

Standing Orders

Background

A set of draft Standing Orders were tabled at the first meeting of the Association and considered in detail at its second meeting where amendments were agreed. The amended Standing Orders are now presented for adoption.

Recommendations

1. That the Association should adopt the revised Standing Orders.

1. Content of document

- 1.1 The draft Standing Orders attached have been drafted to formally set out how the Association will carry out its business.
- 1.2 These Standing Orders are based upon a standard set of policies and procedures for an Association of this type, and have been modified to incorporate elements that are more consistent with the specific tasks of managing the Menai Strait mussel fishery that have been set for this Association.
- 1.3 The Standing Orders cover the following key areas:-
 - Management principles for the fishery
 - Role of the Chair of the Board and Members
 - Role of Directors and Members
 - Election of Chairperson
 - Annual General Meeting
 - Calling a Meeting
 - Order of Business
 - Variation of Business
 - Expert Attendance at Meetings
 - Rescission of Resolutions
 - Review of Standing Orders
 - Suspension of Standing Orders
- 1.4 Two Appendices are incorporated in the Standing Orders:
 - "Fishery Management Policy" which has been drafted to ensure compliance with the relevant fisheries legislation through a set of policies that are consistent with Marine Stewardship Council certification.
 - Wildlife conservation: Management measures for the fishery required for compliance with the requirements of the Menai Strait and Conwy Bay SAC and the Traeth Lafan SPA.

October 2010

The Menai Strait Fishery Order Management Association ("Company")

Proposed Standing Orders

1. Management of the Menai Strait Fishery

- 1.1. In carrying out their duties and their role as the Board of Directors ("**Board**") and the members of the Company ("**Members**"), the Board and the Members shall adhere and shall procure that the Company adheres, to a management strategy that is compatible with the standard set for sustainable fishery management by the Marine Stewardship Council.
- 1.2. In particular, it is acknowledged by the Board and the Members that, in accordance with the objects of the Company set out in article 3 of the articles of association of the Company ("**Articles**"), the Company's aims are:
 - 1.2.1. to conduct the Menai Strait fishery ("**Fishery**") in such a manner that does not lead to over-fishing or depletion of the exploited populations and, for those populations that are depleted, the fishery must be conducted in a manner that demonstrably leads to their recovery;
 - 1.2.2. fishing operations within the Menai Strait allow for the maintenance of the structure, productivity, function and diversity of the ecosystem (including habitat and associated dependent and ecologically related species) on which the Fishery depends; and
 - 1.2.3. the Fishery is subject to an effective management system that respects local, national and international laws and standards and incorporates institutional and operational frameworks that require use of the resource to be responsible and sustainable.
 - 1.2.4. to adhere to the management policies set out in Appendix 1 of this document.

2. Role of Chair of the Board and Members

The Chair of the Board and Members has a dual role – both as the Chair and, simultaneously, as a member. These roles are more specifically set out below:

2.1. Organisation Objectives

- 2.1.1. Provide coherent leadership for the Company, including representing the organisation in the public domain.
- 2.1.2. Understanding the views of stakeholders, including the Welsh Assembly Government.
- 2.1.3. Providing guidance to the Board and the Members to ensure the Company acts within its objects set out in the Articles.

2.2. Board Facilitation and Meetings

- 2.2.1. Leadership of the Board, ensuring its effectiveness on all aspects of its role and setting its agenda.
- 2.2.2. Facilitate Board meetings.
- 2.2.3. Set Board meeting timetable.
- 2.2.4. Scrutinise Board papers.

2.2.5. In particular the Chair of the Board and Trustees:

2.2.5.1. should make efficient use of Board time by ensuring Board agendas are focused on the objects of the Company set out in the Articles.

2.2.5.2. is responsible for managing the business of the Board to ensure that sufficient time is allowed for discussion of complex or contentious issues and, where appropriate, arrange for informal meetings beforehand to enable thorough preparation for Board discussion.

2.2.6. Ensure an effective and fully informed decision making process is employed by the Board.

2.2.7. Encourage active engagement by all members of the Board.

2.2.8. Facilitate change and address conflict within the Board.

2.2.9. Take the lead in providing a properly constructed induction programme for new directors that is comprehensive, formal and tailored.

2.3. **Organisation Governance**

2.3.1. Liaise with committees of directors in order to assess and, if appropriate, approve their decisions.

2.4. **Communication**

2.4.1. Ensure the provision of accurate, timely and clear information to directors (to enable the Board to take sound decisions, monitor effectively and provide advice to promote the Company's objects).

2.4.2. Ensure effective communication with stakeholders, including the Welsh Assembly Government.

2.4.3. Where required, assist and initiate fundraising opportunities.

2.5. **Operation of Organisation**

2.5.1. Monitoring implementation of Board decisions.

2.6. **Required Skills**

2.6.1. In-depth knowledge of shellfisheries and their management, either in the Menai Strait or otherwise in the United Kingdom.

2.6.2. Independent from the Members and proposed members of the Company, as listed in article 21(1)(a) to (g) of the Articles.

2.6.3. Previous experience as chairperson of an organisation, preferably similar to the Company, is desirable.

3. Role of Directors and Members

3.1. Organisation Objectives

- 3.1.1. Safeguard the good name and values of the Company.
- 3.1.2. Contribute actively to the Board of directors in their role in giving firm management and strategic direction to the Company.
- 3.1.3. Be a spokesperson and ambassador for the Company, promoting the Company and its objects.

3.2. Board Facilitation and Meetings

- 3.2.1. Active participation and attendance of Board meetings and committee meetings where so appointed.

3.3. Organisation Governance

- 3.3.1. Ensure that the Company complies with its governing document, company law, the Menai Strait Oyster and Mussel Fishery Order 1962, the Sea Fishery (Shellfish) Act 1967, the Marine and Coastal Access Act 2009, the Wildlife & Countryside Act 1981, the Habitats Directive (Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora) as applied in the United Kingdom by the conservation (Natural Habitats Etc) Regulations 1994, and any other applicable Welsh, UK or EU wildlife or conservation legislation
- 3.3.2. Ensure that the Company pursues its objects as defined in its governing document.

3.4. Communication

- 3.4.1. Represent the Company at functions and meetings when required.

