

Welsh Environment Bill Consultation Paper

Background

The Welsh Government published proposals for a new Environment Bill for consultation in October 2013. This report provides a brief summary of the proposals for inclusion in the Environment Bill.

Recommendations

1. Comments on the WG proposals are invited.
2. That the Association should make a response to the WG proposals by the deadline of 15th January 2014.

1. Environment Bill White Paper

- 1.1 The Welsh Government has produced a wide-ranging consultation document (a "White Paper") setting out proposals for the Environment Bill. The document can be downloaded [here](#). The broad aims of the White Paper are to:-
 - a) join-up the existing statutory frameworks for natural resource planning and management in Wales
 - b) ensure Natural Resources Wales has the legislative tools to help enable them to implement integrated natural resource management
 - c) take actions to ensure Wales' natural resources are used to best effect and reduce waste
 - d) simplify, streamline and clarify the law for a number of existing environmental regulatory regimes.
- 1.2 The sections of the document that are relevant to shellfisheries are attached to this report at Annex A. These proposals seek to:-
 - a) **Revise the application process for Fishery Orders** - it is proposed to make changes that would allow Fishery Order applications to be processed in a minimum of 9 months (if outside Natura 2000 sites) or 9-18months (if within Natura 2000 sites).
 - b) **Flexible management** - it is proposed that each Order will be accompanied by a formal "Management Plan" that will provide the Minister with more options for ensuring that shellfish harvesting and cultivation operations are compatible with EC wildlife sites (Natura 2000 sites).

2. MSFOMA Response

- 2.1 The Association has previously met with representatives of the Welsh Government to discuss their concerns about the Sea Fisheries (Shellfish) Act 1967 and its implementation, and has written to the Welsh Government to welcome changes that will speed the application process for Fishery Orders and introduce new management measures that will make the Government more comfortable with the creation of new Fishery Orders in Natura 2000 sites.
- 2.2 It would seem appropriate for the MSFOMA response to the White Paper to welcome the proposed changes. It would also seem appropriate to encourage the Welsh Government to continue to progress existing Fishery Order applications (such as the one for the Western Menai Strait), rather than waiting for the White Paper proposals to be enacted, which could take more than a year.
- 2.3 Members of the Association are invited to consider other points that should be included in the response to this consultation document.

MSFOMA Secretariat
November 2013

Annex A: Welsh Government Proposals for Changing the Fishery Order Regime

Shellfisheries management

SM2: Measures to revise the application process and ongoing operation of Several and Regulating Orders at Part 1 of the Sea Fisheries (Shellfish) Act 1967

- 5.11 It is recognised that managed shellfisheries can be a valuable method of managing marine resources in a way which supports integrated natural resource management and provides a wide range of benefits to:
- the local economy – providing economic and employment opportunities, often in remote coastal places;
 - the marine environment - as shellfisheries can lead to improvements in water quality and the management measures usually employed in such fisheries will include screening the shellfish for disease, pests and invasive species; and
 - consumers and communities - as shellfish culture produces some of the healthiest and most sustainable seafood available.

Figure (vii) Benefits of Shellfisheries management

One recently granted Several Order proposes to re-introduce Native Oysters - a Biodiversity action plan species - into Welsh waters. The Order enables a commercial enterprise with the potential to create employment opportunities, but its success could also assist and pave the way for further re-introductions, either commercial or purely ecological and help to improve and restore the diversity of our ecosystems around the Welsh coastline.

- 5.12 A Several Order allows the person to whom that fishery is granted (known as “the Grantee”) to establish and/or enhance and cultivate existing and introduced ecosystems for their own economic benefit, often creating employment opportunities as part of that process. A Regulating Order enables the Grantee to regulate existing and introduced ecosystems by a system of issuing permits to others which enable those others to fish for the specified shellfish. Regulating Orders are often, therefore, used as a tool for fisheries management.
- 5.13 Currently in Wales, there are relatively few active Several or Regulating Orders. Whilst applications for such fisheries have increased in the last couple of years, the full potential of such Orders is not currently being realised. This has led to a loss in both opportunities for local employment as well as environmental improvements. If we are to further develop sustainable fisheries in Wales, the legislation which governs the application process and on-going operation of Several and Regulating Orders needs to be amended.

5.14 The Welsh Government is therefore seeking views on the following potential measures to make it easier for applicants to seek Several and Regulating Orders and to ensure that the Orders are sufficiently flexible for the fishermen to operate the fishery as efficiently as possible. We recognise that this flexibility must be balanced with ensuring compliance with the various conservation obligations which apply in relation to the marine environment:

- the ability to make reference (in the Several or Regulating Order) to a document setting out the management practices (in detail) for each particular fishery. That document could be amended from time to time, with the consent of the Welsh Ministers (without the need to go through the entire amendment process in relation to the relevant Order);
- the ability for the Welsh Ministers to require compliance with that management practices document;
- the ability for the Welsh Ministers to undertake a regular review of both the Order and the management practices document; and
- the ability for the Welsh Ministers to amend/determine the Order and the management practices document unilaterally (and at short notice, in the case of emergency or immediate damage etc) if that became necessary as a result of the Welsh Ministers environmental obligations (for example, if it transpired that the fishery could be damaging an EMS).

