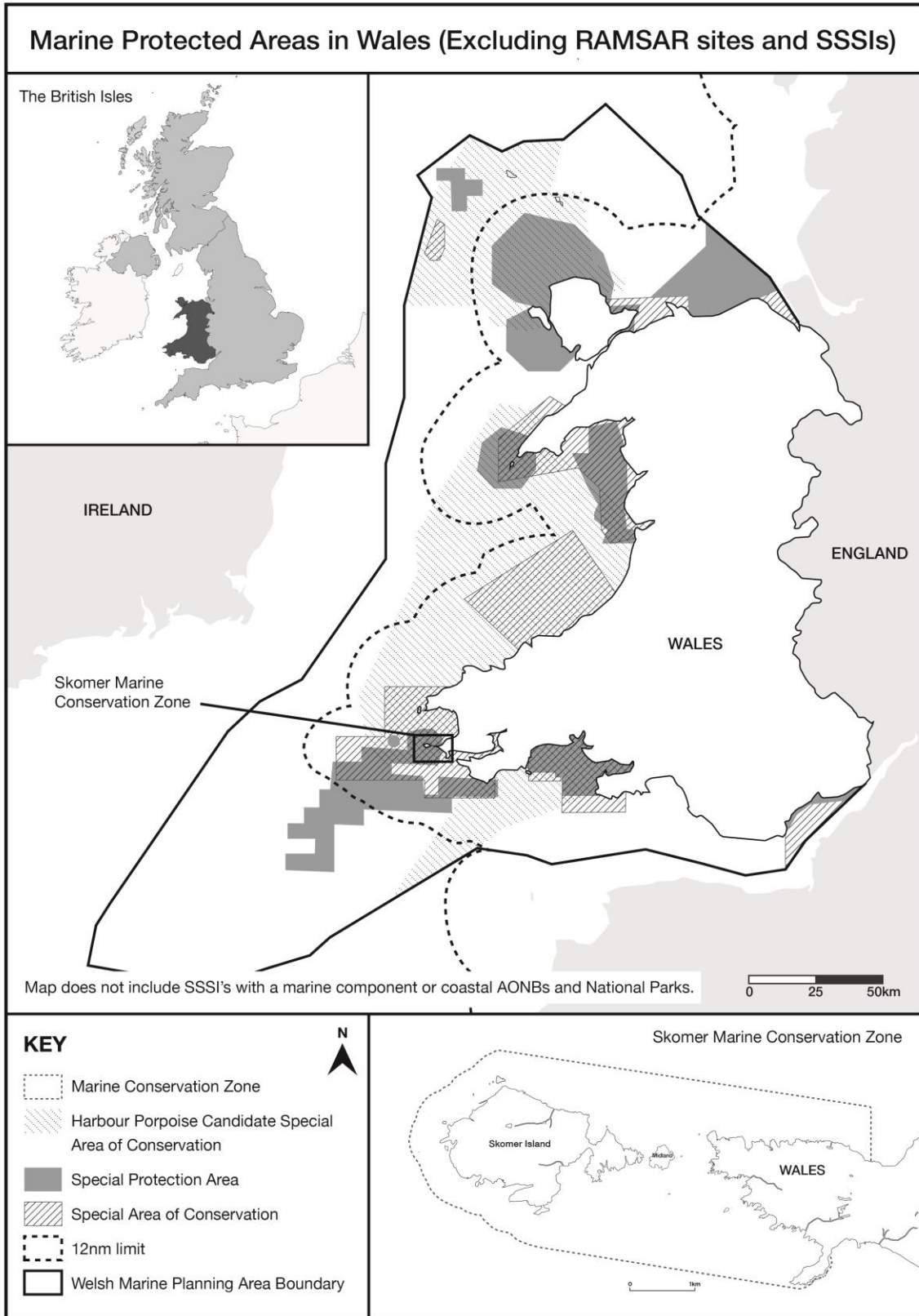
54 The impacts of MCAA have been explored from a variety of perspectives; ecosystem protection,
55 stakeholder engagement, marine spatial planning, highly protected marine reserves¹², failures of
56 participatory processes to advance MCZs¹³; efficacy of inshore fisheries co-management^{14 15};
57 satisfaction of stakeholders in fisheries co-management amongst English Inshore Fisheries and
58 Conservation Authorities (IFCAs)¹⁶ and failures to significantly reduce the complexity of English
59 marine management structures¹⁷. Future developments are also analysed with respect to the UK.¹⁸
60 However, although MCAA created a ‘Welsh Zone’, extending the jurisdiction of the Welsh Ministers
61 for certain functions to the median line, discussion of the impacts of MCAA on Wales is notably
62 absent in the published literature.

63 This paper addresses this knowledge gap by examining the impact of MCAA on the management of
64 Welsh inshore fisheries and marine conservation management. Our study compliments Pieraccini
65 and Cardwell’s (2016) analysis of post-MCAA fisheries co-management in England and Scotland¹⁹.
66 Their study considered the change through two theoretical perspectives, “...*Habermasian*
67 *deliberative democracy and Deweyan political pragmatism*”²⁰. The authors identified and tested
68 three aspects of fisheries co-management; actors’ authority over decision making (empowerment);
69 actors’ diversity (membership); the right to self-nomination (procedures for external inclusion); they
70 concluded that “...*the three key elements of co-management identified are more developed in*
71 *England than they are in Scotland*”²¹. Since Pieraccini and Cardwell’s (2016) paper was published, the
72 authors have undertaken a study of Welsh inshore fisheries and marine management enabling
73 comparison with Wales²².

