

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.

Recommendations

1. That the report is received.
2. That comments on proposed new byelaws and management measures are agreed and sent to the NW-IFCA as appropriate.

1. IFCA Meetings

- 1.1 Since the last meeting of the Association the NW-IFCA has held one Quarterly Meeting (on the 16th September 2016). The Technical, Scientific and Byelaws Sub-Committee has met once (on the 9th August 2016). The "Bivalve Mollusc Working Group" also met once, on the 8th August 2016.
- 1.2 Some of the matters that are relevant to the Menai Strait mussel fishery that have been considered by the NW-IFCA are summarised briefly below.

2. Changes to Byelaws

- 2.1 The NW-IFCA is presently working on changes to two byelaws which are relevant to the activities of the mussel industry in the Menai Strait. These are a new Byelaw 11, which will regulate fishing with dredges; and a revision to the existing Byelaw 3 which establishes a permit scheme for cockles and mussels.
- 2.2 During the past 3 months, the IFCA has concentrated on developing Byelaw 11. This byelaw has been considered at both the TSB and Authority meetings. The current draft this byelaw and the supporting IFCA Chief Executive Officer's report on it is attached as Annex A of this report for Members' information and comment.

3. Bivalve Mollusc Working Group

- 3.1 The agenda for the meeting of the Bivalve Mollusc Working Group in August 2016 is attached at Annex B. A verbal report on this meeting will be provided at the Association meeting by our BMWG representative.

4. Response to IFCA

- 4.1 At its last meeting, the Authority resolved to make a formal response to the IFCA about the proposed new Byelaw 11 and the Morecambe Bay Management Plan. The response was delayed whilst awaiting the IFCA to finalise its changes to Byelaw 11. A proposed response to the IFCA is attached at Annex C for Members' consideration.

MSFOMA Secretariat
October 2016

Annex A: Proposed new NW-IFCA Byelaw 11 (from papers presented to NW-IFCA meeting on September 16th 2016).

NWIFCA Quarterly Meeting
16th September 2016: 11.00 a.m.

AGENDA
ITEM NO.
8

PERMIT TO DREDGE BYELAW

Purpose of Report: To report progress with this byelaw and present options for charging

Recommendations: That the Authority recommends which option for charging should be used

Introduction

1. Comments on the byelaw from MMO and TSB have been incorporated in the version attached. The only outstanding question is the permit fee structure.

Permit fees

2. The MMO have commented that the Authority's previous practice of charging dredge permit fees according to vessel length may not be in line with current treasury guidance. Alternative approaches should be considered.
3. MACAA gives IFCA's powers to charge for services and IFCA's generally are introducing permit fees as byelaws are reviewed. Government policy is that agencies recover the **full** cost of public services with charges in place of paying for services from general taxation. Government guidance is at:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/454191/Managing_Public_Money_AA_v2_-jan15.pdf
4. The guidance advises that the same charge should be applied to all users of a defined service. In summary, charging large businesses/vessels more than small ones for a service where the cost is the same is not in accordance with the guidance. This is a reason why the NWIFCA proposal has been queried. The Authority has sent evidence as in this paper that having different charging categories for vessels with different catching capacity is fair and supported by industry. MMO have raised a query with Defra and a response is awaited.
5. The main target for the dredge permit byelaw is the seed mussel fisheries of Morecambe Bay. The fishery varies from year to year in scale, area and timing. The fishery is generally open for less than 50 days per year in summer to autumn.
6. Fixed management costs are incurred by the Authority regardless of the size of the fishery. In addition there are variable inspection monitoring and compliance costs dependent on the number of days fished. In table 1 costs have been estimated for a fishery lasting 15 days.
7. Vessels range from small under 10m vessels with 0.5m dredges catching a maximum of 5000kgs per day (sale value £500) to 50m vessels with 16m dredges catching up to 300 tons per day (sale value of £30,000).
8. The cost to the Authority of operating the fishery is estimated to be on average approximately £50,000 / year. Members may wish to consider the level of cost recovery which would be appropriate taking account of treasury guidance. The following charging options are being considered:

Table 1	Activity	Time in Officer Days & Cost
Fixed work to open the fishery	Surveys (ground & aerial)	20 days
	Analysis	5
	Draft and agree HRA. Reporting to TSB	10
	Consult with industry sectors, agree & issue authorisations	5
Fixed Costs	7.4h Day @ £55 per officer hour = £407 per day	40 days = £16,280
Inspection and Enforcement	Variable depending on the number of days fishing	4 IFCOs for 15 days = 60 days (Cost £24,420)
Patrol Vessel	£1800/day	5 days = £9000
Variable Costs	15 days	£33,420
Total Costs		£49,700
5 vessels/yr Average (last 10 yrs)	Cost per vessel	£9940

Charging options (full cost recovery)

9. **Option 1:** Adopt a standard charge for all vessels of e.g. £10000 per year. This is most in line with Treasury guidance. However, this fee would likely exclude small boat operators and may be considered unfair to such operators.
10. **Option 2:** A standard dredge permit fee of e.g. £10000 per vessel but exclude vessels under 10m vessels from the fee. Crew of vessels under 10m who were not Byelaw 3 permit holders would pay a fee of £500 each to maintain parity with byelaw 3 permit holders (but not become a full Byelaw 3 permit holder).
11. **Option 3:** Set permit fees based on vessels length and/or catching capacity, as previous practice as in the following table given as example.

Vessel length	Catching capacity	Dredge size	Permit fee per year
Under 10m	Up to 5000 kg/day	0.5m	£500
10-30m	5000 to 50000 kg/day	0.5-10m	£2000
Over 30m	50,000 to 500,000 kg/day	More than 10m	£10000

12. **Option 4:** A levy on the catch of e.g. £10 per 1000kg caught. Skippers will be required to submit data on catch returns, which would be used to invoice the levy.
13. These options have been discussed with MMO byelaws officers but they are not able to advise on which may pass legal scrutiny by MMO and Defra.
14. The Authority is asked to agree its preferred option for development and further discussions with MMO and Defra.

