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## The traditional commons of England and Wales in the twenty-first century: meeting new and old challenges

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**Abstract:** The commons literature makes much of the changes within the traditional land use sectors of developed countries. This largely focuses on the decline of the economic function of commons that threaten their existence, the emergence of multiple use patterns, and the resilience and policy adaptation needed to continue. The situation in England and Wales is used to illustrate that commons are increasingly important to a number of ‘new’ rural functions and that the associated policy developments may hold an important message for progress towards sustainable multifunctional land management more generally. This article reviews and updates what is meant by the term common land within England and Wales, while outlining its current importance and threats. The commons literature is investigated to see if the approach is useful in revealing the current issues associated with the incorporation of new stakeholders and functions within a traditional structure. Recent changes and developments surrounding the Commons Act 2006 are assessed to see if they are likely to assist in sustaining these commons through the twenty-first century. The article argues that any new approach requires long term planning and a commitment to support local participation among commoners and others who are involved in the governance and management of these areas of land. In order for these challenges to be met there needs to be an understanding of the functions and cultural traditions of common land as well as of the changes in society associated with the decline in traditional agrarian management in developed countries. Such challenges can rarely if ever be achieved through legislation and policy developments, requiring an investment in developing locally based solutions.

**Keywords:** Adaptive management, common land, multifunctional land use, United Kingdom.

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## 1. Introduction

The commons literature makes much of the changes within the traditional land use sectors of developed countries. This largely focuses on the decline of the economic function of commons that threatens their existence (Ostrom 1990, Dolšák and Ostrom 2003), the emergence of multiple use patterns (Edwards and Steins 1998) and the resilience and policy adaptation needed to continue (Berkes et al. 2000). The situation in England and Wales is used to illustrate that commons are increasingly important to a number of 'new' rural objectives and that the associated policy developments may hold an important message for sustainable multifunctional land management more generally. However, this refocusing or shift in economic function is not without its challenges, first for those still economically reliant on these areas, and second for policy makers representing the public interest. The article therefore focuses on traditional commons where these interactions are most pronounced and does not consider areas in public ownership, such as a nature conservation organisation or a government agency. These areas might be considered commons but would fall outside the definition of what is understood to be common land within England and Wales and thus, are not included within the recent developments discussed here.

Key aspects of change and associated adjustment within economically developed countries figure strongly within the rural studies<sup>1</sup> literature of northern Europe as well as the international literature around commons.<sup>2</sup> Within rural studies, the main areas for discussion centre around the issue of rural change arising from the decline in the traditional functions associated with the land, the impact on rural society of the new values that need to be incorporated, and finally, the legal and policy developments associated with these changes. Such changes within the United Kingdom (UK) can be traced back for over a century when common land was first discussed as an important environmental and recreational resource, rather than just an agricultural one. Formed in 1865 to protect commons from enclosure, the Open Spaces Society (OSS) claims to be the oldest environmental group in the UK. In 1958 the Royal Commission, set up to review the condition and legal protection on common land, identified

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<sup>1</sup> Those included in the 'rural studies' academic community would include mainly anthropologists, economist, geographers, historians and sociologists among others.

<sup>2</sup> A similar multidisciplinary grouping including all the above with the addition of system analysts.

common land as the 'last reserve of uncommitted land' (Royal Commission 1958). Developing an effective means for actively sustaining these areas has been of increasing concern for over 20 years (Common Land Forum 1986; Capstick and Foulds 1990; Department for Environment Transport and the Regions (DETR 1998); English Nature (EN) 2000; Department of the Environment, Food and Rural Affairs (DEFRA 2002).

This article has three objectives. First, to briefly review and update what is meant by the term common land within England and Wales and to outline its current importance and main environmental threats. Second, to place common land within the context of the commons literature to see if the concepts are useful in revealing the current issues associated with the incorporation of new stakeholders and functions within a traditional structure. Third, to assess whether the most recent changes and developments surrounding the Commons Act 2006 are likely to assist in sustaining these commons through the twenty-first century. This enables suggestions to be made as to how such developments and related innovations, within a developed country context, might have a wider application in the policy arena and what other information is required in order to understand the implications of this.

The data on which this article is based are derived from research associated with the development of the Commons Act 2006 (Taylor et al. 2005) and in associated projects aimed at sustaining positive management on commons (Short 1997; Winter et al. 2003; Short et al. 2005; Short 2006). These various projects required a literature review and a wide range of interviews with land owners, commoners, land managers, lawyers, members of the local community, and other organisations with experience in common land management. The article argues that any new approach requires long term planning and a commitment to support local participation among commoners and others who are directly involved in the governance and management of these areas of land. In order for these challenges to be met there needs to be an understanding of the functions and cultural traditions of common land as well as of the changes in society associated with the decline in traditional agrarian management in developed countries. Such challenges can rarely if ever be achieved through legislation and policy developments alone, requiring an investment in developing sustainable locally based solutions.

## 2. Common land in England and Wales: a brief overview

From a historical point of view commons, or common land as it is most usually referred to in England and Wales, are remnants of much larger tracts of land that have existed in various forms for over a millennium.<sup>3</sup> One of the first accounts can be found in the Domesday Book of 1086, which includes references to areas of common pasture. According to Rackham (1986) these were areas

<sup>3</sup> For a fuller summary of the historical literature see Short and Winter (1999).

of shared grazing as there was sufficient land for all purposes and thus little or no requirement for rights. Hoskins and Stamp (1963) note that as enclosure increased the amount of common pasture decreased and it was this transition from the common property to private property that led to the establishment of rights rather than customary practice. Thus over a period of 500 years common land evolved as being distinct from other types of land because while the ownership of the land remained private, the same land was subject to rights of common. These rights were held by other individuals that entitled them to specified products from that land. Given that each set of rights developed in isolation, the result was a complex set of rules and activities and the combination and detail associated with the rights of common varied from one common to another. The broad categories of rights included the grazing of stock (common of pasture), digging of peat for fuel (turbery), collecting timber (estovers) and the taking of fish (piscary). The process of enclosure continued through the late fifteenth and seventeenth centuries, further gathering pace in the eighteenth and early nineteenth centuries. It largely focussed around areas of high population expansion and intensive livestock production, representing an area of around one-fifth of the land area (Rackham 1986). At the end of this period the areas of common land remaining closely match those existing today, namely the north and west.

The passing of the Inclosure Act 1845 was aimed at ensuring total enclosure, but this proved a step too far and after much protest the proposed act was never fully implemented but received various amendments up until 1876 (Short 2000). This U-turn was completed when the Metropolitan Commons Act of 1866 was passed, which protected many commons around London, in the public, rather than the agricultural, interest as 'green lungs' for the whole population (Clayden 2003). Since that date, there have been a number of further pieces of legislation that ensure the special status of common land, all of which contribute to its complex, and often misunderstood, character. Currently, there are around 8,675 registered units of common land in England and Wales covering over 550,000 hectares, representing three percent of the land area in England and eight percent in Wales (Countryside Council for Wales (CCW) 2007; DEFRA 2007). However, this only includes land registered under the Commons Registration Act in 1965 and so the area would be larger if areas of commons with local legislation that predated the 1965 Act, such as the New Forest and Epping Forest, were added. In July 2006, the latest piece of common land legislation was passed, the Commons Act 2006, with the aim of protecting common land and promoting sustainable management well into the twenty-first century (DEFRA 2007). The Act replaces various pieces of legislation from the late nineteenth and early twentieth centuries as well as some that are considerably older, such as the Second Statute of Westminster, 1285. The 2006 Act also fulfils the three legislative areas set out in the Royal Commission report, namely registration, management and public access (Royal Commission 1958). The Commons Registration Act 1965 attempted to both define and

register all common land, specifically including land which had, at some time in the past, been subject to rights of common as well as land that retained rights of common, as the public benefits from all common land were seen as very important. Some 35 years later, the Countryside and Rights of Way Act 2000 ensured that the public have a right of access to all registered common land. The Commons Act 2006 deals with issues of management<sup>4</sup> and governance,<sup>5</sup> as well as attempts to resolve outstanding issues concerning registration. Part of the need for the Act is that despite the presence of distinct pieces of legislation it would be wrong to assume that issues concerning common land are blessed with clarity, an agreed understanding, and free from challenges. In fact, the law has created much confusion and this is perhaps the main reason that it has taken 50 years to fulfil the programme of legislation that it set out (see DEFRA 2007). While there is not a straightforward answer to the question 'what is common land', it is clear that common land is distinct from others types of freehold land because of the complex set of property rights (Aitchison and Gadsden 1992).