3.5. Operation of Organisation

- 3.5.1. Ensure the efficient management and administration of the Company.
- 3.5.2. Ensure the financial stability of the Company.
- 3.5.3. Protect and manage the property of the Company and to ensure the proper investment of the Company's funds.

4. Election of Chairperson

- 4.1. The Chairperson of the Board and Members shall be elected biennially by the procedure set out in article 16 of the Articles.
- 4.2. The Chairperson shall, unless he resigns or becomes disqualified, continue in office until his successor becomes entitled to act as chairperson.
- 4.3. The election of the Chairperson shall be the first business transacted at the annual meeting of the Company.

5. **Annual General Meeting**

- 5.1. The Company will hold one annual meeting in each year for the transaction of general business in addition to any special or adjourned meetings.

6. **Additional meetings**

- 6.1. A meeting of the Board shall be held in the sixth month after the Annual General Meeting.

- 6.2. Additional meetings of the Board or the Members may be called by the directors pursuant to article 13(3) of the Articles or pursuant to section 303 of the Companies Act 2006 respectively if:

- 6.2.1. in respect of a meeting of the Board:

6.2.1.1. the directors calling such meeting include in the notice to be issued pursuant to article 13(3) of the Articles Good Reason for calling such meeting; and

6.2.1.2. the requirements for calling such meeting set out in articles 13(4) to 13(7) of the Articles have been fulfilled; or

- 6.2.2. in respect of a meeting of the Members:

6.2.2.1. the Member(s) who have requested the directors to call such meeting include in their request for a meeting issued pursuant to section 303 of the Companies Act 2006 Good Reason for calling such meeting; and

6.2.2.2. the requirements for calling such meeting set out in section 303 of the Companies Act 2006 have been fulfilled.

- 6.3. For the purposes of Standing Order Nos. 6.1.1 and 6.1.2 “**Good Reason**” shall mean:

- 6.3.1. a matter directly related to, or furtherance of, the objects of the Company as set out in article 3 of the Articles; or

- 6.3.2. consideration of the corporate governance of the Company; or

- 6.3.3. consideration of legislation or regulations applicable to the Company; or

- 6.3.4. a requirement imposed on the Company by the Welsh Assembly Government or any other governing statutory body; or

- 6.3.5. any other reason that two or more of the Directors or Board Members consider to require a meeting to be held.

- 6.4. The Chairperson shall determine in his absolute discretion whether the requirements of Standing Order No. 6.1.1.1 or 6.2.1.1, as applicable, have been fulfilled. If the Chairperson determines that no Good Reason has been given as required, the meeting called pursuant to Standing Order No. 6.1 will not be held.

7. **Order of Business**

Except as otherwise provided by Standing Order No. 7, the order of business at every meeting of the Board and Members shall be:-

- 7.1. To choose a Member to preside if the Chairperson be absent.
- 7.2. Chairperson's Announcements.
- 7.3. To approve as a correct record and sign the minutes of the last meeting.
- 7.4. To deal with any business expressly required by statute to be done.
- 7.5. To dispose of business (if any) remaining from the last meeting.
- 7.6. To receive and consider reports of any experts attending the meeting pursuant to Standing Order No. 9.
- 7.7. To receive and consider reports, minutes and recommendations of any committees of the Board.
- 7.8. To answer questions in respect of reports, minutes or recommendations of any committees of the Board.

8. **Variation of Business**

Business falling under items 6.1 to 6.4 of Standing Order No. 6 shall not be displaced, but subject thereto the foregoing order of business may be varied:

- 8.1. By the Chairperson at his discretion [provided that at least 7 days' written notice has been given to each director or Member, as the case may be, of such variation]; or

9. **Expert Attendance at Meetings**

- 9.1. The Chairperson, [in his absolute discretion or] pursuant to a resolution passed at a meeting of the Board by a majority of the directors, may invite persons to attend meetings of the Board or the Members to provide information or opinions on any matter related to shellfisheries in the Menai Strait, the legislation specified in Standing Order No. 3.3.1 or any other matter related to the objects of the Company as set out article 3 of the articles.
- 9.2. Any persons invited by the Chairperson to attend meetings of the Board or Members pursuant to Standing Order No. 9.1 shall be entitled to speak at such meetings for the purposes of making presentations, reporting to the Board or the Members, as the case may be, and answer any questions raised by the Board or the Members, as applicable.

10. **Rescission of Resolutions**

- 10.1. No motion to rescind any resolution passed within the preceding 6 months, and no motion or amendment to the same effect as one which has been rejected within the preceding 6 months, shall be proposed unless the notice thereof given in pursuance of article 13(3) of the Articles or pursuant to section 303 of the Companies Act 2006 in accordance with Standing Order No. 6.1 is given by at least [one-third] of the directors or the Members, as the case may be and it shall not be open to any director or Member to propose a similar motion within a further period of 6 months.

11. **Review of Standing Orders**

- 11.1. The Standing Orders of the Company shall be reviewed by the Board on a triennial basis.
- 11.2. Any proposed resolutions to amend the Standing Orders of the Company resulting from their review pursuant to Standing Order 11.1 must be included in the notice given pursuant to section 302 or 303 of the Companies Act 2006 in accordance with Standing Order No. 6.1.2 and such resolutions can only be passed by at least one-half of the Members.

12. **Suspension of Standing Orders**

- 12.1. Subject to Standing Order No. 12.2, any of the preceding Standing Orders may be suspended so far as regards any business at the meeting where a resolution is passed approving such suspension.
- 12.2. A motion to suspend Standing Orders shall only be proposed if the notice thereof given in pursuance of article 13(3) of the Articles or pursuant to section 303 of the Companies Act 2006 in accordance with Standing Order No. 6.1 is given by at least one-half of the directors or the Members, as the case may be.

Appendix 1: Fishery Management Policy

1. Preface

The Association recognises the increasing importance of carrying out fishing activities sustainably. The Menai Strait mussel fishery operates within a natural environment that has national and international importance. The future of the fishery will depend on our ongoing sustainable husbandry of these natural resources.

