

## **Welsh Government Activity: Update**

### **Background**

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

### **Recommendations**

1. That a meeting should be organised with the new Minister for Natural Resources
2. That the Association considers its response to the items reported below.

### **1. Meetings & Correspondence**

- 1.1 Since the last Association meeting in July there has been quite a lot of dialogue with WG, in connection with both the Menai Strait West Fishery Order proposal and the proposed new leased areas in the eastern Menai Strait. The key details of this correspondence are considered under the relevant items below.
- 1.2 After the last meeting of the Association, the Chair wrote to the new Deputy Minister for Agriculture and Fisheries to request a meeting (see letter at Annex A). This meeting took place on the 3<sup>rd</sup> September 2014 in Cardiff (see James Wilson's letter sent after the meeting at Annex B). While the meeting was constructive, there was a reorganisation of the Cabinet shortly after the meeting. The Deputy Minister's post no longer exists, and the new Minister responsible for fisheries is now Mr Carl Sergeant AM (now the Minister for Natural Resources). Mr Sergeant's constituency is in Flintshire.
- 1.3 Progress with the Menai Strait West Fishery Order proposal and the new leased areas in the eastern Menai Strait is described briefly below.

### **2. Menai Strait West Fishery Order Proposal**

- 2.1 The Menai Strait (West) Fishery Order was established in 1978 for a period of 30 years. This Fishery Order provided the basis for the development of some oyster and mussel farming activity in the western Strait. Unfortunately the Order lapsed in 2008, preventing the further development of these businesses. The operators who had been working in this area before 2008 have been progressing an application for a new Fishery Order to set the foundations for developing sustainable shellfish cultivation in the western Menai Strait.
- 2.2 Progress with the creation of a new Fishery has been delayed by concerns raised by WG lawyers. These arise from the WG perception that a Fishery Order cannot be granted for a period of more than 7 years within an area that has been designated a Special Protection Area or a Special Area of Conservation, and thus must be managed in accordance with the requirements of the EC Habitats Directive.

- 2.3 In July 2014 a letter was sent by Mr Rhun Ap Iorwerth AM to the Deputy Minister for Agriculture and Fisheries. The response is attached at Annex B to this report. Members will note that the Minister is hopeful that the Environment Bill will resolve the problems associated with the creation of Fishery Orders. This hope is rather at odds with the briefing provided by WG Officers at their meeting with MSFOMA on the 18<sup>th</sup> June, when it was indicated that most of the proposals set out in the Environment Bill consultation document were *ultra vires*. Members will also note that the suggested discussion between WG and MSFOMA lawyers was not considered by the Minister to be appropriate.
- 2.4 On the 31<sup>st</sup> July 2014 the Chair wrote to Mr David Tripp at the Welsh Government Sea Policy Executive to request clarification of this Association's role as a "competent authority" in the sense of the Conservation of Habitats and Species Regulations 2010. No response has yet been received to this request. The Chair's letter is included at Annex D to this report.

### **3. New leased areas, eastern Menai Strait**

- 3.1 In April 2014 the Minister was formally asked by the Association to consent to the creation of two new leased areas within the Menai Strait Oyster and Mussel Fishery Order 1962. In September 2014 the Minister granted consent to these new areas (letter of consent attached at Annex E).
- 3.2 The Chair consolidated some queries that arose from the Minister's consent in a letter that was sent to Mr David Tripp on the 26<sup>th</sup> September (Annex F). There has been no formal response to the Chair's letter yet, but informal discussions with WG officials suggest that the technical errors in the conditions of consent could be readily rectified.

**Annex A: Letter from Chair to Deputy Minister, 15<sup>th</sup> July 2014**

**Menai Strait Fishery Order Management Association**

Porth Penrhyn, Bangor, LL57 4HN

Rebecca Evans, AM  
Deputy Minister for Agriculture and Fisheries  
National Assembly for Wales  
Cardiff Bay  
Cardiff  
CF99 1NA

15<sup>th</sup> July 2014

Dear Minister

**Shellfish farming in the Menai Strait**

On behalf of the shellfish farmers in the Menai Strait I would like to congratulate you on your appointment.

