

# **Modern Environmental Governance: Qualitative Research Data**

## **Case Study 1: Eskdale Common, Cumbria**

### **1 Introduction and Methodology**

Eskdale common is an extensive upland area in the Lake District National Park. The common shares with the Ingleton and Elan valley case studies upland characteristics as well as types of management agreements and rights of common. In regards to the latter, the rights of common exercise today are pasture rights, although the exercise of rights of turbary is in the living memory of some farmers. Although the exercise of estovers has faded away at the beginning of the 20<sup>th</sup> century when bracken stopped to be used for winter bedding, today no one of the farmers cut bracken, though some of them have registered rights of estovers. Similarly to the Welsh case study, there is an ESA agreement for the whole common, here complemented by individual SWES agreements. As the other two upland case studies, Eskdale common is today principally grazed by sheep, though some cattle have been introduced and there is a clear strategy from Natural England to reintroduce more with the High Level Stewardship scheme. As in Ingleton the sheep are hefted and the future introduction of cattle is then perceived problematic in terms of agricultural management. The relationship between the hefting system and current agro-environmental schemes is also difficult given the substantial reductions in sheep stocking levels required by the agri-environment schemes and the consequent creation of vacuous spaces on the common that disturb traditional hefting arrangements and grazing patterns.

Characteristics that differentiate this case study from the other upland ones are the simplicity of legal boundaries, the importance of diversification for the farming business and the paucity of active graziers. In fact, in Ingleton three registered common land units were the object of study, although two of them (CL 134 and 208) were considered by the stakeholders as forming a single common (Ingleborough) and in Wales the issue of de-registration of CL 66 rendered the description of the legal boundaries a very complex exercise. Compared to these case studies, Eskdale is more straightforward in terms of legal boundaries: only one registered Common Land Unit (CL 58) with no disputed land and a low number of active graziers (8 in total). From a methodological view point, the relative low number of active graziers has not required the involvement of sampling techniques as all the active farmers have been asked to participate in the interviews. 7 of the 8 farmers consented so that semi-structured interviews were conducted with each of them in two separate field visits, using a questionnaire resembling that of the other case studies (see Annex I). Semi-structured interviews were also conducted with Natural England officers and unstructured interviews with the National Trust's land manager and rural surveyor in and with the National Trust guardian in order to explore issues of landownership, tenancy and monitoring of the common. In the second field visit, the secretary of the federation of Cumbrian Commoners was also interviewed about the federation's role in relation to the formation of a common council.

Use was also made of the participant observation technique - the farmers were informally met with as a group during the first fieldwork visit (11/11/07). The discussion focussed primarily on the Statutory Common Councils (CC) in relation to which the commoners expressed their doubts and reservations.

As for the other case studies, the principal research questions which conducted the enquiry were five:

- 1) What are the principal environmental governance mechanisms in place?
- 2) What is the system of property rights as sanctioned by the CRA 1965 and how has it changed historically?
- 3) What are the principal institutions governing the commons?
- 4) What are the future strategies of the principal stakeholders for the achievement of sustainable development and how can they be reconciled between themselves or/and with the requirements of Commons Act 2006?
- 5) What is original about this case study?

The first three find an answer in the thematic session which opens each chapter (section A responds to question n. 1, section B to n. 2 and section C to n. 3) and the interaction is then conceptualised within the legal pluralist framework of analysis. As for questions n. 4 and 5, these are addressed throughout the chapter beginning in the thematic account down to the conclusion. Question n. 5 is ambivalent in character: on the one hand it is a research question that contributed to shape the fieldwork in each case study; on the other it is also a starting point for the choice of the case studies themselves. In fact, one of the attempts of the overall research was to show the diversity of common land in England and Wales by selecting case studies that represented diverse realities. This is a clear example of the interlinking between methodology and research questions, viz. the extent in which research questions shape the methodology.