European Marine Site issues

5.15 The majority of viable shellfish beds in Wales either lie within or near areas which have been designated as either a Special Area of Conservation ("SAC"), pursuant to the Habitats Directive (Council Directive 92/43/EEC), or a Special Protection Area ("SPA"), pursuant to the Wild Birds Directive (Council Directive 79/409/EEC). Marine SACs and SPAs are collectively referred to below as European Marine Sites ("EMS").

5.16 Where the proposed fishery is within (or sufficiently near to potentially have an effect upon) an EMS in Wales, the Welsh Ministers must assess whether the fishery is likely to have a significant effect (either alone or in combination with other projects in the area) on the site. If the proposed fishery is considered to be likely to have a significant effect on the site, the Welsh Ministers can only proceed with making the proposed Order once they have been able to ascertain that the proposed fishery will not adversely affect the integrity of the relevant site for the entire period of the Order (Article 6(3) of the Habitats Directive).

5.17 One of the main current areas of difficulty with applications for Several and Regulating Shellfishery Orders is that the applicants need considerable flexibility in the management of the fishery in order to ensure they can operate the fishery effectively, taking into account the dynamic marine environment and changing conditions. In addition, given the time it takes to establish a viable fishery (for example, if a new ecosystem is being established, it can take at least two or three years before an initial crop can

be harvested) it is not commercially viable to seek a "short" Order - particularly as the costs to the applicant of making the application, under the current 1967 Act provisions, can be significant.

- 5.18 The Welsh Ministers, therefore, need to consider both how best to achieve the necessary level of certainty that there will be no adverse effects on any EMS (on the basis of the proposed fishery management measures) over the entire period of the Order, (which can be a considerable number of years) against the needs of the fishermen to have the flexibility needed to operate the fishery in a non damaging but effective way.
- 5.19 The key area for change to the existing Several and Regulated Shellfishery regime (primarily to address the issues which arise where the proposed fisheries are within or near a EMS) relates to the current use of Management Plans as part of the application process.

Management Plans

- 5.20 If a Several or Regulating Order needs to be amended or revoked, section 1(6) of the 1967 Act currently requires (unless certain circumstances apply) that the full application process set out in the 1967 Act must be followed. That will include publication of the proposed revocation/amendment Order, a period within which objections can be made and then, if relevant objections are made, a public inquiry may also be needed. It follows that an amendment or revocation of a Several or Regulating Order, once made, cannot be undertaken at short notice, which might be needed if, for example, it became apparent that the fishery could become damaging to a marine SAC.
- 5.21 In an attempt to balance the Welsh Ministers' need to have certainty about the proposed management practices, against the need of the fishermen to have flexibility, the practice of adopting a separate but parallel document, known as the "Management Plan", has evolved.
- 5.22 The Management Plan details how the fishery will be managed in sufficient detail for the Welsh Ministers to be able to assess how the fishery will operate and whether it could have an effect on any EMS. If that detail was to be included on the face of the Order, any changes to the proposed management practices would require an amendment to that Order.
- 5.23 Whilst the use of a Management Plan affords the flexibility that the fishermen need in order to efficiently manage these fisheries, the current solution creates an additional layer of complexity. The current provisions of the 1967 Act make no reference to a Management Plan document. The Grantees are required to comply with the restrictions set out in the Order, yet the Order cannot make reference to the Management Plan (without any changes to the Management Plan requiring an amendment to the Order). The current legislation, creates a situation where the fishermen do not have the flexibility they require in order to operate the fishery effectively and the Welsh Ministers do not have the ability to require that the fishery is operated in the non damaging way

-
- 5.24 Changes are, therefore, needed to the 1967 Act (as the legislation which governs the application process and on-going operation of Several and Regulating Orders). Most of the issues arise in relation to shellfisheries which are within or sufficiently near to EMS in Wales. Approximately 70 per cent of the territorial seas around the Welsh coast have been designated as EMS and most of the viable shellfisheries in Wales are within or adjacent to designated EMS.

Enforcement

- 5.25 The 1967 Act itself does not set out any express or specific powers of enforcement. Given the Welsh Minister's environmental and conservation obligations, we need to ensure that the Grantee is adhering to the terms of the Order, the agreed management practices and that the operation of the fishery is not raising the potential for any damage to any protected sites, features or species in the vicinity of the fishery. This sort of "spot check" inspection is something that we commonly undertake in connection with other agricultural areas (for example, spot checks on farms are undertaken to ensure compliance with European rules and to ensure the welfare of animals etc).
- 5.26 A suite of fisheries enforcement powers were provided, for certain purposes, by Part 8 of the Marine and Coastal Access Act 2009 (MaCAA 2009). Detailed consideration of the powers available under Part 8 of MaCAA 2009 is currently being undertaken in order to ensure that they provide the comprehensive powers needed by the Welsh Government in connection with the purposes described above. If, following this exercise, those powers are considered to be lacking, consideration may be given to adding bespoke enforcement provision in the Environment Bill.

