

Menai Strait Fishery Order Management Association

Agenda & Papers- 17th June 2020, 1000 Quarterly Meeting Zoom Conference

1. Chair's announcements
2. Apologies
3. Declarations of interest
4. Minutes of last meeting ([attached](#))
5. Matters Arising
6. Register of interests (verbal)
7. Financial update ([report](#))
8. Public Profile of the Association (verbal)
9. Welsh Government Activity ([report](#))
10. North West IFCA Activity ([report](#))
11. Menai Strait East ([report](#))
12. Menai Strait West Fishery Order ([report](#))
13. Project funding update (verbal)
14. Fishery management issues
 - a. Coastal / marine developments
 - i. Bangor Pier maintenance
 - ii. Bangor Pier - Tea Room restoration
 - iii. Sand in the dock
 - b. Environmental / health issues
 - i. Bangor Beach Road to Treborth rising main repair
 - ii. Shellfish hygiene classifications
 - iii. *Bonamia* in the western Strait
 - iv. Non-native species
 - v. Norovirus - update
15. Any Other Business (verbal)
 - a. Correspondence
16. Dates for next meetings:-
 - a. Q3 2020 - 16th September
 - b. Q4 2020 - 2nd December [AGM]

Menai Strait Fishery Order Management Association

**Meeting, 22nd April 2020
Telephone Conference Call**

Minutes

Attendance

Members

Alan Winstone*
James Wilson*
Lewis le Vay

Chair
Bangor Mussel Producers Ltd
Bangor University

Observers

Iwan Huws
Kate Griffith
Kim Mould
Lisa Connaire
Michelle Billing
Trevor Jones

Isle of Anglesey County Council
Natural Resources Wales
BMWAG
Welsh Government
Welsh Government
Menai Strait (West)

Advisors

Jim Andrews*

MSFOMA Secretariat

Notes

** These individuals are also Directors of the Association*

1. Chair's announcements

The Chair welcomed Kate Griffiths to her first meeting of the Association.

2. Apologies

Gareth Roberts
Howard Mattocks
Ioan Thomas
Julian Bray
Keith Andrews*

Bangor City Council / Gwynedd C.C.
Beaumaris Town Council
Gwynedd County Council
Welsh Government
Licensed hand pickers

3. Declarations of Interest

Because this meeting was conducted as a telephone conference which prevented the register of interests being circulated, the Chair asked participants in the meeting to declare an interest in each agenda item before speaking.

4. Minutes of last meeting

The minutes of the meeting that took place on the 4th December 2019 were accepted.

5. Matters Arising

It was considered that most of the matters arising from the last meeting were addressed on the agenda for the current meeting.

Some items raised at the December meeting were discussed:-

Community Fund

This was a perennial issue. No ideas for projects had been proposed since the last meeting. It was agreed that a paper should be presented to the next meeting setting out options for funding local community projects.

Action: JW, Secretariat

Sand in Penrhyn Dock

It was reported that sand was still accumulating in the dock at Port Penrhyn from the storage area on the western arm of the dock. James Wilson had approached the Estate about this issue but it has not yet been resolved. It was agreed that the Association should write to the Estate again to ask for this to be addressed.

Action: JW, Secretariat

Moorings in the Strait

Following discussions at the last meeting the Secretariat had sent a copy of the reassurances given to Beaumaris Town Council about the legality of the deep water moorings in the Menai Strait to Cllr Mattocks.

Iwan Huws asked if a copy of this letter could be sent to him for his records.

Action: Secretariat

Iwan Huws reported that Ynys Môn County Council are working on a recreation code of conduct for the Strait, with support from the North Wales Fisheries Local Action Group.

Trevor Jones reported that he was working with Iwan on this project. He also noted that the Fishery Order in the eastern Menai Strait is not marked on Admiralty Charts, and it would be helpful if this could be addressed.

Action: Secretariat

Articles of Association

James Wilson has updated the company records at Companies House to show the changes in Directors agreed at the AGM.

Jim Andrews reported that a majority of the membership have signed the resolution agreed at the December meeting, but Keith Andrews and Ioan Thomas still needed to sign it. It was agreed that this should now be progressed by post.

Action: Secretariat

Bangor pier

It was noted that the pier master had been invited to the previous meeting. It was agreed that he should be invited to attend the next meeting of the Association.