## **2 Environmental Governance**

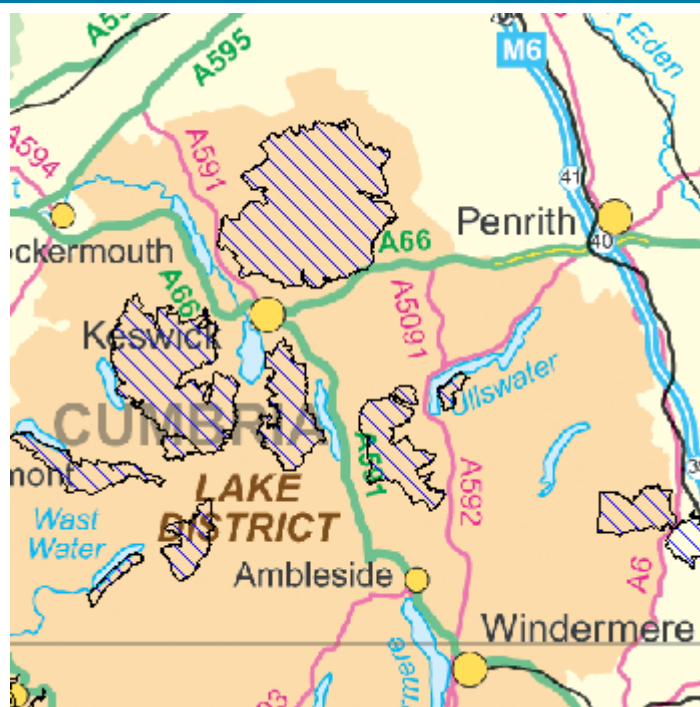
This section is dedicated to environmental governance in *sensu stricto* since it is identified with environmental designations and mechanisms (management agreements). First the section attempts to describe existing environmental designations affecting the commons in question, thereby answering research question 1.1 (what are the environmental designations in place?). It moves beyond a mere description of them since it reports stakeholders' often divergent opinions answering research question 1.2 (how are the environmental designations perceived by the different stakeholders?). In the section 2.2 attention is drawn to existing and future management agreements in an attempt to answer research question 1.3 and 1.4, respectively 'which ones are the existing MAs and future MAs' and 'why are these the preferred instruments'?

### **2.1 Environmental Designations**

Eskdale is another example of upland common characterised by sub alpine dry dwarf shrub heath of national and international environmental importance. In fact the common hosts four SSSIs, it lies within the Lake District National Park and partially within the Lake District High Fells Special Area of Conservation.

## 2.1.1 Lake District High Fells Special Area of Conservation

Map of Lake District High Fells



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Image retrieved from:  
<http://data.nbn.org.uk/siteInfo/siteSpeciesGroups.jsp?useIntersects=1&allDs=1&engOrd=1&srcKey=UK0012960&srcDsKey=GA000327>

The Lake District High Fells (UK0012960) was designated as a SAC in 2005 because it hosts many upland tarns (Oligotrophic to mesotrophic standing waters with vegetation of the Littorelletea uniflorae and/or of the Isoeto-Nanojuncetea). Annex I habitat that are primary reasons for the designation of the SAC and that are present in this case study are northern Atlantic wet heaths with *Erica tetralix*, *European dry heaths*, *Alpine and Boreal heaths* with *Calluna vulgaris*, locally bilberry *Vaccinium myrtillus*, siliceous slopes and siliceous scree of the montane to snow levels. Other Annex I habitat that are a primary reason for the designation of the site are *Juniperus communis*, siliceous alpine and boreal grasslands, hydrophilous tall herb fringe communities, blanket bogs and old sessile oak.

Annex I habitats that are a qualifying feature are species-rich nardus grassland (priority feature), alkaline fens and calcareous rocky slopes with chasmophtic vegetation. There are no Annex II species that are a primary reason for the selection of the site and Slender green feather-moss is the only Annex II species which is a qualifying feature for the site selection.

(<http://www.jncc.gov.uk/ProtectedSites/SACselection/sac.asp?EUCode=UK0012960>)

According to the Natura 200 data form compiled in 2006, the major threat for the habitats is grazing, especially on unfenced common land where control of grazing is difficult to achieve, although the ESA has been able to reduce pressures.

(<http://www.jncc.gov.uk/ProtectedSites/SACselection/n2kforms/UK0012960.pdf>).