The need for the Commons Act 2006 to tackle issues of both management and governance arises from a number of environmental threats that have been identified (Short and Winter 1998). Wherever common land is present there is always more than one interest or function, consequently there is always a relationship on which this governance and management is based that makes the situation more complex than the conventional owner occupier and landlord and tenant systems (Short 2000). The quality and nature of this relationship determines the stability and effectiveness of the governance and management and therefore the level of environmental management or neglect. Three broad categories of environmental threat were identified.<sup>6</sup> First, there may be a pursuit of singular objectives by individuals or organisations, which range from a resistance to change to the exclusive pursuit of an interest's objectives to the detriment of other users. Second, there are often inadequacies within the administration resulting in a direct or indirect environmental threat. This might be uncertainty surrounding who has rights and when they might be exercised resulting in 'freeriders' and 'shirkers' (Ostrom 1990; McKean 1992). Third, there is evidence of reduced interest in some commons, whether it is a lack of willingness to coordinate sheep numbers, possibly resulting in overgrazing, or not exercising grazing rights, which might result in undergrazing.

### 3. Declining agrarian traditions and new functions

Discussion surrounding the decline of the traditional agrarian functions of rural areas in developed countries is found in both rural studies and commons

<sup>4</sup> The physical and economic activities and day-to-day activities associated with these.

<sup>5</sup> The decision making structures, mechanisms and systems of administration which influence the management activities.

<sup>6</sup> For a fuller explanation into the environment threats associated with the management of common land see Short (2000).

literature. Within Europe, the response of the European Union (EU) to changing rural circumstances, and to a rural economy that is increasingly less orientated around agriculture, has been to broaden the Common Agricultural Policy (CAP) away from being a solely production-orientated policy to a multisector rural development approach. There is a vast literature within the UK considering the move from a productivist policy to one that has developed agri-environment schemes (Potter and Lobley 1999; Short 2000), multifunctional forestry (Mather et al. 2006), as well as the rise of consumption based activities like recreation (Marsden 1999). Within Europe more generally it is acknowledged that key features of this paradigm shift are increased diversity and multifunctionality (Knickel and Renting 2000).<sup>7</sup> The issue of diversity relates to the range of actors involved in rural issues and the acknowledgement of multifunctionality concerns the 'simultaneous and interrelated provision of different functions' (van der Ploeg et al. 2000). There is also a sense in which this developed world approach is compensatory and centrally regulated with little local ownership (Hartmann and Petersen 2005). The decline in local involvement is seen as particularly important by some, such as the European Forum on Nature Conservation and Pastoralism,<sup>8</sup> who recognise the need to retain traditional management functions as the most sustainable way of managing landscapes that these different interests identify as being sensitive and valuable (Hindmarch and Pienkowski 1998).

As shown in Figure 1 most common land is concentrated in the west and north, strongly matching areas of upland farming reflecting common land's historical origins to land that was considered marginal and unproductive (Hoskins and Stamp 1963). This early labelling, together with the shared nature of these common properties, resulted in commons being largely excluded from the effects of productivist policies in the UK, especially in the past 50 years. Short and Winter (1999) argue that commons have experienced a type of 'constrained productivism' and therefore, did not experience the intensification in agricultural management that other types of land, such as owner occupied land, did. This disincentive towards intensive management lies at the heart of their increasing importance to a wide range of other functions. The new functions include nature conservation, heritage, landscape, environmental services and, therefore, the link between nature and society. The data and maps used to support this article have been generated by regional and national government agencies in England and Wales. This is important, as although it is difficult to say definitively, it is quite probable that the clear overlap between common land and areas of high value for a range of functions has prompted a

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<sup>7</sup> Multifunctionality is used here to describe a range of interdependent land uses and is thus wider than the definition used by the OECD (2001), which is seen as being unnecessarily restrictive (Potter and Burney 2002).

<sup>8</sup> The European Forum on Nature Conservation and Pastoralism brings together ecologists, nature conservationists, farmers, and policy makers to promote an understanding of the high nature conservation value of certain farming systems.





*Figure 1: Registered Common Land in England and Wales. (Source: DEFRA 2007).*

rise in the attention given to seeking long-term solutions, including legislation, on commons.

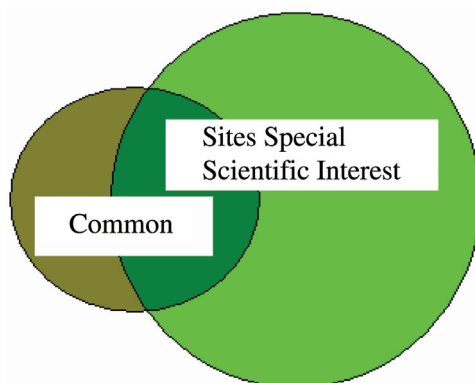
Nature conservation agencies have been aware of the value of commons for some time, but the ability to calculate the contribution they make to various designations is relatively recent. At the national level, 20 percent of all Sites of Special Scientific Interest (SSSIs)<sup>9</sup> in England include common land; or, if viewed the other way round, 55 percent of all commons contain SSSIs, as indicated in Figure 2 (Bathe 2005). Within Wales, the association between commons and the SSSI designation is just as strong (Figure 3) with 30 percent of all SSSIs being commons and 45 percent of commons containing SSSIs (CCW 2007). This close association also extends to international designations.

Figures 4 and 5 show the association between commons in Wales and areas designated as Special Protection Areas (SPAs)<sup>10</sup> and Special Areas of Conservation (SACs)<sup>11</sup>, respectively. Commons are also more important for some habitats than others; in the case of five habitats with action plans developed under the Biodiversity Convention signed during Rio Summit in 1992, commons receive a specific mention (Cmnd 2428 1994, UK Biodiversity Group 1998).

<sup>9</sup> A national designation relating to an area of land notified for being of special nature conservation interest.

<sup>10</sup> An area designated under Article 4 of the European EC Directive 79/409 on the conservation of wild birds.

<sup>11</sup> An area designated under the European EC Directive 92/43 on the conservation of natural habitats of wild fauna and flora.



*Figure 2: Overlap between Common Land and SSSIs in England. Common land area in England – 360,000 ha (4 percent of land area in over 7,000 units), SSSIs in England – 1,000,000 ha (12 percent of land area in over 4,000 units) (Source: Bathe 2005).*

In the case of heathland in England, common land alone accounts for over 40 percent of the areas of both lowland and upland heath habitats (EN 2005). Clearly, there is a strong correlation between commons and designations of significant nature conservation value ensuring that nature conservation issues are an integral part of determining sustainable management on commons.