CEO
6th September 2016

North Western Inshore Fisheries and Conservation Authority

Marine and Coastal Access Act 2009

Permit to dredge byelaw 2016

The Authority for the North Western Inshore Fisheries and Conservation District in exercise of its powers under 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 and 4 of the North Western Inshore Fisheries and Conservation Order 2010 (S.I. 2010/2200);
 - 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;
 - c. "dredge" means a rigid structure, scoop, pump or mechanical device which is not a trawl or beam trawl and any ancillary hydraulic equipment that is operated from a vessel or vehicle which is designed for or capable of taking sea fisheries resources;
 - d. "specified vessel" means a vessel identified by name and registration number for which a permit to dredge has been issued under this byelaw;
 - e. "specified vehicle" means a vehicle identified by make, model, and chassis number for which a permit to dredge has been issued under this byelaw;
 - f. "permit" means a permit issued by the Authority in accordance with this byelaw;
 - g. "fully functioning Automatic Identification System" means an operational transceiver of Class A or Class B design that transmits accurate information including the ships identity, type, position, course, speed and can exchange information with shore-based facilities;

Prohibition

2. A person must not use a dredge for the exploitation of sea fisheries resources except from or attached to a specified vessel or a specified vehicle and in accordance with a permit.

Exception

3. This byelaw shall not apply to any person performing an act that would otherwise constitute an offence, if that act was carried out in accordance with a written permission issued by the Authority permitting that act for scientific, stocking or breeding purposes.

Permit conditions

4. A person may only apply for a permit in respect of a vessel or vehicle of which the person is the owner.
5. A permit is issued by the Authority to the owner of the specified vessel or vehicle.
6. Permit applications must be made using the form available from the Authority.
7. A permit is valid for the dates specified on the permit.

8. A permit fee is payable prior to use. The fee may be amended by the consumer price index in January each year.
9. The Authority may charge a fee of £50 to issue a replacement permit.
10. A permit
 - a. is not transferable from the specified vessel or vehicle to another vessel or vehicle;
 - b. must be carried on the specified vessel or vehicle when a dredge is carried or in use and produced for inspection when requested by a IFC officer,
 - c. remains the property of and must be surrendered to the Authority if no longer required.
11. Permit holders must file returns with the Authority no later than the 5th day of the month following providing dates, times and locations of dredging and the quantity of fish taken in numbers or kilogrammes for the previous month. Nil returns may be required for each month when a permit was valid but not used. The authority may suspend permits until returns have been filed.
12. It is a permit condition that a person using the permit does not obstruct any Inshore Fisheries and Conservation Officer,
13. A specified vessel used in conjunction with a permit must have a fully functioning Automatic Identification System.
14. The Authority must be notified by phone, text or email at least 2 hours prior to commencement of fishing in conjunction with a permit.
15. A person must notify the Authority of any change in the information provided to obtain a permit during the period when the permit is valid.
16. Contravention of a permit condition constitutes a contravention of this byelaw.
17. On receipt of the review procedure information specified below, the Authority may attach flexible permit conditions to a permit including some or all of the following:
 - a. Dates, times or tides during which using a dredge for the exploitation of sea fisheries resources is permitted
 - b. Areas where using a dredge for the exploitation of sea fisheries resources is permitted;
 - c. Species for which using a dredge to fish is permitted;
 - d. The type or design of dredge which is permitted
 - e. The maximum number of permits which can be issued for a fishery;
 - f. maximum number of dredges of total length of dredges that a vessel may use;
 - g. total catch limit permitted within a specified period.

Review procedure

18. The Authority will review permit conditions no less than once every 4 years as follows:
 - a. The Authority will consult in writing with permit holders and such other stakeholders, organisations and persons as appear to the Authority to be representative of the interests likely to be substantially affected by changes in permit conditions;
 - b. The Authority will make a decision whether to add, vary or remove any permit condition based on the consultation responses and information received obtained in accordance with the following paragraph
 - c. Following a decision being made by the Authority, permit holders will be notified in writing and permits will be amended as necessary with no charge.
19. The information referred to in the previous paragraph is:
 - a. information and advice received from permit holders;
 - b. scientific and survey information gathered by the Authority or provided to the Authority by any other organisations or persons as the Authority shall think fit;
 - c. advice provided by Centre for Environment Fisheries and Aquaculture Science or Natural England or any other organisations or persons as the Authority shall think fit;
 - d. an impact assessment of any proposed changes;
 - e. information from any other relevant source.

Revocation of byelaw

20. The byelaw with the title "Byelaw 12 Restrictions on fishing for bivalve molluscan shellfish" made by the North Western and North Wales Sea Fisheries Committee Byelaw 12 under the Sea Fisheries Regulation Act 1966 (c.38)S5 and confirmed on 21 January 1998 is revoked.

Explanatory Note

(This note does not form part of the byelaw)

This byelaw prohibits the use of dredges for fishing within the District without a permit. The permit application requirements, the conditions which may be attached to a permit and the procedure by which permit conditions may be varied are set out in the byelaw.

Annex B: Copy of the Bivalve Mollusc Working Group agenda, 8th August 2016.

Bivalve Mollusc Working group – Meeting 8th August 2016 – 1000 hrs. Carnforth

AGENDA

1. Chairman's introduction
2. Notes of last meeting
3. Matters arising
4. Seed mussel fisheries update (see written report to TSB):
 - Heysham Flat
 - South America
 - Requests to harvest:
 - Perch Scar
 - Extension to the 2016 South America and Falklands seed mussel dredge authorisation
 - Bottom shears at Heysham
5. Removal of seed mussel from Seasalter oyster trestles
6. Cockle fisheries update (see written report to TSB):
 - Flookburgh
 - Marshside – Penfold North
 - Setting TACs and quota
7. Morecambe Bay Mussel Management Plan
 - Heysham Flat protection of underlying 3D structures of reef
 - question over ephemerality of Heysham Flat mussel
 - principles of opening a fishery
8. Draft Morecambe Bay Cockle Management Plan
9. Byelaw Review update:
 - Byelaw 3
 - Dredge byelaw
10. Date of next meeting
11. AOB

Annex C: Proposed response to the IFCA.