The industry has been working closely with the Countryside Council for Wales, Natural England, the North Western & North Wales SFC, and researchers at the School of Ocean Sciences in Bangor for many years. This work has improved our understanding of the Menai Strait and the seed mussel resources at Caernarfon and in Morecambe Bay.

With the formation of this Association it is appropriate to clearly set out the policies that will ensure that this fishery continues to develop sustainably.

2. Policy context

The policies set out here operate in the context set by the relevant fisheries and environmental legislation governing the fishery. The policies are intended to complement the statutory management measures applying to the fishery, which includes but is not limited to the relevant provisions of:-

- The Sea Fisheries (Shellfish) Act 1967
- The Sea Fisheries (Conservation) Act 1967
- The Sea Fisheries (Regulation) Act 1966
- The Wildlife & Countryside Act 1981
- The Conservation (Natural Habitats &c.) Regulations 1994
- The Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998
- The Countryside & Rights of Way Act 2000
- The Water Environment (Water Framework Directive) (England and Wales) Regulations 2003
- The Natural Environment and Rural Communities Act 2006
- The Marine and Coastal Access Act 2009
- Relevant EC Directives that have been transposed into UK and Welsh legislation (notably the EC Birds Directive, Habitats Directive, and shellfish hygiene Directive).

The Association also recognises the importance of non-statutory instruments relating to fishing and shellfish farming activities, notably:-

- The UN Food and Agriculture Organisation's Code of Conduct for Responsible Fisheries;
- The Seafish Industry Authority's Responsible Fishing Scheme;
- The Marine Stewardship Council's Principles and Criteria of Sustainable Fisheries.

After considering the wide range of legislative and policy drivers that are relevant to the sustainable management of the fishery, the Association has decided to adopt a series of policies which follow the sequence of Performance Indicators set out in the Marine Stewardship Council's Fishery Assessment Methodology. We consider that this list addresses all of the key policy areas associated with the Menai Strait Mussel Fishery.

4 Policies

The policies set out here set out how the Association will work to optimise the sustainable development of both the shellfish cultivation industry in the Menai Strait and seed mussel harvesting from wild resources.

4.1 Seed mussel stocks

The Menai Strait fishery relies on wild beds of ephemeral “seed” mussels to provide the juvenile stock that is cultivated in the Menai Strait.

The Association will work with partners to:-

- Ensure that seed mussel fishing activities are compatible with stock status at a regional and local level;
- Ensure that levels of exploitation take account of the ecological role of the stock;
- Respond to requests for information required to inform the seed mussel harvest strategy;

4.2 Retained species

The seed mussel fishery is very “clean”, made up entirely of mussels. Within the Menai Strait, a fishery for green crabs (*Carcinus maenas*) is carried out as part of the cultivation process, and these crabs are retained and sold.

The Association will work with others to:-

- Require the collection of information about levels of retention of non-target species in the fishery;
- Develop new management measures, where necessary, to ensure that the fishery does not pose a risk of serious or irreversible harm to any retained non-target species;
- Review the effectiveness of any new management measures introduced to minimise the retention of non-target species.

4.3 Discarded species

The seed mussel fishery is very “clean”, made up almost entirely of mussels. There is no significant discarding from this fishery. Within the Menai Strait, there can occasionally be catches of predatory animals such as starfish (*Asterias rubens*) and green crab (*Carcinus maenas*). These animals are returned to the sea.

The Association will work with others to:-

- Require the collection of information about levels of discarding of non-target species in the fishery;
- Develop new management measures, where necessary, to ensure that the fishery does not pose a risk of serious or irreversible harm to any discarded non-target species;
- Review the effectiveness of any new management measures introduced to minimise the discarding of non-target species.

4.4 Endangered, Threatened & Protected species

The fishery operates in areas where some Endangered, Threatened & Protected (ETP) species are known to occur. These are, in the main, bird species such as eider ducks (*Somateria mollissima*) in Morecambe Bay; and wading birds such as oystercatchers (*Haematopus ostralegus*) in the Menai Strait. These and other bird species are protected by domestic and international legislation in all areas where the fishery operates, and a wide range of other marine habitats and species are also protected in the Menai Strait and Morecambe Bay areas.

These wildlife conservation measures have been in place for over 15 years, and the Menai Strait fishery has developed in harmony with them thanks to collaboration between the industry, fishery regulators and the nature conservation agencies. It will be important for the Association to continue working with nature conservation agencies to ensure that the fishery does not cause serious or irreversible harm to ETP species.

The Association will continue to:-

- Ensure that fishery is not likely to have a significant effect on ETP species;
- Work with fishery regulators and nature conservation agencies to implement the formal management strategy designed to deliver precautionary management of ETP species;
- Encourage and support research and monitoring work to determine the status of ETP species in our area of operations where possible;
- Collaborate with partners to investigate the relationship between the fishery and ETP species where possible.

4.5 Habitats

The fishery has the capacity to alter marine habitats. Seed mussel harvesting is carried out with light dredges, which if used inappropriately could effect seabed habitats. The relaying and cultivation of mussels in the Menai Strait alters natural habitats, replacing them with mussel-dominated communities for the duration of cultivation activity.

The industry has collaborated with fishery regulators, nature conservation agencies and scientific partners to investigate these habitat effects. This research confirms that the fishery will not have significant or irreversible harm on habitats in the area.

The Association will continue to:-

- Ensure that fishery is not likely to have a significant effect on marine habitats;
- Work with fishery regulators and nature conservation agencies to implement the formal management strategy designed to deliver precautionary management of marine habitats;
- Encourage and support research and monitoring work to determine the status of marine habitats in our area of operations where possible;
- Collaborate with partners to investigate the relationship between the fishery and marine habitats species where possible.

4.6 Ecosystems

The fishery has the capacity to affect marine ecosystems. Mussels are a prey item for a wide range of predators (including fish, birds and marine invertebrates), and play a role in linking pelagic and benthic ecosystems in coastal areas.

The movement of seed mussels from place to place creates a potential risk of introducing alien (non-native) species. Certain non-native species have been associated with shellfish production and can drastically alter coastal ecosystems (such as the slipper limpet, *Crepidula fornicata*).

The industry has played an active role in improving understanding of ecosystem effects of the fishery and tackling the risk of introducing non-native species¹.