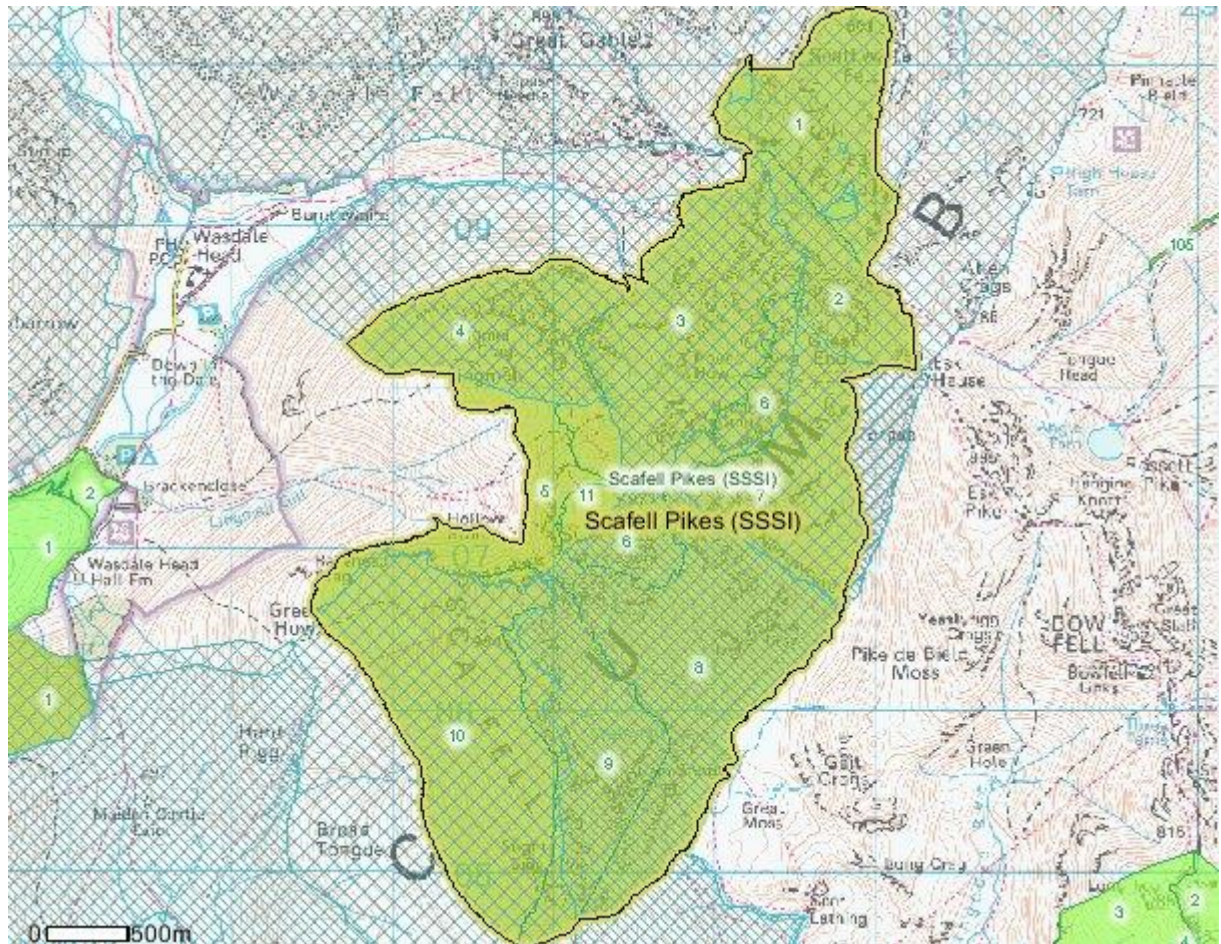
This view is shared by Natural England description of SSSIs, as evident below. According to the JNCC form, grazing is not the sole threat as recreational interests

contribute to the site vulnerability. This view is downplayed by Natural England, given its interest in signing ESA for the common as well as individual sWES.

As for the other case studies, farmers' knowledge about the characteristics of the SAC is limited given that there are no immediate/evident constraints the designated SAC impose on them compared to SSSIs.

## 2.1.2 SSSIs

### Scafell Pike



Picture

from:

<http://www.natureonthemap.org.uk/map.aspx?map=sssi&feature=1001922,sssi,HYPERLINK,LABEL>

Scafell Pike was notified in 1988 under the 1981 Act. It lies within the Lake District National Park. It is named after Scafell Pike, which is the highest mountain in England (977 m) and provides an important example of summit boulder field with lichen heaths and a series of gills. The slopes below the summit plateau are characterised by scree, mat grass and bilberry heath

([http://www.sssi.naturalengland.org.uk/citation/citation\\_photo/1001922.pdf](http://www.sssi.naturalengland.org.uk/citation/citation_photo/1001922.pdf)).

According to Natural England's management statement, the montane heaths are self-sustaining so that they require minimal human management. This renders heavy grazing dangerous

(<http://www.sssi.naturalengland.org.uk/Special/sssi/vam/VAM%201001922.doc>).

