

Developing the Fishery Order Area

Background

This report considers the proposals for developing new cultivation areas within the Fishery Order area.

Recommendations

1. That the Association should determine whether or not to approve the two applications for the creation of new leased areas, taking into account the relevant fisheries and wildlife conservation requirements associated with this decision.
2. That if the Association is minded to approve the applications, an application should be submitted to the Minister to seek consent to create and lease the two new cultivation areas.

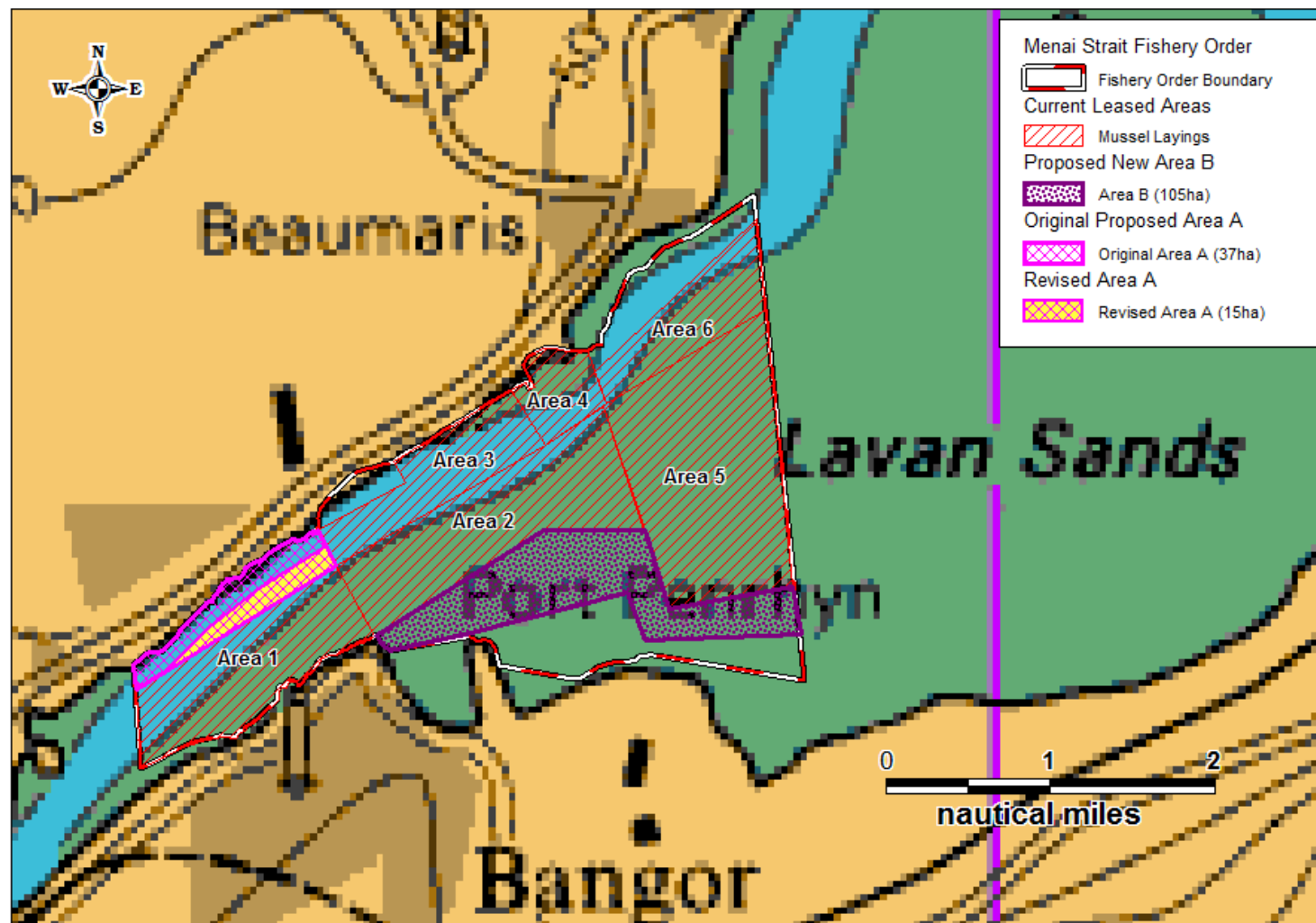
1. Background

- 1.1 When the Menai Strait Fishery Order was made in 1962, it set out provision for both the cultivation of mussels and oysters and for the regulation of the fishery for wild mussels in the eastern end of the Menai Strait.
- 1.2 At the October 2012 meeting of this Association there was some discussion about the possibility of creating two new cultivation areas ("layings") in addition to the current 6 layings in the Fishery Order (see Figure 1).
- 1.3 During 2013 these proposals were progressed, and in March 2014 the Association resolved to seek the Minister's consent to create these new layings.
- 1.4 This report provides an update on progress since March.

2. Progress report

- 2.1 A formal application for the Minister's consent to create and lease the new layings was submitted by the Chair on the 11th April 2014 (see Annex A). This letter was accompanied by the Association's Habitats Risk Assessment, and supporting documentation from the applicants.
- 2.2 At a meeting on the 18th June 2014, WG officials reported that this application was being progressed. There is, as yet, no indication of the timetable for the WG response.

MSFOMA Secretariat
June 2014



Map is illustrative not definitive.