By continuing to work with partner organisations the Association will:-

- Ensure that the fishery is not likely to have a significant effect on ecosystem structure and function;
- Encourage research to improve understanding of the interaction between the fishery and key elements of relevant ecosystems;
- Encourage the introduction of new management measures, where necessary.

¹ See Appendix 1 - the BMPA Code of Good Practice for mussel seed movements.

4.7 Genetics

Aquaculture activities, particularly those based on hatchery-reared stock, can have adverse effects on the genetic structure of wild populations of fish and shellfish.

The Menai Strait mussel cultivation operation is based upon wild stocks from a relatively limited area. These seed mussel sources are not considered to be genetically isolated from one another or from the wild stocks found near to the Menai Strait. The risk of adverse effects on the genetics of the natural mussel stocks in either seed mussel areas or in the cultivation area in the Menai Strait therefore seem to be very limited.

The main risk of changes to the genetic structure of the mussel population in the Menai Strait could be the introduction of the congeneric species *M. galloprovincialis* and *M. trossulus*. Both species have been recorded elsewhere in the UK, and *M. galloprovincialis* is becoming more widespread. The presence of these species can only be confirmed by genetic testing, and the industry has recently agreed a procedure for testing a representative sample of seed mussels prior to their introduction in the Menai Strait.

The Association is committed to:-

- Ensure that any seed mussels introduced to the Menai Strait that are gathered from wild stocks are likely to be compatible with the genetic structure of the local wild population;
- Work with partners to confirm that current practices are compatible with the genetic status of the mussel population in the fishery area;
- Introduce new management measures, where necessary, to maintain the genetic structure of the population.

4.8 Management

The cultivation area in the Menai Strait is managed by the Menai Strait Fishery Order Management Association (MSFOMA). Seed mussel production areas are located in Cumbria (managed by the North West Sea Fisheries Committee); and at Caernarfon Bar (managed by the Welsh Assembly Government).

Two nature conservation agencies (the Countryside Council for Wales and Natural England) play an active role in the management of the fishery. These agencies work hand-in-hand with the fishery regulators to ensure that the effect of the fishery on marine wildlife is assessed before any activities are permitted to take place.

The Association needs to work closely with these and other statutory bodies. It will:-

- Observe all statutory requirements arising from fisheries and environmental legislation to ensure a high level of compliance with regulations;
- Share information with other management organisations to facilitate integrated management of seed mussel resources and cultivation areas;
- Support and encourage research that will inform and develop the management of the fishery.

4.9 Research Strategy

The Menai Strait mussel industry has worked with scientists and regulators to support, facilitate, and participate in research into seed mussel harvesting and mussel cultivation to address the information needs associated with managing the fishery.

This research has focussed on a number of key areas: the interaction between the fishery and bird populations; the effects of mussel farming on seabed habitats; and the fishery for shore crabs in the Menai Strait area. The results of this research have been published in peer reviewed journals and as reports to help guide management of the fishery.

It will be appropriate for the Association to encourage a research strategy that identifies and prioritises research requirements for the fishery. Issues that could be addressed in this strategy could include:-

- Seed mussel harvesting – interactions between seed mussels and other species (especially birds);
- Non-native species risk analysis – investigating the relative risks arising from and faced by the mussel industry from non-native species (particularly the colonial ascidian *Didemnum vexillum*)
- Dissemination of information – making the results of research available to interested parties.

Appendix 2: Wildlife conservation

1. Management measures relating to the Menai Strait and Conwy Bay SAC and the Traeth Lafan SPA

An assessment of the likely effect of mussel harvesting operations was carried out by the North Western & North Wales Sea Fisheries Committee (as grantees of the Fishery Order) and CCW in 2009. The actions arising from this assessment are set out in the table overleaf. These actions have been transposed to apply to MSFOMA as the new grantee of the Order.

Feature or sub-feature	Hazard	Action
Menai Strait and Conwy Bay SAC		
Sub-feature. Clay outcrop reef communities	An unusual subtidal reef community, composed of boring bivalves is associated with clay outcrops in the area known as Gallows Deep, near Gallows Point, within Leased Area 4. Smothering of this feature by mussels could have a significant effect on its distribution and extent.	Continued monitoring of this feature. This part of Area 4 is not utilised for mussel laying. Recent surveys have shown the feature to be still present and in favourable condition.
Typical species of all features. Possible effects of predator control, <i>Carcinus maenas</i> .	A small-scale pot fishery for shore crabs <i>Carcinus maenas</i> takes place on or adjacent to the Leased Areas. This has the potential to affect the population level and distribution of this species within the Order or the wider SAC area.	Continued monitoring of the pot fishery. Monitoring of the <i>Carcinus</i> pot fishery to date indicates that effort is not increasing, and that catch rates are stable, indicating that a sustainable balance between fishing effort and population is being achieved. The increased mussel population resulting from the relaying of substantial quantities of introduced mussels would be expected to artificially increase the shore crab population through increased shelter, refuge from predators and food availability. The pot fishery goes at least some way to redressing this artificial enhancement of shore crabs. See Annex 5.
Typical species of all features. Possible effects of alien species introduction.	As part of the mussel cultivation operation, substantial quantities of juvenile mussels are brought into the Leased Areas annually a "seed". There is potential for these mussels to contain alien invasive species which could affect the typical species composition of various features within the SAC.	Adherence to the Code of good practice for mussel seed movements. Section 12.5 of the new lease requires compliance with this code of good practice and the Memorandum of Understanding between Bangor Mussel Producers Association (BMPA), the Landlord and Countryside Council for Wales (CCW) signed on 14 July 2008
Traeth Lafan SPA		
		No need for any actions identified.

Financial Arrangements

Background

It was agreed at the second meeting of the Association that a financial plan and budget should be prepared, and that the implications of this for future lease fees should be considered. This paper proposes a financial plan and budget. It considers the implications of these proposals for lease fees.

Recommendations

1. That the proposed Financial Plan should be discussed, and subject to any amendments, agreed by the Association.
2. That the proposed budget for the 2010-11 financial year be adopted.
3. That proposals for altering the budget and income to the Order over the next 5 years are discussed, and subject to any amendments, agreed by the Association.
4. That the Association should consult with the lease and licence holders, and also with WAG before implementing any changes to lease or licence fees.
5. That text should be inserted in the policies and procedures of the Association to specify how financial assets should be managed if the Fishery Order should lapse without renewal in 2022.