Action: Secretariat

6. Register of Interests

Members were advised that their statements of interests are now shown on the MSFOMA website.

7. Financial Update

James Wilson provided a brief verbal update on the Association's financial position. Because of the impact of the Covid-19 pandemic on routine activities it had not been possible to prepare a quarterly update as planned.

Jim Andrews confirmed that invoices had been sent out on 1st April for lease fees in the Fishery Order area.

It was agreed that a quarterly financial update should be presented to the next meeting.

Action: JW, Secretariat

8. Public Profile of the Association

Jim Andrews provided a quick update. Andy Olivier has continued to maintain the Association's Twitter account. The number of tweets and profile of the Association continues to grow steadily. It now has over 900 followers and had over 43,000 tweet impressions in the 28 days prior to this meeting.

All present were reminded of the value of the public profile of the Association and were asked to remember to send items of interest to Andy Olivier for him to Tweet.

Action: All

Any items can be sent directly to Andy Olivier (avdsolivier@bangor.ac.uk).

Lewis le Vay note that Andy Olivier has taken up a post in Portsmouth. It was agreed that it would be appropriate for the Association to review its approach to the use of social media at its next meeting.

Action: Secretariat

9. Welsh Government Activity

The Secretariat's report was noted and received.

a) Meetings

Progress with the fisheries groups established by Welsh Government was reported by delegates who had attended these meetings as follows:-

- **Inshore Fisheries Groups** - is being kept under review.
- **Welsh Marine & Fisheries Advisory Group** -
- **Aquaculture Advisory Group** -no meetings had been held recently.

b) Consultations

It was noted that there are no current WG consultations underway of relevance to MSFOMA.

c) WG officials

It was noted that regular engagement with WG officials has continued and that this was proving to be beneficial. In particular Gareth Bevington had visited Port Penrhyn in January to meet with mussel farmers and see operations at first hand, which had been very beneficial.

Michelle Billing reported that Gareth Bevington has been temporarily re-deployed, and his role is now being covered by Mike Dowell. This has no implications for the work being carried out by WG officials on Fishery Orders.

d) Covid-19

It was noted that WG had made financial assistance available to fishing businesses as part of its response to the pandemic. This assistance was capped at £10k. Operators reported that they were aware of this assistance, and considered that it was not directly relevant to the Menai Strait fishery.

10.NW IFCA Activity

The report on recent activities of the NW IFCA was received and accepted by the meeting.

Jim Andrews and Trevor Jones reported that they had raised the issue of the fee charged for dredge permits at the IFCA meeting in December. There had been no indication that the IFCA was likely to change its policy on this matter in the near future.

Trevor reported that he had been working closely with NW IFCA Science staff who were working hard to try to maintain their annual survey programme. Seed mussel survey work was due to be carried out in Morecambe Bay on the spring tides over the 8th / 9th / 10th of May.

In view of the importance of maintaining access to the seed mussel resources in the NW IFCA District it had been considered unwise to press the IFCA on the subject of the permit fee for the time being.

11.Menai Strait East Fishery Order

The report on this Fishery Order was received and discussed.

Michelle Billing reported that she was working on drafting instructions for a new Order, and that a draft Order should be ready for comment at the next Association meeting in June. She was due to receive some queries from her legal advisors on certain aspects of the application which would be sent to the Secretariat and Chair for a response.

It was agreed that the Chair and Secretariat should coordinate a response from MSFOMA to any queries from Welsh Government about the application.

Action: Chair, Secretariat

All welcomed the progress that WG officials have been making with this matter, and in particular thanked Michelle and her colleagues for securing additional legal support so that progress with the Fishery Order was not hindered by other commitments.

It was agreed that regular conference call meetings between the Association and WG officials had been very helpful and it was agreed that this practice should be continued.

Action: Secretariat

The report identified a number of items for the Association to determine, summarised below.

- **Scope of the Order**

After some discussion it was agreed that the scope of the Order should not be altered in terms of its geographic extent, the inclusion of both mussels and oysters, and the provision for both a several and regulated fishery (i.e. a “hybrid” Order).

- **Engagement with stakeholders**

It was noted that under the Covid-19 management arrangements it was unlikely that public meetings could be convened in the foreseeable future. It was therefore agreed that the “Zoom” video conferencing platform should be used to engage with stakeholders for the area prior to the formal consultation on the Fishery Order.