Evidence for recreation and access also suggests that many commons receive hundreds of thousands of visitors each year and all commons are very important areas of local open space (Short and Winter 1998). Following the Countryside and Rights of Way Act 2000, a legal right of access for walking and quiet enjoyment was introduced on all registered common land.<sup>12</sup> Figure 6 shows the location of the 947,000 hectares of open access land in England (seven per cent of the land area) and 360,000 hectares in Wales (21 percent of the land area). Common land represents about 38 percent of all open access land in England and 30 percent in Wales (EN 2005; CCW 2007). This change from a largely permissive right<sup>13</sup> to a legal one<sup>14</sup> significantly changes the public interest in the ability to exercise this function. The only exceptions are small areas where exclusions have been agreed with government agencies, possible because of military training or especially sensitive areas of biodiversity.

In terms of heritage and archaeology, the low level of management and minimal soil disturbance compared to other areas of land has heightened the importance of common land as a ‘time capsule of past activity’ (Short and

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<sup>12</sup> The Act also introduced a right of access to all ‘open country’ defined as ‘uncultivated moorland, downland, and heathland’.

<sup>13</sup> *de facto* – permissive access where the owner is aware that the site is used for recreation but does not encourage this usage.

<sup>14</sup> *de jure* – a legal right of access in perpetuity or ‘for ever’ under UK law.

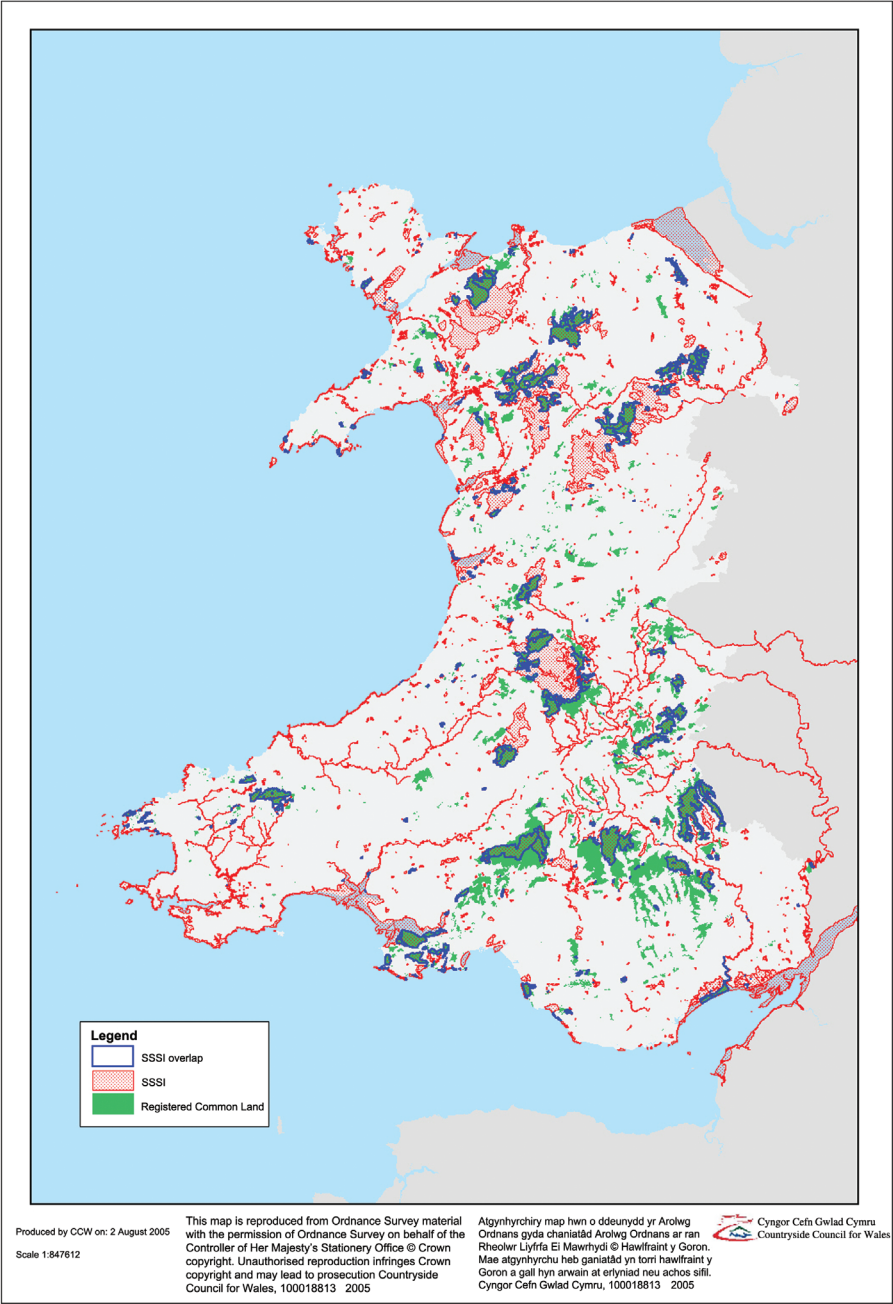


Figure 3: Overlap between SSSIs and common land in Wales (Source: CCW 2007).