74

75

76 Fig. 1: The location of Wales within the British Isles and its Marine Protected Areas (Excluding
 77 RAMSAR sites and SSSIs)



79 | Prior to the SFCs with responsibility for Welsh inshore fisheries management being dissolved on the
80 commencement of MCAA, WG announced that Welsh Ministers would “...manage our marine
81 environment and fishing industry” rather than create a Welsh IFCA²³. On the introduction of MCAA,
82 WG assumed full responsibility for the management and enforcement of sea fisheries around the
83 Welsh coast, delivered by a new, highly-centralised, in-house Fisheries Unit²⁴ reporting directly to
84 the Minister. In 2013 this Unit was merged with WG’s Marine Branch to form the Marine and
85 Fisheries Division (MFD).

86 From an inshore fisheries management perspective, this was surprising as the Welsh commercial sea
87 fisheries sector is dominated by small-scale vessels (93 per cent are less than 10 metres in length)²⁵
88 targeting different types of species on a seasonal or opportunistic basis, predominantly in inshore
89 fishing grounds. Fishing grounds are localised, occasionally exploited by larger foreign or UK owned
90 vessels targeting particular species such as scallops. Given the Bradley Review’s emphasis on the
91 need for “...local control and stakeholder involvement,”²⁶ the highly centralised model favoured by
92 WG seemed to go against its advice and against best practice as outlined in numerous case studies²⁷.

93 The aim is to examine how the application of MCAA in Wales has led to a distinctive Welsh marine
94 and fisheries management regime, and apply Pieraccini and Cardwell’s theoretical lens to investigate
95 the nature of Welsh inshore marine management with respect to three indicators of co-
96 management. Our objectives are to: compare the different ways in which MCAA applies in Wales
97 compared to England; consider how the management structures set up by WG and the strategies it
98 has employed since assuming power over Welsh marine resources relate to suggested best-practice
99 in the management of communal resources as recommended by the institutional school of
100 communal resource management²⁸; and compare key elements of the post-MCAA Welsh marine and
101 fisheries management structure against Arnstein’s (1969) ladder of participation²⁹. This improves
102 understanding of Welsh inshore fisheries and marine management and provides an opportunity to
103 test the post-MCAA Welsh system against Pieraccini and Cardwell’s findings. This case study
104 demonstrates the consequences of adopting a centralised model of marine and fisheries
105 management with implications for all coastal states.

106 First the key theoretical issues relating to inshore marine management are examined followed by an
107 explanation of the research methodology. Finally, the form and function of the Welsh post-MCAA
108 marine and fisheries management structure are compared against theoretical best practices.

110 **2. The Theoretical Context**

111 **2.1 Co-management of Communal Natural Resources**

112 Inshore fisheries and the marine environment are communal resources, shared between commercial
113 fishermen, often from different communities and countries and different types of users. A healthy
114 marine environment attracts recreational divers and recreational fishermen with secondary benefits
115 to hotels, restaurants and other tourist related businesses that may have no direct interaction with
116 the local marine environment³⁰. Co-management is a goal of many institutions responsible for
117 maintaining their productivity, the principle implying that centralised state management is shared
118 with others. In recognising the problems of over-simplifying state versus local actors, plus

119 acknowledging the complexities in the term community,³¹ Pieraccini and Cardwell advocate that
120 “...co-management is ...best conceptualised not as a formal inter-scalar partnership, but an iterative,
121 collaborative problem solving process.”³²

122 Prior to the WG takeover of the management of Welsh inshore fisheries, it undertook discussions
123 with stakeholders to ascertain what type of management model might be adopted³³.

124 A study of eight co-management schemes identified characteristics that enabled them to operate
125 effectively³⁴. The key findings were that stakeholder groups should be wide-ranging and the co-
126 management groups should be formalised within the fisheries management structure, consistent
127 with the institutional school of communal management³⁵ who emphasise the limitations of
128 centralised management.^{36 37} However co-management remains contested.³⁸

129 Despite Woolmer’s study demonstrating the benefits of co-management –including increased
130 understanding between stakeholder groups and between stakeholders and managers, more
131 effective fisheries management measures and increased willingness to comply with regulations - WG
132 adopted a centralised management model.

133 **2.2 Deliberative Democracy versus a Pragmatist Approach to Co-Management**

134 Important in the discussion of co-management is the question, who has the power of identifying
135 participants and how is that determined? Pieraccini, and Cardwell focus upon three elements;
136 deliberative democracy, co-management, and pragmatism³⁹. Deliberative democracy states that
137 institutions should enable individuals or groups affected by particular decisions to engage in rational
138 discourse⁴⁰, leading to mutual understanding, a key outcome of Habermas’s proceduralist
139 approach⁴¹. ‘According to discourse theory, the success of deliberative politics depends not on a
140 collectively acting citizenry but on the institutionalization of the corresponding procedures and
141 conditions of communication⁴². For deliberative democracy to be legitimate, all stakeholders need to
142 have a voice in decision making⁴³, those affected defined as ‘...anyone whose interests are touched
143 by the foreseeable consequences of a general practice regulated by the norm at issue⁴⁴.

144 In contrast, Dewey’s ‘pragmatist approach’⁴⁵ emphasises that decision making is a messier process
145 involving multiple, partial perspectives and understandings. Dewey’s idea of an ‘emergent public’ is
146 an “...assembly of people called into being by the problem of being affected by actions that are
147 beyond their individual control”⁴⁶, virtually defining the communal nature by which marine resources
148 are used. Users may have different perspectives, but need to understand other viewpoints to
149 achieve a pragmatic outcome, probably involving compromise. This contrasts with Habermas’s idea
150 of selfless, moral individuals able to make value-free judgements based on evidence, exempt from
151 pre-conceived ideas. Given the nature of marine management, Pieraccini and Cardwell conclude that
152 the pragmatic approach is the most compelling way of organising decision-making within a co-
153 management regime. This is because marine fisheries impacts not only on fishermen, but also
154 conservationists, recreational boat users and anglers, tourist businesses, divers, shore-based
155 services, supplying all these sectors and being supplied by them. As questions regarding the
156 sustainability of fisheries resources become more prominent, an emergent public becomes more
157 aware of the issues and in turn more interested in participating in decisions that affect the resource
158 and in this way fuels a demand to become more involved⁴⁷.