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

XXth October 2016

Dear Stephen

SHELL FISHERY MANAGEMENT

I am writing further to a recent meeting of our Association at which some of the actions of your Authority in recent months were discussed. It was agreed by our Members that I should write to you in connection with these matters.

1. Morecambe Bay seed mussel dredge fishery

The Association received a verbal report from Mr Kim Mould, who is a member of the IFCA Bivalve Mussel Working Group, and who praised the action of the Authority and this Group in progressing the seed mussel fishery in July of this year. The Association resolved that we should formally record our gratitude to the IFCA and its Officers for their swift and pragmatic approach to managing this fishery resource.

2. New Byelaw 11 (Dredging)

We noted with interest the proposed new dredging byelaw. We see that this has been considered by both the Technical, Scientific & Byelaws Sub-Committee and by the Authority. Before this byelaw proceeds to the formal consultation phase, we wonder if you might be able to clarify the following matters:-

- a. Vessel ownership – the byelaw presently states that a person may only apply for a permit for a vessel that they own. Does this include part-ownership of a vessel, and does it preclude the use of a chartered vessel?
- b. Permit conditions – could you clarify the procedure for consultation on the proposed permit conditions referred to in section 17 of the byelaw.
- c. Consultation – please could you include this Authority in your list of organisations that you will consult that are referred to in section 18(a) of the byelaw.
- d. Transitional arrangements – can you confirm whether vessels that have been previously authorised to fish for bivalve molluscs under the existing NW-IFCA Byelaw 12 will have a track record that can be transferred to the new byelaw regime?
- e. Dredge size – we note that the report submitted to the September Authority meeting referred to “dredge size”. Could you clarify whether this reference is for individual dredges or is an aggregate dredge width?

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

3. New Byelaw 3: Cockle & Mussel Fisheries

We note that the existing cockle & mussel byelaw is under review, and that it will ultimately be replaced by a new Byelaw 3. I wonder if you could clarify whether this new Byelaw 3 will apply to the activities of mussel dredging vessels in the same way as its predecessor, or whether this requirement will be negated by the new Byelaw 11.

4. Morecambe Bay Mussel Management Plan

We see that the Authority is working on a management plan for the mussel stocks in Morecambe Bay. We note with interest that it is proposed that there should be a Minimum Spawning Stock Biomass (MSSB) of mussels in the Bay (defined as the stock of mussels with a shell length of 45mm or greater).

We note that this plan is still in development and has not yet been circulated for wider comment. However, in advance of any such consultation we wonder if you might be able to address the following points which seem to be central to this management approach and which seem to be missing from the current rationale:-

- a. Size at maturity – what is the evidence base for determining the lower size limit for the spawning stock of mussels at 45mm?
- b. Stock-recruitment relationship – to support the use of MSSB as management metric, can you include the information about mussel stock-recruitment relationships in Morecambe Bay that will be used to determine the MSSB value?
- c. Larval dispersal and recruitment sources – given the planktonic habit of mussel larvae, could you provide evidence that the mussel beds in Morecambe Bay are self-recruiting?

We hope that these comments are helpful. If you have any comments or queries about our comments, please do not hesitate to get in touch with me.

Yours sincerely

SUE UTTING
Chair, MSFOMA

cc Trevor Jones
James Wilson
Kim Mould
David Jarrad, SAGB

Menai Strait Oyster & Mussel Fishery Order 1962

Background

The Menai Strait Oyster and Mussel Fishery Order was made in 1962, and provides the legal foundations for the mussel fishery in the eastern Menai Strait. The Order was made for a period of 60 years and is due to expire in 2022. MSFOMA needs to consider options for renewal of the Fishery Order to protect the local businesses and jobs that depend upon it.

Recommendations

1. That the Association should agree a timetable for applying for the renewal of the Menai Strait Oyster & Mussel Fishery Order 1962.
2. That the financial implications of renewing the Fishery Order are considered.

1. Introduction

- 1.1 The Menai Strait Fishery Order sets 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. It has been the most successful Fishery Order in the UK, allowing the Menai Strait mussel industry to develop and flourish.
- 1.2 The existing Fishery Order will expire in 2022. The experience of the mussel farmers in the Western Menai Strait indicates that it can take many years for a Fishery Order to be renewed.
- 1.3 It is imperative for the businesses and jobs that depend on the Menai Strait Oyster and Mussel Fishery Order that a new Fishery Order has been made before the existing Fishery Order expires.
- 1.4 At the July 2016 meeting of the Authority it was resolved that work should start on the process of renewing this Fishery Order. This report provides a review of the proposals agreed, and an update on progress. It additionally provides a brief update on the renewal of the existing leases to operators working in the Fishery Order area.

2. Renewal of leases

- 2.1 The process of renewing the existing leases in the Menai Strait Fishery Order area is ongoing. Since our last meeting the Association's lawyers have provided guidance on the terms of the new leases, and the Secretariat has also corresponded with the Welsh Government on the wording of the leases (see Annex A).

3. Proposed timetable for renewal

- 3.1 There is no advantage in delaying the process of renewing the Fishery Order, and it is vital for the future of shellfish cultivation in the Menai Strait that it is maintained. It would be wise to progress and submit an application at the earliest opportunity.
- 3.2 An outline timetable for progressing the renewal of the Order is set out below for discussion. This proposal considers that a period of 18 months should be adequate for consulting on and refining the Fishery Order application, so that a formal

application can be submitted early in 2018 and hopefully the formal consultation on the Order could take place in late 2018.