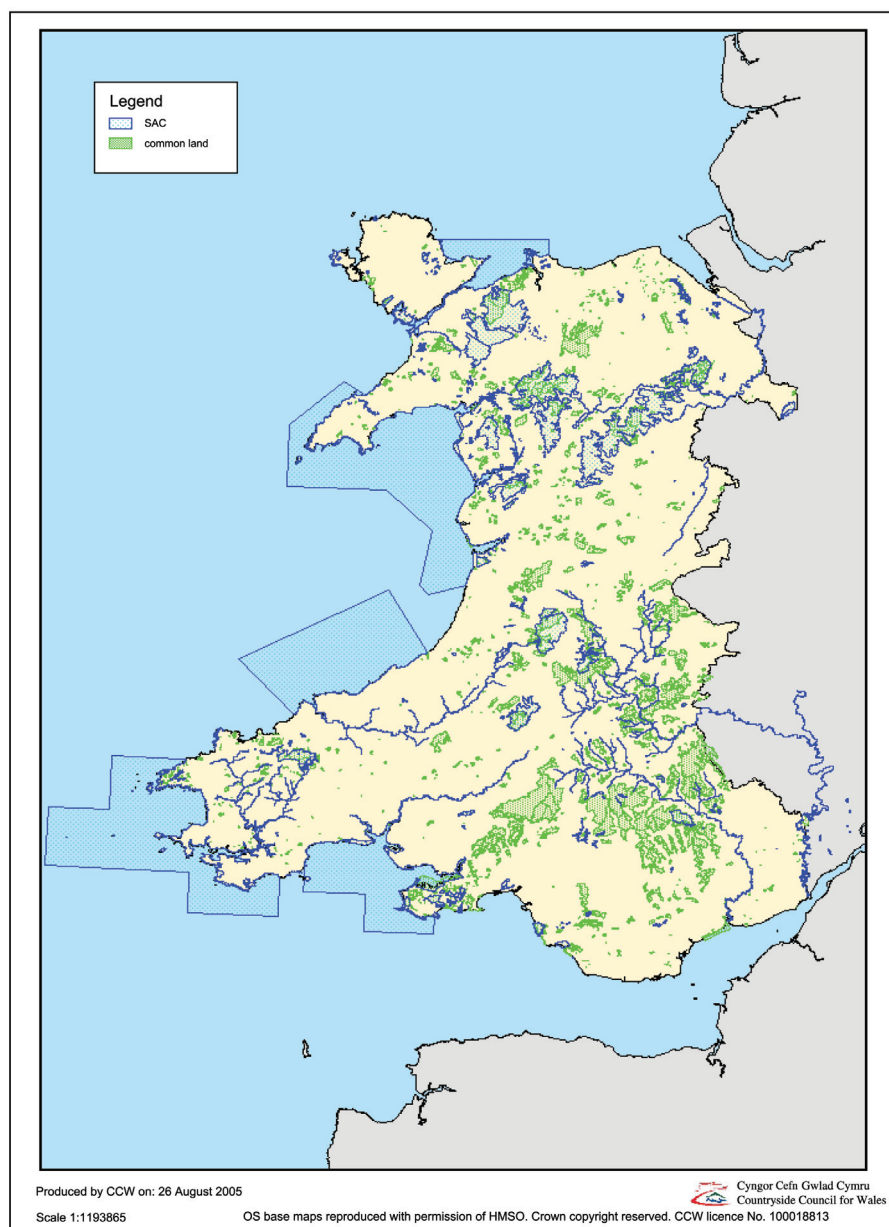


Figure 4: Association between Special Areas of Conservation and common land in Wales (Source: CCW 2007).

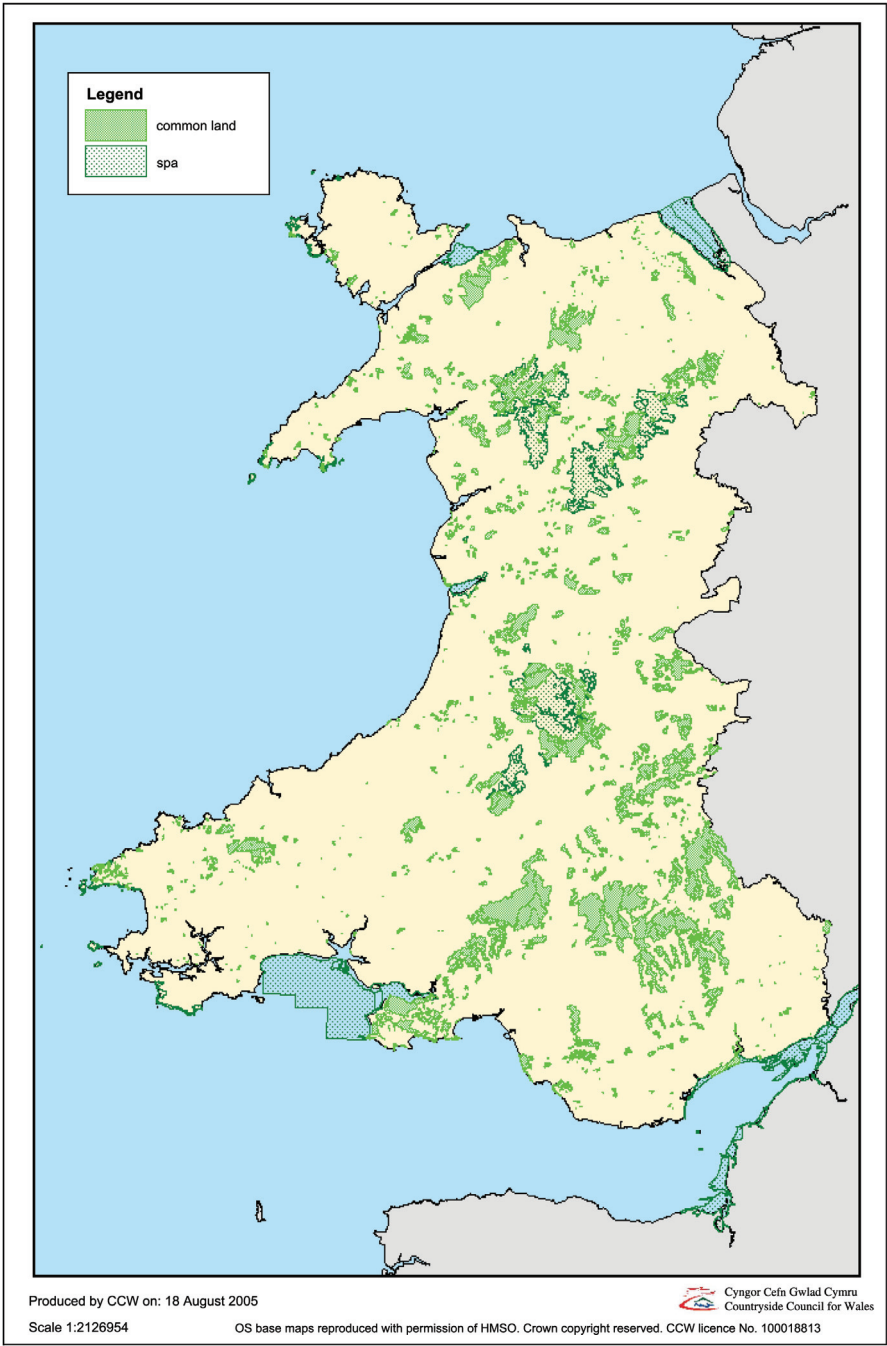


Figure 5: Association between Special Protection Areas and common land in Wales (Source: CCW 2007).



*Figure 6: Areas of Open Access in England and Wales (Source: Bathe 2005).*

Winter 1999). According to Rackham (1986), common land was the focus for many early settlements and so regularly host barrows, tumuli and hillforts. However, there is no national-level indication of the link between common land and designated sites such as Scheduled Ancient Monuments (SAMs) or recordings from archaeological digs. Nevertheless, there are plenty of local



examples indicating the significant contribution made by commons to this function (Hooke 1993). Ward (1989) identified two Neolithic chambered tombs, 12 burnt mounds, 12 structured cairns, 14 large cairns and over 200 smaller cairns on a single 350 hectare common on the Gower peninsula in South Wales. Detailed archaeological investigations on the Black Mountain in the Brecon Beacons revealed that instead of one Roman fort, as previously thought, there were actually three different forts constructed over a longer time period (Meithrin Mynydd Project 1997). Recent work in Cornwall has highlighted the strong link between commons, often seen as wild places, traditional folk stories and legends and the location of archaeological remains. As the draft report highlights 'when brought together, the archaeological remains, the historical evidence for past land use and organisation, and the many stories illuminate and strengthen present and future community involvement in management and celebration of the heathlands' (Cornwall County Council 2006, p. 20).

There is also a well-developed association between landscape and common land. According to Brown et al. (2005), landscapes are places where people and nature meet and interact with one another. For others, landscapes are important indicators of cultural and regional identity (Knickel and Renting 2000) that reflect the basic organization of society and economy (Terkenli 2001). The place of landscape as a function within concepts associated with the commons literature focuses on people's association with the land (Olwig 2003). The evidence presented here clearly marks out common land as being different from the bulk of the enclosed land within both England and Wales. Whether people identify it as common land or not, it is visually different and this results in a different interaction. National Parks within the UK are designated under the National Parks and Access to the Countryside Act 1949, which selected areas of both high nature conservation and landscape value. Within England half of the commons fall within National Parks and a further 31 percent fall within Areas of Outstanding Natural Beauty (AONB)<sup>15</sup> (EN 2005). Thus 81 percent or four-fifths of all commons in England fall within protected landscape areas. Figure 7 shows the situation in Wales where 50 percent of common land falls within protected landscapes designation of national parks or AONBs (CCW 2007). The map shows that in the Gower AONB in the southern part of Wales and the Brecon Beacons National Park just above it common land is particularly important, representing nearly half of the total land area within these designations.