I am sure that you will quickly find that the fisheries portfolio holds many challenges, and also opportunities. One opportunity that has already been recognised by the National Assembly is the potential for developing aquaculture in Wales. The largest single aquaculture site in Wales (and in fact in the UK) is the shellfish farming operation in the Menai Strait.

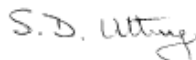
Shellfish farming in the Menai Strait has been developed by local operators over the past 30 years from a cottage industry into a thriving international trade. The Menai mussel farmers have invested in modern vessels and equipment, employ dozens of local staff, and operate to the highest standards. In 2010, the Menai Strait became the first mussel farming area in the world to achieve the prestigious Marine Stewardship Council standard for sustainable fisheries.

We have recently been working with local Assembly Member Rhun Ap Iorwerth and your predecessor to strengthen the foundations for the future operation and development of shellfish farming in the Menai Strait, and also in the rest of Wales. Rhun has been helping us to try and resolve some frustrating issues that have been hindering our efforts to re-establish the legal protection that is needed to enable the shellfish farmers in the western Menai Strait to develop their businesses. Welsh Government legal advisors inform us that the primary legislation (the 1967 Sea Fisheries (Shellfish) Act) is no longer fit for purpose which conflicts with the opinion of our legal advisor. Unless we have an opportunity to resolve this, there is a very real risk that these administrative problems will result in a lost opportunity that will cost the Welsh economy millions of pounds per year.

Shellfish farming provides a great opportunity for your administration to create sustainable long-term employment and export trade in rural Wales. With each delay this opportunity slips further from our grasp, and the chances of meeting the Welsh Government's strategic objectives for aquaculture growth become more and more remote.

We would welcome the opportunity to meet with you at the earliest opportunity either up here at Porth Penrhyn or at your offices to discuss how we could work with you to resolve these problems and to realise the potential for shellfish farming in Wales. I hope that you will be able to find time for in your diary, and look forward to meeting you in the near future.

Yours sincerely



Dr Sue Utting – Chair MSFOMA

cc. Rhun Ap Iorwerth, A.M.

**Annex B:** Letter from James Wilson to Deputy Minister, 5<sup>th</sup> Sept 2014

**Menai Strait Fishery Order Management Association**

Porth Penrhyn, Bangor, LL57 4HN

Rebecca Evans, AM  
Deputy Minister for Agriculture and Fisheries  
National Assembly for Wales  
Cardiff Bay  
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5 th September 2014

Dear Minister

**Shellfish farming in the Menai Strait**

It was a great pleasure to meet with you this week to discuss the opportunities for developing shellfish farming in Wales and in particular the Menai Strait. We all very much appreciated the time you made available for us in your busy schedule.

During the course of our meeting it was apparent that the key challenge to delivering the objectives of the Welsh Government Fisheries and Aquaculture Strategy is the current interpretation of the use of the 1967 Shellfish Act to manage shellfish farming in European Marine Sites.

Our own long experience, as cultivators and more recently managers, has been that there are no innate tensions between shellfish farming and protected wildlife sites. We can provide proof of this in the successful management of the mussel fishery in the eastern Menai Strait, within a European Marine Site. Mussels had been farmed in this area for over 40 years before the creation of this site, and mussel farming has caused no problems (either for wildlife or administrators) in the 12 years since the European Marine Site was created. Indeed, as we mentioned at our meeting DG-Environment cited this as an example of good practice only last year (I have forwarded a link to this document to your officials).

We hope that following our meeting you will ask your officials to look carefully at how the current interpretation of the legislation will impact on the Welsh Fisheries and Aquaculture Strategy, and encourage them to adopt a more pragmatic approach. We are convinced that this will enable both wildlife and shellfish farming to flourish within European Marine Sites.

At the risk of repeating ourselves, we would be delighted to welcome you for a brief trip aboard one of the mussel dredgers in the Menai Strait to see our work at first hand. We are sure that an hour or two aboard one of the vessels would give you a clear understanding of our operations.

In the meantime, if there is anything that we can do to assist you with this matter, please do not hesitate to get in touch.

Yours sincerely

James Wilson, MSFOMA  
cc. Rhun Ap Iwerth, A.M.

