

EASTERN SEA FISHERIES JOINT COMMITTEE

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Over 100 years of Fisheries Management

Established 1894



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Dear Annabel

Consultation on the proposals to amend legislation supporting Several and Regulating Orders for shellfish through the Marine Bill

The Joint Committee has operated a hybrid order, the Wash Fishery Order, since 1992. The Order has provided the Joint Committee with a further level of legislation by which to manage the shellfisheries in the Wash. The importance of the Wash Fishery Order has increased significantly in the last few years.

In response to environmental legislation much greater responsibility has been placed on the Joint Committee. The Wash Fishery Order is the main legislation by which the Committee strives to maintain the habitat in favourable condition. Significant changes in the way the fisheries operate in the Wash have also challenged the effectiveness of the Wash Fishery Order. Despite the identification of significant shortcomings in the current legislation, the Wash Fishery Order continues to represent a real practical means by which to manage the fisheries.

Fisheries evolve, habitats change, environmental conditions fluctuate, but current legislation is rarely flexible enough to address these issues fully and effectively. Regulating Orders have the potential to provide the local fisheries managers with the necessary mechanisms by which to address these matters.

The announcement that modernised Sea Fisheries Committees would be responsible for managing the inshore fisheries has already been widely acknowledged as a significant and positive move forward. If this key development was to be combined with amendments to the current legislation, as outlined in the consultation document, then there is every chance that an effective mechanism by which to manage the inshore fisheries and the wider environment would be created.

The right of several fishery conferred on the Joint Committee through the Wash Fishery has, in the opinion of the Joint Committee, greatly assisted the recovery of the mussel stocks in the Wash. The potential benefits to the shellfish cultivation sector are acknowledged and should be encouraged. However the creation of several fisheries does provide for potential enforcement difficulties to arise within the public fisheries. More recently environmental concerns have been raised concerning the fisheries cultivation practices within these areas in the Wash.

I have attached my responses to the questions outlined in the consultation.

Yours sincerely

Matthew Mander
Clerk and Chief Fishery Officer

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Q1 Do you agree that the criteria for holding a public inquiry should be relaxed in this way?

A1 Yes, if possible the process by which changes and renewal of Orders are achieved should be made quicker and easier. The possibility for a Public Inquiry to be held should be maintained and the criteria by which one is triggered clearly stated.

Q2 Should SFOs have their current enforcement powers extended

A2 Yes, clarification of powers would be the absolute minimum required. Deficiencies in powers need to be addressed. Currently there is no specific offence of obstruction that SFOs can enforce under the Wash Fishery Order. This has the potential to make enforcement of all other regulations very difficult. Changes should be made to the legislation so that the owner and skipper are held jointly responsible for the actions of the vessel. It is unclear at present where the power to suspend licences is stated in the legislation. This power should be clearly stated and would provide a real deterrent to those contemplating fishing illegally.

Q3 Should SFO enforcement powers allow them to go into adjoining SFC districts when enforcing an order? What are the current problems this would solve?

A3 Yes, any move towards SFO acquiring the powers to enforce all relevant legislation throughout England and Wales would be welcomed. This would not only allow SFOs to enforce their own Orders in other districts but would provide the opportunity in the future for SFOs to be seconded to different areas if the need arose.

Q4 Should the granting of Regulating Orders be restricted to SFCs

A4 Yes, modernised SFCs have been identified as the organisations that will be responsible for inshore fisheries management. In order to achieve a consistency of approach I think it highly appropriate to restrict the granting of RO to these organisations. I think that Several Orders should also be operated in this way with the SFC granting leases to individuals rather than private individuals having the right to make several orders.

Q5 Do you agree with this proposal?

A5 Yes, refer to A2 as well

Q6 Are there any other situations that should be covered in this way?

A6 The issuing of a licence should be to an individual not company. A new Regulating Order will allow access to all current fishermen and provide the individual with the necessary licence to fish. If a restricted licence scheme was introduced under the RO to manage the fishery then a situation would be created that may not be advantageous to the individual fishermen. If a company can hold a licence, it is unlikely that a company would ever relinquish a licence whereas an individual would when retiring from the fishery. This is likely to lead eventually to a smaller number of companies having a significant share of the access to the fisheries and would prevent new independent fishermen from entering.