Grazing should be limited to the summer periods and light in intensity. Stock number

and patterns of movements are key elements also for the preservation of scree and dry upland heath. As for the operations likely to damage, the criticism raised in the other case studies is once again relevant given the standardisation of the list which does not offer specific advice for the particularities of the SSSI in question. This standardisation contributes to a nationalisation of nature conservation, so that different habitats, differently managed through time may be subject to the same list of OLDs (a relevant example here is the equivalence between the list of OLDs for Scafell and Wasdale Screes). Besides, in relation to the common land, the standard list duplicates prohibitions existing under the common law's definition of *profit a prendre*. To take an example that has not been mentioned previously, operation number 9 prohibits the release into the site of any wild, feral or domestic animal, plant or seed. Clearly these are activities already forbidden by the nature of the registered rights of common.

According to a recent condition assessment of Natural England (2009), the area is 100% unfavourable recovering. (<http://www.sssi.naturalengland.org.uk/Special/sssi/reportAction.cfm?report=sdrt18&category=S&reference=1001922>). It is argued that ESA renewal 2004 the sWES should lead to long-term recovery of the common as well as the freehold fell at the top. However the recovery could potentially be undermined by stock encroachment from nearby non-SSSi heafs if monitoring does not take place properly.

### 2.1.3 Wasdale Screes

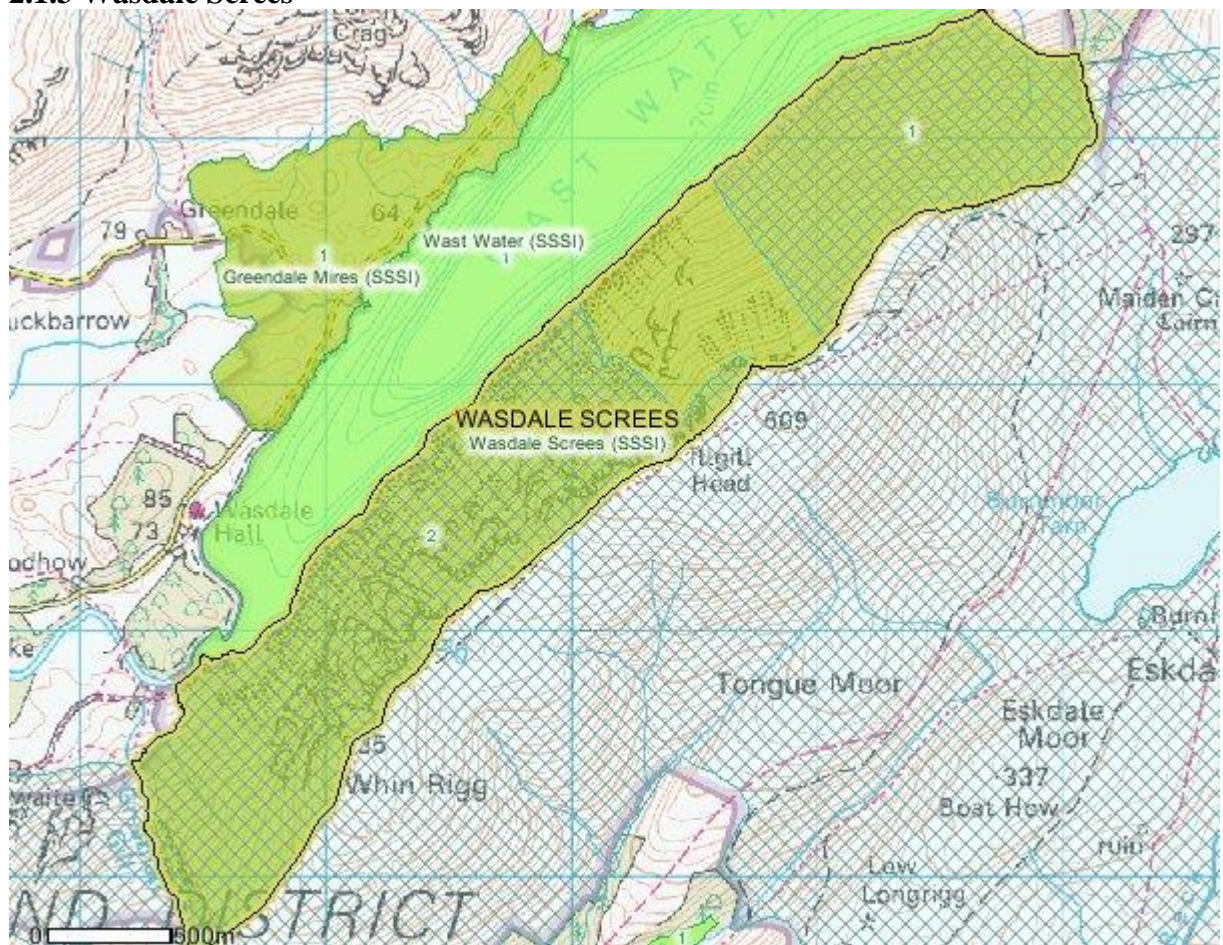


Image retrieved at: <http://www.natureonthemap.org.uk/map.aspx>

Wasdale Screes SSSI was designated in 1987 under section 28 of the WCA 1981 because of important screes, principally formed of resistant acid rocks of the Borrowdale Volcanic Series. Together with the geomorphological interest, the site is also important for mountain flora, which includes nationally rare species such as alpine lady's mantle, alpine clubmoss and mountain saxifrage ([http://www.sssi.naturalengland.org.uk/citation/citation\\_photo/1002125.pdf](http://www.sssi.naturalengland.org.uk/citation/citation_photo/1002125.pdf)).

Compared to the 1,102.2 ha of Scafell, Wasdale Scree extends for a small area of 344.8 ha and it is composed by two units as shown in the above map, both in unfavourable recovering according to Natural England assessment 2009. There have been improvements in the SSSIs conditions since in 2007 the condition assessment found 70% of the area in unfavourable no change conditions (Natural England website). The reason for such an improvement may be found in the sustainable grazing achieved via ESA renewal 2004 (Eskdale common) and sWES 2004. As for Scafell Pike, Natural England's view about management is that the control of stocking density is the key to achieve a full recovery of the SSSI (<http://www.sssi.naturalengland.org.uk/Special/sssi/vam/VAM%201002125.doc>).