**Annex C: Letter from Minister to Rhun Ap Iorwerth AM, August 2014**

Rebecca Evans AC / AM  
Y Dirprwy Weinidog Amaeth a Physgodfeydd  
Deputy Minister for Agriculture and Fisheries



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref RE/00024/14

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

August 2014

*Dear Rhun,*

Thank you for your email dated 15 July on behalf of your constituents regarding shellfish farming in the Menai West.

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, because their submitted management plan was for a period of 7 years, that was the period of time over which the necessary environmental assessments could be undertaken. In addition, in order to comply with Welsh Ministers' obligations under the Habitats Directive (Council Directive 92/43/EEC), my officials have explained that that was the only period over which they could recommend that the proposed Order is granted.

The next stage in processing this application is for my Officials to make a submission to me setting out the detail of the position summarised above and requesting a decision from me as to how we should proceed. I understand that that position has been relayed to your constituents' who have indicated to my Officials that, in the circumstances, they would prefer to consider the matter further before any Ministerial decision is sought.

It is noted that your constituents' 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 framework within which my Officials must consider this application has, therefore, changed significantly since this shellfishery was last considered by the Government.

Bae Caerdydd • Cardiff Bay  
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*Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)*

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Your constituents ask for a discussion between their lawyers and ours. I do not think that would be helpful or feasible. The legal position in this case is clear. The Welsh Ministers must administer this application for a Several Order in a way which is in accordance with their obligations under the Habitats Directive. It is acknowledged that the operation of Part 1 of the Sea Fisheries (Shellfish) Act 1967 in a manner which is compliant with our obligations under the Habitats Directive has raised a number of practical difficulties from time to time. With that in mind, my Officials are currently working towards bringing forward appropriate amendments to the 1967 Act in the forthcoming Environment Bill.

In relation to the proposed discussion between lawyers, the role of Welsh Government lawyers is, as you will appreciate, solely to provide legal advice to the Welsh Ministers. That advice is confidential and carries legal professional privilege, which is a principle strongly defended by the Welsh Ministers. It would not be appropriate, in the circumstances, for the suggested discussion to take place.

I should like to emphasise that I am keen to support the development of the aquaculture industry in Wales. I believe that the proposals that we intend to bring forward in the Environment Bill will provide a helpful way forward to overcome problems of this nature, and to allow for the possible development of further aquaculture installations within European Marine Sites.

*Yours,  
Rebecca*

**Rebecca Evans AC / AM**  
Y Dirprwy Weinidog Amaeth a Physgodfeydd  
Deputy Minister for Agriculture and Fisheries

**Annex D:** Letter from Chair to David Tripp, 31<sup>st</sup> July 2014

**Menai Strait Fishery Order Management Association**

Port Penrhyn, Bangor, LL57 4HN

David Tripp  
Welsh Government  
Sea Policy Executive  
Rhodfa Padarn  
Llanbadarn Fawr  
Aberystwyth  
Ceredigion  
SY23 3UR

31<sup>st</sup> July 2014

Dear David

**PROPOSED MENAI STRAIT (WEST) FISHERY ORDER**

I am writing further to discussions and correspondence between MFOMA and yourselves about the proposed Menai Strait (West) Fishery Order, and to ask you a question that we feel is central to the progress of this proposal.

One of the key concerns that you and your colleagues have raised about the proposed Fishery Order has been associated with the creation of a new Fishery Order within a European Marine Site, and the risk that this could present to compliance with the Habitats Directive. Since you have raised this concern with us we have taken advice from our lawyers on this matter, and have also discussed it with Natural Resources Wales.

Our lawyer advises us that under the provisions of the Conservation of Habitats and Species Regulations 2010, the Grantee of a Fishery Order is a "*competent authority*" and as such is bound to comply with the provisions of those Regulations. In this regard the Grantee of a Fishery Order is akin to statutory undertakers like Dwr Cymru, National Grid, and Network Rail.

The obligations of competent authorities include the duty to exercise their powers in accordance with the requirements of the Habitats Directive (§9(3) of the Habitats Regulations); and under §61 of the Regulations a requirement to assess the implications for European Marine Sites before granting consent to any "plan or project" (which in the case of a Fishery Order would be the issuing of a lease to permit shellfish cultivation).