Action: Secretariat

The Association approved expenditure to set up a MSFOMA “Zoom” account.

Action: Secretariat

Iwan Huws asked for a copy of a map of the area to be sent to him for information.

Action: Secretariat

12. Menai Strait West

The report was received and discussed.

Jim Andrews reported that several discussions had been held between the Association, WG Science & Policy staff and shellfish farmers from the western Strait over the past few months. These discussions had focussed on the issues arising from the cultivation of Pacific oysters in the Menai Strait. The key issue associated with this non-native species is the risk of it establishing “feral” populations in the wild, and the need to have an appropriate national policy and set of mitigation measures in place to address this risk.

It was reported that although these discussions had taken longer than hoped, they were productive and it was hoped that progress could be made soon.

The Association had asked WG to consider the possibility of broadening the scope of the Order with respect to oysters from Pacific oysters (*Crassostrea gigas*) alone to the broader term of “oysters”, which could introduce the possibility of cultivating European oysters (*Ostrea edulis*) in this area. Michelle Billing indicated that WG would be providing advice on this option shortly.

Action: Michelle Billing / Welsh Government

All agreed that it was important to maintain progress with this application and that regular meetings between WG officials and the Association should continue.

Action: Secretariat

13. Funding proposals

Lewis LeVay provided a brief update on the projects being progressed by the University that are relevant to MSFOMA. He reported that all staff were working from home under the current Covid-19 restrictions. While fieldwork and lab work

has been delayed, these restrictions had not yet impacted significantly on overall progress.

For the Menai Offshore Subsurface Shellfish Systems (MOSSS) project, work is planned to continue at the site near Puffin Island. Details of this work are available on the University website [here](#).

The Shellfish Centre continues to develop collaborative research projects with industry partners across a diverse range of topics from novel methods of measurement of norovirus in shellfish, new approaches to native oyster production and research to support development of offshore shellfish aquaculture. www.shellfish.wales

The DASSH project, working with Seafish, SAGB, FSA and Environment Agency is investigating modelling of catchment drivers of shellfish water quality, with the aim of identifying practical and effective alert systems that could inform shellfish harvesting and classification of areas.

14. Fishery Management Issues

1. Coastal / marine developments

i. Bangor Pier

There was no further news on the proposal to reinstate the tearooms on the pier. It was agreed that an invitation should be extended to the pier master to attend the next meeting in June.

Action: Secretariat

ii. Dickies Boatyard Development

There had been no further consultations about this project.

iii. Beaumaris Pier

Iwan Huws reported that the authority had received its Marine Licence for this work from NRW, and plans for painting the pier in May 2020 would be progressed, subject to any constraints resulting from the response to the Covid-19 pandemic.

iv. Sand in the dock

Further to the earlier discussion it was agreed that action should be taken to address this issue as appropriate.

Action: JW, Secretariat

2. Environmental / health issues

i. Bonamia

No further update.

ii. Invasive Alien Species (IAS) / Invasive Non Native Species (INNS)

Kate Griffith reported that some specimens of the slipper limited *Crepidula fornicata* had been found in the Menai Strait during February. NRW had planned to conduct a subtidal survey at the end of April to investigate potential abundance/extent of the species, but this had to be postponed due to the Covid-19 situation. An update will be provided to the Association once

the survey has been carried out, unfortunately at present NRW cannot confirm when that will be.

Action: NRW / Kate Griffith

iii. Norovirus

No further update.

iv. Shellfish hygiene

It was noted that NRW had provided regular updates on the repair work that Dŵr Cymru had carried out to the

15. Any Other Business

a) Correspondence

No additional correspondence had been received.

b) Meeting arrangements

It was agreed that Members of the Association should be asked if the Zoom video conferencing platform could be used for the next meeting.