Year	Quarter	Activities
2016	Q3	a) Formal notice to WG of intent to renew Fishery Order b) Initial contact with stakeholders.
	Q4	c) Meetings with WG officials to discuss renewal. d) Meetings with NRW to discuss renewal. e) Initial stakeholder meetings (with key sectoral groups such as RYA, NRW, Wildlife Trust, Beaumaris Yacht Club). f) Communication & meetings with landowners & tenants
2017	Q1	g) Consultation & agreement with NRW h) Wider stakeholder meetings (e.g. "drop in" sessions & evening meetings). i) Ongoing liaison with NRW
	Q2	j) Work on application for Order.
	Q3	k) Ongoing liaison with stakeholders, NRW, land owners.
	Q4	
2018	Q1	l) Submit formal application for renewal of Fishery Order.
	Q2	m) Liaison with WG.
	Q3	n) Liaison with WG
	Q4	o) (Possible) Formal consultation on Fishery Order.
2019		<ul style="list-style-type: none"> Respond to consultation feedback. Address consultation issues either informally or through Public Inquiry.
2020		<ul style="list-style-type: none"> Progress application process.
2021		<ul style="list-style-type: none"> Progress application process.
2022		<ul style="list-style-type: none"> DEADLINE FOR NEW ORDER

- 3.3 At our last meeting it was resolved that the Authority should write to Welsh Government to set out our intentions for renewal of the Fishery Order. A draft letter is attached at Annex B for Members' comments.

4. Costs

- 4.1 Costs will be incurred by the Association during the process of renewing the Fishery Order. These will arise from seeking specialist advice and support (for instance from lawyers and other professionals); hiring meeting rooms; and potentially for funding a Public Inquiry should that be necessary.
- 4.2 The Association has accrued a reserve fund to meet the costs of renewing the Order. It will nevertheless be important to carefully manage the renewal process to ensure that it is kept within an appropriate budget.
- 4.3 It is possible that if the application process is protracted or requires a Public Inquiry then extra funds may have to be secured by the Association, through an increase in the levy on operators. This will need to be kept under review during the application process.

MSFOMA Secretariat
October 2016

Annex A: Letter to Welsh Government concerning wording of the leases issued under the Menai Strait Oyster and Mussel Fishery Order 1962.

Menai Strait Fishery Order Management Association

Port Penrhyn, Bangor, LL57 4HN

16th August 2016

Margaret Rees
Welsh Government
Sea Policy Executive
Rhodfa Padarn
Llanbadarn Fawr
Aberystwyth
SY23 3UR

Dear Margaret

MENAI STRAIT OYSTER AND MUSSEL FISHERY ORDER 1962 – LEASE RENEWALS

We are writing further to the correspondence later this year and earlier this year about the renewal of leases for the Menai Strait Oyster and Mussel Fishery Order in the eastern Menai Strait.

To recap very briefly, the Minister consented in early April to the renewal of these leases. We are in the process of renewing them.

During this process our lawyers have noticed that the old leases for mussel layings contained a clause that no longer seems appropriate. We have therefore removed the following text from the new leases that we are issuing for the Order to avoid a reference to powers that no longer exist which could confound the purpose of the lease:-

12.7 The Tenant will not without the prior licence of the Welsh Government import into the Layings or any part of the Fishery any shell fish from outside the Fishery

Any requirements to control or restrict the movement of shellfish imposed by the Welsh Government will still of course apply to the operators whether or not this text is in the lease.

The remainder of the lease will be unchanged, apart from the subsequent numbering of the clauses under section 12.

We hope that this action meets with your approval. If you have any queries about this, please do not hesitate to get in touch with me.

Yours sincerely

SUE UTTING
Chair, MSFOMA

Annex B: Draft letter to Welsh Government concerning renewal of the Menai Strait Oyster and Mussel Fishery Order 1962.

Menai Strait Fishery Order Management Association

Port Penrhyn, Bangor, LL57 4HN

XXth October 2016

Margaret Rees
Welsh Government
Sea Policy Executive
Rhodfa Padarn
Llanbadarn Fawr
Aberystwyth
SY23 3UR

Dear Margaret

MENAI STRAIT OYSTER AND MUSSEL FISHERY ORDER 1962 –RENEWAL

We are writing to inform you of our intention to apply for the renewal of the Menai Strait Oyster and Mussel Fishery Order 1962. Since this Order was made it has become the foundation for the most successful aquaculture production area in Wales. Local businesses and local jobs depend upon it.

The current Fishery Order is due to expire on the 1st April 2022. With just over 5 years to run, we are writing to confirm that this Association wishes to apply for the renewal of this Order. We make this request further to our previous notice to Jodi Massey in June 2013 (attached).

Because of the importance of long-term stability for the businesses in the Menai Strait, we will be requesting that a new Order is made for as long a period as possible. In an ideal world we would be seeking renewal for a further period of 60 years, but we recognise that with the changes in legislation and the use of the coast that it would be more prudent to ask for a shorter period of, say, 35 years.

We will be starting the preliminary work on our formal application for a new Fishery Order over the coming months. At this point we would like to seek your views on our proposal, and would welcome the opportunity to meet with you and your colleagues to discuss how best to progress our application.

Yours sincerely

SUE UTTING
Chair, MSFOMA

Enc.

cc. Graham Rees, Deputy Director, Marine

Menai Strait Fishery Order Management Association

Port Penrhyn, Bangor, LL57 4HN

16th August 2016

Margaret Rees
Welsh Government
Sea Policy Executive
Rhodfa Padarn
Llanbadarn Fawr
Aberystwyth
SY23 3UR

Dear Margaret

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We will be starting the preliminary work on our formal application for a new Fishery Order over the coming months. At this point we would like to seek your views on our proposal, and would welcome the opportunity to meet with you and your colleagues to discuss how best to progress our application.

Yours sincerely

SUE UTTING
Chair, MSFOMA

Enc.

cc. Graham Rees, Deputy Director, Marine

Menai Strait Fishery Order Management Association

Port Penrhyn, Bangor, LL57 4HN

Jodi Massey
Sea Policy Executive
Marine and Fisheries
Welsh Government
Rhodfa Padarn
Llanbadarn Fawr
Aberystwyth
Ceredigion
SY23 3UR

28 June 2013

Dear Jodi

The 1962 Menai Strait East Fishery Order

As you will be aware, the 1962 order is due to expire in 2022, having been granted for a period of 60 years. The Menai Strait Fishery Order Management Association, as the current Grantee of the order, would like to inform Welsh Government that it wishes to begin the procedure of application for a following order – which will in essence be a new fishery order.