We can see from the actions of other competent authorities in Wales and the rest of the UK that the Habitats Regulations provide the basis for consenting a range of activities within European Marine Sites whilst ensuring that the requirements of the Habitats Directive are met. The legislation does not create different types or classes of competent authorities. It is thus our understanding that the Grantees of Fishery Orders are subject to the same duties and responsibilities as other competent authorities (such as the statutory undertakers we mention above). We therefore think that the legislation in force already addresses the quite legitimate concerns that you have raised.

For the avoidance of any doubt, could I ask you to present this letter and attachments to your lawyers, and ask them one simple question:-

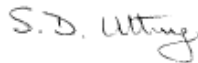
*Is the Grantee of a Fishery Order made under §1 of the Sea Fisheries (Shellfish) Act 1967 (for the purposes of §2 and §3 of that Act) that lies within a European Marine Site a "competent authority" as defined by Regulation 7(1) and 7(3)(b)(ii) of the Conservation of Habitats and Species Regulations 2010?*

I hope that you will be able to share your lawyers' response to this question with us, so that we can work with you to progress the Fishery Order application with a clearer understanding of the underlying legal foundations.

I am aware that with every day that passes, the shellfish farmers in the western Menai Strait are less and less likely to start business this year or even in 2015. Delays with this proposal will not help Welsh Government to meet its strategic target to double aquaculture production by 2020. With this in mind, could I request acknowledgement of this letter within the next 10 working days, with a response that provides an indication of the timescale against which we might receive a response from your lawyers.

If you have any queries about this letter, please do not hesitate to get in touch with me.

Yours sincerely



SUE UTTING  
Chair, MSFOMA

Cc Rhun Ap Iowerth, AM  
Rowland Sharpe, Natural Resources Wales  
David Jarrad, Shellfish Association of Great Britain  
Graham Rees, WG



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

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Dear James

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

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

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

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

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

Yours sincerely,

Andrew

Andrew Oliver  
Partner

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## Andrew Jackson

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

**Annex E:** Deputy Minister's letter of consent for new leased areas

**Rebecca Evans AC / AM**  
**Y Dirprwy Weinidog Amaeth a Physgodfeydd**  
**Deputy Minister for Agriculture and Fisheries**



**Llywodraeth Cymru**  
**Welsh Government**

Ms S Utting  
Menai Strait Fishery Order Management Association  
Port Penrhyn,  
Bangor,  
LL57 4HN

4 August 2014

*Dear Ms Utting,*

**LEASED AREAS IN THE MENAI STRAIT OYSTER AND MUSSEL FISHERY ORDER  
1962 ("the 1962 Order")**

Thank you for your letter and the report dated 11 April 2014 regarding your wishes to gain my consent for designating and leasing two new layings to local mussel farmers within the fishery area created by the 1962 Order.

After due consideration of the details of the proposals and all other relevant factors, I issue the consent below as Deputy Minister for Agriculture and Fisheries, under authority of the Minister for Economy, Science and Transport, one of the Welsh Ministers and is subject to the Conditions set out below.

The areas where the proposed new cultivation areas fall are within or near the Menai Strait and Conwy Bay Special Area of Conservation ("SAC"), the Traeth Lafan Sands Conwy Bay Special Protection Area ("SPA") and a number of Sites of Special Scientific Interest ("SSSI").

In relation to the nearby SAC and SPA, the Welsh Government has undertaken an environmental assessment (pursuant to Article 6(3) of the Habitats Directive (Council Directive 92/43/EEC) and Regulation 61 of the Conservation of Habitats and Species Regulations 2010 (SI 2010/490)). A copy of our environmental assessment is enclosed as Annex 1 (and referred to in this letter as the "Appropriate Assessment"). Based on the description of the proposed new layings, the leasing of the same and the mitigation action described in the Appropriate Assessment, Welsh Government Fisheries Science Officers have concluded that there will be no likely adverse effects on the integrity of the SAC or SPA as a result of the proposals.

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CF99 1NA

*Wedi'i argraffu ar bapur wedi'i ailgyichu (100%)*

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[Correspondence: Rebecca.Evans@wales.gov.uk](mailto:Correspondence.Rebecca.Evans@wales.gov.uk)  
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On that basis, I **HEREBY CONSENT** to the proposed designation and letting of the two proposed new layings within the area of the Menai Strait Oyster and Mussel Fisheries Order 1962 upon the following conditions.