Action: Secretariat

16. Dates for next meetings

It was agreed that the Association meetings in 2020 should all take place on a Wednesday, as follows:-

- c. Q2- 17th June 2020
- d. Q3- 16th September 2020
- e. Q4- 2nd December 2020 [AGM]

Summary of Actions

Item	Action	Responsibility
1.	Community Fund – paper to be presented to next MSFOMA meeting.	JW, Secretariat
2.	Sand in Dock –contact Penrhyn Estate to raise further concerns about this issue.	JW / Secretariat
3.	Moorings in the Menai Strait – provide copy of correspondence sent to Beaumaris Town Council to Iwan Huws.	Secretariat
4.	Contact Hydrographic Office and ask if Menai east area could be shown on Admiralty Charts.	Secretariat
5.	Articles of Association to be signed by all and sent to Companies House.	Secretariat
6.	Bangor pier – invite pier master to next meeting.	Secretariat
7.	Finances – present quarterly updates to MSFOMA meetings.	Secretariat & JW
8.	Social media – send any items suitable for the MSFOMA Twitter feed to Andy Olivier (avdsolivier@bangor.ac.uk).	All
9.	Public profile – review the MSFOMA approach to the use of social media at the next meeting.	Secretariat
10.	NWIFCA – encourage a more pragmatic approach to dredge permit fees.	Secretariat & TJ
11.	Menai East – provide response to any WG queries about legal issues.	Chair, Secretariat
12.	Menai East – maintain monthly discussions with WG officials to ensure progress is maintained.	Secretariat
13.	Menai East – progress stakeholder engagement, using “Zoom” video conferencing platform.	Secretariat
14.	Menai East – provide map of area to Iwan Huws for information.	Secretariat
15.	Menai West – consider possibility of changing scope from “Pacific oysters” to “oysters”.	Michelle Billing
16.	Menai West – continue discussions with WG & NRW to address concerns about Pacific Oysters.	Secretariat
17.	Bangor Pier – invite pier master to next MSFOMA meeting.	Secretariat
18.	INNS – provide an update on the <i>Crepidula fornicata</i> reports from the Menai Strait.	NRW / Kate Griffith
19.	Next meeting – consult Members about possible use of Zoom platform.	Secretariat
20.	Date for next meeting – 17 th June 2020	Secretariat

Financial Update

Background

The purpose of this report is to advise the Association on its current financial status with respect to the 5-year Financial Plan agreed in 2018, and to review items of financial significance.

Recommendations

1. The update on actual and budgeted income and expenditure is received.
2. MSFOMA allocates £2,000 annually, shared between good causes in Anglesey and Gwynedd with links to the Menai Strait, and that nominations should be sought from the local councils each year.
3. The Association should determine whether to register for Value Added Tax (VAT).

1. Background

- 1.1 The Association agreed a budget and Financial Plan in January 2018 for a period of 5 years. The key aspects of this Plan were that it should maintain a Reserve of at least £25,000 to cover costs associated with the renewal of Fishery Orders, and also that lease fees should be inflated at a rate of 2.8% pa.
- 1.2 The Financial Plan was revised at the December 2019 MSFOMA AGM. A summary of the revised Financial Plan is set out in Annex A of this report.
- 1.3 It is appropriate for the Association to keep all aspects of this Plan under review, and an update is provided in this report.

2. Budget & Finance update

- 2.1 An income and expenditure report for the Association for the first quarter of MSFOMA's Financial Year (starting on 1st March) is presented in Table 1 overleaf. This table shows both the actual and budgeted values for each item of income and expenditure.

Table 1: Income and expenditure report for MSFOMA, 1st March – 31st May 2020

Item	Year Budget	Quarter 1	
	2020-21	Actual	Budget
1. Expenditure			
Administration of the Order*	£7,061.43	£7,347.61	£1,765.36
Enforcement activity	£1,303.65	£0.00	£325.91
Corporate core*	£1,303.65	-	£325.91
Renewal of Fishery Orders*			£0.00
Menai East	£20,000.00	-	£5,000.00
Menai West	£10,000.00	-	£2,500.00
Research & monitoring	£1,955.47	£0.00	£488.87
Bank charges		£20.40	
Total Expenditure	£41,624.20	£7,368.01	£10,406.05
2. Income			
Leases for lays	£32,968.41	£8,185.92	£16,484.20
Licences	£0.00	£0.00	
Total	£32,968.41	£8,185.92	£16,484.20
Operating surplus / deficit	-£8,655.79	£817.91	-£2,163.95
Reserve	£29,804.37	£47,725.65	

* The "Administration of the Order" budget head in this table includes costs incurred for the Corporate Core and Renewal of Fishery Orders budget heads.