Figure 1: Map of the Menai Strait Oyster and Mussel Fishery Order 1962 (as amended), showing existing and proposed new mussel cultivation areas (“layings”).

Annex A: Letter from Chair to Welsh Government, April 2014

Menai Strait Fishery Order Management Association

Port Penrhyn, Bangor, LL57 4HN

David Tripp
Welsh Government
Fisheries Policy Branch
Rhodfa Padarn
Llanbadarn Fawr
Aberystwyth
SY23 3UR

11th April 2014

Dear David

LEASED AREAS IN THE MENAI STRAIT OYSTER AND MUSSEL FISHERY ORDER 1962

At a meeting of this Association in March it was agreed that two new mussel cultivation areas ("layings") could be created within the Fishery Order area. We are now writing to you to seek the Minister's consent for designating and leasing these new layings to local mussel farmers.

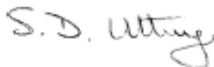
The procedure for creating new layings, and for subsequently leasing them to shellfish farmers, is set out in the Menai Strait Oyster and Mussel Fishery Order 1962 (the "1962 Order", relevant sections attached). Under the 1962 Order, this Association is empowered to designate new layings and lease them to shellfish farmers with the consent of the Minister.

The 1962 Order lies within the Menai Strait and Conwy Special Area of Conservation. As a consequence this Association and the Minister are required to carry out a Habitats Regulations Assessment of the proposed new areas. We have worked closely with Natural Resources Wales (NRW) to ensure that the proposals are compatible with the nature conservation features of the area. The Association has concluded that the proposals are not likely to have a significant effect on the SAC or to adversely affect the integrity of the site.

I attach for your information a copy of the report that was considered by the Association at its meeting concerning this matter, and also a copy of the HRA for each site, along with the response we have received from NRW setting out their views. We have also had feedback from Anglesey and Gwynedd County Councils, which is also attached.

I hope that this information is sufficient for the Minister to consent to the creation and leasing of these new layings. If you have any queries, or require any additional information, please do not hesitate to get in touch with me.

Yours sincerely



SUE UTTING
Chair, MSFOMA

Encs.

Cc: Graham Rees, Bill Somerfield

Menai Strait Fishery Order Management Association
Company registered in England and Wales No 07163689

Welsh Government Activity: Update

Background

The Welsh Government has carried out a number of activities that are relevant to the Association since the last meeting in March. This report provides a brief report on these activities to inform discussions at the Association meeting.

Recommendation

1. That the Association considers its response to the items reported below.

1. Meetings & Correspondence

- 1.1 Since the last Association meeting in March there has been quite a lot of dialogue with WG, mostly in connection with the Menai Strait West Fishery Order proposal. The key details of this correspondence are considered under the relevant items below.
- 1.2 Representatives of the Association met with WG officials in Bangor on the 18th of June to discuss the obstacles facing the proposed Fishery Order. This meeting provided an opportunity to share and exchange views and information about the proposed Fishery Order and also the WG Environment Bill.

2. Menai Strait West Fishery Order Proposal

- 2.1 The Menai Strait (West) Fishery Order was established in 1978 for a period of 30 years. This Fishery Order provided the basis for the development of some oyster and mussel farming activity in the western Strait. Unfortunately the Order lapsed in 2008, preventing the further development of these businesses. The operators who had been working in this area before 2008 have been progressing an application for a new Fishery Order to set the foundations for developing sustainable shellfish cultivation in the western Menai Strait.
- 2.2 Progress with the creation of a new Fishery has been delayed by concerns raised by WG lawyers. These arise from the WG perception that a Fishery Order cannot be granted for a period of more than 7 years within an area that has been designated a Special Protection Area or a Special Area of Conservation, and thus must be managed in accordance with the requirements of the EC Habitats Directive.
- 2.3 Following the last meeting of the Association, the Chair wrote to WG officials on the 11th April 2014 to encourage progress with the Fishery Order proposal. A copy of the Chair's letter is attached at Annex A of this report. There has been no formal response to this letter and its attachments.
- 2.4 On the 23rd May 2014 the Chair wrote to the Minister about the proposed fishery Order, indicating that our own legal advisors saw no conflict between Fishery Orders, the Shellfish Act, and the EC Habitats Directive. On the 18th June 2014, following a meeting with WG officials, a response was sent to the Chair indicating

that WG still consider that there is an obstacle to progress. (Letters attached at Annexes B & C respectively).

- 2.5 Running in parallel with this correspondence, Rhun Ap Iorwerth AM has received a letter from the Minister explaining the reasons for delay with this Fishery Order (see letter at Annex C). The views of the Association's legal advisors on this letter are attached at Annex D.
- 2.6 One source of frustration throughout the discussions about this Fishery Order has been the reluctance of Welsh Government to allow direct discussions between the Association's legal advisor and WG lawyers. WG have undertaken to review this position, and it is hoped that this might help to raise mutual understanding of the issues associated with this proposal.
- 2.7 A number of actions have been taken following the meeting with WG officials on the 18th June. These are ongoing, and a verbal report on progress will be made to the Association meeting.

3. WG Environment Bill

- 3.1 Members will recall that the Association met with WG officials in September 2013 to discuss the proposed Environment Bill. WG officials indicated at that time that some proposals for amendments to the Sea Fisheries (Shellfish) Act 1967 would be included in the Environment Bill. The purpose of these proposals was to address the obstacles to the creation of new Fishery Orders that had been identified by WG lawyers.
- 3.2 WG officials informed the meeting on the 18th June that WG lawyers had now determined that the proposals set out in the WG Environment Bill consultation document were *ultra vires* and should not be included in the new Act (with the exception to a strengthening of the Minister's power to vary or revoke an Order).