Overview of potential impact of proposal

- 5.27 The shellfish industry is an important contributor to the UK economy and is worth over £250 million annually³⁵. The UK market in shellfish (and related products) is growing at a faster rate than other foods, accounting for almost six per cent of food expenditure in recent times. In 2005, shellfish cultivation alone in Wales was valued at £12 million³⁶. Shellfish farming, particularly of mussels and oysters, accounts for a large part of the shellfish industry in Wales. The Menai Strait area (which is a European Marine Site) is responsible for between 50–75 per cent of the total United Kingdom production of 'farmed' mussels with some 6-11,000 tonnes annually being produced by 4 operating companies. During 2011-2012 they collectively made over £5 million, providing a significant contribution to the Welsh economy and jobs in the local community.

³⁵ Defra, Shellfisheries: Several Orders and Regulating Orders guidance. Accessed 4 September 2013: <https://www.gov.uk/shellfisheries-several-orders-and-regulating-orders>

³⁶ Wales Fisheries Strategy, (2008), Welsh Assembly Government.

-
- 5.28 The proposed changes to the regime established by Part 1 of the Sea Fisheries (Shellfish) Act 1967 would enable the Welsh Ministers to comply with their environmental obligations whilst affording the fishermen the flexibility they need to efficiently manage the fishery. This will make such Orders more attractive (as, in appropriate circumstances, they could be granted for longer periods) and thereby increase economic opportunities for shellfishery businesses in Wales. It would also help to create economic and employment opportunities for local communities, SMEs and sole traders.
- 5.29 By monitoring the quantity of future applications, the length of time it takes and the types of issues encountered in processing an application for a Several or Regulating Order through the new system we should be able to gauge the impact of the proposed changes. In addition, we should be able to measure the level of satisfaction within the industry through correspondence with the various operators of Several and Regulating Shellfishery Orders in Wales. The environmental analysis stages will not be significantly changed as a result of these proposals but the new provisions should enable an Order to be made for a duration that is appropriate to the Industry whilst ensuring that the environmental impacts are protected.
- 5.30 Under the current regime, applications which relate to proposed shellfisheries that are not within an EMS regularly take at least 16 months before an Order is granted (if approved). It is difficult to provide accurate estimates on applications for proposed shellfisheries within or adjacent to EMS due to the variable factors that need to be taken into consideration regarding their assessment. However, as an approximate guide, current timings are around at least 2 years and in some cases considerably longer to grant such Orders.
- 5.31 On enacting the proposed changes, conservative estimates indicate that:
- An application for an Order not within or adjacent to an EMS should take a minimum of approximately 9 months to be issued (if approved);
 - An application for an Order adjacent to an EMS should take a minimum of approximately 9-12 months to be issued (if approved and depending on the type of EMS and proposed fishery); and
 - An application for an Order within an EMS will have highly variable timings for issue (if approved). It will very much depend upon the nature of the shellfishery being proposed and the conservation objectives of the EMS in question. It is thought that the majority of applications should take a minimum time of around 14-18 months (if approved).

Note: These timings do not include the pre-application phase, where the applicants are encouraged to discuss the proposed fishery and its management with the Natural Resources Body for Wales. Applicants are also encouraged to engage with Crown Estates Commissioners where relevant.

-
- The ability to adjust the management practices (together with the ability of the Welsh Ministers to adjust/determine the Order as necessary if environmental damage is possible) will make it possible for the Welsh Government to grant Orders for longer periods of time than is currently possible. The document detailing the practices will need to be revised every few years, depending upon the site of the fishery (for example, if the fishery is within an EMS, the management plan document is likely to need adjusting more regularly than sites outside of EMS) and the degree of confidence in the management practices being proposed.
- 5.32 It is acknowledged that some time and expense will still be involved in making changes to the management practices document; however, it is considered that the benefits will outweigh any additional work required.
- 5.33 In terms of the amount of time taken to process an application for a Several or Regulating Order under the new regime, it is estimated that it should take around two thirds of the total time that is currently spent dealing with such applications, therefore, making significant resource and time savings.

Consultation questions

35. Do you agree with the proposal in relation to Shellfishery Orders?
Please provide comments
36. Are there any other changes to the Several and Regulating Order regime that you think should be considered (i.e. can you think of any other ways that current practices could be improved)?
37. Do you have any comments on the impact of this proposal (for example, impacts on your business)?

Leased Areas Update

Background

There are 6 leased areas within the Menai Strait Oyster and Mussel Fishery Order area. This report provides a brief update on discussions over leased area boundaries, lease fees and the proposed new leased areas that have previously been considered by the Association.

Recommendations

1. That the Association should determine whether it is appropriate to adjust the boundary of any existing leased areas.
2. That the Association should determine whether it is appropriate to alter the fees charged for leased areas.
3. That progress with the proposals for new leased areas is noted.

The remainder of this report is considered to be commercially sensitive and has been withheld from publication.

MSFOMA Secretariat
December 2013

Bangor Pier Renovation

Background

In October 2013 the Association received information about proposals to renovate and extend Bangor Pier. This activity could have some effect on mussels in the vicinity of the pier. This report provides information about the proposed activity and its potential effects, and considers how the Association might best respond.

Recommendations

1. That the Association considers the response that should be made to Gwynedd County Council with respect to the proposals to renovate and extend Bangor Pier.