159 The importance of this idea for co-management is that there needs to be a right for “...members of
160 the public to emerge and self-identify in response to a problem that they see as affecting them, and
161 create of themselves an interested public... and that ...potential co-management stakeholders should
162 be allowed to self-nominate, rather than only being chosen by an external body.”⁴⁸ To ensure that
163 such a body doesn’t become too unwieldy, sifting of potential stakeholders is necessary, but this
164 should be transparent and the organising authority should explain its reasons for non-inclusion.

165 Pieraccini, and Cardwell therefore argue that for co-management of fisheries to be legitimate, it
166 needs to incorporate “...empowerment (from classical co-management literature), deliberants’
167 diversity (from Habermas), and ways to limit external exclusion by giving the opportunity to members
168 of the public to self-nominate (from Dewey)”⁴⁹. On the basis of these three criteria, they identified
169 the main differences between Scottish Inshore Fishing Groups (SIFGs)⁵⁰ and English IFCAs concluding
170 that the three key elements of co-management are more developed in England than Scotland.

171

172 **3. Methodology**

173 Our research was undertaken from April 2016 to February 2017. A qualitative approach was adopted
174 based upon semi-structured interviews with key interviewees who represented fishing groups within
175 Wales, officers of marine conservation organisations with responsibility for Wales and individuals
176 who had provided evidence to the National Assembly of Wales (NAW) Environment and
177 Sustainability Committee on the 2012 consultation on the failed introduction of Highly Protected
178 Marine Conservation Zones. These interviews were undertaken face to face, by Skype or telephone.
179 A snowball technique enabled the researchers to reach individuals who had been, or still were,
180 members of the two post-MCAA liaison and advisory bodies, namely, the Inshore Fishing Groups
181 (IFGs), or the Welsh Marine Fisheries and Advisory Group (WMFAG).

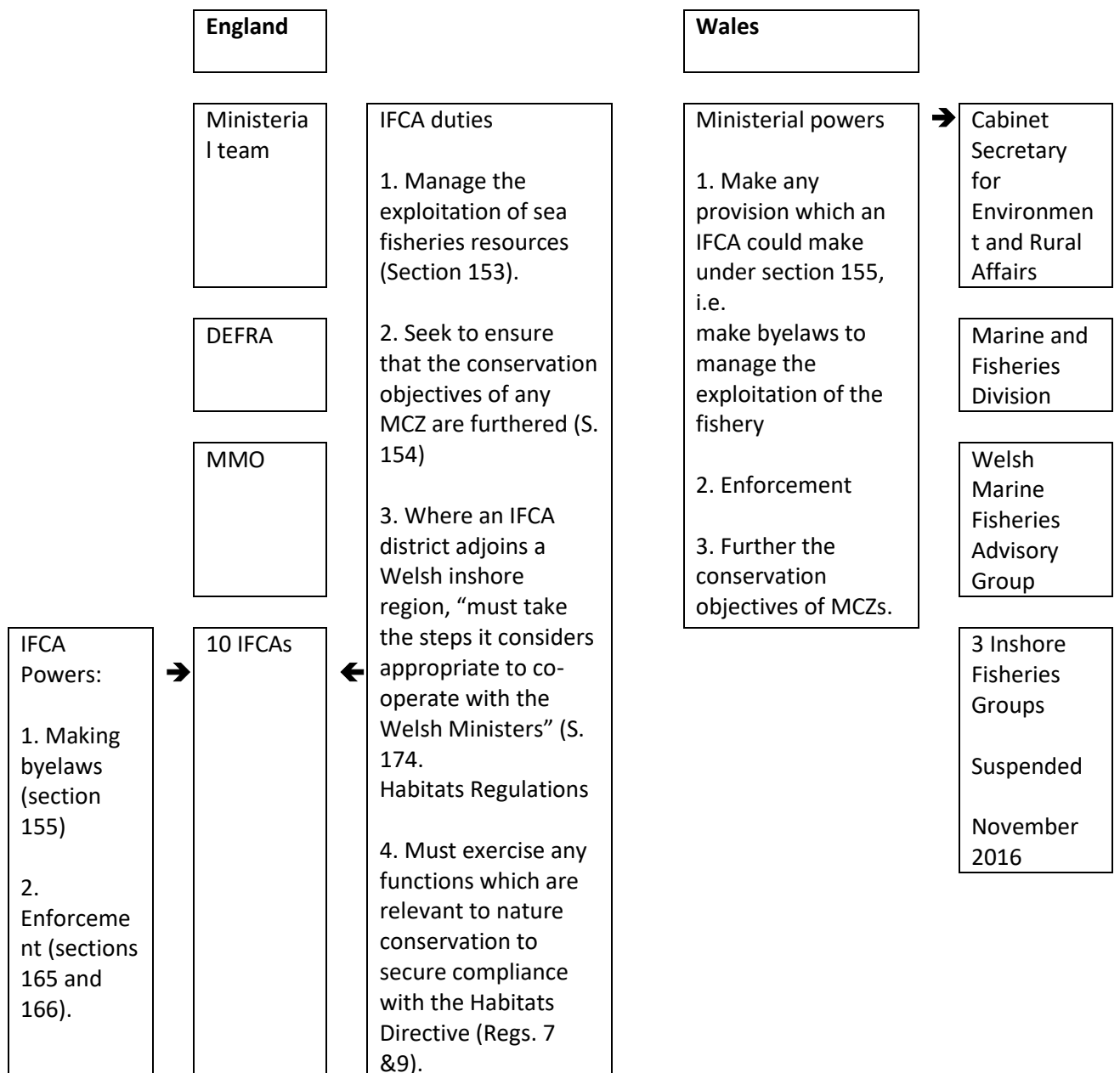
182 All responses were treated confidentially, other than where their views had already been made
183 public, for example in minutes of meetings or correspondence available on the internet. The records
184 of the interviews were fully transcribed, whilst the data from all IFG and WMFAG minutes were
185 systematically transferred to spreadsheets to compare key elements of business such as numbers
186 attending, makeup of attendees, agendas, who raised issues and whether the issues were resolved
187 satisfactorily in that or subsequent meeting⁵¹. All data was stored in compliance with the ethical
188 standards of the University of the West of England. Twenty-four individuals participated including
189 commercial and recreational fishermen (some of who were former IFG members and chairpersons),
190 current and former WMFAG members, representatives from IFCAs, marine conservationists,
191 independent marine consultants and academics working on marine related issues, and former
192 Fisheries Officers who had worked in the pre and post-MCAA management regime. WG MFD and
193 Natural Resources Wales (NRW)⁵² declined our invitations to participate.⁵³