4. Sustainable growth initiatives

- 4.1 The Welsh Government is committed to promoting the sustainable growth of the Welsh economy. Two documents have recently been published that are relevant to the activities of the Association and the mussel industry. A brief summary of each is presented here, with a link to the relevant documents.
- 4.2 **Towards Sustainable Growth: An Action Plan for the Food and Drink Industry, 2014-20** – this document has been produced following a consultation with the food and drink industry earlier this year. The Minister's Strategy sets a target of growing the production of food and drink in Wales by 30% by 2020. The strategy recognises that fish and shellfish make up 12% of exports from Wales (the third largest sector), and proposes that sector managers shall be appointed to prepare development plans for key sectors, including fisheries. The document can be downloaded [here](#).
- 4.3 **Green Growth Wales: Investing in the Future** – this document "*sets out how the sustainable use of our natural resources can create a new economic model that will deliver wealth creation and economic growth both today and in to the future.*" Within it, the Minister states that "*The Welsh Government will help create an environment where businesses can invest with confidence. We will create the conditions that will nurture and drive green growth, with a regulatory*

climate that will be able to respond positively and quickly to new opportunities.”
The document also mentions that “*Our coastline of 1,200 km and around 32,000 km² of sea offers significant opportunity for ‘blue’ growth. We have considerable knowledge and expertise in a range of developing industries, including marine energy and aquaculture*”. This document can be downloaded [here](#).

MSFOMA Secretariat
June 2014

Annex A: Letter from Chair to WG, 11th April 2014

Menai Strait Fishery Order Management Association

Port Penrhyn, Bangor, LL57 4HN

David Tripp
Welsh Government
Fisheries Policy Branch
Rhodfa Padarn
Llanbadarn Fawr
Aberystwyth
SY23 3UR

11th April 2014

Dear David

PROPOSED NEW MENAI STRAIT WEST FISHERY ORDER

I am writing further to various discussions and meetings over the past few months that have taken place between the applicants for the new Menai Strait West Fishery Order and with you and your colleagues from the Welsh Government. We are keen to progress this Order, which will bring new jobs and export opportunities to Anglesey and help to deliver the Minister's formal commitment to double cultivated shellfish production in Wales by 2020.

You will be aware that we had a very positive meeting last year with Graham Rees and have been dismayed by the lack of progress since then. We understand that the prospects for progressing the Order have been stalled by legal advice that has indicated that there are significant constraints on the Minister's capacity to create a new Fishery Order within a European Marine Site, and which also raised concerns about sub-delegation.

In an effort to expedite progress, we have sought advice from Andrew Oliver, a solicitor and partner at the law firm AMJ in Hull, who specialise in fishing law. He has provided advice on the management of Fishery Orders for over 20 years. We have asked Mr Oliver to consider the key issues that we understand have been causing delay to this Fishery Order application. We have attached his response.

You will see that in the view of Mr Oliver there is no obstacle to the creation of a Fishery Order within a European Marine Site for a period more than 7 years – providing, of course, that the Order contains suitable provisions. To illustrate how this might be accomplished, Mr Oliver has also worked with us to draw up a draft Order which would comply with all relevant legislation.

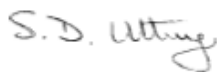
You will note from this advice attached that Mr Oliver has recently advised Defra and the Inshore Fisheries and Conservation Authorities (IFCAs) in England about the issue of sub-delegation in European Marine Sites through IFCA byelaws. It is clear that there are many similarities between the issues raised by the use of IFCA byelaws in England and those associated with Fishery Orders in both England and Wales. We have no doubt that you, your colleagues, and the Minister will be reassured that Defra have concluded that it is appropriate to allow sub-delegation in European Marine Sites.

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You will be aware from my earlier correspondence that it is important to progress this issue as swiftly as we can so that the opportunities for shellfish cultivation this year are not lost. The advice from Mr Oliver and the precedents set by Defra and the IFCA's in England will enable Welsh Government to address the important issues raised by your own legal advisors with confidence. We are now looking forward to making the swift progress with this Order that is essential to ensure that the Welsh shellfish cultivation industry stays ahead of its competitors in the UK and overseas.

We trust that you will draw this advice to the Minister's attention at the earliest opportunity. In the meantime, if you have any comments or queries about this letter or the attachments please do not hesitate to get in touch.

Yours sincerely



SUE UTTING
Chair, MSFOMA

Encs.

Cc: Graham Rees, Bill Somerfield, Rhun Ap Iorwerth AM

Annex B: Letter from Chair to WG, 23rd May 2014

Menai Strait Fishery Order Management Association

Port Penrhyn, Bangor, LL57 4HN

Dear Minister

23 May 2014

Menai Strait West – Proposed Fishery Order

We are writing in relation to the responses that you made to Rhun Iddon AM in the Senedd on the 30th April 2014 and also to the written reply made by your Official, Mr Bill Somerfield on the 6th May 2014 to Mr Shaun Krijnan of Menai Oysters.