2.2 Key points to note are that:-

- a) Income for the past quarter has been lower than budgeted. Invoices were issued on 1st April 2020 and were payable within 60 days, and may not have cleared in the bank at the time this report was produced.
- b) Expenditure has been approximately £3,000 lower than expected in the past quarter. A loss of over £2,000 was expected for this quarter, but instead the Association was £817 in credit.

2.3 The Association presently has a sum of £47,725 in its Reserves. This value is more than the target Reserve of £38,460 for the end of the 2019-20FY and more than the target of £29,804 for the end of this FY.

3. Community Fund

- 3.1 The Association has previously discussed the benefits of setting up a Fund to support local good causes and charities with links to the Menai Strait area. These discussions have focussed on attempting to engage the Crown Estate in participating with such a Fund. Unfortunately, these attempts have been unsuccessful. Options for the

Association to set up and manage a Community fund by itself are therefore considered here.

- 3.2 It is proposed that a sum of money is set aside each year by the Association for the Community Fund. An appropriate sum of money could be £2,000. This could be shared between good causes in Anglesey and Gwynedd linked to the Menai Strait.
- 3.3 The options for selecting good causes and managing this fund could include:-
- a) Advertise (Twitter, local press) for bids from good causes, community groups and charities and select which bids to fund at a MSFOMA meeting.
 - b) MSFOMA attendees to nominate local good causes and decide who to fund at next meeting. This could either be on an annual basis or 'adopt' these good causes for a number of years to give them some financial security.
 - c) Use Community Foundation Wales to manage a Fund on our behalf:
<https://communityfoundationwales.org.uk/giving/businesses/>
 - d) Liaise directly with Beaumaris Town Council and Bangor City Council and request nominated good causes each year.
- 3.4 The Association's views are sought on these proposals and recommendation above on this matter.

4. Value Added Tax (VAT) Registration

- 4.1 MSFOMA is not presently VAT registered. As a private company limited by guarantee MSFOMA is eligible to become VAT registered.
- 4.2 VAT registration is mandatory when the taxable turnover on an eligible company exceeds a sum currently set at £85,000 per year. MSFOMA's turnover is presently much less than this (income for 2020-21 is forecast to be £32,968). Businesses can, however, register for VAT voluntarily if their turnover is less than the mandatory threshold.
- 4.3 The consequences of MSFOMA becoming VAT registered would be that VAT would be charged on all invoices issued by MSFOMA for leases and licences issued by the Association. The Association would also be able to reclaim VAT from any invoices submitted to it (for instance for legal or professional services).
- 4.4 Most of the invoices submitted to MSFOMA are from VAT registered companies. The effect of becoming VAT registered would be that MSFOMA would be able to offset the VAT charged by these suppliers against the VAT that MSFOMA charges itself. The net result will be that MSFOMA's overheads would decrease by nearly 20%.
- 4.5 The effect of charging VAT on the lessees and licensed operators within a Fishery Order would depend on whether they themselves are VAT registered. For business that are VAT registered, the additional cost can be reclaimed, so the change would have no material impact. For businesses that are not VAT registered, the effect would be that the leases and licences issued by MSFOMA would become 20% more expensive than they were previously.

- 4.6 The Association is advised that VAT registration is free. VAT returns can be submitted electronically by the Association, using the HMRC “Making Tax Digital” service. The accounting software used by the Association (Quick File) integrates seamlessly with this service. For the small number of transactions made by the Association each year the time cost involved with submitting VAT returns would be trivial compared to the savings that would be made.
- 4.7 The only negative implication of this change would seem to be the financial impact on businesses or individuals that are not VAT registered themselves who hold leases or licences issued by MSFOMA.

MSFOMA Chair & Secretariat
June 2020

Annex A: MSFOMA Financial Plan, as revised at December 2019 AGM.