Q7 What costs should grantees be able to take into account when calculating the level of tolls or royalties.

A7 Fishermen that benefit from participating in the fishery should pay towards the work carried out in order to get the fishery open. It is unclear whether it is justifiable to recover full costs for this work from the participating fishermen. In the Wash for example the same level of survey work is required to be carried out before the opening of a cockle fishery, irrespective of the available TAC. High licence tolls could potentially exclude some fishermen from participating in certain fisheries. Currently the licence tolls for the Wash fisheries do not reflect at all closely the costs associated with the general management of the fisheries. The Joint Committee's aim is to regulate, protect and develop the fisheries within the Committee's District in a manner that ensures sustainable viability for the foreseeable

future and compliance with the Committee's environmental responsibilities. It could be argued that it is in the public interest that tax payers' money is used to survey and manage the fisheries in the Wash.

Q8 Do you agree with this proposal? Are there other circumstances under which the Secretary of State should make a certificate to cease an Order? What are they?

A8 Agree that voluntary relinquishing of Orders should be made easier. In cases where Several Orders are seen to have a negative impact on the wider environment or public fisheries the Secretary of State should be able to intervene. Importation of shellfish for cultivation leading to introduction of disease or alien species.

Q9 We propose to take a similar approach in England as has been taken in Scotland and amend the Act to allow other implements to be specified in the Order – do you agree?

A9 Yes.

Q10 Or, should we confer a discretion on grantees to consent other implements being used?

A10 If Several fishery rights continue to be issued to private bodies then it should be for the grantee to demonstrate that the other fishing activities are having a negative impact on cultivation and the SoS should decide whether to prohibit other fishing activities on the information provided.

Q11 Are there other examples of activities which could be permitted in a Several fishery, but which are currently prohibited?

A11 The extent to which other activities are restricted is unclear. Any restrictions resulting from the creation of a Several Fishery should be identified and clearly stated from the outset.

Q12 **Would an amended application process resolve problems of amending an Order mid-term?**

A12 It has the potential to resolve the problems. It is essential that Orders can be amended at anytime to reflect the management needs of the fishery.

Q13 **Should section 17(2) be extended in this way?**

A13 Yes, it should be sufficient well regulated to allow for persons taking edible crab for scientific purposes. Of note, ESFJC byelaw 5 prohibits the use of edible crab as bait and section 17(2) does not apply. I would be in favour of the scientific purposes replacing the use of edible crab for bait in section 17(2)

Q14 **Do you agree with this approach?**

A14 Yes

Q15 Do those with rights to private mussel fisheries have problems with third parties removing mussel or entering their areas and damaging the mussels or the fishery?

A15 Yes, there are infrequent incidences of third parties removing mussel from lays within the Wash. It is not believed to be serious problem in the Wash.

Q16 **If the answer to the last question was 'yes' – would the extension of the protection afforded to private oyster beds be of assistance?**

A16 Yes, ownership rights need to be clearly established

Q17 Should Orders be granted for longer or shorter periods? On what basis do you say this?

A17 Maintain the shorter periods applied at present. If the process to renew Orders is made easier and found to be effective there is no requirement for longer periods to be granted. On balance I believe it is in the public's interest to have the opportunity to review such Orders, especially Several Orders at the times currently applied. If the process to renew Order is made easier and cheaper it should not necessarily discourage private investment. The Joint Committee leases areas of the Wash to individuals up to a maximum of ten years before requiring renewal. This has not inhibited a multi million investment in to the mussel Several fishery in the last few years

Q18 Do respondents think this review system would benefit the grantee, the fishery and the general public?

A18 An annual reporting system is already in place. A more robust review system should be undertaken as good practice. I do not believe the review system would be adequate to change my opinion on the duration of Several Orders. It may be quite a difficult process to establish whether any actual changes result in the management of the fishery from undertaking this review process.

Q19 Are there any particular issues you would like to see covered in update guidance that are not mentioned above?

A19 Clear guidance would be of great benefit. Legal interpretation on what is and what is not possible does change. Clear guidance, that is readily available, would be a significant benefit to grantees.

Matthew Mander
Clerk & Chief Fishery Officer