#### **2.1.4 Beckfoot Quarry and Nab Gill Mine SSSIs**

These SSSIs, both in favourable conditions according to Natural England, are geological sites, important for exposure to a perthite granite (Beckfoot Quarry) and in understanding the origin of West-Cumbrian iron-ore field (Nab Gill Mine). Given their status and characteristics, they are marginal to Eskdale common grazing activities and no further space is dedicated to their description.

#### **2.1.5 The Impact of Legal Controls on Land Management**

As in the other case studies, many farmers are not particularly aware of the OLDs list and when asked which restrictions the SSSIs status of land imposed, they confuse them with the grazing restrictions imposed by Management Agreements. Only two of the interviewees mentioned as OLDs no ploughing or spread of fertiliser and one of them interestingly recognised that the majority, given their standardised character, are not applicable to the common (Efarmer 7: 2008).

Unsurprisingly then, graziers on Eskdale common have never served written notice to carry out Operation Likely to Damage the special interest under section 28, (5) (a) of the WCA. There have been no section 15 agreements under the 1968 Act or management schemes under Sc. 9, sec. 28J of the CROWA. Similarly to the other case studies, this shows how the preferred instruments to manage the commons are those from agricultural-environmental law rather than from nature conservation law of SSSIs. Although Natural England officers interviewed argued that there is the need to move towards more positive management for restoring gill woodland and shrub need, Natural England focus has been so far on instrument that restrict graziers' activity, neglecting the powers under the CROWA to achieve positive management. For the future in fact the action is moving towards another agro-environmental measure, the HLS.

## 2.2 Management Agreements

### 2.2.1 Environmentally Sensitive Area Scheme

Eskdale common is part of a designated ESA. As for Cwmdeuddwr common in Wales, an ESA agreement for the whole common has been negotiated in Eskdale. The reasons for the successful negotiation of the ESA in Eskdale are similar to those identified for Cwmdeuddwr common. The small number of active graziers (8 in total registered in total) is an important variable to consider when accounting for the success of the ESA, although it is important to point out that there have been difficulties in identifying all inactive graziers. As for Cwmdeuddwr, the small number of commoners not only renders the process of signing an agreement administratively quite rapid, but it is also important for its social consequences. The community of commoners has been in fact able to develop strong social bonds, which render free riders behaviour as well as internal disputes less likely to occur when deciding whether to enter an agreement and during its performance.

Another significant variable affecting the ESA is the influence of the National Trust's farm business tenancy agreements ("FBT"). Those farmers who have a FBT were required to "use all reasonable endeavours to enter into the (ESA) Scheme Agreement" (Schedule 4, para 5.2 National Trust standard Farm Business Tenancy Agreement).