Finally, there is beginning to emerge within the UK a recognition of the contribution that the Ecosystems Approach can offer as a strategy for integrated land management. The approach originated in North America, especially where traditional approaches in natural resource management have struggled (Hartje et al. 2003). The main elements are decentralized decision-making and greater public participation as well as a wider recognition of the goods and services

<sup>15</sup> Areas within England and Wales are designated because of their high landscape value.

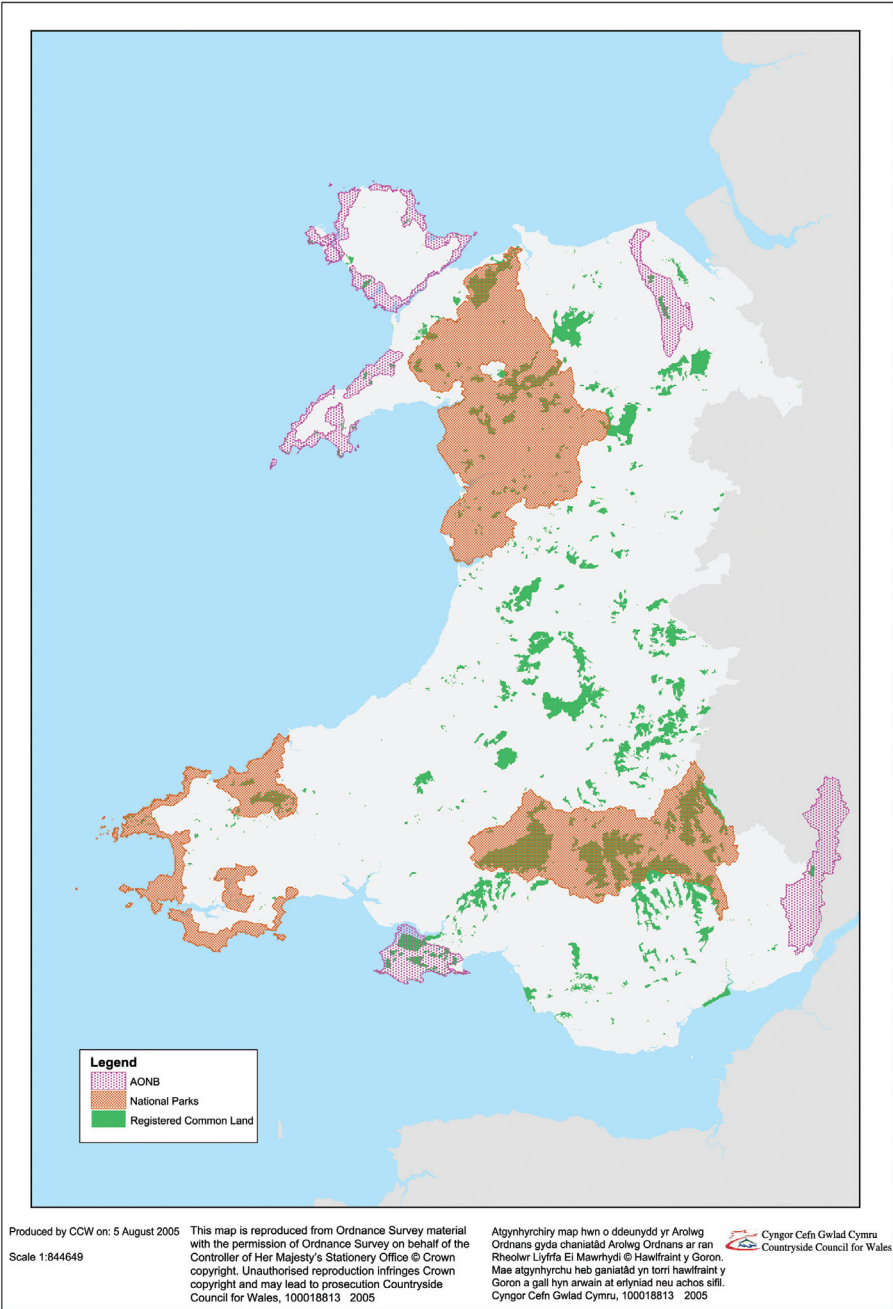


Figure 7: Association between Landscape Designations and common land in Wales (Source: CCW 2007).



that a landscape scale can provide. The DEFRA have recently established a team with a remit to explore the 'potential of the ecosystem services approach in relation to its work on resource protection, valuation and application' (Haines-Young and Potschin 2007). Its attractions are the ability to consider multiple objectives and to consider in more detail the different functions, services and benefits that sustainable land management offers.

This section has thus far discussed a number of relatively new functions that apply to common land and to some extent the benefits, if taken to be the level of public interest representation from government. There is potential for more emphasis on services such as fresh air and water, flood protection and carbon sequestration as well as aesthetic and cultural well-being. Clearly, governments are concerned with the 'quantity as well as quality of the ongoing supply of ecosystem goods and services' (Haines-Young and Potschin 2007), but this does not always mean that issues concerning the management of the commons will be considered sensitively (Hartje et al. 2003; Kandel and Rosa 2005).

The functions outlined in this section reflect rural change within the UK and Western Europe more generally, characterised by its rapid spread and increasing complexity. This is a major area of investigation (Marsden et al. 1993; Marsden 1999; Holmes 2006). One area that is explored by Holmes (2006) is the concept of multifunctional land use where issues of production (represented by the traditional land uses of agriculture and forestry), consumption (represented by tourism and recreation) and protection (represented by natural resource management) are spread across a range of stakeholders and property regimes but fall within the same rural space. Holmes suggests a triangulation approach (Figure 8) recognising that all elements might be present in the same area but to varying degrees. As Figure 8 suggests there is a good chance that some commons in England and Wales would occupy the central area where all three are equally strong.

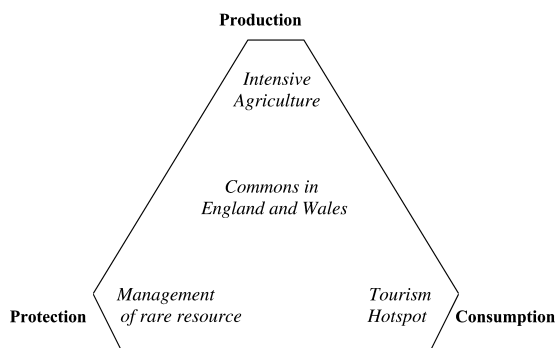


Figure 8: The Multi-Functional Triangulation (Adapted from Holmes 2006).

This section has shown that common land in England and Wales is now prized for its public good functions, a relatively new concept for commons generally (Ostrom 1995) and one with a different economic meaning. Some within these debates suggest that the paradigm shift of rural transition requires new 'synergies between previously discrete knowledge bases' (Marsden 1999, 504). With this in mind the next section will see what insights the commons literature can bring to these discussions, such as the role for government, as the non extractive uses, such as nature conservation and heritage, are often represented centrally as a public good. Overall the section will place common land within the context of the commons literature to see if the approach is useful in revealing the current issues associated with the incorporation of new stakeholders and values within traditional structures.