1. Financial plan

- 1.1 At the last meeting of the Association it was suggested that a 5-year financial plan should be set out.
- 1.2 The key financial challenges that are likely to arise over the next 5 years are to meet all of the costs associated with the day-to-day administration of the Order; and to start to accrue a reserve fund that will support the renewal of the Order before it expires in 2022. The costs associated with renewing the Order could be significant, and this process is likely to take several years.
- 1.3 With these challenges in mind, the key goals for a 5-year financial plan could be:-
 - To meet the ongoing management and administrative expenses associated with the Menai Strait Fishery Order; and
 - To accrue a reserve of £25,000 by the end of the 2015-2016 FY.

2. Budget 2010-2011

- 2.1 A proposed budget for the 2010-2011 is set out in Table 1 overleaf. The budgeted levels of income and expenditure are extrapolated from spending and income to date.

Table 1: The 2010-2011 budget for the Menai Strait Fishery Order Management Association.

	2010-11		
	Annual Budget	Year to date	
		Budget	Actual
Expenditure			
Establishing Association	£ -	£ -	£ 6,057.25
Administration of the Order	£ 6,000.00	£ 3,000.00	£ 2,127.78
Enforcement activity	£ 1,000.00	£ 500.00	£ -
Corporate core	£ 1,000.00	£ 500.00	£ -
Research & monitoring	£ 1,500.00	£ 750.00	£ -
Total Expenditure	£ 9,500.00	£ 4,750.00	£ 8,185.03
Income			
Leases for lays	£ 12,700.00	£ 6,350.00	£ 6,350.00
Licences	£ 235.00	£ 235.00	£ 235.00
Transfer of funds from SFC			£ 11,308.94
Interest	£ -	£ -	£ -
Total	£ 12,935.00	£ 6,585.00	£ 17,893.94
Operating surplus / deficit	£ 3,435.00	£ 1,835.00	£ 9,708.91
Reserve	£ 3,435.00	£ 1,835.00	£ 9,708.91
Cash at bank (22nd Sept 2010)			£ 11,836.69

3. Budget 2010-2016

- 3.1 Budget scenarios for future financial years are set out in Table 2 overleaf. In this table, the costs of managing the Order have been increased at the current inflation rate (3.1%) over the next five years. Annual management costs are thus predicted to increase to over £10,700 by the 2015-16 financial year.
- 3.2 If expenditure targets are met, and if the income to the Order is unchanged over this period (“*status quo*”), the Order will accrue a reserve of just under £14,000 over this period.
- 3.3 To achieve a reserve of £25,000 by the end of 2016, it will be necessary to increase the income to the Order. At the last meeting it was felt that licence fees should be fixed. The financial targets can be met by increasing revenue from leases by 4.6% per annum for the next 5 years.
- 3.4 If it is agreed that lease fees should be increased in order to achieve the financial plan goals, the Association should consult with the lease and licence holders, and also with WAG before implementing any changes. Any changes would not be implemented until April 2011, so there is ample time to carry out this consultation and report its outcome to the Association.

Table 2: Future budget scenarios for the Menai Strait Fishery Order Management Association.

	2010-11	2012-13	2013-14	2014-15	2015-16
Recurring Expenditure - inflated at 3.1%					
Administration of the Order	£ 6,000	£ 6,186	£ 6,378	£ 6,575	£ 6,779
Enforcement activity	£ 1,000	£ 1,031	£ 1,063	£ 1,096	£ 1,130
Corporate core	£ 1,000	£ 1,031	£ 1,063	£ 1,096	£ 1,130
Research & monitoring	£ 1,500	£ 1,547	£ 1,594	£ 1,644	£ 1,695
Total Expenditure	£ 9,500	£ 9,795	£ 10,098	£ 10,411	£ 10,734
1. Recurring Income - status quo					
Leases for lays	£ 12,700	£ 12,700	£ 12,700	£ 12,700	£ 12,700
Licences	£ 235	£ 235	£ 235	£ 235	£ 235
Total	£ 12,935	£ 12,935	£ 12,935	£ 12,935	£ 12,935
Operating surplus / deficit	£ 3,435	£ 3,141	£ 2,837	£ 2,524	£ 2,201
Reserve	£ 8,744	£ 11,884	£ 14,721	£ 17,245	£ 19,446
2. Recurring Income - to achieve financial plan target (£25,000 reserve by end 2015-16FY)					
Leases for lays	£ 12,700	£ 13,284	£ 13,895	£ 14,534	£ 15,203
Licences	£ 235	£ 235	£ 235	£ 235	£ 235
Total	£ 12,935	£ 13,519	£ 14,130	£ 14,769	£ 15,438
Operating surplus / deficit	£ 3,435	£ 3,725	£ 4,032	£ 4,358	£ 4,704
Reserve	£ 8,744	£ 12,469	£ 16,501	£ 20,859	£ 25,563

October 2010

Request for Variation of the Fishery Order Area

Background

The Welsh Assembly Government have been asked to consider varying the boundary of the Fishery Order to make way for the installation of yacht moorings. This paper considers the issues associated with this request.

Recommendations

1. That the Association should consider this report and agree a response to WAG in respect of these issues.

1. The request

- 1.1 The Welsh Assembly Government has recently informed the Association of correspondence from Lt Col Burkham MBE (Retd) of Beaumaris. He has requested that the boundary of the Menai Strait Oyster and Mussel Fishery Order 1962 should be varied to make way for the installation of yacht moorings².
- 1.2 Lt Col Burkham is of the view that any moorings installed within the Fishery Order boundary would be illegal. He has therefore asked WAG to consider varying the boundary of the Fishery Order to make way for more moorings in the area.
- 1.3 This issue has been raised by Anglesey County Council and by Lt Col Burkham on previous occasions.
- 1.4 This request raises some legal and practical issues which are considered below.