The success of the ESA is demonstrated by the fact that the current ESA is the second ESA agreement for the common. In fact, the first ESA agreement was negotiated in 1995 and was renewed in 2004, when the new ESA agreement was coupled with individual sWES agreements in order to ensure a further reduction of sheep (see description of sWES below). Both times, the agreement was concluded by unilateral approach from Natural England and negotiated with the Commoners Association, showing that it was never farmers' own initiative to reduce number of sheep as in the other case studies. The ESA agreement entered into is Heather Fell Tier 1. These required commoners to remove 40% of their stock in order to help heather regenerate and comply with the PSA 2010 target. The formula for original payments was £1 per registered rights+£1 per right used after the exercise+£29 per sheep taken off the fell+£15 wintering charge for 25% of those left. The agreement included the requirement to remove 25% from the fell for the winter (1<sup>st</sup> Oct to 28<sup>th</sup> Feb). On top of that, each Scafell commoner was also paid £1000 per year (Eskdale and Scafell Commoners Original Claims Document confidentially given by Natural England during interview 2007).

Differently from Cwmdeuddwr common then, the ESA negotiated for Eskdale has made the reduction of grazing a more standardised exercise. In fact, while in Cwmdeuddwr a number of grazing days has been allocated to each farmer, who consequently has been left a degree of freedom to decide the periods in which to graze; in Eskdale the ESA has fixed the average reduction of sheep to a maximum of 1.5 sheep per hectare in the summer and 1.125 in the winter. Although the reduction is more standardised than in the Elan Valley, Natural England did not impose the same

reduction to each commoner so that those that reduced more were paid more and vice versa.

### **2.2.2 Sheep and Wildlife Enhancement Scheme (“SWES”)**

Although the substantial reduction of sheep with the ESA, the heather conditions continued to decline so that Natural England reverted to sWES agreements in 2004 for further reducing the grazing pressure on the common (a further 40%). sWES were combined with ESA renewals under the Sustainable Grazing Initiative in Cumbria. The SGI is a term used to cover a number of projects initiated by Natural England and partners to ensure that uplands are grazed sustainably. The SGI is delivered through voluntary agreements with farmers, in this case sWES and ESA. Differently from ESA agreements, sWES are individually tailored agreements, which have created a differentiated environment on the common. In fact, although all the active graziers participate in it, they did it very differently. Two of the commoners removed all their stock under these 5 years agreements thereby creating vacuum areas where there used to be their hefted sheep. This had the consequence of destabilising the overall hefting system on the common since the remaining sheep began to spread out rendering their gathering a difficult and time consuming exercise.

According to the majority of the farmers interviewed, too many sheep have been taken out of the common and this has had negative environmental and agricultural consequences, namely

- 1) loss of hefting → difficulty to gather sheep but also encroachment of sheep from Borrowdale and Wasdale due to the open boundary until Scafell Pike. This is a consequence of Natural England’s method of assessment of the carrying capacity of the land. Natural England in fact, does not take into account spatial variations due to sheep behaviour as well as hefts assuming that sheep are homogeneously dispersed on the common when calculating the amount of stock to be removed (Butler unpublished Master thesis 2007: 27).
- 2) bracken increment due to under grazing. This is a point also shared by the National Trust (National Trust interview 2007)
- 3) tick infestation
- 4) loss of lambs’ hardiness → 25% of shearlings are off- wintered and are more fit to produce twins which cannot be run out on the common so that more lambs are losing hardiness by being away from the common

### **2.2.3 Prospective Higher Level Stewardship (“HLS”)**

The HLS is likely to be offered to the commoners once the ESA expires (2014). The HLS payments are likely to be about £50 per hectare. There will be therefore a small decrease compared to the ESA (of £5-10 per hectare). The HLS will combine the ESA and the sWES into a single scheme but will also attempt to go beyond them by including a provision about mixed grazing (Natural England semi-structures interview 2007). In fact, according to Natural England (semi-structured interview 2007), sheep reduction has been beneficial but not necessary to render Eskdale common in



favourable environmental condition. This is mainly due to the type of livestock on the common. Apart from one commoner, all the farmers graze only sheep on the common. Mixed grazing should instead be prioritised with the HLS given that cows have a less selective grazing than sheep, eating the first unpalatable grass so that sheep can follow eating the short grass.

The importance of mixed grazing to ensure the common environmental sustainability is a view also shared by many of the commoners interviewed and it is reflected in customary practices. Historically in fact, mixed grazing was practiced in Eskdale common as the 1587 Award (the Twenty-Four Book) reports. The Twenty Four Book went so far as to allocating a precise area (Burnmoor Tarn) for the grazing of 'geld goods' (cattle and horses) during the summer months. The geld goods had to be removed from the moor on the 29<sup>th</sup> of September by the tenants of Eskdale and Miterdale. Many of the farmers interviewed recognise the possible positive effects of mixed grazing for the vegetation of the common but also argue that cattle will tend to congregate in Burnmoor Moor, as in the past and therefore it will not have an impact on other areas of the common.