We are mindful of the time it has taken to progress the Menai Strait West fishery order application to date and also a number of other Several Order applications at other locations in Wales. We are also of course aware of the changes in principle that Welsh Government are proposing to make to the 1967 Act through the Welsh Government Environment Bill/Act in 2016. Whilst we are fully in support of these in principle, we are concerned of the additional time before these reach the statute book, and the implications of this on the process to develop a following order for Menai Strait East.

Could you take this letter as formal notification that we wish to begin this process and we will be in touch with you again in the near future on this matter.

Yours sincerely

SUE UTTING
Chair, MSFOMA

CC Graham Rees – Deputy Director, Marine
Members of MSFOMA

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

Menai Strait West Fishery Order Application

Background

In 2012 the Association resolved to work with shellfish farmers from the western Menai Strait to renew the Menai Strait West Fishery Order, which lapsed in 2008. The renewal of the Order is essential to secure the future development of shellfish farming in this area.

A public consultation on the proposal to renew the Menai Strait West Fishery Order was carried out by the Association in October-November 2015. A significant number of objections were submitted. Since then the Association has been working with local stakeholders to address these concerns.

This report provides an update on progress.

Recommendations

1. That the report on the consultation for the Menai Strait (West) Fishery Order is noted and discussed.
2. That the Association considers how it would prefer to proceed with the application for this Fishery Order.

1. Update on Renewal of Fishery Order

- 1.1 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. The Order lapsed in 2008, preventing the further development of these businesses. In May 2015, the Association received confirmation from Welsh Government that the Order would be re-created. A draft Order was sent to the Association in October 2015.
- 1.2 A formal consultation was carried out on the draft Order period in line with WG directions between the 29th October – 29th November 2015. Responses were received from 75 individuals and organisations. 57 of the response were objections; 15 were letters of support; 2 were requests for minor alterations to the Order from navigation authorities; and 1 was an offer of assistance from local Gwynedd Councillor Sian Gwenllian.
- 1.3 Since November, representatives of the Association and the proponents of the Fishery Order have been working with stakeholders to try to identify ways in which their objections could be addressed. An update on liaison with different sectoral groups is provided below.

2. Liaison with sailing, recreation and local resident stakeholders

- 2.1 At the last meeting of the Association in July it was reported that a sequence of productive meetings had been held with local stakeholders. As a result of these, the Association had established a “Liaison Group” and a smaller “Working Group” to facilitate engagement and develop a partnership approach to managing cultivation operations in the western Menai Strait.
- 2.2 A copy of the “Operating Plan” that has been developed with these stakeholders is attached at Annex A of this report, along with a note of the meeting of the Liaison Group that took place on the 14th July (Annex B).
- 2.3 Members of the Association are advised that at the end of the meeting on the 14th July the RYA raised concerns about the legal status of the “Operating Plan” (see Annex C). In response to these concerns, the Chair organised a conference call with key RYA personnel (owing to various prior commitments this took place on the 27th September 2016).
- 2.4 The situation at present is that the RYA feels unable to advise their members to withdraw their objections until they have some reassurance that the proposed Operating Plan will be enforceable.
- 2.5 Prior to the discussion with the RYA on the 27th September, it had been intended to write to the Minister to seek agreement to the principle of appending the “Operating Plan” to the leases issued under any new Fishery Order (see draft letter at Annex D).
- 2.6 The RYA has asked that further options are explored with the Welsh Government, such as the revision of the actual Order to include an explicit reference to the “Operating Plan” or alternatively that as “side agreement” is drawn up with the RYA, which would provide the RYA with a formal mechanism for ensuring that the Operating Plan is enforced.
- 2.7 A further meeting with stakeholders is scheduled for the evening of the 13th October in Port Dinorwic.

3. Liaison with commercial stakeholder

- 3.1 One of the respondents to the consultation on the proposed Fishery Order was a firm of solicitors, acting on behalf of the company Roberts of Port Dinorwic. This company was concerned about the possible impact of oyster cultivation within Plot D of the proposed Fishery Order on the effluent outfall pipe from their premises. The owner of the company has attended Liaison Group meetings in April and July and has raised concerns about impacts on his business at these meetings.
- 3.2 The proposed tenant for Plot D has been seeking a meeting with this objector and has also been liaising with the Crown Estate Commissioners (the landowner) to seek a resolution to this issue. The meeting will be provided with an update on progress.

4. Next Steps

- 4.1 At the last Association meeting it was hoped that the Liaison Group meeting on July 14th would reassure stakeholders and provide a platform for progressing the Fishery Order application. An e-mail referendum of objectors was planned, to enable them to either sustain or withdraw their objections. Following the RYA's statement to the meeting, it was decided that it would not be appropriate to progress with this referendum.
- 4.2 At this point it is not clear how Welsh Government will respond to the request set out in Annex D of this report. If the Welsh Government response does not meet RYA requirements, it seems unlikely that they will feel able to advise their members to withdraw their objections.
- 4.3 Taking this into account it is not clear at this point when, if ever, it will be possible to get to a position where all objections are withdrawn. After discussions with the proponents of the Fishery Order, the options for progress are:-
 - a) **Proceed with application** - if all of the objections are withdrawn, then there should be no obstacle to the new Minister making a new Fishery Order.
 - b) **Public Inquiry** - if substantial objections remain, then the most expeditious course of action is felt to be to ask the Minister to appoint an Inspector and to hold a Public Inquiry to examine the proposal.
- 4.4 The Association is reminded that the procedure for making a new Fishery Order provides for the Minister to call a Public Inquiry if there are outstanding objections to an Order that are "*neither frivolous or irrelevant*" (under §4 of the Sea Fisheries (Shellfish) Act 1967).
- 4.5 Members' views are sought on how best to proceed with this application.

5. Costs

- 5.1 At the last Association meeting it was resolved that all of the proponents of the Fishery Order should be advised of the costs accrued to date and the procedure for managing costs. The Chair has written to the four proponents. Expenditure is being kept under careful review.

