

SPECIAL MEETING OF THE WASH MANAGEMENT SUB-COMMITTEE

Minutes of the Wash Management Sub-Committee meeting held on **Wednesday 23rd August 2006**, at 1030 hours.

PRESENT

Councillor A Turner	Chairman - Lincolnshire County Council	
Councillor D Baxter	Norfolk County Council	
Councillor R Bellham	Suffolk County Council	
Councillor D Rye	Norfolk County Council	
Councillor S F Williams	Lincolnshire County Council	
Councillor S Bakewell	Lincolnshire County Council	
R Brewster)	
R Garnett)	
N Lake)	DEFRA Appointees
C Southerland)	
S Williamson)	
M Yates)	
M R Mander	Clerk & Chief Fishery Officer	
A J Clarke	Fishery Officer)	Present by Invitation

APOLOGIES

Councillor R.Ward

CLERK'S ANNOUNCEMENTS

There were no Clerk's Announcements

DECLARATIONS OF MEMBERS' INTERESTS

Councillor Rye declared an interest as he is a member of King's Lynn Conservancy Board. Messrs Brewster, Garnett, Southerland and Williamson declared an interest as holders of Wash Fishery Order Licences and Wash fishermen. Mr Lake declared an interest as a Wash fishermen, licence holder and Director of John Lake Shellfish who were currently considering taking legal action against the Committee.

WM06/08 CLERK'S REPORT ON THE LEGAL ADVICE RECEIVED IN RELATION TO REGULATION No2 OF THE WASH FISHERY ORDER AND TO CONSIDER AND AGREE TO THE CHANGES NECESSARY TO THE MANAGEMENT MEASURES OF THE WASH COCKLE FISHERIES

The Clerk advised that a key element of the management of the cockle fishery had been the application of a 4 tonne daily quota for the dredge fishery and a 2 tonne daily quota for the handwork fishery. Although these management measures had been agreed by the Committee one member disputed the legality of it. Following the meeting the Clerk sought advice from Defra, when no clear opinion was forthcoming the Clerk sought legal advice from the Committee's solicitors. The Committee's solicitors believed the wording of the Regulation No2 was ambiguous and sought Counsel's advice. The Counsel's opinion was

forwarded by the Committee's solicitors and had been received on the 17th August. The Counsel's opinion was that the Committee did not have the powers under the current wording of Regulation No2 of the Wash Fishery Order to lower the daily quota from 8 tonnes. A meeting of the Wash Management Sub-Committee had been called immediately and the Clerk had suspended the remaining handworked fishery, until the Committee could reconsider the management of the fishery. The Clerk felt that whilst there was considerable support for the handwork fishery to continue with a 2 tonne daily quota, it was not within the Committee's power to lower the quota from 8 tonnes. However, to reopen the handworked fishery would be a significant deviation from the original Appropriate Assessment which English Nature had agreed to, therefore it would be necessary to provide a further Appropriate Assessment for the remaining stock.

The Clerk also advised that the original TAC for the dredge fishery had been taken, however, a further survey of the Friskney sands had been carried out which had confirmed that a significant amount of adult stock remained on the bed. On the strength of these findings the Clerk had produced an additional Appropriate Assessment which proposed a quota extension to both the dredge and handworked fisheries. English Nature's response to this had been received on the 22nd August, and confirmed that further information would be required before they could agree to all the additional tonnage.

The Clerk felt that the only way forward from here was to apply to the Minister to have Regulation 2 changed and to submit another Appropriate Assessment to EN.

At this point Mr Lake questioned why a letter from his solicitors had not been circulated to the members. The Clerk explained that although the letter had been faxed the previous afternoon he had not been in the office and had therefore only become aware of the letter that morning. The Chairman requested the Clerk read out the letter. Whilst members acknowledged the letter it was also reiterated that despite the current position on the legality of the management measures taken, the Committee had all agreed that the action taken at the time had been for the benefit of the industry.

Having considered the content of the solicitors letter Councillor Bellham questioned whether the Committee should not pass the whole matter to Defra and English Nature to sort out. He was concerned that there seemed to be a lot of 'experts' but they did not include the Committee charged with managing the fisheries.

Councillor Rye was concerned by the letters inference that there could be a lawsuit taken against the Committee, and the possible financial implication this could have for the County Councils if it proved to be successful. The Chairman felt the members should not dwell on this as the decision was taken in good faith. Councillor Baxter was also of the opinion that any legal proceedings would be difficult to pursue as the implication of reducing the tonnage would only extend the fishery rather than depriving anyone of their livelihood.