1. Proposed works

- 1.1 Information about the proposed renovation and extension works is enclosed at Annex A to this report. In brief, it is proposed to refurbish the pier (involving painting and where necessary repairing the steelwork); and to add a new pontoon landing stage to the pier head.
- 1.2 It is hoped that this work will restore the pier and stimulate economic growth in the area by attracting tourists.

2. Legal background

- 2.1 Bangor Pier is located within the Menai Strait Oyster and Mussel Fishery Order 1962, and forms the boundary between leased Areas 1 and 2, which are highly productive mussel farming areas.
- 2.2 The Fishery Order and its parent legislation provide protection to shellfish farmers from impacts caused by other developments. Further to this, Welsh Government Fisheries byelaws prohibit damage to mussel beds.

3. Response to the proposal

- 3.1 If it was considered likely that the proposed refurbishment of the pier and pontoon extension would have an adverse impact on mussel cultivation in the area, it would be appropriate for the Association to raise these concerns with Gwynedd County Council.
- 3.2 During November 2013 the Chair of the Association and the leaseholder for Areas 1 and 2 attended a meeting with the Council to discuss the pier renovation proposals. A verbal report on the outcome of this meeting will be presented to the Association, and may form the basis of the response that should be made to the Council.

Annex A: Proposed works at Bangor Pier



Proposed Works at Bangor Pier

Scheme Overview

Bangor Pier is located at the eastern end of the Menai Straits between North Wales and Anglesey. It is situated in the Garth area of Bangor at the northern edge of the city. At 460m long it is the second longest pier in Wales and ninth longest in Britain. It was constructed in the 1890's and opened to the public in 1896. For many years it operated with a floating pontoon landing stage that handled significant numbers of visitors on pleasure steamers to/from Blackpool, Liverpool and the Isle of Man.

Recently there has been renewed interest in developing the pier as a tourist attraction by providing a landing stage to generate increased visitor numbers and revenue. In addition, the protective paintwork to the steelwork on the pier has reached the end of its life and the pier is in need of repainting and localised repair and maintenance works.



Bangor City Council are developing a project with an aim to refurbish the existing pier structure and also to provide a new pontoon landing stage at the pier head. This will bring the pier back to its original function and will act as economic stimulus to the Garth area of Bangor, encouraging tourism by significantly increasing footfall over the pier.

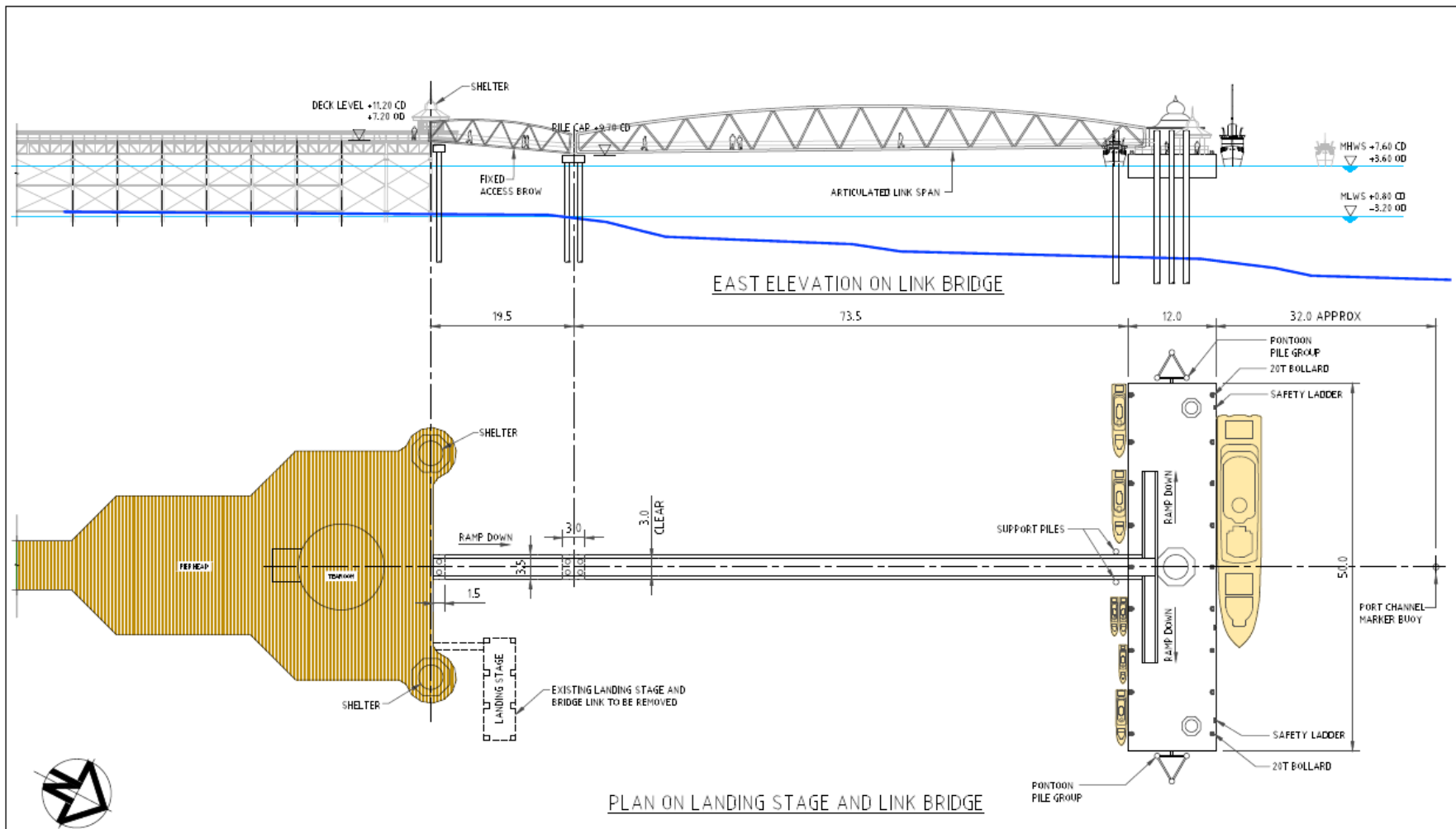
The pier refurbishment will primarily comprise repainting works to the pier deck steelwork. Some replacement or repair of members will be required