MSFOMA Secretariat
October 2016

Annex A: Proposed “Operating Plan” for Menai Strait West Fishery Order

Menai Strait Fishery Order Management Association: Menai West Fishery Order Proposal Draft Operating Plan

Purpose

1. This is a draft operating plan for the proposed Menai Strait West Fishery Order. It has been written to stimulate discussion. ~~(Note: this provision will be deleted when the plan is agreed)~~
2. This operating plan sets out provisions for shellfish farming operations in the proposed Menai Strait (West) Fishery Order that will apply throughout the duration of the Fishery Order and are intended to:-
 - a. mitigate and address the objections that were made to the Order during the formal consultation period in October-November 2015; and
 - b. Address concerns about shellfish farming operations that may arise if the Fishery Order is subsequently “made” by the Minister

Status

3. The provisions of this operating plan shall be incorporated in the statutory and legal management framework governing operations in the Menai Strait (West) Fishery Order. It shall be incorporated in:-
 - a. The Management Plan approved by the Minister in support of the Fishery Order;
 - b. The leases issued to shellfish farmers by the Menai Strait Fishery Order Management Association (MSFOMA); and
 - c. Any other components of the statutory and legal framework deemed necessary to give a formal and binding effect to the provisions of this plan.
4. The incorporation of this operating plan in the statutory and legal framework for the Fishery Order shall make any act or omission that is not compatible with the terms of the operating plan a breach of the relevant provision (i.e. the Order and / or any leases issued under the authority of the Order).

Definitions

5. “MSFOMA” means the Menai Strait Fishery Order Management Association.
6. “Liaison Group” means the group of stakeholders with an interest in the western Menai Strait that has met on the 15th December 2015 and again on the 14th April 2016. The membership of this group is open to all. Terms of Reference for this group are set out in Annex 1 of this document.
7. “Working Group” means the group of representatives of the Liaison Group that may be established on an ad hoc basis to address specific tasks associated with the management of shellfish farming in the western Menai Strait. Terms of Reference for this group are set out in Annex 2 of this document.

Management of Shellfish farming activities

General provisions applying to entire area

8. In order to ensure that recreation and such activities can continue unhindered, neither the grantee of the Order nor any shellfish farmers operating in the areas shall take any action to prevent access to the Fishery Order areas in connection with activities (including recreational activities) that will

cause no significant or ~~deliberate-malicious~~ harm to either the shellfish under cultivation or any equipment being used for cultivation activities (such as oyster frames and bags). Nor will the grantees or lessees take any enforcement action against any third parties who may innocently or inadvertently cause minor disturbance to the shellfish under cultivation or equipment used or cultivation activities.

9. The existence and extent of the Fishery Order and its implications for members of the public shall be communicated at appropriate locations on the nearby seashore, in consultation with the Working Group. Additional communication mechanisms (such as direct communication and the use of electronic media) shall also be used, as appropriate.

10. In order to address concerns raised by recreational users and navigation authorities with respect to any navigation marks that may be required in the area, any navigation marks (such as buoys or perches) that the Minister requires to be installed in the Fishery Order area shall be compatible with the requirements of the local navigation authority.

11. In order to address concerns raised by recreational users of the area that mussel dredging operations will either interfere with, or pose a hazard to, watersports activities in the area, prior to shellfish farming operations that will require the use of ~~large~~ vessels (either to relay or harvest shellfish), the operators shall consult with relevant recreational organisations (such as the Port Dinorwic Sailing Club, and Plas Menai) to plan operations in a way that will minimise and ideally avoid any interference with either casual or formal recreation activities in the area.

~~11.12.~~ In order to address concerns raised about the potential hazard posed by old oyster frames on the shore, operators shall keep their area in good order and remove any redundant cultivation equipment from the shore that could pose a hazard to other users of the sea or seashore.

~~12.13.~~ In order to ensure that the ~~management-operating~~ plan is adaptive, MSFOMA shall consult with the Liaison Group and if necessary convene meeting(s) of the Working Group prior to making any changes to the extent of shellfish farming operations in the Fishery Order area, to address impacts that these operations might cause.

~~13.14.~~ In order to address concern that communication between MSFOMA and interested parties in the area has been poor, MSFOMA will establish formal liaison arrangements to ensure regular meeting with stakeholders that have expressed an interest in this area. The location and frequency of such meetings will be agreed by the participants.

~~14.15.~~ The preceding provisions are additional to, and can neither duplicate nor interfere with any statutory requirements to consult with the Minister, Welsh Government, Natural Resources Wales and/or other statutory bodies (or their successor bodies) by MSFOMA and shellfish farmers as required by the Fishery Order and any other relevant legislation.

Specific provisions for Plot A (mussel cultivation only)

~~15.16.~~ In order to ensure that recreation on the Moel y Don sandbank is not affected by shellfish cultivation operations or ancillary activities, any leases issued for all or part of Plot A shall prohibit shellfish cultivation in the area to the north and east of a line drawn on a bearing ~~150° true from the point 53° 10.915' N 004° 13.795' W 145° T (true) from point 53° 10' 52" N 004° 14' 05" W to the low water mark~~ (coordinates referenced to the WGS84 datum) (see Figure 1).

Specific provisions for Plot B (oyster and mussel cultivation)

~~16.17.~~ No specific issues have been raised for this area.

Specific provisions for Plot C (mussel cultivation only)

~~17,18.~~ No specific issues have been raised for this area.

Specific provisions for Plot D (oyster cultivation only)

~~18,19.~~ In order to ensure that oyster frames are kept at an appropriate distance from areas where watersports activities may be taking place, oyster cultivation shall not take place further north and east of a line drawn 330° true from the point 53° 10.025'N 004° 14.885'W (coordinates referenced to the WGS84 datum) (see Figure 1).

Review of this plan

~~19,20.~~ This plan shall be reviewed as required and at least on an annual basis by MSFOMA and stakeholders. A review of the plan can be called for by any stakeholder during a Liaison Group meeting (see Terms of Reference for the Liaison Group at Annex I of this plan).

~~20,21.~~ Any changes proposed to this plan shall be discussed by the Liaison Group and then agreed by the Working Group before being sent to the Minister for approval, after which the amended plan shall replace the previous version for all activities carried out under the authority of the Order.