The nature and terms of the common rights registered under the 1965 act are a possible impediment to the realization of a mixed grazing strategy in Eskdale. In fact, although (unlike the Elan Valley case study) in Eskdale commoners have registered rights of pasture specifying conversion rates from sheep to cow, not all the commoners have done so and the conversion rate is not uniform throughout the register (14 entries are 1 cow=10 sheep, other 14 are 1 cow=20 sheep). As emphasised for Cwmdeuddwr common, two solutions might be : to create new rights of common under the Commons Act 2006 or to use the surplus grazing of the landlord, in this case the National Trust. There are however drawbacks for both the cases: if it is perceived that the common is already overstocked it will be difficult to allow the creation of new rights of common as this will run against the sustainable objectives of the Commons Act 2006 and, in relation to surplus grazing, although it is likely that the National Trust would be willing to licence it to its tenants for the grazing of cattle, it may be there is none. Surplus grazing is regarded by DEFRA as grazing over and above the registered common pasture rights and an administrative calculation is done by the rural payment agency, which differentiates between Severely Disadvantage Area Moorland (SDA), non –SDA heath land and non-SDA grassland. Eskdale common falls within SDA moorland which means that the stocking rate is assumed at 0.25 Livestock Units per hectare. This stocking rate is to be multiplied by the area of the common and the product is the maximum stocking rate for the common. This will be compared with registered rights in order to see if there is any surplus grazing available (Rodgers 2009: 19). Given the over-registration of rights that have occurred in many commons, surplus grazing is a rarity. According to this formula, in Eskdale there is no surplus grazing since total area of the common is 3071.5 ha., which when multiplied by 0.25, equals only 767.875 lu in total. The notional stocking capacity of the common (approximately 5250 sheep) is therefore much lower than the registered rights, in total 12230. This calculation, however, does not take account of inactive graziers: many of the registered rights clearly are not exercised and it may well be that the notional number is never reached.

## 2.2.4 The Impact of the Single Farm Payment

Two points are important to mention in relation to the Single Farm Payment in Eskdale:

- 1) Differently from the Elan valley case study and more in line with the Ingleton one, Single Farm Payments do not play a fundamental role in influencing the management of the grazing.
- 2) The majority of the farmers interviewed were confused about the way the SPS was calculated. Once it was explained that SPS entitlements are based on the total registered number of rights, the majority of the farmers argued that it was not fair because of inactive graziers. Each commoner in fact receives a proportion based on registered rights, independently on his/her exercise of the rights. While this did not constitute a problem in the Ingleton case study, it is perceived unfair among the active graziers of Eskdale. The tentative explanation needs to revert to a discussion of property rights and their perception via history. In fact, if it was argued in Ingleton chapter that the history of stinting had created a perception of rights as sellable commodities and personal entitlement, in Eskdale, the levancy and couchancy tradition accompanied by a predominance of rights appurtenant, has rendered the rights more attached to their land use so that their exercise has become almost synonymous with the entitlements stemming from them. Rights in paper should not be weighted in the same way as rights in agricultural use, hence the negative valuation of the way the SPS is calculated.

## 3 Farm Diversification

“Turning sunshine into money”

(Farmer’s definition cited by National Trust’s land manager 2007)

Many farmers practice some forms of diversification<sup>1</sup>, although no one explicitly connected it with the SFP<sup>2</sup>. The farm diversification is principally in the form of business activities that are run on the farm, especially Bed and Breakfast accommodation and self-catering cottages. This form of diversification is rendered possible by the outstanding natural beauty of the place, which attracts many tourists. Similarly to the Cortina case study, the tourist industry is a vital source of income for the commoners. However, other forms of diversification are also practiced. Off-farm activities, such as agricultural contracting, international sheep shearing and gainful contributions of female members to the household are among the forms of diversification practiced. A link needs to be made explicit between tenancy agreement and diversification: those that have a full Agricultural Tenancy (FAT) with security of tenure under the Agricultural Holding Act 1986 tend to practice less diversification

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<sup>1</sup> A broad definition is adopted here, dictated by the interpretation of the farmers interviewed. Since many farmers spoke of off-farm activities, these are included in this working definition of diversification.