#### 4. Insights from the commons literature

Within the commons literature, the traditional aspects of common land make it a pure common property resource where the rights to the resource are generally shared according to prescribed regulations (legislation, the commons register, and local custom and practice) and are exclusive to a well-defined set of people (the legal rightsholders) that ensure the exclusion of other potential beneficiaries (Singh 1994; Dolšák and Ostrom 2003). The rightsholders operate largely as a club, and the institutions and associated rules developed to manage the resource equate to a 'club good' (McKean 1992). Economic analysis has shown that it is the existence of regulations to oversee the commons that is critical to the sustainability of the commoning system (Baland and Plateau 1996). As this article outlines, there are a number of other rightsholders linked to more recent demands and functions, such as nature conservation, and for this reason commons within England and Wales come under the category of complex commons, as they are subject to multiple uses with a mixture of rights, both traditional and relating to the public interest (Edwards and Steins 1998). The fact that many commons experience multiple uses and users is gaining recognition (Berkes 1989; Edwards 1996) and this has also progressed as far as the development of analytical frameworks (Ostrom 1990; Oakerson 1992; Edwards and Steins 1998). However, there remains a presumption that the involvement of government and centrally based agencies on commons and impact of external economic environment on the traditional resource system are negative (Dolšák and Ostrom 2003; Dolšák et al. 2003).

A central question within the commons literature hinges around 'how a group of individuals who are in an interdependent situation can organize and govern themselves to obtain continuing benefits' (Ostrom 1990, pp. 29–30). To avoid one or more acting opportunistically, a system needs to be constructed to manage the natural or man-made resource. Thus the commons literature deals with issues concerning the system itself and the flow in whatever units are derived from the resource. Ostrom (1990, pp. 30–31) outlines the different

roles of those involved in common-pool resources. There are 'appropriators', those who withdraw products from the resource, 'providers', who arrange for the provision of a common, and 'producers', who undertake the management of the resource. In the traditional sense of commons, the resource system is something that is shared among the 'providers' and 'producers' and these two categories may involve the same people. However, the resource unit, as in the grass eaten by cattle or water taken for irrigation, cannot be shared but may be allocated amongst the 'appropriators'. There are circumstances, often in more complex cases, where the traditional commons elements are in decline but, as outlined previously, other functions are becoming more prominent. Most of these functions introduce new resource units, for example relating to nature conservation (a particular flora or fauna species), heritage (an ancient site) or landscape (a social/symbolic environment) that is shared amongst those responsible for managing the site as well as other users of the site. While these new resource units each have their own providers and producers there are no appropriators as there is no product to withdraw from the resource.

Complexity is the involvement of 'different types of extractive and non extractive uses among different stakeholder groups through a mixture of property right regimes' within the same area (Steins and Edwards 1999, 242). It is these types of commons that seem to dominate developed countries, such as Western Europe, and belong to the cluster of largely traditional, 'long enduring common-pool resources' discussed by Ostrom (1990). Ostrom suggested seven design principles for the effective management of such commons:

- Boundaries must be clearly defined so the CPR area, the resource use, and levels of access within and outside the core group are clear.
- Rules are required to determine how the area is provided, managed and the products of the resource are divided up taking account of specific resource constraints.
- Modification of rules is a collective activity by those who participate in the common and are affected by the operational rules.
- Condition monitoring of the common and compliance with the rules must be effective, with accountability among those who use the resource.
- Effective and appropriate sanctions for those who violate the rules with the process accountable to those who use the resource.
- Mechanisms for resolving conflicting demands locally are necessary.
- Once agreed local rules should not be challenged by higher levels of government.

(Summarised from Ostrom 1990, p. 90).

Edwards and Steins (1998) suggest further characteristics for complex commons, those that retain some element of the traditional long enduring common alongside less traditional activities. These include the recognition of several possible tensions, key relationships and subsequent points of discussion. A frequent tension is between the old structures, often developed for single-use

commons, and those required for multiple-use decision-making. Moreover, the construction of a new multifunctional framework arising out of the traditional single-use system requires a dialogue to establish the scope of the required changes. As Libecap (1995) indicates, adjustment in commons is not likely to take place in a smooth or timely fashion when there are important differences between the bargaining parties. Due to the decline in the traditional function, agricultural interests increasingly feel disempowered compared to other stakeholders. Edwards and Steins (1998) work in the New Forest notes that the newer interests are often more articulate and well resourced than traditional resource users. Libecap (1995) also comments that uncertainty about future regulatory policies provide additional problems within any discussions, something that applies to agriculture within Europe as a result of the CAP reforms.

Critical within the commons literature is the relationship between central and local institutions and stakeholders. Further development of Ostrom's design principles has resulted in analytical frameworks (Oakerson 1992; Edwards and Steins 1998) and management alternatives to the centralised prescriptive approach such as 'adaptive management' with local-level regulation and a recognition of traditional ecological knowledge (TEK) (Berkes et al. 2000). Berkes et al. (2000) outline adaptive management as being a system accepting of TEK and one that might be characterised by:

- management through locally crafted rules enforced by users;
- flexible resource use adjusted to suit resource at that time;
- users who have accumulated ecological knowledge base;
- livelihoods that are secure;
- management adjusted to meet resource and ecosystem change.

(Adapted from Berkes et al. 2000, p. 160).

Central to this approach is the incorporation of different types of knowledge within the process, often balancing the formal, or scientific, alongside local, or lay, knowledge (Berkes 1989). Therefore the adaptive management approach moves away from centralised rules and regulations that are exclusively developed by technical experts and enforced by agents who have no connection with the resource being used. In such situations there is little scope for variability and opportunity as well as resilience and adaptation to circumstances (Berkes et al. 2000).

In concluding this section it can be seen that the commons literature offers a broad and well developed framework with which to assess recent policy developments and conceptual thinking concerning common land in England and Wales. It is important to note that commons within England and Wales are not seen as being intrinsically superior; far from it, they are often seen as a feudal relic of the past. They are becoming tolerated, and occasionally valued, largely because of their inability to respond to the previous and increasingly discredited agricultural policy regime within Europe. Thus the outcome is more fortuitous than planned, however having arrived where we are, the next section

assesses the government's response to these issues using the concepts outlined in this section.

## 5. Management and governance responses in England and Wales

A government commitment to legislate on common land in England and Wales was first made in 1987, following the report of the Common Land Forum (CLF 1986), which in itself was a response to the findings of the Royal Commission report in 1958. The complexities of common land ensured that it took an additional 20 years to realise this commitment. The supporting documentation to the Commons Act 2006 talks of the need 'to provide for the protection of all commons for the benefit of future generations' (DEFRA 2004) but recognised that there was no quick fix as the existing legal framework was complex and there was wide variation in the needs and issues within common land, from the large and heavily grazed upland commons to small and undergrazed commons in lowland situations (DEFRA 2002). The policy statement makes a clear reference to the need for a balanced approach that embraces the range of interests and functions shown in Figures 2 to 7, alongside 'modern sustainable agricultural management practices' (DEFRA 2002, iii). This section will assess whether the most recent changes and developments surrounding the Commons Act 2006 are likely to assist in sustaining these commons through the twenty-first century.

Clearly the message from within Government and many of the agencies with an interest in this area is that the legislation needs to protect the commons from further decline as well as enable better management. Overall, the Commons Act can be divided into three main areas: the updating of the centralised registers and procedures relating to common land; overhauling the procedures for protecting common land from abuse, encroachment and unauthorised development; and introducing mechanisms through which the management of common can be more effectively regulated at the local level.