Item	Financial Year					
	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
1. Recurring Expenditure - inflated at 2.8%.						
Administration of the Order*	£6,500.00	£6,682.00	£6,869.10	£7,061.43	£7,259.15	£7,462.41
Enforcement activity*	£1,200.00	£1,233.60	£1,268.14	£1,303.65	£1,340.15	£1,377.68
Corporate core*	£1,200.00	£1,233.60	£1,268.14	£1,303.65	£1,340.15	£1,377.68
Renewal of Fishery Orders						
Menai East	£2,600.00	£15,000.00	£7,500.00	£20,000.00	£20,000.00	
Menai West	£8,200.00	£12,000.00	£5,000.00	£10,000.00		
Research & monitoring*	£1,800.00	£1,850.40	£1,902.21	£1,955.47	£2,010.23	£2,066.51
Total Expenditure	£21,500.00	£37,999.60	£23,807.59	£41,624.20	£31,949.68	£12,284.27
2. Recurring Income - inflated at 2.8% to increase value of reserve.						
Leases for lays	£30,347.20	£31,196.92	£32,070.44	£32,968.41	£33,891.52	£34,840.49
Licences		£0.00	£0.00	£0.00	£0.00	£0.00
Total	£30,347.20	£31,196.92	£32,070.44	£32,968.41	£33,891.52	£34,840.49
Operating surplus / deficit	£8,847.20	-£6,802.68	£8,262.85	-£8,655.79	£1,941.84	£22,556.22
Reserve	£37,000.00	£30,197.32	£38,460.17	£29,804.37	£31,746.22	£54,302.43

Welsh Government Activity

Background

The Welsh Government is responsible for managing inshore fisheries in Wales. This report provides a brief update on some Welsh Government Activities that may be relevant to the work of MSFOMA.

Recommendations

1. That the report is received, along with any verbal updates from the Welsh Government officials invited to the meeting.
2. That a letter is sent to Welsh Government seeking reassurance that the new UK Fisheries Bill will not undermine the legal foundations for shellfish cultivation in Wales provided by the Sea Fisheries (Shellfish) Act 1967.

1. Background

- 1.1 The Welsh Government website provides information about consultations and meetings of various stakeholder groups that are relevant to the Welsh Fishing industry. A brief summary of recent activity is provided below.

2. Meetings of Fisheries Groups

- 2.1 Welsh Government has established several groups to assist with the administration and management of Welsh fisheries. The key groups are:-
 - a) **Inshore Fisheries Groups** – these groups were established to provide stakeholders with a forum for communicating and engaging with Welsh Government. They were disbanded several years ago, and at the same time the membership of the Welsh Marine Fisheries Advisory Group (WMFAG) was broadened and supported by ad-hoc “Task and Finish” groups. The most recent WMFAG meeting resolved to maintain this arrangement and to review its effectiveness in December 2020 (see Annex A).
 - b) **Welsh Marine Fisheries Advisory Group (WMFAG)** – this group was established to assist with the formulation of appropriate policies, plans, strategies and laws relating to marine fisheries in Wales. Information about this group is now available from <https://beta.gov.wales/wales-marine-fisheries-advisory-group>. The most recent WMFAG meeting took place on 19th September 2019 and was reported to the last meeting of MSFOMA. No meetings seem to have been held since then.
 - c) **Aquaculture Advisory Group** – this Group was established to help Welsh Government meet the targets it set in the 2013 Wales Marine and Fisheries Strategic Action Plan for aquaculture production of 2,000t of finfish and 16,000t of shellfish by 2020. No meetings of this group have taken place recently. The most recent WMFAG meeting confirmed that the AAG has been “...suspended following poor attendance and dissatisfaction.” WMFAG further resolved to

remove a reference to the AAG from its own Terms of Reference “...as that sub-group was disbanded.”

- 2.2 Members and Observers at the Association meeting will be asked for a verbal update on any recent meetings of these and related groups that are not reported on the Welsh Government website.

3. **Consultations**

- 3.1 There are presently no open consultations for “Marine and Fisheries” on the Welsh Government website. The most recent consultation was for Whelk Management Measures, which closed on 7th June 2020. This consultation had no direct relevance for the Association.