<sup>2</sup> The influence of the SFP on diversification seems obvious given that the SFP entitlement is tied to the land and not its produce. However, the impact of the SFP on diversification is very uncertain in this case study as in England more generally (see for example, Maye, D et al 2009).

compared to those who have a Farm Business Tenancy (FBT) under the Agricultural Tenancies Act 1995. This is not only due to the fact that FBT offer more flexibility to farmers to engage in diversification activities but also to the fact that the landlord is the National Trust, a promoter of diversification through FBT. A diversification clause is in fact included in the Tenancy Agreement between farmer and National Trust (National Trust Regional Rural Surveyor interview 2007). This makes us wonder if it is more the landlord than the tenant that is pushing for diversification. Another important variable is also the level of security offered by the tenancy agreement. Given that the FBT are much shorter than FAT and do not offer long term security of tenure, there is more incentive for the tenants to engage in off-farm activities than to concentrate on on-farm diversification or on agricultural activities. On the contrary, those FAT tenants, by having security of tenure, tend to put traditional agricultural practices first. This is because maintaining a good level of agricultural production is a pre-condition for ensuring the security of tenure, which permits an inter-generational continuation of agricultural practices given the succession rights, inserted in Part IV of the Agricultural Holding Act 1986.

#### **4 Property Rights**

The framework of property rights on Eskdale is here analysed beginning with a description of ownership issues and rights of common as they are reported in the common register. The textual representation of rights under the Common Registration Act 1965 is then contra-posed to the cultural constructions of rights according to the different stakeholders and to the everyday practices. If the ownership issues are more straightforward than in the Welsh and Ingleton case studies, the constructions and practices of rights are particularly complex. Of particular interest is the incongruence of the common register, which can be understood by a informal decision of the commoners reported in the minute book of Eskdale commoner Association. As in the other case studies, this section embed the description of property within an historical framework, attempting to answer two research questions, i.e. 1) Why and How the concepts and practices of property have changed historically? and 2) What have been the effects of property changes on the environmental governance of the common?

Eskdale common was originally a section of the manor of Eskdale, Miterdale and Wasdalehead, owned by the Dukes of Northumberland. The manor was the southern part of the forest of Copeland, which had been subdivided into three units in 1338. Eskdale is the only part of the manor remaining registered as common land today (CL58) since the northern section of the manor was enclosed in 1808 and the section in the centre of the manor, covering also Scafell Pike, was reserved for game in the late-medieval period and today has the status of lord's freehold.

After being in the hands of the Dukes of Northumberland and their successors (the Wyndham family), the ownership of Eskdale common passed to the National Trust in 1979. The National Trust already owned the central section of the manor, received as a memorial to those who fell in the WW1 (Winchester and Straughton 2008: 2). Having the National Trust as a landowner is for Eskdale common of particular importance given that the National Trust's objectives are in line with recreational interests and environmental protection policies and given its active role in the common management, to be contrasted with the inactive/absentee landowners found

in the Ingleton and Elan valley case studies. Except one farmer, who is the tenant of the forestry commission and another who privately owns his farm, all the farmers interviewed are tenants of the National Trust and it is exactly through farm tenancy agreements that the National Trust exercises a vital power over the Eskdale common (interview with National Trust's regional senior rural surveyor 2007). The farm business tenancies are extensively used by the Trust in order to address conservation requirements. The emphasis is on the achievement of balance between economic production and environmental protection. A key variable to attain such a balance is diversification of the farm business through green tourism (see above for more details). Although the National Trust is an active landowner, when the property manager for the Lake District Western Valleys was interviewed in Grasmere (Interview with National Trust's property manager 2007), he lamented the lack of teeth the Trust has since it has only an informal role in arbitrating disputes between tenants. According to the property manager, if a common council will be created, the Trust could participate in it, thereby strengthening its position. The lack of teeth to which the property manager referred to was also employed to describe the powerless status the National Trust had in relation to the environmental governance of the common. Here it is possible to see the predominance of the environmental law sphere: the property manager lamented to not been involved in the assessment of Scafell SSSI, although it owns the freehold of Scafell. He also differed as to the type of conservation requested by Natural England: rather than a numeric reduction of sheep with the sWES, the National Trust would prefer "managed change", giving conservation a more human face. The Trust finds the sWES particularly problematic because it has not been involved in the negotiations differently from the ESA, where it was part of the agreement. Therefore, following the sWES reductions, the Trust does not know the exact number of sheep that are turned out on the common.

The common rights registered under the Commons Registration Act 1965 for CL 58 (Eskdale common) are analysed in the separate briefing paper also available on the contested commons website:

**ANALYSIS OF REGISTER OF COMMON LAND  
ESKDALE COMMON – CL 58 (Rodgers)**