194 Secondary sources included minutes of meetings (WMFAG, the IFGs, Seafish Wales Advisory
195 Committee and the Environment and Sustainability Committee of the Welsh Assembly, such as the
196 2012 WG review of the post-2010 management regime) as well as Hansard and the NAW Record of
197 Proceedings. The archives of the former South Wales SFC provided information on enforcement and
198 prosecutions and allowed comparison of the quality of information regarding issues relating to

199 fisheries management with post-2010 sources. Freedom of Information requests were made to WG
 200 MFD.

201 **4. MCAA implementation for inshore fisheries and conservation as applied to Wales and**
 202 **England**

203 Two factors are striking when comparing the post-MCAA Welsh and English inshore fisheries and
 204 conservation structures; first the lack of statutory duties on Welsh fisheries and conservation
 205 managers, in contrast to the comprehensive IFCA framework; second, the non-statutory and limited
 206 liaison/advisory nature of the groups that interact most closely with the fishing and wider marine
 207 management stakeholders, namely WMFAG and the South, Mid and North Wales Inshore Fishing
 208 Groups.



209 Fig. 2: Comparing the post-MCAA marine conservation and fisheries management powers and duties
210 as applied to England and Wales

211

212 Thus the Welsh Ministers retain close control, through the MFD, of all key aspects of inshore marine
213 management.

214 **4.1 Part 6 of MCAA: Management of Inshore Marine Fisheries and Conservation**⁵⁴

215 **4.1.1 England: Inshore Fisheries Conservation Authorities (IFCAs)**

216 We set out the English system here to facilitate a clear comparison with the Welsh regime.

217 MCAA confers power on the Secretary of State to create inshore fisheries conservation districts in
218 England⁵⁵, for each of which there must be an Inshore Fisheries Conservation Authority.⁵⁶

219 Membership, powers and duties of IFCAs are comprehensively set out. Two duties are imposed on
220 an IFCA: firstly, managing the exploitation of sea fisheries in its district⁵⁷; secondly, ensuring that the
221 conservation objectives of any MCZ in its district are furthered, without being compromised by its
222 fisheries management duties.⁵⁸ In England, the key duties of an IFCA are to manage the exploitation
223 of the fishery and to protect any MCZs in its district. IFCAs also have powers, including making
224 byelaws⁵⁹ for the purpose of performing these duties, as well as enforcement powers⁶⁰.

225 Under the Habitats Regulations⁶¹, all public bodies (including IFCAs) must exercise any functions
226 which are relevant to nature conservation to secure compliance with the EU Habitats Directive⁶².
227 IFCAs are also identified as a 'relevant authority', with power to establish or contribute to
228 establishing management schemes for European Marine Sites (EMS).⁶³

229 Where an IFCA district adjoins a Welsh inshore region, it "*...must take the steps it considers*
230 *appropriate to co-operate with the Welsh Ministers*"⁶⁴. The remit of IFCAs is therefore founded on
231 the basis of the need to integrate conservation objectives with one of the key anthropogenic
232 pressures impacting the marine environment: fisheries.

233 **4.1.2 Wales: Inshore Fisheries in Wales: The Role of the Welsh Government**

234 For Wales, the position is set out in a much shorter Chapter⁶⁵.

235 Welsh Ministers have the power to make any provision which an IFCA could make under section
236 155⁶⁶, i.e. make byelaws for the purpose of managing the exploitation of the fishery and furthering
237 the conservation objectives of MCZs, but powers are discretionary, and Welsh Ministers cannot be
238 required to exercise them. In relation to Wales, MCAA is silent as to *duties* equivalent to those
239 imposed on IFCAs: in other words, in Wales, there is no statutory requirement to manage the
240 exploitation of the fishery resource, or to further the conservation objectives of MCZs, or to co-
241 operate with adjoining English IFCAs⁶⁷.

242 The underlying reasons for this situation relate to the devolution settlement⁶⁸. During the passage of
243 MCAA, the Welsh Minister for Rural Affairs adopted the position that it was politically unacceptable
244 for Westminster to impose duties on the Welsh Ministers:

245 *“...there seems to have been a great deal of interest in the duties placed, or not placed, on Welsh*
246 *Ministers as they relate to IFCA’s in the Marine Bill. ... I do not agree with the principle that UK*
247 *legislation should put duties on Welsh Ministers. Giving us powers... is important, but placing duties*
248 *on us is not appropriate for UK legislation... Welsh Ministers will be accountable to the Assembly and*
249 *to the people of Wales... on any implementation of powers”⁶⁹.*

250

251 This issue was discussed in NAW Sustainability Committee⁷⁰ and in Westminster. The Member of
252 Parliament for Bridgend stated:

253 *“It is a matter of great concern that the Bill does not provide any duty towards sustainable inshore*
254 *fisheries management in Wales... A specific responsibility for sustainable fisheries management and*
255 *the promotion of marine conservation zones should be placed on Welsh Ministers... The Bill presents*
256 *the one opportunity for such a legal and lasting commitment, as the National Assembly has no power*
257 *to lay down such duties.⁷¹ Wales must not be left with a lower standard of certainty and*
258 *accountability for fisheries management than England”⁷².*

259 The Minister and WG’s lawyer argued that the democratic accountability of Welsh Ministers was
260 greater than IFCA’s, and that there would be little difference between the Welsh and English
261 management regimes. Consequently, no duties were imposed on Welsh Ministers under MCAA.