2. The legal situation

- 2.1 The legal situation is determined by several sources of law. These include the Sea Fisheries (Shellfish) Act 1967; fisheries byelaws made by the North Western & North Wales Sea Fisheries Committee that have subsequently been adopted by the Welsh Assembly Government; and the Common Law, which has recently been clarified by the High Court and Court of Appeal³. Each is considered in turn here.

Sea Fisheries (Shellfish) Act 1967 and Fishery Orders

- 2.2 The Sea Fisheries (Shellfish) Act 1967 sets out a framework for managing "several" and "regulated" fisheries. In a nutshell, it is an offence to harm the shellfish in "several" areas; but there is no similar offence in the Act for the shellfish in "regulated" areas.
- 2.3 The Menai Strait Fishery Order is a "hybrid" Order. The entire area was established as a "regulated" fishery that can only be fished by licence holders. Within that boundary, 6 areas have been designated as "several" areas for shellfish cultivation.

² A copy of Lt Col Burkham's letter has been sent to MSFOMA by WAG and is attached at Appendix 1.

³ *Isle of Anglesey Council & Crown Estate Commissioners v Welsh Ministries, NW&NWSFC, Andrew Wilson & Extramussel Ltd* [2008] EWHC 921 (QB)

- 2.4 Moorings installed in the Menai Strait Fishery Order would only be illegal under the Shellfish Act if they were:
- (a) within a several area; and
 - (b) caused harm to shellfish within the several area or interfered in some way with fishing activity in a several area.
- 2.5 Moorings that are installed parts of the regulated fishery or in parts of several areas such that they do not interfere with the fishery would not be illegal under the Sea Fisheries (Shellfish) Act 1967.

WAG Fishery Byelaws

- 2.6 The Welsh Assembly Government's Byelaw 12 states that:

[...]

2. no person shall take or use on any mussel bed, any sledge or other contrivance which in the opinion of the Committee is likely to crush or loosen the mussels or loosen the foundations of the bed, without a written authorisation issued by the Committee.

3. no person shall dig in any mussel bed for any purpose without a written authorisation issued by the Committee.

- 2.7 A consequence of this byelaw is that any mooring that is on a mussel bed and likely to lead to the mussels being crushed or loosened is potentially illegal (and the owner of the mooring and vessel associated with it is therefore liable to a criminal prosecution.
- 2.8 Byelaw 12 applies to all areas of Welsh waters within 6nm of the coast, irrespective of whether they are within our outside Fishery Orders.

Common Law

- 2.9 The outcome of the High Court judgement on the "Gallows Point" case was a ruling that the Common Law protects all sea fisheries in England and Wales from harm. Landowners are not considered to have the right to interfere with the Common Law right of fishery.
- 2.10 As with the application of WAG Fishery Byelaws, the Common Law applies independently of the Fishery Order or Shellfish Act.
- 2.11 The Common Law protection of fisheries does not create a summary or statutory offence; it simply establishes a precedent upon which a legal action could be taken (and thus a deterrent from activities that might give rise to legal action).

Changing the law

- 2.12 It is not within the gift of this Association with alter the WAG byelaw that protects mussel beds, or issue the authorisation that would prevent an offence arising under byelaw 12. Equally it is not with in the gift of this Association to alter the Common Law that protects all sea fisheries. Nor indeed does the Association have the power to alter the boundary of the Fishery Order. That power lies with the Minister.
- 2.13 It is not within the gift of the Minister to alter the Common Law. That power lies with the Courts. The decision of the Judge in the High Court could be overturned

by Judges in a higher Court (such the the Court of Appeal or the Supreme Court). The Court of Appeal chose not to overturn this aspect of the ruling; the House of Lords refused leave to appeal.

3. The Practical Situation

- 3.1 The shellfishermen in the Menai Strait favour a pragmatic approach to this issue. There have been moorings in part of the area the Lt Col Burkham is concerned about, and they have not given rise to any problems in the past.
- 3.2 The mussel farmers in the Strait have also worked with local yachting interests to allow temporary moorings and navigation marks to be installed in the summer on areas where mussels are being cultivated.
- 3.3 When the Fishery Order was managed by the NW&NWSFC, the Committee proposed a conciliatory solution to the potential legal problems arising from the High Court ruling on the Common Law. This solution was supported by the mussel farmers in the Strait. The Committee made an undertaking to take no legal action on the installation of moorings in agreed areas in the Strait. This solution was rejected on the basis that the moorings would be illegal whether legal action was taken against them or not.

4. Conclusions

- 4.1 All shellfisheries everywhere in England and Wales are protected by the Common Law, irrespective of the boundary of any Fishery Orders. Within north Wales' coastal waters, all mussels enjoy additional protection under the WAG byelaw. Both the Common Law and the WAG byelaw are therefore potential impediments to the installation of moorings. This impediment applies everywhere that moorings (or other activities) might adversely affect public or private shellfisheries.
- 4.2 The Menai Strait Oyster and Mussel Fishery Order 1962 is no impediment to the installation of moorings providing these are outside cultivated areas. The Order only provides protection for the mussels within the 6 designated "several" areas. It does not create a barrier to the installation of moorings outside the areas where mussels are cultivated.
- 4.3 Neither the Minister nor this Association can alter the Common Law. The Common Law applies everywhere. Re-drawing the boundary of the Fishery Order will not, therefore, remove the problem the Lt Col Burkham is concerned about.
- 4.4 Because the issue of concern arises from Common Law and not from statute, and because the only likely plaintiffs would be this Association or the mussel farmers in the Strait, an undertaking not to take legal action against moorings in certain areas would seem to offer a pragmatic and workable solution to this issue.

October 2010

Appendix 1

From: Lt Col (ret'd) M. I. Burkhams MBE

**Alma House
4, Alma Street
Beaumaris, Anglesey, LL58 8BW**

Telephone & Fax 01248-810673

9 October 2010

Fax to 0300-062-2065

Leasa Fielding
Sea Fisheries Policy Welsh Assembly Government

East Menai Strait Mussel Fishery

Reference: your AT/EJ/00973/10 dated 6 October

Dear Ms Fielding,

Thank you for your letter. It was a pleasant surprise to have Martyn attend a meeting arranged with Rowland Sharp of CCW to discuss the increasing damage of the Strait by the commercial mussel farmers. This commercial activity has altered the shape and the nature of the Traeth Lafan Site of Special Scientific Interest and diminished property values and the attractiveness of Beaumaris to visitors, where the view from the town of golden sand has been replaced by dark mud.