due to excessive corrosion. Repair methods and materials will take into account the sensitive environmental nature of the surrounding area and the heritage of the pier.

The new pontoon will be located at the head of the jetty. It will be held in place by piles installed into the bed. The pontoon will be accessed via linkspans with an intermediate piled support. All new structures would be visually sympathetic to the pier architecture. The works will be designed to limit the intrusion into the channel bed. The pontoon will be located away from the main navigational channel. The pontoon would be designed to accommodate vessels including small pleasure craft, larger heritage cruise vessels such as the Balmoral and small cruise ships.

Preliminary drawings are attached to this note that gives more detail of the proposals. The project team are now looking to gain input and comments from the various stakeholders that will have an interest in the works. This early liaison will hopefully ensure that the project is taken forward successfully to a point where grant funding can be secured and the project delivered.

Bangor Pier is an important heritage asset to the City. Refurbishment of the pier and the reinstatement of a pontoon landing stage facility would be an exciting step forward. It would present a range of new opportunities that will enhance both the immediate and wider area and safeguard the future of an important heritage structure.



		<div>Notes</div> <div><div><div>1.</div><div>DO NOT SCALE DRAWING.</div></div><div><div>2.</div><div>ALL DIMENSIONS EXPRESSED IN METRES UNLESS NOTED OTHERWISE.</div></div><div><div>3.</div><div>ALL LEVELS EXPRESSED IN METRES.</div></div><div><div>4.</div><div>MAXIMUM SLOPE OF LINK SPAN: 1:10 AT MLWS 1:12 AT MHS</div></div></div>	<div>Client</div> <div><div></div><div>CYNGOR DINAS BANGOR CITY OF BANGOR COUNCIL</div></div>	<div>Status</div> <div><div>PRELIMINARY NOT TO BE USED FOR CONSTRUCTION</div><div><div><div>Scale @ A3</div><div>1:500</div></div><div><div>Author F. JONES</div><div>Checked A. JONES</div></div><div><div>Original Size</div><div>A3</div></div><div><div>Design NEWLYN</div><div>Approved CANES</div></div><div><div>Grid</div><div>GRID</div></div><div><div>© Copyright reserved</div></div></div><div>File Path: I:\0207-04004093-31 DWGS FOR REPORT\310\03</div></div>	<div>Project</div> <div><div>GARTH PIER OUTLINE DESIGN</div><div><div>Title</div><div>PLAN ON LANDING STAGE WITH LINK BRIDGE & EAST ELEVATION</div></div></div>	<div><div></div><div>HYDER CONSULTING (UK) LTD Hanging House 22 Canfield Place London SW1P 3JA Tel: +44 (0)20 3016 9000 Fax: +44 (0)20 7628 4928 www.hyderconsulting.com</div></div> <div><div><div>Drawing No.</div><div>0207</div></div><div><div>Project No.</div><div>UA004093</div></div><div><div>Issue</div><div>03</div></div></div>
05	PIED AND ARTICULATED LINK BRIDGE REVISED	16-10-23				
02	SUPPORT PILES TO FIXED ACCESS BROW ADDED	24-09-23				
01	INITIAL DESIGN	19-09-23				
Issue	Description	Date				

North West Inshore Fisheries and Conservation Authority Activity

Background

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

Recommendation

1. That the report be received.

1. Morecambe Bay Fishery Order

- 1.1 The NWIFCA has been working on proposals to establish a new Fishery Order for all of Morecambe Bay for several years. The proposed new Fishery Order would cover all of Morecambe Bay and would establish a Regulated Fishery for cockles and mussels, as well as providing opportunities for shellfish cultivation within several areas in the Bay.
- 1.2 The new Fishery Order is larger in both scope and scale than its predecessor, the Morecambe Bay Fishery Order 1978, which expired in 2008. This earlier Order was limited in its scope to the regulation of fishing for mussels, and the extent was limited to the "South America" mussel skear in the northern part of Morecambe Bay where the annual seed mussel fishery takes place.
- 1.3 It is understood that the NWIFCA has submitted its formal application for a 30 year Fishery Order for Morecambe Bay to Defra. The application is supported by the local fishing industry and also by Natural England. Defra and the NWIFCA are understood to be in the process of securing the support of all of the interested parties associated with the Fishery Order, and are optimistic that the new Order will be made in time for the 2014 seed mussel fishery.