In the Conditions below "Chart Datum" means the datum level shown on the Admiralty Chart for Holyhead to Great Ormes Head numbered 1977 (Edition Date 2 July 2013).

**Conditions**

1. The proposed two new layings must be within the following coordinates, which enclose the area in a clockwise direction :
  - A. 53° 14' 22.6N 04°07' 58.5 W
  - B. 53° 14' 6.16 N 04°06' 31.6 W
  - C. 53° 14' 6.10 N 04°05' 6.99 W
  - D. 53° 14' 32.2 N 04°05' 5.55 W
  - E. 53° 14' 40.6 N 04°05' 9.50 W
  - F. 53° 14' 23.1 N 04°04' 7.51 W
  - G. 53° 14' 21.3 N 04°05' 6.98 W
  - H. 53° 14' 23.0 N 04°06' 7.97 W
  - I. 53° 14' 23.8 N 04°07' 3.46 W
2. Once designated as layings, the Bangor Pool and Ballast Bank layings may be leased to third parties provided that those lease arrangements contain all the mitigation measures specified in the Appropriate Assessment.
3. Without prejudice to Condition 2, the lease arrangements must require that :
  - a. both of the new layings are operated in accordance with Conditions 4 to 8 below;  
and
  - b. the Bangor Pool laying must be operated in accordance with Condition 9 below;  
and
  - c. the Ballast Bank laying must be operated in accordance with Condition 10.
4. Adult Mussels must be cultivated on the seabed and below Chart Datum.
5. Mussel Seed may only be fished using a 2m dredge and must be deposited at a density of not more than 40 tonnes per hectare on the area between mean high water neaps and Chart Datum.
6. Adult mussels may be redeposited below Chart Datum at densities not exceeding 100 tonnes per hectare.
7. Mussels (i.e. mussel seed and adult mussels) must be harvested using a vessel which does not exceed 10 metres in length and which is operating a single mussel dredge.
8. Any vessel used in the harvesting and landing of mussels must complete a logbook in relation to each such trip and submit copies to The Old Vicarage, Newry Street, Holyhead, Anglesey, LL65 1DB within 5 working days of the relevant trip.

**Specific condition within Bangor Pool:**

9. Mussel cultivation and harvesting activities must not be undertaken within 100 meters of any reef feature within a European Marine Site. For the purposes of this Condition, "European Marine Site" has the meaning given by regulation 8(4) of the Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490).

**Specific conditions within Ballast Bank:**

10. Mussel cultivation and harvesting activities must not be undertaken within 5 metres of any *Zostera noltii*.

*Yours,  
Rebecca*

**Rebecca Evans AC / AM**

Y Dirprwy Weinidog Amaeth a Physgodfeydd

Deputy Minister for Agriculture and Fisheries, under authority of the Minister for Economy, Science and Transport, one of the Welsh Ministers

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## **Annex F:** Letter from Chair to David Tripp, 26<sup>th</sup> September 2014

### **Menai Strait Fishery Order Management Association**

Port Penrhyn, Bangor, LL57 4HN

David Tripp  
Welsh Government  
Sea Policy Executive  
Rhodfa Padarn  
Llanbadarn Fawr  
Aberystwyth  
Ceredigion  
SY23 3UR

26<sup>th</sup> September 2014

Dear David

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

I am writing further to the letter sent by Rebecca Evans AM, Deputy Minister for Agriculture and Fisheries granting consent to the creation of new leased areas in this Fishery Order area. The Members of MSFOMA have all noted the Minister's consent, and we shall meet to determine our formal response to the consent letter at the next MSFOMA meeting on the 10<sup>th</sup> October 2014 in Porth Penrhyn.

In the meantime we have a number of queries about the letter that you will no doubt be able to answer ahead of the meeting to help me to ensure that the Association is fully briefed before determining its course of action.