Rowland Sharp promised to supply copies of the periodic inspections of Traeth Lafan.

Martyn was unable to answer the points made, as the various observers had not known that each mussel vessel has a chart-plotter that cannot be tampered with and that Martyn has access to these plots. Consequently, in the absence of specific dates and times, the questions could not be answered.

An explanation of this and a request that any further apparent activity outside the leased areas be reported to Martyn's Menai Bridge telephone number has been circulated.

Martyn asked how the weight of correspondence can be reduced. I explained that it arises because your Minister, though acknowledging to Ynys Mon County Council that she has the power to do so, had written to the AM for Ynys Mon to say she will not move the Fishery boundary by Beaumaris.

Your press-cuttings office will show you that this problem appeared in the Liverpool Post this week. More importantly the Assembly-funded development of Beaumaris cannot proceed legally until the boundary is moved.

After our discussion Martyn said that it is possible that the problem had not been clearly understood. In case he was correct, let me restate it for you.

The Fishery boundary within Beaumaris' boundaries was set at mean low water as far as Gallows Point and mean high water from there on.

This made no difference to the local historic and customary use of the area, as the concluding clause of the Statutory Instrument creating the Fishery protected the rights of Beaumaris against those of the Fishery.

Under this protection exploratory drilling for the proposed marina was undertaken and moorings continued to be laid both in the deep water and in the drying-out area to the West of Gallows Point. These latter are essential for the working of the boatyard on the Point on which Ynys Mon has just issued a long-term lease.

The Judge hearing the legal objection of Mr Mould and Mr Wilson to the proposed marina removed this protective clause. This made it illegal to lay moorings or disturb the seabed anywhere within the Fishery.

Aware of the problems this judgement had caused, North Western & North Wales Sea Fisheries Committee, [NW&NWSFC] the then grantee of the Fishery, published that it had no objection to the moorings at that time. It could not make the moorings legal again as it did not have the power to overrule the Sea Fisheries (Shellfish) Act.

Ynys Mon County Council inserted into the leases it issues for moorings a statement that these moorings may not be legal.

When seeking the approval of the Minister this year to the current licences to farm shellfish, NW&NWSFC certified that none of the areas occupied by deep-water moorings opposite Beaumaris Town or those of the drying-out moorings to the West of Gallows Point are used for the cultivation of shellfish.

NW&NWSFC wrote, also, that there is no intention of enlarging or adding to areas of the Fishery at present leased for cultivation. Indeed NW&NWSFC's map shows that not all of these leased areas are fully used.

Because of the embarrassment and uncertainty, including doubt about boat insurance for a hull on an illegal mooring, private individuals, the two local yacht clubs, Beaumaris Town Council and Ynys Mon County Council all asked the Minister to use the power of the Sea Fisheries (Shellfish) Act to remove from a Fishery any area that is not being properly used for the cultivation of shellfish.

This would require a very simple statement from the Minister that she had been advised by the grantee, NW&NWSFC, that these areas are not being used for the cultivation of shellfish. Thus, she has moved the northern boundary of the Fishery opposite Beaumaris from its start point south of the Shelter on the Green to the south boundary of the navigation channel, then westwards until due south of Gallows Point, from there north to mean low-water on the Anglesey shore and thereafter to the west at the line of mean low-water.

Locally there is incomprehension that the Minister has not acceded to the multiple requests already made. The change would have no effect upon the shellfish farmer lessees of the grantee. The acceptance of moorings by NW&NWSFC illustrates that the shellfish cultivators would not be disadvantaged. The requested change would solve the problems of legality of deep-water and drying-out moorings and of work on the pier.

Recently there was an ill-informed letter from Ynys Mon County Council saying that this is now a matter for the new grantee. This cannot be, as whatever that grantee may resolve it cannot overrule the Sea Fisheries (Shellfish) Act any more than could the preceding grantee.

I hope that, as Martyn indicated, clarification may lead to satisfactory action. The problem is not going to go away and it is most unfortunate to have Assembly money being applied illegally and to put at risk the long historic role of Beaumaris as a port and the few businesses in this deprived area.

If I can help in any way, give me a call

Administrative Issues: Correspondence

Background

The Association has received further correspondence from a variety of parties. This paper considers options for providing a timely and appropriate response to such correspondence.

Recommendations

1. That the Board should agree a procedure for responding to correspondence.

1. Recent correspondence

- 1.1 Since this Association was established in April 2010, a number of letters have been received from correspondents in the Beaumaris area. These correspondents have made enquiries about the composition of the Board, the activities of fishing vessels in the Fishery Order, and have requested copies of the minutes of Board meetings⁴.
- 1.2 Correspondence has also been received which calls for major alterations to the management of the area and which could have significant long-term implications for the mussel farming industry in the Strait⁵.

2. Procedures: current and future

- 2.1 At the last meeting it was agreed that correspondence could be brought to the attention of the Board prior to replying. While this approach allows for careful consideration of the response and provides an opportunity for all Association Members to be involved in determining the response, it also delays the speed of response.
- 2.2 A more timely response could be provided if it was drafted by an individual Member of the Association or by a group of Members. However the risk of this approach is that an inappropriate response could be made to a controversial issue.
- 2.3 Members of the Association are invited to consider options for responding to correspondence that would balance the need to provide a timely response with the need to ensure that responses reflect the objects of the Association and the views of its Members.

October 2010

⁴ Copies of this correspondence are attached to item 13 on today's agenda.

⁵ This is considered in the previous agenda item (10).

Any Other Business

Correspondence

Copies of correspondence received, with responses, since the last meeting of the Association are attached in chronological order.

Anglesey Boat Company Limited

Porth Lavan
Beaumaris
Anglesey LL58 8YH

Tel No : 01248 811350
Fax No : 01248 811500

James Wilson Esq
Director
Menai Strait Fishery Order Management Association
Port Penrhyn
Bangor
Gwynedd LL57 4HN

9 July 2010

Dear Mr Wilson

Thank you for your letter dated 2 July and sorry to trouble you further but I just need to understand your Association's role as regards the administration of the 1962 Fishery Order.