MSFOMA
August 2016



Figure 1: Map of proposed cultivation plots (red) and operating lines for Plot A and Plot D. Image available to view on Google Maps [here](#).

Annex I: Liaison Group Terms of Reference

Purpose

1. The Liaison Group has been established to provide a mechanism for regular formal and informal communication between stakeholders and shellfish farmers in the western end of the Menai Strait.
2. Meetings of the Liaison Group will provide an opportunity for:-
 - a. Raising issues of concern and requesting management and/or mitigation action in response to them;
 - b. Exchanging information between shellfish farmers and other stakeholders;
 - c. Discussing opportunities for better integration between shellfish farming activities, other users of the Menai Strait, and local community interests; and
 - d. Discussing management and/or mitigation proposals agreed by a smaller "Working Group" comprising representatives of the Liaison Group.
3. To provide a mechanism for gathering stakeholders' views about shellfish farming in the Western Menai Strait for subsequent dissemination to the relevant statutory and non-statutory management organisations (e.g. Welsh Government, RYA), either by Liaison Group members or the Working Group.

Membership

1. Membership is open to all individuals and organisations that have an interest in the western Menai Strait.

Meetings

1. Liaison group meetings shall take place on an *ad-hoc* basis and at least annually.
2. Meetings shall be chaired by a representative of the Felinheli community council or its successor organisation.
3. Brief notes of meetings and agreed actions will be circulated to all participants and published by MSFOMA by appropriate means.
4. At least 3 weeks' notice of meetings shall be given. Notices of meetings will be circulated to all previous participants and published by MSFOMA by appropriate means.

Review

1. These terms of reference will be reviewed annually by the Liaison Group.

Annex II: Working Group Terms of Reference

Purpose

1. The working group shall meet to discuss and identify possible solutions to
 - a. the concerns raised during the consultation on the proposed Menai Strait West Fishery Order during 2015; and subsequently
 - b. ongoing management issues associated with shellfish cultivation in the Menai Strait West Fishery Order if it is subsequently "made" by the Minister
2. To prepare, agree, and keep under review, a set of mitigation and / or management options that will be implemented under the management regime for the proposed Fishery Order.
3. To produce an initial set of proposals for consideration by the wider liaison group in July 2016.
4. To provide a mechanism for communicating stakeholders' views about shellfish farming in the Western Menai Strait to the relevant management organisations (both statutory and non-statutory).

Membership

1. The membership of the Working Group emerged from the Liaison Group meeting held on 14th April 2016. This includes:-
 - a. Chair: Cyngor Cymuned Y Felinheli Community Council
 - b. MSFOMA representatives (3)
 - c. Porth Dinorwic Sailing Club representatives (3)
 - d. Y Felinheli residents (1)
 - e. RYA Cymru (1)
 - f. RYA Legal Dept (1): tbc
 - g. Plas Menai (1)
 - h. Plas Coch (1)
 - i. Ribride / Porth Daniel (1): Phil Scott
 - j. Anglesey Sea Salt (1)
 - k. Secretariat (non voting)
2. Additional members may be invited or co-opted to participate in meetings as required, with the agreement of the Working Group Members.

Meetings

1. Meetings shall be chaired by a representative of Cyngor Cymuned Y Felinheli Community Council or its successor organisation.
2. The quorum for a meeting shall be 7 (including the Chair).
3. Where a consensus view cannot be reached, resolutions shall be made in accordance with the majority of members present (and entitled to vote). In the event of a tie, the Chair shall have a casting vote.
4. Brief minutes and agreed actions shall be recorded and circulated to participants.

Review

1. These Terms of Reference shall be reviewed by the Working Group at least annually.

Annex B: Note of Liaison Group meeting, 14th July 2016

**Menai Strait Fishery Order Management Association:
Menai West Fishery Order Proposal
Liaison Group
Minutes
14th July 2016, 1900
Port Dinorwic Sailing Club, Port Dinorwic**

1. Attendance

Angela Burton	Independent Researcher
Linda Melton	Individual, RWYC / PD Marina
Ian Park	Individual, RWYC / PD Marina
Bryan Tozer	Resident
Daniel Williams	Cyngor Cymuned Y Felinheli Community Council
Jamie Johnson	Plas Menai
Pete Brook	Port Dinorwic Sailing Club
Cathy Goodwin	Port Dinorwic Sailing Club
Jo Powell	Port Dinorwic Sailing Club
Keith Bailey	Port Dinorwic Sailing Club
Mike Thomas	Port Dinorwic Sailing Club
Wyn Roberts	Dinas Boat Yard
Paul Green	Port Dinorwic Sailing Club
Sue Utting	Chair, MSFOMA
Jim Andrews	Secretariat, MSFOMA

Apologies

Ken Newing	
Terry & Fredrica Blamire	
Rob Bells	
David Lea-Wilson	Mona Seafoods / Halen Môn
Ruth Iliffe	RYC Cymru
Steve Morgan	Plas Menai

2. Actions Agreed

- a. Working Group Terms of Reference: these were discussed and amendments were proposed and agreed for MSFOMA to make to these.

Action: MSFOMA

- b. Liaison Group Terms of Reference: these were discussed and amendments were proposed and agreed for MSFOMA to make to these.

Action: MSFOMA

- c. **Operating Plan:** this was discussed and amendments were proposed and agreed for MSFOMA to make to these.

Action: MSFOMA

- i. RYA representatives indicated that feedback had been received on the day of the meeting from RYA Legal, suggesting a more appropriate way to make the Operating Plan enforceable. It was agreed that these proposals and comments from RYA Legal should be discussed with MSFOMA

Action: MSFOMA

- d. **Timetable:** MSFOMA proposed a timetable for progressing the Fishery Order application (either to a point where it is approved, dismissed or subject to a Public Inquiry).

- e. **Interference with existing business activities:** MSFOMA representatives acknowledged the concerns raised by Mr Wyn Roberts about the potential impact that the proposed Fishery Order could have on his business. It was agreed that further discussions should take place separately between Mr Roberts, the proposed tenant for "Plot D" (Dr Jon King) and the Crown Estate Commissioners.