As you are aware, the Menai Strait Fishery Order Management Association (MSFOMA) have engaged for time with your officials to try to progress the proposed Menai Strait West Fishery Order, for which MSFOMA are the applicant and prospective Grantees. As part of this process we have endeavoured to develop a fuller understanding as to why on current reading of the primary legislation evident within the 1967 Sea Fisheries (shellfish) Act is seen by Welsh Government to be non compliant with the requirements of Natura 2000 legislation. We have expressed our confusion to your officials in relation to this on a number of occasions as on our reading, and on the reading of our legal advisers, we simply do not see any conflict. Whilst we appreciate that you have proposed a number of amendments in the Environment Bill white paper, which seek to fix the 1967 Act, we are not able to fundamentally agree with the assertion that the Act as it currently stands, is broken.

We have sought on a number of occasions to discuss this issue directly with WG Fisheries Policy's own legal advisers as part of an approach to either a) properly appreciate the material issues ourselves and/or b) assist Fisheries Policy legal advisers in developing a more rounded interpretation of the legislative landscape associated with this somewhat arcane landscape. However all these approaches have, most unfortunately, been met with resistance and have been rebuffed, largely on the basis of process and protocol as far as we can understand. This is deeply regrettable on a number of fronts.

Sitting alongside this debate are your targets for growth in both Shellfish and Finfish Aquaculture in Wales, as part of both the Welsh fisheries strategic action plan and of WG contribution to the UK's overall multi annual national plan for aquaculture, submitted as part of the reformed Common Fisheries Policy. MSFOMA of course, warmly embraces these targets. Indeed a successful application of the Menai Strait West Fishery Order would, in full production, go a long way toward in meeting your targets for developing aquaculture in Wales.

However as far as the situation currently stands, it is highly unlikely that any substantive production from the areas within the Menai West will manifest before 2018/2019, and as such be unlikely to contribute to the meeting of the Welsh targets for growth in the sector. This is because the timescale for progressing amendments to fisheries legislation through the Environment Act will take some time, and the current insistence that Fishery Orders cannot be granted for more than 7 years would make a Fishery Order financially unviable. A loss in terms of potential production in addition to the clear loss of income for the producers, for the communities and for Wales as a whole, which we estimate at current market prices of amounting to approximately £2.5 million per year.

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The collateral impact of this impasse should not be underestimated by Welsh Government, both on the confidence and commitment to those from the sector within Wales (the producers and associated parties, such as MSFOMA), but also within external bodies, such as those within Scotland who are seeking to capitalise on the current Welsh hiatus. The Scottish shellfish industry is flourishing while Welsh shellfish farmers are hamstrung by bureaucracy. This impacts not only on a perceptive level but more significantly at the confidence level for those who might be seeking to make investment decisions.

As an attempt to unlock this, or perhaps to give the dice one more throw, we have included with this letter a copy of the advice that we have received on this matter from MSFOMA's principle legal adviser, Andrew Oliver from Andrew Jacksons, the UK's leading fisheries law firm. Andrew has extensive and detailed experience in the matters of shellfish and marine law, in terms of developing areas and in relation to interaction with wider environmental legislation. You will see that he has concluded that there seem to be no legal obstacles to the creation of new Fishery Orders in Wales, and hence no obstacle to meeting your targets for aquaculture development in Wales

I would humbly ask that you consider in full the content of this advice. We would very much welcome the opportunity to meet with you either in Cardiff or on our existing mussel farm in North Wales to discuss how we may be able to move this situation forward in a timely and positive manner.

Yours sincerely

Dr Sue Utting – Chair MSFOMA

cc. Rhun Ap Iwerth

Menai Strait Fishery Order Management Association
Company registered in England and Wales No. 07163689

**Is-adran Môr a Physgodfeydd /
Marine & Fisheries Division**



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref TO/AD-/00881/14

Dr Sue Utting
Chair
MSFOMA
Port Penrhyn
Bangor
LL57 4HN
sutting003@btinternet.com

18 June 2014

Dear Sue,

Thank you for your email dated 23 May, to Mr Alun Davies AM, Minister for Natural Resources and Food regarding the Menai Strait West proposed fishery Order. I have been asked to reply on his behalf.

You also refer to two pieces of previous correspondence on this issue. For the sake of clarity in this response, I will inevitably have to reiterate some of their content here as we believe the situation has not significantly changed.

The Welsh Government is committed to supporting sustainable aquaculture in Welsh waters, and to achieving our targets for growth, but they must also fulfil our environmental obligations set out by UK and EU law.

As you well know, the relevant legislative regime here is governed principally by the Sea Fisheries (Shellfish) Act 1967, and this enabling legislation sets out detailed provisions (including application procedure) in relation to Several and Regulating Shellfishery Orders.

This proposed Shellfishery Order (Menai West) falls within Y Fenai a Bae Conwy/ Menai Strait and Conwy Bay Special Area of Conservation ("SAC") and, consequently, we must also consider the Welsh Ministers' legal obligations imposed by Council Directive 92/43/EEC of 21 May 1992 on the consideration of natural habitats and of wild fauna and flora ("the Habitats Directive") and the Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490).

This Several Order application suggested a period of 28 years for the Order itself, but the Management Plan was for a period of only 7 years, and that was the period of time over

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TO/AD-/00881/14

which the environmental assessments could be undertaken. To comply with our Habitats Directive obligations, that was also the maximum period over which the Welsh Ministers could consider granting the proposed Order.

The previous Several Order was made and, consequently, those leases were granted, before the creation of the Habitats Directive. The legislative environment within which officials must consider this application has, therefore, changed considerably since this shellfishery was last considered in this way.