2. Proposed new vessel size byelaw

- 2.1 On the 1st November 2013, the "Technical, Scientific & Byelaws" (TSB) Sub-Committee of the NWIFCA met to consider a new byelaw designed to regulate the size of vessels that could operate within the IFCA District. A copy of the proposed new byelaw is attached at Annex A to this report.
- 2.2 The proposed new byelaw raised some concerns with respect to its potential impact on the operation of mussel dredgers from the Menai Strait (which are of necessity large vessels) in the NWIFCA District. Mr Trevor Jones of this Association is also a member of the TSB, and attended the meeting that was discussed the proposed new byelaw.

- 2.3 Members are advised that the TSB Sub-Committee resolved not to make this new byelaw, and has directed IFCA Officers to draft new proposals for further consideration.
- 2.4 There does not seem to be any need for the Association to take further action on this issue at present. It will be important to keep this matter under review and to respond if proposals are adopted that might adversely impact the activities of the Menai Strait mussel dredgers in the IFCA District.

MSFOMA Secretariat
November 2013

Annex A: Proposed new IFCA Vessel Size Byelaw

ANNEX A

BYELAW 2

MECHANICALLY PROPELLED VESSELS MAXIMUM-LENGTH.

1. No mechanically propelled vessel which exceeds 15 metres overall length shall be used in fishing for or taking of sea fisheries resources within that part of the District that lies between 3 and 6 nautical miles offshore as measured from the baselines.
2. No mechanically propelled vessel which exceeds 10 metres overall length shall be used in fishing for or taking of sea fisheries resources within that part of the District enclosed by a line drawn 3 nautical miles offshore as measured from the baselines.
3. This Byelaw shall not apply to the following vessels:
 - a. Vessels used in the fishing, dredging, transport or relaying of shellfish while such vessels are operating under permit issued by the Authority.
 - b. Vessels used for the purpose of angling by means of rod and line or handline.
4. Vessels exceeding the length restrictions described in sections 1 and 2 may be used provided that:
 - a. It can be demonstrated that the vessel held fishing entitlement for appropriate parts of the District and was built prior to the date of the introduction of this Byelaw.
 - b. That the owners of the vessel have obtained an authorisation permitting the use of the said vessel within the appropriate parts of the District.
5. Newly constructed or purchased vessels exceeding the length restrictions set out in sections 1 and 2 of this Byelaw may be issued with an authorisation under section 4 of this Byelaw provided that:
 - a. The owner(s) can demonstrate that prior to the date of this Byelaw being made, they had entered into an enforceable financial commitment to construct or purchase such a vessel; and
 - b. The owner(s) can demonstrate that the date of delivery prevented compliance with section 4 of this Byelaw.

For the purpose of this Byelaw:

The overall length of a vessel shall be that as recorded on the Certificate of Registry as issued by the Registrar of Shipping and Seamen.

The "District" referred to in this Byelaw shall be the district of the North Western Inshore Fisheries and Conservation Authority as described in Section (3) of Statutory Instrument 2010 No:2200.

Explanatory note: In order to provide protection for important inshore nursery areas this Byelaw restricts the maximum length of mechanically propelled fishing vessels that may be used within the area enclosed by a line drawn 3 nautical miles to seaward of the baselines to 10 metres, and within that part of the District that lies between 3 and 6 nautical miles of the baseline to 15 metres overall length.

Menai Strait West Fishery Order Proposal

Background

The Association is working with shellfish farmers from the western Menai Strait to reinstate the Fishery Order that lapsed in that area in 2008. This will form the foundation for the development of shellfish farming in that area. This report provides an update on progress with this proposal.

Recommendation

1. That the report be received.

1. Menai Strait West Fishery Order Proposal

- 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. Unfortunately the Order lapsed in 2008, preventing the further development of these businesses.
- 1.2 The operators who had been working in this area before 2008 have been progressing an application for a new Fishery Order to set the foundations for developing sustainable shellfish cultivation in the western Menai Strait.
- 1.3 During 2013 a formal application was submitted to the Welsh Government for the creation of a new Fishery Order in the western Menai Strait. It was proposed that this Fishery Order should endure for a period of 28 years, with a review of management every 7 years.

2. Recent Progress & Developments

- 2.1 Welsh Government officials attended the last Association meeting in September. At that meeting it became clear that there were some potential obstacles to progressing the Fishery Order application. This led one of the applicants to ask his Assembly Member, Mr Rhun Ap Iorwerth, to write to the Fisheries Minister to expedite progress. The Fishery Minister's response is attached to this report at Annex A.
- 2.2 The Chair of the Association held a meeting with the applicants for the Fishery Order to discuss the Minister's response. This meeting took place in October 2013, and it was resolved that a further meeting should be held with the Head of Fisheries at the Welsh Government, Mr Graham Rees.
- 2.3 A meeting with the Head of Fisheries took place on November the 15th in Brynsiencyn, and was attended by two of the applicants for the Fishery Order, the local Assembly Member, the Chair of the Association and Jim Andrews. This proved to be a very productive meeting. Mr Rees was keen to discuss the details of the application, and following a discussion of the issues that had been raised in the Minister's letter it proved possible to identify solutions that may help to progress the Fishery Order application.