4. **Marine Planning**

- 4.1 It is noted that a meeting of the Welsh Government “Marine Planning Stakeholder Reference Group” took place on 28th May 2020 (see Annex A). Although the minutes are very jargon-heavy and difficult to decipher, it would appear that this group is seeking to develop Implementation Guidance for the Marine Plan.
- 4.2 The minutes refer to the activities of “Expert Panels”, and apparently one such panel meeting was held on 14th May to look at a project looking at “Wet Renewables and Aquaculture”. It is not clear from the minutes whether shellfish aquaculture is within the scope of this project or the work of this (or any other) Expert Panel.
- 4.3 The only Attendee at the Stakeholder Reference Group with a clear role with regard to marine fisheries was Eunice Pinn from Seafish. Other marine stakeholders including the RYA, renewable energy sector, ports sector, and the RSPB were present at the meeting. There is no list of apologies, so it is not possible to determine who else may have been invited to this meeting.
- 4.4 There seems to be a lack of participation by the fisheries and aquaculture sector in this Group. The Association may wish to consider whether it is appropriate to approach Welsh Government about direct participation in this Group. Alternatively, it may be more appropriate for the time being to keep a watching brief on its activities.
- 4.5 In considering its response, the Association is advised that Marine Planning projects have been trialled in various parts of the UK over the past 30 years, often with considerable investment from stakeholders. None have yet delivered on the promise of improving and simplifying management of marine areas (in fact most of the projects seem to have had the opposite effect).

5. **New legislation**

- 5.1 As part of the preparations for the UK leaving the European Union, the UK Government is working on new fisheries legislation.
- 5.2 The new “Fisheries Bill” is currently passing through the House of Lords. The Bill is described as “A bill to make provision in relation to fisheries, fishing, aquaculture and marine conservation; to make provision about the functions of the Marine Management Organisation; and for connected purposes”.

- 5.3 The Fisheries Bill has now passed through its First and Second Readings and the Committee Stage in the House of Lords. Amendments have been made to the Bill, and the Report Stage is scheduled for 22nd-24th June 2020. The Third Reading is scheduled for the 1st July, after which it will pass to the House of Commons. Information about the Fisheries Bill's progress through the Houses of Parliament can be found [here](#).
- 5.4 Most of the text of the Bill is connected with wild capture fisheries. It does, however, make reference to aquaculture. The general objectives of the Bill provide support for the sustainable development of aquaculture. There are, however, some more detailed provisions in the Bill that may actually (and presumably accidentally) confound the sustainable development of aquaculture and in particular shellfish cultivation.
- 5.5 The detailed rationale for this view is quite convoluted. In short:
- a) §10 of the Bill requires the "*national fisheries authority*" to exercise its powers with respect to fisheries and aquaculture in accordance with various policy and management documents created under the Bill (these are termed a "*Joint Fisheries Statement*", a "*Secretary of State Fisheries Statement*" and a "*fisheries management plan*").
 - b) The procedures for these different documents require that they are reviewed every 6 years (at §3(4), §5(4), & §8(4) of the Bill respectively).
 - c) It is not presently clear from the wording of the Bill how the new measures that it will introduce will integrate with existing UK legislation and in particular the Sea Fisheries (Shellfish) Act 1967. The Bill does not propose to revoke this Act.
 - d) The concern is that this short timescale for the review of statutorily binding documents that appear to determine the framework for UK aquaculture is not compatible with the period that it takes to make a return on the investment required to establish a shellfish farming operation, and indeed is far shorter than the period of the Menai Strait Fishery Orders (the Order in the eastern Menai Strait was made initially for a period of 60 years in 1962).
- 5.6 Other aspects of the Bill can clearly be welcomed by the Association, notably the power to be granted to Welsh Ministers to give financial assistance to promote the development of commercial fish or aquaculture activities (Schedule 6 §2(1) *et seq.*).
- 5.7 The Association is aware that a solid and stable legal and policy foundation is essential to allow aquaculture businesses to secure financial investment. Informally, WG officials have provided reassurance that the Fisheries Bill is not intended to undermine these foundations. It would, nevertheless, seem prudent to obtain formal reassurance from a senior level of Government that this Bill will not adversely affect Fishery Orders made under the Sea Fisheries (Shellfish) Act 1967.

6. Welsh Government Officials

- 6.1 There have been no meetings between MSFOMA representatives and WG officials since the last meeting.
- 6.2 There have been regular formal and informal discussions over the phone and in telephone conference calls with WG officials about various issues connected with the

renewal of the two Fishery Orders in the Menai Strait (see items 11& 12 on the agenda).

7. Communications with Cabinet Minister

- 7.1 There have been no communications with the Cabinet Minister since the last MSFOMA meeting.