As you are aware, the Welsh Government is taking steps to review the provisions and operation of the Sea Fisheries (Shellfish) Act 1967 (in relation to Several and Regulating Shellfishery Orders) as part of the Welsh Government's currently proposed Environment Bill.

Thank you for the copy of the advice you have received from your principal legal advisor. Our lawyers have looked at it, but due to the doctrine of Legal Professional Privilege I am unable to share their findings with you. I am able to tell you that legal advice to policy officials regarding the Menai West Several Order application remains unchanged. Although they agree with much of Mr Oliver's analysis, they consider his opinions regarding the crucial points to be either not directly comparable or correct.

We discussed the situation again when we met other applicants for the Order earlier today on 18 June. We will be in touch with you all again on the basis of the various points discussed then.

Yours sincerely

Bill Somerfield
Sea Fisheries Policy Manager

Annex D: Letter from Minister to Rhun Ap Iorwerth AM, 4th June 2014

Alun Davies AC / AM
Y Gweinidog Cyfoeth Naturiol a Bwyd
Minister for Natural Resources and Food



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref AD-/00869/14

Rhun Ap Iorwerth AM
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

4 June 2014

Mussel farming in Menai West

Thank you for your email dated 23 May, regarding mussel farming in Menai West.

I can confirm that informal discussions have already taken place with members of the Menai Strait Fishery Order Management Association (MSFOMA) and my Officials. A further meeting will be taking place, and Officials are in the process of establishing a suitable date to meet.

The point you refer to regarding the Marine Stewardship Certification will be included in the discussions at that meeting. However, my Officials do not believe that gaining this certification can address the short term lease issue. The difficulty with this issue is not affected by gaining certification under this scheme, but regards the fact that Welsh Ministers must discharge their Habitats Directive obligations before making a Several Order, and those obligations cannot be delegated to another body.

Alun Davies AC / AM
Y Gweinidog Cyfoeth Naturiol a Bwyd
Minister for Natural Resources and Food

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Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)

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Annex D: E-mail from Andrew Oliver, lawyer, 17th June 2014.

From: Andrew Oliver [mailto:andrew.oliver@andrewjackson.co.uk]
Sent: 17 June 2014 09:14
To: 'James Wilson'
Cc: Sue Utting; JimAndrews; Trevor Jones; Lewis Le Vay; JonKing
Subject: RE: Mussel farmers in the Menai Straits

Dear James

Many thanks for passing to me a copy of the letter sent by Alun Davies AM to Rhun Ap Iorwerth AM. You have asked me to advise on the Minister's statement that the obligations of Welsh Minister's under the EC Habitats Directive cannot be delegated to another body.

In my opinion this is not the case. I refer to the Conservation of Habitats and Species Regulations 2010/490 which provides for exactly this system of delegation. Regulation 7 of these Regulations define "competent authorities" which includes (by virtue of Reg.7(3)(b)(ii)) the Grantee of a Fishery Order, as the holder of a *public office* "created or continued in existence by a public general Act or by legislation passed by the National Assembly for Wales". The duties of competent authorities with respect to Special Areas of Conservation are set out in Regs 8 & 9 of these Regulations. This system of delegation enables local authorities and other statutory bodies to manage such sites; and if it is the Minister's view that this is not appropriate then the whole system for managing these sites in the UK will need to be reviewed.

It remains my considered opinion that there is no legal obstacle to the creation of a Fishery Order under the Sea Fisheries (Shellfish) Act 1967 in an area containing a European Marine Site. The Minister's letter does not change my opinion.

I am also of the view that progress with this issue is compromised by the refusal of WG officials to allow us to discuss these legal matters with their own legal advisers. I am sure that this would help us to resolve these matters, and I would welcome a meeting with them if the opportunity should arise.

I trust this assists but if you need an further clarification or advice please do not hesitate to contact me.

Yours sincerely,

Andrew

Andrew Oliver
Partner

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North West Inshore Fisheries and Conservation Authority Activity

Background

The North West Inshore Fisheries and Conservation Authority (NWIFCA) is responsible for managing sea fisheries, including mussel fisheries, in the coastal waters lying between the Dee and the Solway Firth. This area includes the UK's largest seed mussel resource, which is vital to the ongoing success of the Menai Strait mussel fishery. This report provides a brief update on NWIFCA activities that could have an impact on the Menai Strait mussel fishery.

Recommendation

1. That progress with the proposed new Morecambe Bay Fishery Order is noted.
2. That the Association considers the nature of the response that it should make to the proposed new NWIFCA vessel size byelaw.
3. That the Association should keep proposals from the NWIFCA to establish a seed mussel track record in Morecambe Bay under review.