- 2.4 Following this meeting, the Chair of the Association wrote to Mr Rees to welcome the good progress that had been made. A copy of the Chair's letter is attached at Annex B. A copy of an e-mail sent by the local Assembly Member following the meeting is attached at Annex C.
- 2.5 The application for the Menai Strait West Fishery Order is due to be resubmitted shortly, with some revisions made to address the points raised in the Minister's letter.
- 2.6 The Association meeting will provide an opportunity to review progress with this Fishery Order. Any recent developments will be reported verbally to the meeting.

MSFOMA Secretariat
November 2013

Annex A: Letter from the Fisheries Minister to Mr Rhun Ap Iorwerth, AM for Anglesey.

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



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref AD-/01603/13
Rhun Ap Iorwerth AM
AM for Ynys Mon
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

21 October 2013

Leases to shell fisherman

Thank you for your email of 9 October on behalf of your constituents regarding their concerns on leases in the Menai Straits West.

In responding to the points you raise, it may assist if I first explain the legislative regime within which shellfisheries of this nature operate.

The Sea Fisheries (Shellfish) Act 1967 is the enabling legislation and sets out detailed provisions (including application procedure) in relation to Several and Regulating Shellfishery Orders. It is noted (with regard to your query) that section 1(3) of the 1967 Act provides that such an Order may be granted for a period of not longer than 60 years.

My Officials have received and are considering an application for a Several Order in the Menai Strait West which will facilitate the granting of leases from the Grantee of that Order (i.e. the body which has the benefit of the Right of Several Fishery) to a number of leaseholders, of which your constituent is one.

Of course, in considering that application, my Officials must have regard to all the legislation which is relevant to the proposed shellfishery.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

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

English Enquiry Line 0845 010 3300
Llinell Ymholiadau Cymraeg 0845 010 4400
Correspondence: Alun.Davies@wales.gsi.gov.uk
Printed on 100% recycled paper

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

In particular (and for our purposes), Article 6(3) of the Habitats Directive requires a two stage environmental assessment is completed before the Welsh Ministers will be in a position to consider granting any such Order. The first stage of that test requires an assessment (based on objective information) of whether the proposed fishery is likely to have a significant effect on the SAC either individually or in combination with other plans or projects in the area (this first stage of the test is known as the Test of Likely Significant Effect ("TLSE")). If that level of certainty cannot be reached (at the TLSE stage), the second stage of environmental test must be undertaken which involves an assessment of whether the Welsh Ministers can be certain that the proposed shellfishery will not adversely affect the integrity of the SAC in question. That will be the case where no reasonable scientific doubt remains as to the absence of such effects. This second stage test is known as an Appropriate Assessment ("AA").

Given the dynamic nature and fluidity of the marine environment and the relatively unknown nature and condition of many protected marine habitats and species, you will appreciate that it is often difficult to assess how any such proposed fishery might affect its surrounding environment for any considerable length of time.

In your constituent's case, although the application for a Several Order which has been received suggested a period of 28 years for the Order itself, the Management Plan which has been provided was for a period of only 7 years. For information, the Management Plan document sets out the detailed management practices that are to be employed at any particular fishery and this information is needed in order for my Officials to undertake the environmental assessments described above. Given the uncertainties regarding the constantly changing state of the marine environment it is often not possible to be certain about the management practices that will be used for period of longer than about 7 years. Equally, it is frequently not possible for the necessary environmental conclusions to be reached for significantly longer periods, although each application is considered on a case by case basis.

In connection with the application for a Several Order in the Menai Strait West, my Officials have engaged with the applicant on a number of occasions to discuss their application and agree the best way forward. The applicant has been made aware that, as their submitted management plan was for a period of 7 years, that was the period of time over which the environmental assessments could be undertaken and, in order to comply with our Habitats Directive obligations, that was also the only period over which the Welsh Ministers can consider granting the proposed Order.

It is noted that your constituent's previous lease (which expired in 2008) was granted pursuant to the previous Several Order which existed in the Menai Strait West (the Menai Strait (West) Oyster, Mussel and Clam Fishery Order 1978 (S.I. 1978/243)). That Order was made and, consequently, those Leases were granted before the creation of the Habitats Directive. The legislative environment within which my Officials must consider this application has, therefore, changed considerably since this shellfishery was last considered by the Government.

I hope that this helps to explain the concerns raised by your constituent.

I would add that the Welsh Government is committed to further developing sustainable fisheries in Wales and it is acknowledged that there are difficulties in exercising functions under the 1967 Act in a way which ensures both compliance with the Welsh Minister's Habitats Directive obligations and results in the creation of a shellfishery which is desirable to those in the Industry. With that in mind, I am already taking steps to review the provisions and operation of the Sea Fisheries (Shellfish) Act 1967 (in relation to Several and Regulating Shellfishery Orders) as part of the Welsh Government's currently proposed Environment Bill. The White Paper in relation to that Bill is due to be launched on 21 October 2013 (I am afraid I cannot disclose the exact details ahead of the launch) and I would encourage your constituent to consider the proposals set out in that document and provide us with any comments or suggestions he may have as to ways in which the current shellfishery systems can be improved. A copy of the White Paper will be available via the Welsh Government website in due course.