The updating of the commons registers and associated procedures is important as this underpins the management of commons. It provides a centralised resource at the local level that is accessible to all, within designated Commons Registration Authorities. The need for this section of the legislation relates largely to the failings of previous legislation to provide a suitable system. The Commons Registration Act 1965 was drafted to provide a single approach to something that had been previously been *ad hoc*. However, the process of registering rights and ownership of land was not uniformly followed and the procedures for correcting entries were very limited. The 1965 Act also did not include a process for general updating, for example, when a property was sold or the land with common rights was developed for housing. As a result a number of sources found the registers to be incomplete and inaccurate, and increasingly out of date (CLF 1986; Aitchison and Gadsden 1992; Short and Winter 1998). The registers are in part a historical record, with most representing

a snap shot of the situation around 1970, but they are also a legal document used to locate rights holders and owners when considering management changes such as the introduction of an agri-environment scheme or the exact boundary of a common.

The protection of common land has, since the Law of Property Act 1925, been associated with a process that has contributed to the problems associated with management. This aim of the 1925 Act was to protect commons from enclosure by requiring consent from a government minister for 'any building, fence or other work that prevents or impedes access to the common' (CLF 1986). The process for seeking permission has been described as not being 'clear, accountable or transparent' (Short and Winter 1998). For example, the type and location of the common determined which section of the 1925 Act, and other legislation, applied. The process was conducted through correspondence alone for both applicant and objectors without promoting local discussions. Lastly, there was no provision for conditions to be attached to applications making amendments difficult. For much of the 75 years that the law has been in place the key interests of agriculture and recreation were keen for commons to remain open and unenclosed. However, as the range of interests broadened, to include nature conservation, landscape, and heritage, concerns grew about the level of management and the complexity associated with active management. The result was that management was either not pursued, done illegally, or that relatively small changes took a disproportionate amount of time to be implemented.

The 2006 Act aims to reinforce the existing protections against abuse, encroachment and unauthorised development by extending this so that all registered common land receives the same level of protection, regardless of whether there are registered common rights. The second aim is to update the application process with a more responsive system that requires the applicant to show that they have consulted with local stakeholders and have the agreement of those with a legal interest. Some management activities, such as small areas of temporary fencing for nature conservation management, would not require consent. Any person, not just those with a legal interest in the common, can now report reporting of illegal activity. These last two suggestions are linked, as it is clearly the intention that local consultation takes place before small management tasks are implemented to prevent those with a general, as well as legal, interest from taking enforcement action. The final part of the protection aspects of the Act prevents those with common rights from selling, leasing, or letting their rights away from the property to which the rights are attached. The stopping of this process, called severance, is aimed at protecting local grazing of commons with stock that are reared and suitable for upland grazing on commons.

The third mechanism within the Commons Act 2006 is concerned with the management of commons, offering a means to ensure that they are more sustainable and effectively regulated. A central part of this sustainable manage-

ment agenda is the power for commoners, landowners, and other undefined groups or individuals to voluntarily apply to establish statutory commons councils. Commons councils can apply to individual commons or a cluster of commons with the precise aim of obtaining powers to manage more effectively the agricultural activities, vegetation, and the exercising of rights (DEFRA 2006). In order for a commons council to be formed all of the legal stakeholders (commoners, landowners and others with rights to use the resource) need to support the initiative. Where there is public interest, the appropriate public bodies, in many cases the nature conservation or heritage agencies, need to be consulted and supportive. At present the management powers on commons are consensus-based, and one of the main concerns over the past 20 years has been the ability of a minority to prevent positive progress on a particular common. Examples of this include where there is a decline in the traditional upland farming system with little attention given to shepherding or coordinating management (Short 1997) and also where there is an unwillingness to adjust grazing to ecological rather than agricultural levels (Short 2000).

The commons councils would be able to make legally binding rules concerning the agricultural practices on the common, using the courts as a last resort where there is non compliance. DEFRA offers guidance on both the standard constitution and the establishment order but makes clear that the decision on exactly what both contain 'will differ according to the varying functions and needs of each common and council' (DEFRA 2007). The intention of this part of the legislation is clearly not to privatise or publicly control the commons, but to sustain and renew the traditional collective approaches into the twenty-first century. However, the findings from the first public consultation exercise suggest that commoners and landowners see this rather differently. The main reason for creating these bodies, from a commoner's point of view, was to provide a stronger voice for commoners and the perceived need to 'strengthen their negotiating position with public sector bodies' (Wood-Gee 2007). Significantly, where a voluntary association already exists, those consulted saw little additional benefit in the proposed statutory councils. Many existing associations already have agreements with government agencies for environmental management and have developed internal rules accordingly. For them commons councils were seen as an unnecessary layer of further bureaucracy that would be costly to administer and may 'further dilute or duplicate existing arrangements' (Wood-Gee 2007). Other concerns centred around the possibility that non-agricultural interests such as recreation and nature conservation would influence and take over management issues, possibly because the management of the vegetation is a statutory function of the association.

On comparison with Ostrom's (1990) design principles for traditional long enduring commons, it would appear that the centralised registers form the basis by which boundaries, both geographically and numerically, are determined. In order for all resource users to be sure of the correct area and levels of access by an individual or a core group, it is therefore sensible that the system is



uniform and to some extent centralised but equally available and accessible. In terms of protection, while the legislation is clearly centralised, there is a need for a common language about what management is acceptable and what is not, and the existing one was not fit for purpose. That said, the process does resemble the Berkes et al. (2000) description of conventional resource management with the overseeing bureaucracy determined centrally (DEFRA and the Welsh Assembly Government (WAG)), enforced by agents (the Commons Registration Officer within local authorities) with little or no variability and low levels of local involvement, apart from the new requirement to provide the information that will bring the registers up-to-date. However, since tensions are a frequent characteristic of complex commons, Edwards and Steins (1998) suggest that the collection of key data within an agreed and familiar format is likely to reduce this factor.

The introduction of local consultation and the desire for agreement within the management framework relating to protection is clearly closer to what both Ostrom (1990) and Berkes et al. (2000) refer to. However, the overall thrust of the Ostrom design principles is the development of locally based rules that cut across all of the functions (Ostrom 1990). Therefore the feedback from the commoners is critical. First, their response to these proposals is based on a perceived difference between the various bargaining parties and a sense that their voice is not being listened to. These feelings of disempowerment from the agricultural interest may be explained as representing the traditional economic function that is in decline and experiencing regulatory uncertainty (Libecap 1995). The statutory commons councils are the regulatory body and yet there is no requirement to ensure that all those who have a legal right to use the products of the commons are present on the council. By restricting the membership to commoners and landowners (the traditional members of the club) and only inviting, rather than requiring, others, the new functions may only be represented where central government has a responsibility. This would seem to retain Ostrom's characteristic for such long enduring commons of dividing up the products of the resource but not suit the adaptive management framework of Berkes et al. (2000) that promotes a flexible approach that suits the resource use at the time. The consequence is unlikely to be the development of rules along the lines of adaptive management, as only non-agricultural contributions are likely to come from government agencies and associated experts, creating a potential for differences in the types of knowledge and membership on the commons council to hinder progress.

Conflict management and management flexibility are design principles included by both Ostrom (1990) and Berkes et al. (2000). Clearly national legislation is a blunt instrument that is not always dynamic enough to deal with multi-faceted issues and possible conflict. Aware of this, DEFRA, along with four other agencies, commissioned the development of a process for those involved with local commons to use when changes in management or governance were proposed (Short et al. 2005). This process is now cited by DEFRA



alongside the regulations and will be reviewed as the Act is being implemented (DEFRA 2007). The overall framework states that:

- There should be recognition by all concerned that different people value commons for different reasons, therefore what people value about the common may differ but they can be united by the strength of their concern.
- Sustainable frameworks are those where all stakeholders:
  - a. respect and try to understand each others' values and aims;
  - b. recognise that all perspectives are valid and that there will be things held in common;
  - c. keep an open mind about change, properly exploring the various options and the impacts on others;
  - d. ensure that change benefits the common as well as the neighbourhood and wider interests.