1. Morecambe Bay Fishery Order

- 1.1 The NWIFCA has been working on proposals to establish a new Fishery Order for all of Morecambe Bay for several years. The proposed new Fishery Order would cover all of Morecambe Bay and would establish a Regulated Fishery for cockles and mussels, as well as providing opportunities for shellfish cultivation within Several areas in the Bay.
- 1.2 The new Fishery Order is larger in both scope and scale than its predecessor, the Morecambe Bay Fishery Order 1978, which expired in 2008. This earlier Order was limited in its scope to the regulation of fishing for mussels, and the extent was limited to the "South America" mussel skear in the northern part of Morecambe Bay where the annual seed mussel fishery takes place. The NW-IFCA has been working on the proposed new Fishery Order for Morecambe Bay since 2006.
- 1.3 At a meeting of the NWIFCA Technical, Scientific and Byelaws Sub Committee in May 2014, the Chief Executive and Senior Scientist of the NWIFCA proposed that the Fishery Order should not be progressed further. This recommendation was based on those Officers' review of the costs and benefits of the Fishery Order. They also considered that if the NWIFCA was to progress the Order, then a designated Officer would need to be recruited.
- 1.4 It is understood that this recommendation was considered further at the NWIFCA Quarterly Meeting on the 13th June 2014. A verbal update on discussions at that meeting and any resolutions arising from it shall be presented to the Association.

2. Proposed new vessel size byelaw

- 2.1 The NWIFCA has been working on a new vessel size byelaw for some time. It was discussed at the last meeting of the Association, after which the Chair wrote to the NWIFCA to enquire about the wording of the byelaw (see Annex A).
- 2.2 The latest version of the byelaw is attached at Annex A of this report. This draft was considered at the June 2014 Quarterly Meeting of the NWIFCA, where Officers had proposed that the byelaw should be formally “made”.
- 2.3 It is understood that following discussions at the NWIFCA Quarterly Meeting, it was resolved that the new byelaw should not be made, and Officers were asked to make some revisions to the proposal.
- 2.4 Progress with this proposal shall be kept under review by the Association.

3. Seed mussel track record

- 3.1 At the last meeting of the Association it was reported that the NWIFCA was considering the possibility of establishing a track record for seed mussel fishing, and using this as the basis of issuing seed mussel quota in future (see Annex C).
- 3.2 The NWIFCA does not appear to have progressed this item any further. It is reported here to keep the matter under review.

MSFOMA Secretariat
June 2014

Annex A: Letter from Chair to NWIFCA concerning proposed Byelaw 2 (March 2014).

Menai Strait Fishery Order Management Association

Port Penrhyn, Bangor, LL57 4HN

Stephen Atkins
North West Inshore Fisheries and Conservation Authority
1 Preston St
Carnforth
Lancs LA5 9BY

March 18th 2014

Dear Stephen

PROPOSED REVISIONS TO VESSEL SIZE BYELAWS

I am writing in connection with the proposals being considered by the NWIFCA to modify the byelaws regulating the maximum size of vessels that can operate within the IFCA District.

At the Association meeting on the 13th March 2014 we considered the draft of Byelaw 2 that was considered at the IFCA Technical, Scientific & Byelaws Sub-Committee on 7th February 2014.

The Association note that the §4 of the proposed byelaw states that it shall not apply to vessels used in fishing, dredging, transport or relaying of cockles or mussels “...while such vessels are operating under permit issued by the Authority.” Whilst we are pleased to see that the core of the existing NWSFC Byelaw 9 is being retained, we have some queries about this section of the byelaw.

It would be very helpful for us if you could clarify whether the permit described in §4 of the proposed byelaw 2 is a new type of permit issued specifically to provide an exemption from the provisions of this byelaw; or alternatively whether any permit issued by the Authority under any other byelaw would provide the required exemption. If it is the former, then it would seem appropriate for the Authority to set out the basis for issuing the “Byelaw 2 permits” that would provide the exemption; and if it is the latter, it would seem that these words unnecessarily duplicate controls that are already provided by other byelaws (such as the Authority’s NWSFC Byelaw 12).

With these points in mind, it would also be very helpful if you could advise us how you envisage the provisions of the byelaw which provide exemptions for new vessels (§6) applying to mussel operators. We would welcome an assurance from your Authority that if one of the mussel farmers from the Menai Strait should at some future date replace one of their vessels (which out of necessity have to operate inside 3nmi of the coast and be larger than 10m LOA), they would be able to obtain the necessary permit to allow their new vessel to operate within the Authority’s District.

Menai Strait Fisher Order Management Association
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We hope that these comments are helpful, and look forward to your advice on how you envisage this proposed new byelaw being implemented. Please do not hesitate to get in touch if you would like to discuss the issues raised in this letter.

Yours sincerely

SUE UTTING
Chair, MSFOMA

cc Trevor Jones
James Wilson
Kim Mould

Menai Strait Fisher Order Management Association
Company registered in England and Wales No 07163689

Annex B: Proposed new IFCA Vessel Size Byelaw (June 2014)

NORTH WESTERN INSHORE FISHERIES AND CONSERVATION AUTHORITY

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ANNEX A

MARINE AND COASTAL ACCESS ACT 2009

NWIFCA BYELAW 2:

VESSEL AND GEAR RESTRICTIONS

The Authority for the North Western Inshore Fisheries and Conservation District in exercise of the powers conferred by sections 155 and 156 of the Marine and Coastal Access Act 2009 makes the following byelaw for that District.

Interpretation

- 1 In this byelaw:
 - a) "the Authority" means the North Western Inshore Fisheries and Conservation Authority as defined in Articles 2, 4 and 5 of the North Western Inshore Fisheries and Conservation Order 2010;
 - b) "the District" means the North Western Inshore Fisheries and Conservation District as defined in Articles 2 and 3 of the North Western Inshore Fisheries and Conservation Order 2010 (S.I. 2010 No:2200)
 - c) "the baselines" means the baselines as defined in Article 3 of the North Western Inshore Fisheries and Conservation Order 2200 (S.I. 2010 No:2200).
 - d) "overall length" has the same meaning as in the Merchant shipping (Registration of Ships) Regulations 1993 (SI 1993/3138);
 - e) "engine power" means the power of the engine of a vessel as recorded on its Certificate of Registry as issued by the Registrar of Shipping and Seamen;

Prohibitions

2. No person shall use a vessel which exceeds 15 metres overall length in fishing for or the taking of sea fisheries resources within that part of the District that lies between 3 and 6 nautical miles offshore as measured from the baselines.