#### **1. Date of the letter**

This is a minor query, but could you confirm that the Minister signed the letter on the 4<sup>th</sup> September and not the 4<sup>th</sup> August? We suspect it was the later date because both you and the Minister indicated that the letter had not been signed when you met with Trevor Jones, James Wilson and Jim Andrews in Cardiff on the 3<sup>rd</sup> September. Some of our Members have been concerned that the letter may have been held up in the administrative machinery and I would like to reassure them that this is not the case.

#### **2. Conditions**

The consent is subject to a number of conditions (such as limiting the size of dredger to 10m, using a single 2m dredge; and restricting the density for relaying mussels to <40t/ha in intertidal areas and <100t/ha in subtidal areas). These are clearly prescriptive practical conditions, rather than conditions that have been designed to address legal issues. We therefore presume that the conditions were based upon scientific and technical information about the mussel cultivation practices used in the Menai Strait and their impact on wildlife in the area.

We note that the documents provided in support of the HRA for each leased area include a description of proposed activities, and it seems that these descriptions have been misunderstood and conflated to create an inappropriate set of conditions.

In summary, the two HRA documents submitted by the applicants propose the following activities:-

- Bangor Pool
  - This area is suitable for cultivating larger mussels at a density of up to 100t/ha
  - It is not thought that this area is suitable for seed mussels, (but it is proposed that this should be trialled on the site
  - The proposal includes an explanation of the mussel cultivation process that refers to seed mussel relaying densities of 25-40t/ha.
  
- Ballast Bank
  - The applicant will clear the central gutter in this area using twin 2m dredges to remove old mussels.
  - The applicant proposes to move seed from higher parts of Ballast Bank into the central gutter using a dredge.
  - Seed may also be relayed in this area from other (unspecified) areas in accordance with the BMPA Code of Good Practice.
  - It is proposed to harvest mussels from the area using an 8-10m dredger with a single dredge (width unspecified).

We would draw your attention to the fact that the Bangor Pool proposal makes no reference to vessel size, the number of dredges that would be used to harvest mussels, or the size of such dredges. Likewise the Ballast Bank proposal makes no reference to relaying densities. Neither proposal makes any reference to "adult" mussels. Neither precludes the possibility that "adult" mussels might be relayed on intertidal areas and seed mussels in subtidal areas.

The Members of the Association are familiar with both applicants' proposals, and consider that the proposed conditions for the consent have conflated and confused the details of each application to produce a set of conditions that are unsuitable for both operations. The applicants and Members of the Association have raised a number of queries with me about this, and I have summarised their queries below. I hope you will be able to assist me by providing a response to these matters.

**a) Vessel size constraints**

Although the proponents of the Ballast Bank area propose to use an 8-10m dredger, no such proposal has been put forward for the Bangor Pool area. There is therefore some surprise about the formal application of constraints on vessel size and dredges for mussel cultivation. The conditions for the new areas are at odds with the established cultivation practices used in all of the other areas in the eastern Menai Strait. Throughout this Fishery Order, mussels are typically cultivated using vessels of between 26-43m length, and using up to 4 dredges.

The cultivation practices in the Strait are well established, and no concerns have ever been raised by NRW (or its predecessors) with the Association (or its predecessors) about adverse effects on wildlife in this area resulting from either the size of a mussel dredger or the number of dredges towed by the dredger.

The imposition of the vessel size condition for both areas, and in particular for Bangor Pool, appears to be unwarranted. I hope that you will be able to review this decision, which seems to have arisen from a misunderstanding of the documents submitted.

**b) Relaying densities**

The mussel farmers from the Menai Strait expressed some concern about the introduction of constraints on mussel relaying densities. Again, these have never been imposed on mussel farmers in the Fishery Order at any time in the past 50 years. We are also not aware of such constraints being imposed by Government on any of our commercial rivals, either within or outside Natura 2000 sites.

Again, it would appear that there has been a misunderstanding of the descriptive nature of the information submitted. The Ballast Bank applicant made no suggestions about relaying densities at that site (these will be determined over a period of time for this area, as they have been elsewhere in the Fishery Order). The applicant for Bangor Pool made reference to relaying areas, but may also find it expeditious to relay mussels at a density of more than 100t/ha in subtidal areas from time to time.

I would very much appreciate a review of the decision to impose these constraints, which would seem to serve no fisheries or nature conservation purpose that we are aware of.