262 It is also a source of contention⁷³ that, under the Habitats Regulations, whereas IFCA’s are ‘relevant
263 authorities’ in respect of EMS management, and historically the Welsh SFCs had been, the WG MFD
264 is not. As noted above, relevant authorities may exercise their EMS management functions in
265 collaboration with others, and in Wales generally do so through long-established (though non-
266 statutory) relevant authority groups (RAGs). Despite WG’s separate duty as a ‘competent authority’
267 to contribute to EMS conservation⁷⁴ and its earlier assurances that proposed changes arising from
268 MCAA would not affect its participation in RAGs,⁷⁵ WG MFD has, since MCAA, declined to contribute
269 to the work of RAGs in Wales⁷⁶. Loss of the Welsh fisheries management authority from RAG
270 membership undermines fully integrated and collaborative management approaches⁷⁷.

271 Despite having the legislative competence to do so since 2011, NAW has not imposed enforceable
272 IFCA-style duties on WG. Under the MCAA framework, there remains a weakness, as the executive
273 powers on WG cannot be enforced. NAW could address this lacuna in the Welsh inshore fisheries
274 regime by bringing forward primary legislation setting out a more robust statutory framework for
275 Wales with enforceable duties placed on the Welsh inshore fisheries manager, including
276 mechanisms to deliver conservation objectives and to work collaboratively with other fisheries
277 managers.

278 **4.2 The post-2010 Welsh Inshore Fisheries Management Structure**

279 The Minister for Rural Affairs⁷⁸ took over responsibility in April 2010. Forums for stakeholder
280 dialogue were introduced by establishing the Welsh Marine Fisheries Advisory Group (WMFAG) and
281 three Inshore Fisheries Groups (IFGs) representing North, Mid and South Wales. Unlike IFCA’s, MCAA
282 does not set out membership, powers and duties of these Welsh bodies and, as with Scottish
283 Inshore Fisheries Groups (SIFGs), they have no statutory powers or duties. Minutes of IFG meetings
284 suggest that their most important function was stakeholder liaison. Apart from specifying that IFGs
285 and WMFAG had no more than one representative from an environmental organisation, a study of

286 the IFG minutes suggests a fluid membership, and commercial fishing-heavy representation on the
287 three groups.

288 The intention seems to have been to create a participatory structure whereby stakeholders could
289 express their opinions, experiences and ideas in geographically distinctive IFGs⁷⁹. IFG information
290 would then be analysed and discussed further at WMFAG, which would make recommendations to
291 the Minister. IFGs seem intended to have acted as sounding boards and information conduits from
292 WG to stakeholders, in theory, enabling a participatory process to operate within a centralised
293 system, but to be effective the information being passed upwards would need to produce results ‘on
294 the ground’. The danger was that if this did not happen, fishermen and other stakeholders within
295 the IFGs might become disillusioned and would view the participative process as a form of
296 tokenism.^{80 81}

297 **4.2.1 Inshore Fishing Groups⁸²**

298 Comprised mainly of representatives from WG (MFD officers), commercial fisheries associations,
299 recreational fishermen, environmental interest groups, and Natural Resources Wales^{83 84}, IFG
300 purposes were as shown in Table 1.

Table 1: The purpose of IFGs and the expected abilities of IFG members⁸⁵

Proposed functions of IFGs	Expected abilities of IFG members
Provide proposals to WMFAG relating to fisheries management within the group’s region.	Demonstrate they can represent a wide range of people for a particular interest.
Assist WMFAG to engage with those with interests in fisheries and the marine environment within the region.	Demonstrate, where possible, that they are able to represent more than one organisation
Provide feedback to wider stakeholders within the IFG region on local policy implications	Demonstrate they are able to feedback to a wide range of stakeholders on local policy implications
	Demonstrate knowledge of and experience relevant to the fishing industry
	Demonstrate they are able to attend quarterly meetings of the IFG

301

302 In the consultation period, the NGO umbrella group Wales Environment Link (WEL) supported the
303 proposals, but warned that “...membership of both the WMFAG and IFGs must be open, transparent,
304 communicative and clear”,... that the membership is equally weighted and all stakeholders are
305 appropriately represented” and that “advice from both the IFGs and the WMFAG to the Minister,
306 along with the associated minutes and agendas of meetings should be made publicly available”⁸⁶.

307 Despite this, one respondent told us that IFGs had “...little or no conservation remit”⁸⁷. Conservation
308 interests were limited to NRW and one other, and were outnumbered by MFD and the commercial
309 fishing industry representatives⁸⁸. According to three of our respondents, NRW did not attend in

310 their conservation advocacy role but as the statutory environment and nature conservation
311 advisor⁸⁹, and IFG minutes indicate that when present NRW⁹⁰ explained WG policy rather than
312 advocated for environmental issues⁹¹. Thus, IFGs contained only one independent conservation
313 representative. Unlike IFCAs, neither IFG nor WMFAG minutes were available on the WG website
314 and had to be accessed via a Freedom of Information request⁹². Several respondents including a past
315 IFG chairperson commented that paperwork was frequently circulated less than 48 hours before a
316 meeting, hampering members from canvassing the views of those they represented and
317 undermining the basis of the stakeholder-led management structure. Where the Minister or MFD
318 rejected WMFAG advice, reasons were not provided⁹³. While IFGs enabled regional issues to be
319 raised, increased bureaucracy meant longer time-scales for decision making, as compared with the
320 earlier SFC regime⁹⁴.