3. No person shall use a vessel which exceeds 10 metres overall length in fishing for or the taking of sea fisheries resources within that part of the District enclosed by a line drawn 3 nautical miles offshore as measured from the baselines.
4. No vessel with an engine power exceeding 221 KW shall be used in fishing for or the taking of sea fisheries resources within the District.
5. Subject to sections 6 to 12 of this byelaw no person shall use any towed net, dredge or other appliance to fish for seafish resources from a fishing vessel within the NWIFCA district.

Exemptions

6. The prohibition in paragraph 5 above shall not apply to the use of towed trawl nets which are:
 - a) single trawls fitted with a single cod-end and utilising one pair of otter boards;
 - b) vessels fishing with a single beam trawl;
 - c) towed nets being used in fishing for shrimp (*Crangon Crangon* or *Pandalus Montagu*);
7. This byelaw shall not apply to any person performing an act that would otherwise constitute an offence against this Byelaw, if that act was carried out in accordance with a written permission issued by the Authority permitting that act for scientific, management, stocking or breeding purposes.
8. This Byelaw shall not apply to vessels used solely for the purpose of angling by means of rod and line or handline.
9. This Byelaw shall not apply to vessels being used in the fishing, dredging, transport or relaying of bivalve molluscs while such vessels are operating under permit issued by the Authority
10. A permit to use a dredge or other appliance under paragraph 9 will only be issued by the Authority when the dredge or appliance is of a pattern approved in writing by the Authority;
11. Use of any dredge or appliance must be in accordance with any conditions subject to which the permit was issued under paragraph 9
12. The Authority may require as a condition of the permit that weekly or monthly returns to the Authority be submitted while fishing under the permit recording such data as the Authority may reasonably require including but not limited to the name and registration number of vessels used, all dates of fishing, the species and quantities in kilogrammes of seafish resources taken on each date by each vessel, the gear used, the start and end co-ordinates of each tow. If returns are demanded by NWIFCA, it shall be an offence against this byelaw if complete returns are not submitted within the time limits defined in the permit.

Historic access rights

13. Vessels exceeding the length restrictions described in paragraphs 2 and 3 and/or the engine power restriction in paragraph 4 may be used provided that the vessel in question is registered with the Authority and placed on a "historic access rights list" (the list) maintained by the Authority.
14. Vessel owners may apply to have their vessels registered and placed on the list up to 6 months from the date of this byelaw coming into force. In order to be placed on the list the owner or owners of the vessel must demonstrate to the satisfaction of the Authority that the vessel on the list had been used to fish in the District for at least 60 days in the last 24 months immediately prior to the coming into force of this byelaw.

15. Owners of vessels placed on the list will be entitled to use the vessel on the list to fish in the District only in accordance with the legacy legal regime created by the provisions of North Western Sea Fisheries Committee byelaw 9 and Cumbria Sea Fisheries Committee byelaws 3, 13 and 15. These legacy byelaws are attached at annex 1.
16. Newly constructed or purchased vessels exceeding the length restrictions set out in paragraphs 2 and 3 or the engine power restriction under paragraph 4 may be placed on the list provided that:-
 - a) The owner can demonstrate that prior to the date of this Byelaw being made, they had entered into an enforceable financial commitment to construct or purchase that vessel which complied with the relevant legacy regime and
 - b) The owner can demonstrate that the date of delivery prevented compliance with the provisions of this Byelaw.

Revocation of Legacy Byelaws

17. Cumbria SFC Byelaws 3, 13, 15 and NWSFC Byelaw 9 are revoked.

I hereby certify that the above byelaw was made by the Authority at the meeting on 13th June 2014

STEPHEN ATKINS

Chief Executive to the North Western Inshore Fisheries and Conservation Authority
1 Preston Street,
Camforth,
Lancashire,
LA5 9BY

The Secretary of State for Environment, Food and Rural Affairs in exercise of the power conferred by section 155(4) of the Marine and Coastal Access Act 2009 confirms the Byelaw Vessel Size and Gear Restrictions made by the North Western Inshore Fisheries and Conservation Authority on 13th June 2014

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A Senior Civil Servant for, and on behalf of, the Secretary of State for Environment, Food and Rural Affairs