Action: MSFOMA

3. **Date for next meetings**

- a. **Liaison Group:** 13th October 2016, 7pm, Port Dinorwic Sailing Club

MSFOMA
August 2016

Annex C: RYA e-mail concerning Operating Plan

Jim Andrews (AWJ)

From: Emma Barton <Emma.Barton@rya.org.uk>
Sent: 12 August 2016 15:17
To: MSFOMA
Cc: Ruth Iliffe; "N UTTING"; jim@awjmarine.co.uk
Subject: RE: Menai Strait Fishery Order Proposal

Jim,

How does Tuesday 27th work for you? I'm free all day and looks as though Ruth is too. Happy to set up the call if that days suits.

In summary, our legal advice up to this point has been as follows:

- There is no explicit reference to the operating plan in the draft order (or the management plan version 1.0) and it is therefore not explicitly incorporated into the order. In paragraph 3 and 4 of the operating plan it specifically refers to the operating plan being incorporated into the statutory framework through the management plan, leases and '*any other components of the statutory and legal framework*'. The management plan is also not explicitly referred to in the draft order. Although the management plan is required by the Welsh Minister before he will grant such an order, there is no clear statutory basis for a management plan. It would be useful to have clarity on exactly what basis you consider the operating plan to be incorporated into the statutory framework.
- Even if the management plan did incorporate the operating plan (an update to the management plan to explicitly incorporate the operating plan), enforcement of the terms of the operating plan, though the management plan, would be cumbersome. However, any obligations and/or restrictions should be included on the management plan to establish the legitimate expectation.
- Paragraph 3(b) of the operating plan refers to incorporation of the operating plan through leases issued to shellfish farmers who would become the tenants. Again it is unclear exactly how you will seek to incorporate the terms of the operating plan into the statutory framework through incorporation of the terms in any such lease. The drafting of this paragraph is not particularly clear and it creates uncertainty.
- However this is done, we would be reliant on you incorporating the terms of the operating order into a lease but would have no control over whether they are in fact incorporated into a lease. This also raises the question of how we would be able to enforce the terms of a lease and enforcement action against the tenant for breach of lease would be difficult.
- A contractual side agreement would provide the greatest level of certainty and the most straight forward method of enforcing any breaches of the obligations and restrictions. Such an agreement could be based on the same or very similar terms to those set out in the operating plan.

Hopefully that makes sense, obviously its greatly abbreviated! Prior to our call, it would be useful if you could send us any updated versions of the management plan or operating plan. Last time we discussed whether WG were close to making a decision are you aware of the Welsh Minister's view on the draft order?

Thanks,

Em.

From: MSFOMA [mailto:info@msfoma.org]
Sent: 10 August 2016 17:59
To: Emma Barton <Emma.Barton@rya.org.uk>

Annex D: Draft letter to Welsh Government.

Menai Strait Fishery Order Management Association

Porth Penrhyn, Bangor, LL57 4HN

Leslie Griffiths, AM
Minister for Natural Resources
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

XXth October 2016

Dear Minister

Menai Strait West – Proposed Fishery Order

May I take this opportunity on behalf of the Menai Strait Fishery Order Management Association to congratulate you on your appointment. We look forward to working with you, and I hope that we will have an opportunity to meet in the near future.

I am writing further to our correspondence with your predecessor to keep you informed of progress with the proposed renewal of the Menai Strait West Fishery Order, and to seek your views on how best to proceed with this proposal.

1. Consultation & stakeholder engagement

During October and November 2015 we carried out a formal consultation on the draft Fishery Order for the western Menai Strait. Our proposal would see the reinstatement of the Fishery Order that was in place in this area between 1978 and 2008.

We consulted over 50 individuals and organisations in the area directly by post and e-mail, posted notices in several newspapers (Fishing News, North Wales Chronicle and the Western Mail), and also posted signs around the area to alert the general public to the proposed Fishery Order. By the end of the consultation period we had received 75 responses ourselves, most of which (57) were objections to the proposal. The focus of all but 2 of these objections was on just one of the four proposed cultivation areas. The objections were mainly related to concerns about the potential impact of the proposed new Fishery Order on sailing and recreational activities.

Over the past 10 months we have held several meetings with local stakeholders to discuss their concerns. At our last meeting in July we agreed an "Operating Plan" with these stakeholders (attached) which addresses the main concerns raised during the consultation process.

At the meeting in July and more recently during a teleconference call, the Royal Yachting Association (RYA) raised concerns about how the "Operating Plan" which we have agreed could be made enforceable. They felt unable to advise their members to withdraw their objections to the renewal of this Fishery Order until this issue is addressed.

2. Option for implementing the "Operating Plan"

MSFOMA had intended that the proposed "Operating Plan" for the Fishery Order should be appended to all of the leases issued under the Order.

This approach, we felt, would be the most appropriate as it would not constrain or fetter the grant of rights under the Shellfish Act, and would represent a voluntary and enforceable action by the Grantee of the rights to exercise them in a manner that would both optimise shellfish production and minimise impacts on other users of the area.

We would very much welcome your support for this option which we believe should be acceptable from a Government perspective.

3. Next steps

It is now nearly a year since the consultation on the draft Fishery Order, and we are aware there is a need to ensure that some progress is made in the coming months.

We are still hoping that it will be possible to get to the point where the objectors feel able to retract their objections to the proposed Fishery Order, which would enable you to make the Order. However we are aware that if this is not possible, then it may be necessary to call a Public Inquiry at which the various different points of view would be considered by an independent Inspector.

We are keen to ensure that we observe any deadlines that you may set for this process, and would welcome a discussion with you on how best to proceed.

I hope that this update is helpful and look forward to hearing from you on the option for implementing the "Operating Plan" that we propose.

Yours sincerely

Dr SUE UTTING
Chair, MSFOMA

cc. Rhun Iwan Jones, A.M.
Bethan Jones, Seafood Market & Supply Chain Manager, Welsh Government