321 Once the system was operating, further weaknesses were exposed. Arnstein⁹⁵ outlines a 'ladder of
322 participation'. At levels one and two, forms of non-participation are used by powerful actors to
323 impose their agendas. Participation as tokenism (levels three to five) occurs when participants hear
324 about interventions and may say something about them, which power holders denote as 'input'.
325 However, participants are unlikely to have any effect on the intervention. At levels six to eight,
326 participation provides citizens with more power to negotiate and change the status quo.

327 Prior to the setting up of IFGs, the fifth goal of the 2008 Welsh Fisheries strategy was to develop
328 'partnership working'^{96 97}, implying level six on the ladder. One respondent indicated that IFGs
329 members believed that they would, *via* the WMFAG, directly influence fisheries policy.⁹⁸ In practice,
330 IFGs had little influence on decision makers. Ideas were filtered via WMFAG, which itself made
331 limited progress. By the spring of 2014, IFG minutes reflect frustration among members who
332 believed that their views had been ignored in the numerous consultations that had been initiated
333 since 2010⁹⁹: "...although issues had previously been discussed during meetings members felt that
334 opinions put forward had been overlooked"¹⁰⁰. A number of respondents told us that business
335 related to conservation initiatives was..."*exclusively top-down, usually highly selective and very short*
336 *briefings from WG officials. No discussion was allowed, just brief updates"*¹⁰¹. Thus, in practice, IFGs
337 were operating at no more than level two or three on Arnstein's ladder. In November 2016, they
338 were suspended.

339 **4.2.2 The Welsh Marine Fisheries Advisory Group (WMFAG)**

340 The original remit of the WMFAG is outlined in Table 2.

Table 2: The purpose of WMFAG¹⁰²

- 1 Provide expert advice to the Fisheries Unit and Minister for Natural Resources on issues relating to Fisheries Management
- 2 Assist the Fisheries Unit to engage with those with interests in fisheries and the marine environment
- 3 Feedback to the IFGs on national policy implications
- 4 Represent the views of the IFGs at WMFAG meetings
- 5 Monitor and evaluate the effectiveness of policies and strategies relating to fisheries management
- 6 Be closely linked to marine stakeholder structure and the Minister for Natural Resources

341

342 Membership was determined by WG, but it appears to have been ineffective: *“It would be fair to say*
343 *that that has had a bit of a bumpy ride for the first couple of years of its existence. There has not*
344 *been an awful lot of progress in terms of recommendations made”*¹⁰³. By August 2016, WMFAG’s six
345 roles had been reduced to one: *“...to assist us in formulating appropriate policies, plans, strategies*
346 *and law related to marine fisheries in Wales”*¹⁰⁴. It still acted as an adviser but lacked power as WG
347 could ignore its recommendations. Although not suffering the same fate as IFGs, at best it sits at four
348 or five on Arnstein’s ladder. It is dominated by commercial fishing interests¹⁰⁵; of the 14 members,
349 nine represent commercial fishing groups, four are public bodies and just one represents
350 environmental interests. Whilst WMFAG has been retained, it still appears to be ineffective.¹⁰⁶
351 Following the suspension of the IFGs, its new role lacks clarity as there is no mechanism to take on
352 board the concerns of stakeholders.

353 In 2016, WG set out its policy on stakeholder engagement suggesting it was still seeking advice on
354 how best to consult with stakeholders six years after it had taken responsibility for management,
355 with pledges that its approach would be based upon participation with them. WG’s approach
356 therefore seems to have simultaneously achieved two conflicting and potentially damaging
357 outcomes. Firstly, by establishing IFGs dominated by industry-dominated groups¹⁰⁷, WG marginalised
358 the role of environmental interests and wider stakeholder representation. Secondly IFGs also
359 became ‘talking shops’, which led to frustration amongst the membership, which may hamper the
360 creation of a more effective co-management regime in future¹⁰⁸.

361 **4.3 Scottish Regional Inshore Fishing Groups (SRIFGs)**¹⁰⁹

362 Five Scottish Regional Inshore Fishing Groups (SRIFGs) represent Scottish inshore commercial fishing
363 interests¹¹⁰. SRIFGs¹¹¹ are non-statutory bodies that can only advance management
364 recommendations to Marine Scotland. SRIFGs aim to improve the management of inshore fisheries
365 in the 0-6 nautical mile zone of Scottish waters, and give commercial inshore fishermen a strong
366 voice in wider marine management. They function more like former Welsh IFGs and WMFAG, but
367 have more influence than either, including a well-established website. SRIFGs have representatives
368 only from the commercial fishing sector, dominated by large fishermen’s associations whose
369 representatives sit on multiple SRIFGs.¹¹²

370 **4.4 Comparing IFCAs, SRIFG, IFGs and WMFAG**

371 In contrast to the Welsh and Scottish groups, IFCAs have representatives from ten sectors apart from
372 commercial fishing¹¹³, providing a broader range of viewpoints. Whilst Welsh IFGs were broader
373 than SRIFGs, WMFAG’s requirement that members were experts in fisheries management excluded
374 many ‘emergent groups and individuals’ lacking technical expertise. IFG requirements that members
375 needed to ‘demonstrate knowledge of and experience relevant to the fishing industry’ would
376 similarly have been a barrier to self-inclusion. In practice, according to some of our IFG and WMFAG
377 respondents, WG controlled IFG and WMFAG membership and revoked membership with no
378 mechanism for objection by members¹¹⁴.