Date

ANNEX 1

NW SFC BYELAW 9 - MECHANICALLY PROPELLED VESSELS - MAXIMUM LENGTH

1. This section applied to Wales only it is not relevant to England.
2. No mechanically propelled vessel which exceeds 15 metres overall length shall be used in fishing for or taking sea fish within that part of the District to the east of a line drawn 0000 (T) from The Old Lighthouse, Great Ormes Head (53° 20.53'N, 03° 52.13'W, WGS 84 datum)
3. This byelaw shall not be enforceable for those vessels:
 - (a) used in fishing for mussels (*Mytilus edulis*) using dredges; or
 - (b) used in angling with rod and line; or
 - (c) referred to in paragraph 4 and 5 below.
4. Vessels exceeding the length restrictions described in sections 1 and 2 above may be used provided:
 - (a) the vessel fished in the District for at least 60 days within the 24 months immediately prior to this byelaw being made; and
 - (b) the vessel remains in the same legal and beneficial ownership as on the date of this byelaw being made; and,
 - (c) the owner(s) of the vessel obtain an authorisation permitting the use of the vessel within the NW&NWSFC District within 6 months of this byelaw coming into force.
5. Newly constructed or purchased vessels exceeding the length restrictions set out in sections 1 and 2 above may be issued with an authorisation under paragraph 4(c) above provided that:
 - (a) the owner(s) can demonstrate that prior to the date of this byelaw being made they had entered into an enforceable financial commitment to construct or purchase such a vessel; and
 - (b) the owner(s) can demonstrate that the date of delivery prevented compliance with paragraph 4(a) above.
6. This section applied to Wales only. It is not relevant to England
7. For the purpose of this byelaw:
 - (a) the overall length shall be the overall length as shown on the Certificate of Registry of a British Fishing Vessel; and
 - (b) the registered length shall be the registered length as shown on the Certificate of Registry of a British Fishing Vessel.

CUMBRIA SFC BYELAW 3 - SIZE LIMIT OF BOATS ALLOWED INSIDE THE DISTRICT

No person shall fish for sea fish

- (i) in that part of the Cumbria Sea Fisheries District from low water mark for a distance of three nautical miles to seaward, from any mechanically propelled vessel exceeding 13.72 metres registered length except with hooks and lines;

- (ii) within the remainder of the part of Cumbria Sea Fisheries District to which these Byelaws apply from any mechanically propelled vessel exceeding 21.34 metres registered length except with hooks and lines.

For the purposes of this Byelaw the registered length of a vessel shall be that which is recorded on the vessels Certificate of Registration as issued by the Registrar of Shipping.

CUMBRIA SFC BYELAW 15 – VESSELS WITH AN ENGINE POWER > 221KW

No person shall fish for sea fish in that part of Cumbria Sea Fisheries district to the east of a line drawn from Maryport south pier end to Southernness Point light house, from any mechanically propelled vessel, with a registered engine power exceeding 221 KW, except with hooks and lines.

Explanatory note

This note does not form part of the byelaw

This byelaw promotes the sustainable exploitation of important inshore nursery areas in the District. It restricts the maximum length and engine power of fishing vessels that may be used within the 3 mile limit to 10 metres overall length, and within the 3 and 6 mile limit to 15 metres overall length. The byelaw maintains the fishing entitlements of existing vessels built prior to the introduction of this byelaw by means of a permit scheme. This byelaw prohibits the use of damaging multi-rigged trawling gear in the whole District.

Annex B: Proposals to establish a seed mussel track record

NWIFCA Technical, Science and Byelaw Sub-Committee

7th February 2014: 10:00am

REPORT NUMBER

9

NORTH MORECAMBE BAY SEED MUSSEL DREDGE FISHERY – TRACK RECORD

Background

Under the proposals in the Morecambe Bay Hybrid Fishery Order, the allocation procedure for hand-gathering licences is a tiered points system based on proven active and material participation in the Morecambe Bay cockle and mussel fisheries.

It is proposed to also incorporate an allocation system based on proven track record for seed mussel dredge licences either under the Order if it is granted by the time of the fishery in 2014, or for use under existing byelaw authorisation should the Order not be in place by then. Due to the increased interest in this fishery there is now a necessity to have a mechanism for limiting numbers of authorisations or licences issued, or for restricting catch per vessel (setting quota) should demand outweigh stock levels or capacity of the area in order to ensure sustainability of the fishery and ensure no risk of damage to any conservation features within the Morecambe Bay EMS.

Track Record

Under EU legislation a fishing vessel's 'track record' is the amount of the particular species of fish which it caught in any calendar year which forms the basis on which it is allocated quota for a subsequent year. The basis for allocating quota for a particular quota year is established by reference to the track record of that vessel over a number of previous years. For all intents and purposes schemes are complicated and based on a number of factors. Officers do not propose to bring in a complicated system for seed mussel dredging but there are a number of principles that could be adopted / adapted.

Officers would suggest that TSB use the following points for the basis of discussion, in order to develop a track record system acceptable to the Authority.

- a) Track record can be determined from a defined set of years – for Morecambe Bay seed mussel dredging it is proposed this should be defined as the period from the granting of the Morecambe Bay Mussel Fishery Order (1978) up to this year ie. 1978 – 2013.
- b) For Morecambe Bay seed mussel dredging it would be more appropriate to assign track record to a company or individual who has been actively involved in this fishery than to a vessel. Vessels have changed hands over the years, and vessel track record could preclude long-standing and known operators in favour of unknown operators who have had no investment or ownership of the fishery.
- c) Track record is not saleable or transferable. It remains with the company / individual.
- d) Track record cannot be increased or transferred by purchase or transfer from another company / individual.
- e) Track record can be used solely to allocate the number of licences / authorisations issued in a year or to also allocate the resource based on amounts fished during the defined track record period. The NW&NWSFC and NWIFCA have hard-copy landings returns which

have been required under the old Order and under recent authorisations on which to base this allocation.

- f) Track record could also include a requirement to prove reliance on the stock during the defined track record period.

Mandy Knott
Senior Scientist and Morecambe Bay Fishery Order Officer
29th January 2014