Presumably the Association will now undertake the role of the former NW&NWSFC as regards the Mussel Fishery and will hold regular monthly meetings?

Will the minutes of those meetings be available to the public as was the case with the Fishery Committee and if this is so could I have a copy of the minutes of the meetings held to date.

You state that two directors have been appointed albeit you are the only director listed at Companies House so perhaps you could identify the other director.

Finally, if I were to communicate with you from time to time would you prefer I did this by email in which case could you let me have your contact details?

I look forward to hearing from you.

Yours sincerely



Dafydd G Jones

Registered in England and Wales
VAT Registration No : 742 2770 39
Co Registration No : 1522452

Registered Office : Porth Lavan
Beaumaris Anglesey LL58 8YH

Menai Strait Fishery Order Management Association

Port Penrhyn, Bangor, LL57 4HN

Dafydd Jones
Anglesey Boat Company Ltd
Porth Lafan
Beaumaris LL58 8YH

August 23, 2010

Dear Mr. Jones

My apology for the delay in responding to your letters of 9th July and 11th August 2010.

I will bring to the attention of those parties that participate within the Menai Strait Fishery Order Management Association, which include members from Industry, Gwynedd County Council, Isle of Anglesey County Council, the Countryside Council for Wales, the Environment Agency and Bangor University, the matters which you have raised and report back to you accordingly.

Yours sincerely,

James Wilson
Director

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

David G. Thomas
Llais Aderyn
Bryn Castell
Llanddona
Anglesey
LL58 8TR

01248 810272
davidthomas@uwclub.net

7th. September 2010.

Menai Strait Fishery Order Management Association,
Port Penrhyn,
Bangor.
LL57 4HN

Dear Sirs,

I, and others, have noticed that many times recently the large blue mussel-dredger B932 has been operating near the Gwynedd shore of the Menai Strait opposite Beaumaris far outside any areas leased for the cultivation of shell-fish.

When the Minister for Rural Affairs was asked to approve the current leases she was assured that no further areas of the East Menai Fishery beyond those included in those leased areas would be taken into cultivation. The activities of B932 seem to belie this. I should be pleased to hear from you as to what is happening.

I look forward to hearing from you as soon as possible.

Yours faithfully,



David G. Thomas

Menai Strait Fishery Order Management Association

Port Penrhyn, Bangor, LL57 4HN

Mr. David G Thomas

Llais Aderyn

Bryn Castell

Llanddona

LL58 8TR

September 13th, 2010

Dear Mr. Thomas

Thank you for your letter of the 7th of September 2010, raising concerns about the activity of the fishing vessel B932 in the Menai Strait.

We have forwarded your letter and this response to WAG enforcement officers, who we have asked to investigate this matter formally and independently. I understand they may make arrangements to interview you, and they will also interview the skipper of the fishing vessel to determine her recent activities.

To assist with this investigation, I have enclosed a map of the 1962 fishery order, which shows the areas which are currently leased for cultivation. This may help you to identify the areas where you have seen the B932 operating recently, and may help you to communicate this information to WAG enforcement officers as part of their investigation.

All of the mussel vessels operating in the Menai Strait are equipped with GPS chart plotters, which record vessel location precisely. In addition the B932 is equipped with satellite Vessel monitoring system (VMS) technology which also reports the vessel position directly to the relevant regulatory bodies at regular intervals. We have made arrangements for WAG enforcement officers to inspect the records on this vessel to establish its pattern of activity recently, and its exact whereabouts with respect to the Menai Strait fishery order at any date and time when you have observed it fishing.

I trust that you will find these arrangements satisfactory, and that we will be able to resolve this matter swiftly.

Yours Sincerely,

James Wilson

Director

Cc Martyn Boyce, Welsh Assembly Government, Inshore Fisheries Enforcement Manager.

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

From: Lt Col (ret'd) M. I. Burkhun MBE

**Alma House
4, Alma Street
Beumaris, Anglesey, LL58 8BW**

Telephone & Fax 01248-810673

28 September 2010

Menai Strait Fishery Order Management Association
Port Penrhyn
Bangor LL57 4HN

Dear Sirs,

I enquired of the Minister for Rural Affairs, Welsh Assembly Government, who is it that now issues the information that I used to receive from North Western & North Wales Sea Fisheries Committee.

The Minister replied that you are now the responsible body and that two meetings had been held since you took over the management of the East Menai Fishery.

As much of this Fishery lies over the Traeth Lafan Site of Special Scientific Interest, which is of public concern, I would be grateful if, under the Freedom of Information Act, you would please let me have the notes from the two meetings of which the Minister wrote and the notes of any subsequent meetings.

Yours faithfully,



Menai Strait Fishery Order Management Association

Port Penrhyn, Bangor, LL57 4HN

Lt Col (retd.) M.I.Burkham MBE

Alma House

4 Alma Street

Beaumaris LL58 8BW

05/10/10

Dear Sir

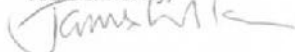
Thank you for your letter of the 28th September 2010, requesting information from the Association under the Freedom of Information Act.

It is our understanding that the Freedom of information Act 2000 obliges Public authorities and Companies that are wholly owned by Public Authorities to provide information in response to requests. The Act can also be applied on a voluntary basis by non public bodies that undertake certain activities of a public nature.

Participation in the Menai Strait Fishery Order Management Association (MSFOMA) reflects a variety of interests; from the private sector – with representatives from the leased and licensed fishery, from science with a representative from Bangor University, from Local government with representation from Gwynedd and Anglesey County Council and from other public bodies such as the Countryside Council for Wales, the Environment Agency and the Welsh Assembly Government.

As such our understanding is that MSFOMA is neither a public authority, nor is it wholly owned by a public authority. Thus whilst the FOI legislation does not obligate MSFOMA to comply with any requests, such as yours, it is within the remit of the Association to decide to do so. With this in mind, I will place your correspondence before the next meeting of the Association and request that a decision is made with regard to an agreed approach to this and any future FOI applications made. I will of course report this decision to you accordingly.

Yours sincerely,



James Wilson

(On behalf of MSFOMA)

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