Councillor Williams was of a similar opinion and felt Regulation 2 was ambiguous and could be read by another legal brain in the same vain that the members had read it, ie. that the daily quota could be varied either up or down.

The Clerk whilst acknowledging there had been a misinterpretation of the Regulation 2 still maintained the view that the action the Committee had taken had been a reflection of the view of the industry that the fishery should be extended by reducing the daily quota. He also believed that the reduced daily effort on the beds had lead to an improvement in the health of the beds. Councillor Bellham found it encouraging that having made a decision which took into account the view of the industry as well as the advice from the research officers it had proved to be fruitful to both the industry and the state of the fishing grounds. He felt that rather than dwelling on potential legal action the Committee must now review the situation and decide on what action to be taken for the remainder of the fishery.

Taking into account the advice from the Committee's solicitors and the request from English Nature for further information the members were given four recommendations to consider.

1. Recognise that the maximum daily quota cannot be reduced from 8000 kg at present.

There was unanimous agreement to this amongst the members.

2. To apply to the Minister to change the wording of Regulation No2 to allow the Committee to reduce as well as increase the daily quota as deemed appropriate to each fishery.

There was unanimous agreement to this amongst the members.

3. Submit Appropriate Assessments to English Nature to re-open the handwork fishery and dredge fishery based on a daily quota of 8000 kg a day.

The timescale for this could be up to 28 days, and similar to the possible 3-4 weeks which it may take to get a response from Defra to recommendation number two. Mr Brewster advised that the majority of the industry would like the fishery to remain closed until such time as Regulation No 2 had been revised.

Members voted in favour of the recommendation with one abstention.

4. Submit a further Appropriate Assessment in order to provide further information to English Nature on the proposal to increase the overall quota for both the dredge and handwork fisheries.

There was unanimous agreement to this amongst the members.

TO CONSIDER THE ACTION NECESSARY TO IMPLEMENT THE MEASURE REQUIRING THE REMOVAL OF SUCTION DREDGE EQUIPMENT PRIOR TO PARTICIPATING IN THE HANDWORK FISHERY.

The Clerk reminded members that at the meeting held in May when considering the management measures for the cockle fishery it had been highlighted that problems could arise associated with vessels pursuing the handwork fishery whilst carrying dredge equipment on board. There was the potential for illegal fishing. In an attempt to prevent this from occurring the Committee had agreed that vessels pursuing the handwork fishery should disable the dredging gear. Unfortunately advice had been received that during the two weeks since the closure of the dredge cockle fishery vessels were allegedly continuing to dredge within the handwork fishery. Whilst the Fishery Officers had not caught any vessel in the act of dredging there was plenty of circumstantial evidence to support the allegations. The Clerk therefore felt the only certain way of preventing illegal fishing was to request the removal of all dredge gear whilst pursuing the handwork fishery. If the Committee were to agree to this the Clerk would seek legal advice from both Defra and the Committee's solicitors prior to implementing it. The Chairman requested the opinion of the Defra appointees. Mr Garnett felt that having initially gone for the compromise it was now necessary to take a more stringent approach. Mr Williamson agreed with this recommendation, as did Mr Brewster. Mr Lake asked if this meant anchors would also have to be removed to prevent blowing out using the anchor. The Clerk advised that carrying an anchor was necessary to meet MCA requirements. If reports were received of blowing out activity then the carriage of large anchors not required for safe passage at sea could be readdressed.

Members considered the information and Agreed unanimously to the removal of dredging gear by vessels pursuing the handwork fishery.

WM06/09 MATTERS ARISING

Fishing within the bombing range: Councillor Williams questioned whether there had been any further progress in the matter regarding cockle fishing within the bombing range. The Clerk advised that the Commanding Officer had advised that vessels fishing with the Ranges would be in breach of the MOD's Health and Safety policy. Legal advice provided to the Clerk acknowledged that the Committee's remit was to manage the fisheries and not concerned with Health and Safety issues. Any H&S matters would have to be worked out between the industry and MOD.

Misrepresentation: Mr Lake questioned why the Chairman had not taken the Clerk to task over misleading the Committee with regard to Regulation No2. The Chairman responded that should a member feel they had been misled by an Officer or member of the Committee it was for them to approach the Ombudsman. Other members felt that in this situation the Clerk had not misled the members but had misinterpreted the Regulation in the same way many of the members had. Councillor Baxter advised Mr Lake that there was a world of difference between misleading and misinterpreting.

There being no other business the meeting closed at 1125 hours.