I trust this response if of some assistance.



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

Annex B: Letter from Chair to Mr Graham Rees

Menai Strait Fishery Order Management Association

Port Penrhyn, Bangor, LL57 4HN

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

XXth November 2013

Dear Graham

MENAI STRAIT WEST FISHERY ORDER

I am writing further to our meeting in Brynsiencyn last week where we had an opportunity to resolve some of the issues that seem to have delayed progress with the proposed new Fishery Order that will allow shellfish farming to develop in the western Menai Strait.

We found the meeting very productive. It was very reassuring to hear from you that the Welsh Government is keen to see shellfish farming develop, and that we share the same overall objectives. With your guidance and assistance at the meeting it seems that we have been able to identify solutions to the problems that seem to have been holding up progress with this Fishery Order.

As agreed, we have summarised the key conclusions from the meeting and have set out a suggestion that could form the basis for part of the new Fishery Order.

1. Duration of the Fishery Order

The meeting provided us with an opportunity to consider that the grant of a Several Fishery Order for a period of less than 15 years does not provide sufficient time for a return on the investment required to establish shellfish farming operations, particularly for oysters. We were pleased to hear that you and your colleagues were aware of this issue.

It became clear during the meeting that through an unfortunate combination of the wording of the Fishery Order application form and the responses given in support of the application there had been some confusion and uncertainty about the duration of Fishery Order that had been requested and that it would thus be appropriate for the Minister to grant.

We all agreed that the application should be seen as for a 28 year order, with periodic review of management during this period (as outlined below).

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

2. Ministerial oversight and control

During the meeting you outlined the concerns that your lawyers had raised about Fishery Orders exposing the Government to EC infraction proceedings. This has become manifest in a reluctance to support applications for Fishery Orders lasting more than 7 years.

During the meeting it became apparent that the new Environment Bill proposals might help to address this issue; however it was also clear that this solution may take several years to be implemented, during which time commercial opportunities for Welsh shellfish farmers will be lost.

We discussed an alternative option that would provide protection for the Government and security for shellfish farmers. This option would be to insert wording into any new Fishery Order that would give the Minister the power to review management and as necessary to direct the Grantees and lessees of the Order to ensure that shellfish farming does not adversely affect the integrity of Natura 2000 sites.

The wording we had in mind is a strengthened version of that already in force in a number of other Fishery Orders (such as §7 & 8 of the Menai Strait Oyster and Mussel Fishery Order 1962). It would seem relatively easy to bring these provisions up to date for any new Orders so that the Minister has oversight of the management of the Order and the full requirements of Article 6(3) of the EC Habitats Directive are woven into its very fabric. Our first attempt at this is outlined below:-

X. The Grantee may:-

- a) With the consent in writing of the Minister designate such portions of the area within the limits defined in this Order as "layings" so that these areas may be leased for the purpose of cultivating oysters or mussels; and*
- b) With the consent in writing of the Minister enter into agreements with any person or Associations of persons upon such terms and subject to such conditions that may be determined by the Minister and the Grantee provided that no such lease shall be granted for a period of longer than X years and that no such lease may terminate after the date under which this Order ceases to operate; and*
- c) With the consent in writing of the Minister, renew any leases issued under the terms of section X(b).*

Y. The Minister may from time to time and as occasion may require:-

- a) Direct the Grantee to review or modify the terms associated with any lease issued under section X of this Order if the Minister has been advised by the statutory nature conservation advisors that the activities authorised under the terms of the lease are likely to have a significant effect on any Natura 2000 site(s) within or in the vicinity of the Order; and*
- b) Direct the Grantee to review, modify or revoke any lease issued under section X of this Order if the Minister has been advised by the statutory nature conservation advisors that the activities authorised under the terms of the lease are adversely affecting the integrity of any Natura 2000 site(s) within or in the vicinity of the Order*

We realise that your lawyers could probably make considerable improvements to our wording. We offer these suggestions as the starting point in what we hope will be a constructive dialogue with you and your colleagues, and ideally the lawyers themselves, so that we can all work together to find a solution to the impasse that currently blights the shellfish farming industry in Wales.

We would welcome your views on the proposals set out in this letter, and look forward to working with you and your colleagues to progress the Fishery Order for the western Menai Strait.

You mentioned at the end of the meeting on Friday that you would be in our locality again on 9 December if we thought it useful to talk with you again. I would like to keep this option open in case some of the West Menai applicants would like to meet with you again.

Yours sincerely

SUE UTTING
Chair, MSFOMA

Cc Rhun Ap Iowerth, AM
David Jarrad, Shellfish Association of Great Britain
Dr Jon King, Trevor Jones, David Lea-Wilson – Fishery Order Applicants

Annex C: E-mail from Mr Rhun Ap Iorwerth to Mr Shaun Krijnen

Dear Shaun,

Just a quick word to express my real hope after last Friday's meeting that a resolution may not be as distant as you had feared. There is clearly a long way to go, but I have written to the Welsh Government urging swift action on the basis of what was discussed with Mr Graham Rees at the meeting.

Please pass on my congratulations to all who were present at the meeting on putting forward such a compelling and well-argued case.

Kind regards,

Rhun