(Adapted from Short et al. 2005).

These golden rules and the shape of the suggested process matches that outlined by Edwards and Steins (1998), and promotes a management style that is more adaptive than the conventional (Berkes et al. 2000). To conclude this section two case studies of recent approaches by government agencies to sustain the existing traditional structures indicate a willingness to embrace the new values whilst looking to retain and reinforce elements of the traditional system.

The first case study concerns the development and subsequent adoption of an environmental land management scheme in the New Forest area of southern England (Winter et al. 2003). The scheme used was a national one, the Countryside Stewardship Scheme, and as a result, the prescriptions and structure of the scheme were developed centrally. Such policies tended to avoid commons because of the complex legislation and the need for all stakeholders to agree (Short 2000). In this case, the decision was taken to overlook the complex situation regarding rightsholders and adapt the standard scheme by devolving the powers of coordinating management to the traditional commoning structure of the Verderers and Agistors (Edwards 1996; Edwards and Steins 1998). As a result, the traditional collective management approach has been reinforced and reinvigorated. The importance of the payment is evident in the number of commoners that have signed up to the agreement in the first two years, with 86 percent of all stock on the common and 80 percent of commoners now engaged.<sup>16</sup> The scheme is also having a positive impact on stock numbers, which are up 10 percent, at a time of considerable uncertainty within the UK livestock economy (Mills et al. 2006). The early signs are that the traditional commoning system has been strengthened to the benefit of all functions and stakeholders.

The second case study concerns policy developments in Wales and the establishment of the landscape-scale tier of the Welsh environmental land

<sup>16</sup> The fact that not all commoners are involved from the start has been a problem for such schemes in the past (see Short 2000).

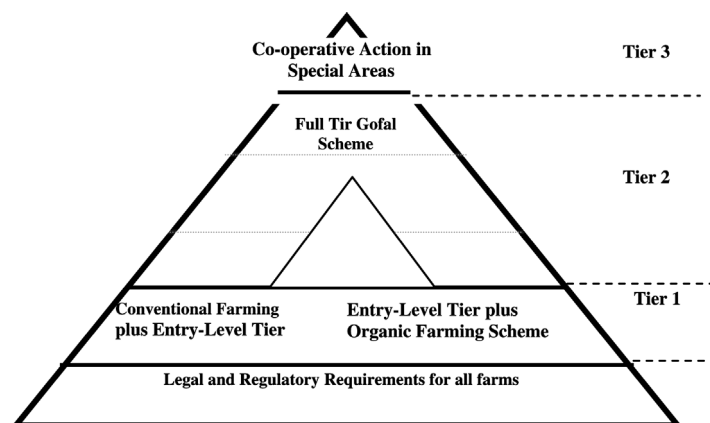


Figure 9: Proposed structure of Welsh Agri-Environmental Scheme, including collective action aspect to Tier 3. (Source: WAG 2005).

management strategy, which is to be based around collective action, as shown in Figure 9 (WAG 2005). Common land is one of three aspects within this landscape-scale initiative, the others being water catchment areas and other collective initiatives that have an environmentally positive impact on land management. It has long been recognised by UK environmental agencies that a serious limitation of farm-based policies is the difficulty in joining up management across ownership boundaries (Whitby 2000). The development of this scheme again indicates a recognition that common land is very significant in Wales and that the collective approach has a valuable contribution to make (Davies et al. 2004). More importantly in the context of this article, it also indicates that collective action provides an opportunity for the building up of environmental, economic and social capital (WAG 2005) and the creation of synergy and partnerships that go beyond farm-based enterprises (van der Ploeg et al. 2000).

The last two sections have shown how non-productive functions are gradually filling the void being left by a declining agriculture and the response of governments to adapt to this new era. This article suggests that because of the strength and number of values and associated stakeholders, commons can provide a powerful symbolic vision of what might be achieved through multifunctional management, provided of course that these new stakeholders can be incorporated within the existing traditional structures and regulations. For this to occur these areas, which are now valued because of their reluctance to take up the production orientated policies will now need to adjust in order to deliver multiple public goods and other public goods better than other institutional forms. If they are not able to, and the structures breakdown, there

is the possibility that all functions, from biodiversity to landscape and heritage to ecosystem services will suffer.

## 6. Conclusions

The article has clearly shown that the traditional commons in England and Wales have experienced a great deal of change in recent years as the agricultural function declines, in line with other developed countries. What the article is able to show, using data collected by government agencies, is the increasing focus on these areas as high quality examples of other functions, such as nature conservation, landscape, heritage, and recreation. With this realisation comes the central issue of incorporating stakeholders and adjusting the regulatory aspects to cope with a new range of environmental threats and resource change. The review of the commons literature reveals that the work concerning traditional long-enduring commons, as well as issues such as adaptive management and analytical frameworks for complex land management situations have a strong relevance to the situation in England and Wales.

The previous section has shown that it is possible, largely through the willingness and determination of both government and local people, to secure effective management of commons. It also shows that the recent legislation is largely sound when assessed against the framework based on the commons literature; however a significant omission from the legislation is the guarantee of sufficient local involvement and investment in the resource.

Overall, the actions of government are seen to be positive to sustain the commons into the twenty-first century and a strong justification for this is the high level of public interest and public goods that these sites deliver. What is also clear is that there is a high level of local interest in commons, from both the traditional interests and those who engage with commons through a range of activities. However, the inclusion of these new stakeholders is patchy and not formalised within the new regulations. There is some progress towards the use of participatory techniques to reduce tension and increase dialogue but this has not been formalised within the regulations. One opportunity to broaden the stakeholders still further and deepen the use of stakeholder engagement is through the Ecosystems Approach. As currently framed the statutory commons councils appear to be a sound way of bringing the traditional interests together and reinvigorating their regulatory potential. However, they do not provide a forum for the incorporation of the other functions and stakeholders unless these are a statutory requirement through designation. The response of those involved in the management of commons is one of resistance to what they view as further interference from government. A key conclusion of this article is that more effort is required to develop local delivery mechanisms that characterise both adaptive management (Berkes et al. 2000) and the ecosystems approach (Hartje et al. 2003). Both offer a more decentralised approach with a greater

emphasis on local expertise and concerns that are incorporated through an impartial participatory process.

Finally, long-enduring commons in the UK, and perhaps across Europe, should no longer focus on the issue of declining traditional economic production functions, but on the effective inclusion of non-traditional functions that have increased both the economic significance and complexity of these commons. Within England and Wales there is ample evidence regarding the significance of commons to these new functions. The traditional functions cannot be cast aside as these remain the most effective and sustainable means of management, as well as a crucial source of knowledge to the benefit of the other functions (Clark and Murdoch 1997). Here Holmes (2006) triangulation is a helpful way of demonstrating the interlinking impact of the change towards multifunctional land use that combines production, protection and consumption. Further research is required to determine the role of government on the long enduring and increasingly complex commons of developed countries and if the multifunctional experience of such commons provides lessons for other areas of multifunctional use. The opportunity for these commons to offer a range of natural services should not be overlooked, further increasing both their value and complexity and making it vital that we understand the key design principles of successful approaches in terms of effective self-regulation, broad stakeholder engagement and policy development.

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