**c) Constraint on relaying adult and seed mussels**

We note that condition 5 permits the relaying of mussel seed in intertidal areas and condition 6 permits the relaying of adult mussels in areas below Chart Datum.

These conditions raise a number of concerns:-

- i) When do you consider a mussel reaches adulthood? Is this the age or size of first maturity; or is it the size at which the mussel attains the MLS that applies to wild fisheries (i.e. 45mm). It would be helpful if this term was clarified. It is not mentioned in either of the applicants' documents.
- ii) Does this mean that within the new "Ballast Bank" area, all of which lies above Chart Datum, it would be a breach of the conditions to relay any "adult" mussels (however defined).
- iii) Does this also mean that within the new "Bangor Pool" area, nearly all of which lies below Chart Datum, it would be an offence to relay any "mussel seed" (however defined).

As mentioned above, it is anticipated that the Bangor Pool operator will use that area mainly for the on-growing of larger mussels, but the proposal specifically mentions that on-growing of smaller mussels will be trialled here. The Ballast Bank proponent has not precluded the possibility that larger mussels might be relayed on the site, even though this is not likely to form a major part of their activities.

We would very much welcome your clarification on this matter so that we can provide clear guidance to the operators about the intent of the conditions, and subsequently provide you with an informed response to them.

**d) Boundaries of areas**

The consent letter refers to a set of points (A-I) with corresponding latitudes and longitudes. These are all in the vicinity of the new Ballast Bank leased area. The applicant for this area listed 8 points (A-H). We are not certain of the origin of the new point "I" that is listed in the Minister's letter.

I wonder if you could perhaps double-check these points and also include a set of points that correspond to the boundary of the proposed Bangor Pool area, which is presently omitted from the Minister's consent letter.

**e) Impact on WG Strategic Objectives**

You may recall that during our meeting with the Minister on the 3<sup>rd</sup> September we made the point that the Welsh Government's strategic objective of doubling cultivated mussel production by 2020 is being thwarted by administrative problems. At that time the key concern was that WG legal advice was consistently obstructing the creation of new Fishery Orders.

The conditions set out in the Minister's letter have added to the challenges of meeting the objectives set out in the WG Marine and Fisheries Strategic Action Plan. The proposal to limit dredge size, dredger length and relaying densities would all make cultivation in the new areas commercially unviable. If it is the intention that mussel cultivation in Wales should be subject to such constraints (which as we note above are not applied to businesses outside Wales that are in competition with our local companies) then it would seem that the WG Strategic Objectives for aquaculture shall never be achieved, and the Minister should be advised accordingly.

We are certain that the Minister must have been advised of how her decision could affect the delivery of the Government's strategic objectives (particularly since we had mentioned this to her the day before), and would appreciate sight of the briefing given to her in this regard to help us fully understand the basis of her decision.

I imagine that the information we request is readily available because it must have been presented to the Minister to inform the decision that she took prior to issuing consent for cultivation in these new areas. I therefore anticipate that you will be able to respond to our request readily. If you require a more formal request for the release of this information, I would be happy for you to regard this letter as a request for sight of all documents relevant to the Minister's decision on this matter (including but not limited to reports, letters and e-mails) submitted in accordance with the relevant sections of the Environmental Information Regulations 2004 and the Freedom of Information Act 2000 if you need to.

**3. Vires of the Minister's conditions**

You will appreciate that the Association, as Grantee of the 1962 Order, has certain obligations. In particular we are aware that if we take a decision that is unreasonable or ultra vires and has a commercial impact on lease holders, our decision is open to challenge. In this regard we would welcome some evidence that the conditions associated with the Minister's consent are within the scope of the powers set out the Sea Fisheries (Shellfish) Act 1967 or the Menai Strait Oyster and Mussel Fishery Order 1962. We can find no facility in either piece of legislation for the Minister to associate conditions with her consent. There is, however, express provision for the Grantee to do this (under §8(1) of the 1962 Order).