379 When applying deliberative democracy, co-management, and pragmatism to the Welsh system
380 neither the former IFGs nor WMFAG have statutory authority and therefore lack empowerment.
381 However, it was possible for individuals, normally commercial fishermen, local authority and other
382 professionals, such as harbour officials to attend meetings, providing slightly greater opportunity for

383 self-nomination than for SRIFGs, albeit within a narrow range of interest groups¹¹⁵. Nomination for
384 inclusion on IFGs was allowed if individuals were identified as having relevant scientific background
385 or as suitable chairpersons. Thus, whilst membership of IFGs might have been slightly less exclusive
386 than SRIFGs, IFG and WMFAG minutes indicate that in practice very narrow groups dominated
387 discussions¹¹⁶. Agendas were guided by MFD and, to a lesser extent, representatives of commercial
388 fishing groups. As the lack of progress on IFGs became more apparent, especially from 2014,
389 inclusivity of membership of the groups almost became irrelevant as attendance by non-WG groups
390 began to fall, disillusionment with the lack of progress increased.^{117 118} Therefore, even had
391 membership been more inclusive, it seems unlikely that emergent groups would have wanted to
392 attend such unproductive meetings.¹¹⁹ Since the suspension of IFGs only WMFAG remains, but its
393 remit has been criticised for separating the wider marine environment and 'fisheries', despite the
394 fact that "*...the recommendations of the group have direct implications for the environment*".¹²⁰

395 **5: Conclusions**

396 The post MCAA Welsh system centralised decision-making, creating a more remote, less responsive
397 management structure than had existed previously. The non-statutory IFGs and WMFAG fail
398 Dewey's democratic legitimacy test with respect to the three elements of co-management;
399 empowerment, inclusiveness of membership and procedures allowing self-nomination. Despite
400 reiterating the desire "*...to improve management of local fisheries as a partnership between WG and*
401 *fishermen*"¹²¹ and the Minister's "*...ultimate ambition... that the Welsh Government co-manages our*
402 *fisheries with stakeholders...*"¹²², there is no evidence that co-management has been practised in
403 post-MCAA Wales.

404 Additionally, MCAA did not create marine conservation duties for WG and the NAW has not used its
405 legislative powers to create enforceable duties akin to those of the IFCAs. Thus, in Wales, the inshore
406 fisheries management regime responsible for managing some of the most damaging impacts in
407 marine protected areas, has side-stepped its responsibilities with respect to improving their
408 management and condition by failing to implement less damaging fishing activities¹²³. Although a
409 substantially greater proportion of the Welsh inshore marine environment is under an MPA
410 designation and therefore, on paper, better protected than those of England or Scotland, in practice,
411 proactive management is lacking and this apparent protection is often ineffective.¹²⁴ This is
412 exacerbated by what is now acknowledged as resource and capacity constraints¹²⁵, delaying
413 WMFAG's priority workstreams on fisheries and the introduction of improved management
414 measures for EMS to ensure compliance with the Nature Directives.¹²⁶ However it could be argued
415 that an equally important reason is that, in its inshore fisheries management function, WG has not
416 engaged meaningfully with the EMS RAGs, despite having being invited multiple times, reflecting its
417 tendency to separate fisheries from marine management¹²⁷.

418 The fundamental weakness in the adoption of MCAA in Wales was the failure to create enforceable
419 IFCA-style duties. The view that there would be greater democratic accountability in Wales than in
420 England has not been realised, resulting in extremely slow progress with respect to fisheries, marine
421 conservation management and the creation of MCZs. The failures are exacerbated because the
422 'emergent public' has failed to emerge with sufficient force to ensure that its elected
423 representatives have acted¹²⁸.

424 Our findings have implications for the wider post-Brexit governance regime in the UK where powers
425 are being transferred from the EU to Westminster, with no guarantee that accompanying duties will
426 be adopted. The Welsh case study also demonstrates that as predicted by Ostrom¹²⁹, the scale of
427 management needs to be appropriate for the scale at which the marine environment is used,
428 whether for fishing or wider purposes.

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434 not-for-profit sectors.

435 Declarations of interest: none

436 **References and endnotes**

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http://www.legislation.gov.uk/ukpga/2009/23/pdfs/ukpga_20090023_en.pdf (Accessed 5th April 2016)
- ⁶⁷ For seven years following the implementation of the new management regime, despite repeated attempts by Devon and Severn IFCA to establish contact with the adjoining Welsh inshore fisheries manager, no meetings took place between the fisheries managers in the Bristol Channel region. It is understood that a constructive meeting took place in the summer of 2017 and further developments are awaited with interest.
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- ⁷⁰ NAW Sustainability Committee Report into the Implications of the Marine Bill on Wales: Recommendation 6: The Committee recommends that the same level of duties placed on the Inshore Fisheries and Conservation Authorities in England regarding the sustainable management of fisheries and the conservation of Marine Conservation Zones are included for Wales to avoid any divergence in the future. This document does not appear to be any longer on the WG site.
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- ⁷⁴ 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 the 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 the secure compliance with the requirements of the Habitats Directive.” Regulation 9(3).

⁷⁵ 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.

⁷⁶ Interview sources: marine conservation managers

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⁸⁵ [These are no longer available on the Welsh Government website.](#)

⁸⁶ Response to WAG proposals for future Sea Fisheries Stakeholder Input Framework for Wales: Developing a partnership approach to fisheries management February 2010

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⁸⁷ Interview source: Conservation manager

⁸⁸ The fishery is a public resource (as has been demonstrated in the Fisheries White Paper Sustainable fisheries for future generations: consultation document, DEFRA October 2018- para. 2.3) and therefore establishing IFGs with an overwhelming presence of those with a commercial interest in the fishery creates an on-built conflict of interest. <https://www.gov.uk/government/consultations/fisheries-white-paper-sustainable-fisheries-for-future-generations/sustainable-fisheries-for-future-generations-consultation-document>

⁸⁹ Interview sources: Conservation manager and two former IFG members

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⁹¹ For example, South Wales IFG minutes 26/05/2011; Mid-Wales IFG minutes; North Wales IFG minutes 23/07/2015. However between 20/09/2011 to 30/09/2014, the Mid-Wales IFG minutes have no record of any Countryside Council for Wales, Environment Agency or NRW representative making a contribution to any of the eleven meetings.