You will recall that we have very recently been told by WG lawyers that the Minister's capacity to set out constraints within a Fishery Order made under the 1967 Shellfish Act is limited by what is allowed, in the lawyers' words, "on the face of the Act". This advice was provided in relation to the development of shellfish cultivation under a proposed new Fishery Order for the Menai Strait West, and was considered to be an insurmountable obstacle that would prevent the creation of a Fishery Order that would include constraints and conditions on cultivation that were intended to protect marine wildlife in the Conwy Bay and Menai Strait SAC.

I am very concerned that if the Association should implement these or any other Ministerial conditions, we could be acting illegally because there is no express provision "on the face of the Act" (or 1962 Order) for such conditions. I would very much welcome some guidance from you on this matter, and I have an inkling of hope that this guidance might also help us to resolve the deadlock with the Menai Strait West Fishery Order.

I would also welcome your advice on the grounds that may exist for this Association to take any enforcement action against a lessee that breached any of the conditions set out in the letter, given that the conditions do not directly link to any wording "on the face of the Act", or indeed the Order. Your advice on this matter would be a great reassurance to us.

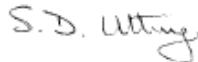
#### 4. Next meeting of the Association

The next meeting of this Association is on the 10<sup>th</sup> October in Porth Penrhyn. We are keen to determine the arrangements for leasing so that these areas can be brought into production this year (if there is any further delay it may not be possible to start cultivation until 2015).

We would very much appreciate your response to the queries above before the 10<sup>th</sup> of October. If you or one of your colleagues would like to attend the meeting, you would be very welcome indeed.

If you have any queries about this letter, please do not hesitate to get in touch with me.

Yours sincerely



SUE UTTING  
Chair, MSFOMA

Cc Rowland Sharpe, Natural Resources Wales  
David Jarrad, Shellfish Association of Great Britain

## **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**

3. That progress with the proposed new Morecambe Bay Fishery Order is noted.
4. That progress with the proposed new vessel size byelaw is noted.
5. That the Association should note the IFCA's actions with respect to the seed mussel fishery in 2014 and consider its response.

### **4. IFCA Meetings**

- 4.1 Since the last meeting of the Association the IFCA Technical, Scientific and Byelaws Sub-Committee has met (on the 15<sup>th</sup> August 2014) and there has been a Quarterly meeting (on the 19<sup>th</sup> September 2014).

### **5. Morecambe Bay Fishery Order**

- 5.1 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.
- 5.2 At the TSB meeting in August, a report was submitted that suggested the IFCA should withdraw its application for a "Hybrid Fishery Order" (i.e. one that provides for both a regulated fishery and a several fishery) and should progress with an application for a Several Fishery. The TSB meeting was presented with a very detailed analysis of options. At the September Quarterly meeting it was reported by the Science Officers that it had not been possible to consider these options at the TSB meeting and that a special meeting would be convened in the near future.
- 5.3 It is understood that the Fishery Order proposal will be discussed at a TSB meeting on the 21<sup>st</sup> October. The Chair of the Association and also an officer from NRW involved in the management of the Dee Estuary Fishery Order have been invited to attend that meeting. Progress with the Fishery Order will be monitored and reported to the Association at future meetings.

## **6. Proposed new vessel size byelaw**

- 6.1 A revised version of this byelaw was considered by the TSB meeting in August 2014. The Chief Executive reported to the Quarterly meeting in September that the TSB had "*requested further discussion on some measures*" and the Officers of the IFCA were to review the byelaw and "*revert to TSB*".
- 6.2 Progress with this proposal shall be kept under review by the Association.

## **7. Seed mussel fishery 2014**

- 7.1 At the time of writing this report there has been a limited seed mussel dredge fishery in Morecambe Bay. A major constraint in fishing this year has been that some areas that have been dredged in the past have not been authorised for dredging this year because they could be accessed by intertidal gatherers.
- 7.2 The mussel industry in Bangor and a fishing company from Barrow in Furness have made vigorous representations to the IFCA to encourage the authorisation of dredging in areas where there are presently abundant seed mussels that will be inaccessible to hand gatherers for the rest of 2014 and which seem likely to be lost in autumn weather.
- 7.3 It is understood that a meeting of the "Chairman's Sub Committee" is due to be held on the 13<sup>th</sup> October 2014 to consider the IFCA's management of the seed mussel dredge fishery.

MSFOMA Secretariat  
October 2014