⁹² The information had been made available on WG MFD portal in 2017, though, at the time of writing (August 2018) they no longer appear on the newly created website containing WG marine information (reports etc.) and there is no indication on that site where the minutes may be obtained.

⁹³ Interview sources: Former IFG members

⁹⁴ Interview sources: former SFC and WGG MFD fisheries officers, former SFC and IFG members.

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Wales Environment Link, June 2018, Response: CCERA Committee Inquiry on the Impact of Brexit on Fisheries in Wales, http://www.waleslink.org/sites/default/files/180618_wel_response_to_ccera_fisheries_inquiry.pdf (Accessed 27th July 2018)
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http://www.waleslink.org/sites/default/files/180618_wel_response_to_ccera_fisheries_inquiry.pdf (Accessed 27th July 2018)
- ¹⁰⁷ Mikalsen, K.H. and Jentoft, S., 2001. From user-groups to stakeholders? The public interest in fisheries management. *Marine Policy*, 25 (4), 281–292. doi:10.1016/S0308-597X(01)00015-X
- ¹⁰⁸ At the last IFG meetings (South-Wales, 13/09/2016), (Mid-Wales, 14/09/2016) and (North-Wales, 15/09/2016), attendees (excluding WG and NAW officers) were asked to set out a SWOT analysis of IFGs. The main response from all groups was that IFG had been talking shops and had made virtually no progress since their inception. This was attributed to a lack of communication, especially responses by WG to suggestions from grassroots members. In addition, given the fact that agendas had been dominated by WG, it was felt strongly that there was a lack of clear planning or prioritisation of issues by WG and a lack of clear timelines from discussion to action.
- ¹⁰⁹ For a more detailed description of SIFGs see: Pieraccini, M. & Cardwell, E. (2016): Towards deliberative and pragmatic co-management: a comparison between inshore fisheries authorities in England and Scotland, *Environmental Politics* <http://dx.doi.org/10.1080/09644016.2015.1090372>
- ¹¹⁰ From 2013-2016 six Inshore Fishing Groups were designated. In 2016 they were changed to five Regional Inshore Fishing Groups. <https://www.gov.scot/Topics/marine/Sea-Fisheries/InshoreFisheries/rifgs> (Accessed 10th October 2017)
- ¹¹¹ Pieraccini and Cardwell’s research was undertaken before the change from Inshore Fisheries Groups to Regional Inshore Fisheries groups and the former groups will therefore be referred to in this paper.
- ¹¹² In this respect, they are even more dominated by the commercial fishing sector than Welsh IFGs.
- ¹¹³ Recreational fishing, Environment, Marine science, Marine social science, Aquaculture, Archaeology, Marine tourism (including sailing and diving), and Estuarine management, Ports and harbours and sales and processing.
- ¹¹⁴ Interview sources: Former IFG members
- ¹¹⁵ For example, in the South Wales IFG a harbourmaster was chosen as a suitable chair.
- ¹¹⁶ Of the forty separate issues raised in the eighteen Mid-Wales IFG meetings between September 2011 and September 2016, only six were introduced by non-WG members (Mid-Wales IFG minutes).

¹¹⁷ Two issues raised by Mid-Wales IFG members (not WG officials in 20th September 2011 meeting), namely: lack of enforcement of fisheries offences; a reduction in the number of fisheries officers, remained unresolved in the last meeting 14th September 2016) (Mid-Wales IFG minutes).

¹¹⁸ The Specified Crustaceans (Prohibition on Fishing, Landing Sale and Carriage) (Wales) Order 2015. <http://gov.wales/topics/environmentcountryside/marineandfisheries/SeaFisheries/commercialfishing/compliance-monitoring/crustaceanVlegislationVreview/?lang=en> (Accessed 17th December 2017)

¹¹⁹ Independent membership (Non-MFD, NRW and the IFG chair) of the 18 Mid Wales IFG meetings, for which there is an attendance register, averaged 48 per cent of attendees. This fell to an average of 40 per cent in the last nine meetings as frustration with the slow rate of progress increased. Numbers attending averaged 14 per session for the first nine meetings but fell 21 per cent to 11 per session in the last 9 meetings.

¹²⁰ Wales Environment Link, June 2018, Response: CCERA Committee Inquiry on the Impact of Brexit on Fisheries in Wales, p 4

http://www.waleslink.org/sites/default/files/180618_wel_response_to_ccera_fisheries_inquiry.pdf (Accessed 27th July 2018)

¹²¹ Wales Marine and Fisheries Strategic Action Plan (2013) p 5

<https://beta.gov.wales/sites/default/files/publications/2018-05/strategic-action-plan-for-marine-and-fisheries.pdf> (Accessed 27th July 2018)

¹²³“Welsh 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.pdf (Accessed 27th July 2018)

¹²⁴ NAW Climate Change, Environment and Rural Affairs Committee inquiry into Marine Protected Areas in Wales; oral evidence Blaise Bullimore:

<http://senedd.assembly.wales/documents/s61973/5%20April%202017.pdf> (Accessed 6th July 2016)

¹²⁵ Wales Environment Link, June 2018, Response: CCERA Committee Inquiry on the Impact of Brexit on Fisheries in Wales, p 3

¹²⁶ Natural Resources Wales, 2016. Assessing Welsh Fisheries Activities Project.

<https://naturalresources.wales/about-us/our-projects/marine-projects/assessing-welsh-fishing-activities/?lang=en> (Accessed 10th September 2017)

¹²⁷ Wales 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.pdf (Accessed 27th July 2018)

¹²⁸ Despite 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/> (Accessed 25th July 2018)

¹²⁹ Ostrom, E. (1990) Governing the commons: the evolution of institutions for collective action, Cambridge: Cambridge University Press