MSFOMA Secretariat
June 2020

Annex A: Note of Marine Planning Stakeholder Reference Group (MPSRG) meeting, 28th May 2020.

Marine Planning Stakeholder Reference Group (MPSRG)

28 May 2020



Attendees

Eluned Jones, John Hamer, Phil Coates & Rebecca Rees (Welsh Government), Adrian Judd & Rachel Mulholland (Cefas), Lucie Skates, Lee Murray, Karen Perrow & Helen Bloomfield (NRW), David Jones (Blue Gem Wind/Simply Blue), Mike Butterfield (RYA), Mel Nicholls (MMO), Rosie Kelly (Crown Estate), Emma McKinley (SEP), Claire Stephenson (RSPB), John Wrottesley (ESCA), Manon Kynaston (Marine Energy Wales), Eunice Pinn (Seafish), Ruth Callaway & Kam Tang (Swansea University), Jillian Whyte (JNCC), Mark Simmonds (British Ports), Michael Igoe (UK Chamber of Shipping)

1. The Implementation Guidance (IG) document had now been finalised following Welsh Government and UK Government policy lead review. It was hoped it will be published soon. Moving forward, updating the IG would be an iterative process. There would be no set timetable but it would be under continual review and would be updated when necessary – looking at what had worked well and learning by understanding. Stakeholders would be informed in advance of any updates in order to provide input but could also provide this at any time via the [Marine Planning mailbox](#). The Group were given an overview of the IG.
2. The Group were updated on wider aspects of plan implementation. A reference document on sector governance arrangements was being produced looking at the same sectors as the Welsh National Marine Plan (WNMP) and would cover organisational roles and responsibilities in the Welsh Marine Plan area. An early draft of this technical document and aquaculture sector text will be shared with this Group in June. We would then be working with representatives of the other ten sectors to fact check the document. A Governance layer for the Marine Planning Portal was also in development. The Marine Planning Decision Maker's Group (MPDMG) had met regularly since August 2018 with the last meeting in February and had received a draft version of the IG last year to inform decision making. A number of one to one training sessions had taken place with the NRW marine licensing team and Local Authorities since adoption of the WNMP – however, these had been scaled back due to COVID work taking precedence.
3. There was an update on the Expert Panels, which had been convened on 14 May to look at the SMMNR EMFF project for the areas of Wet Renewables and Aquaculture. The Expert Panels were updated on the constraints and opportunities outputs and introduced to the evidence packages. There was the intention to convene the Expert Panels every 4 – 6 weeks.
4. At the last meeting there had been an update on the Marine Area Statement following its launch in March. This Group had helped identify the four main themes under this Area Statement and the team in NRW were now keeping track of what was being delivered and were keen to engage this Group in the first task which was:

- Gather information on what projects / activities partners are already involved in that support the delivery of the actions identified;
 - Start to collate ideas from Group members for new projects / activities (and partners) that could help deliver against the actions to achieve the shared outcomes.
5. The Group were updated on Cross border planning. There was continuing engagement with colleagues on cross border matters – whether this was through attendance at each other's events, input to consultations or coordination on guidance. Engagement has also taken place through the Coastal Partnerships and we are also engaging with a number of interested parties across the Welsh Marine Plan Area through the MPDMG. There was also an update from the MMO on their consultation on the draft English plans. It was suggested that cross border planning should be a standing agenda item for the MPSRG and the Group agreed.
 6. Future agenda items were suggested and included Indicators for Monitoring and Reporting and the Marine Area Statement. The next meeting will take place on 9 July.

Queries to: Rebecca.Rees2@gov.wales

North West Inshore Fisheries and Conservation Authority Activity

Background

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

Recommendations

1. That the report is received.
2. That the Association considers the appropriate response to make to NW-IFCA in respect of the seed mussel resources in Morecambe Bay.

1. IFCA Meetings

- 1.1 Since the last meeting of the Association the NW-IFCA has held one meeting of its Technical, Science and Byelaws (TSB) Sub-Committee, on the 12th May 2020. A quarterly meeting of the IFCA is due to be held on the 18th June 2020 (the meeting scheduled for 19th March 2020 was cancelled).
- 1.2 No new management measures that are directly related to the activities of MSFOMA were discussed at the recent IFCA TSB meeting.
- 1.3 The mussel stock in Morecambe Bay is mentioned very briefly in the papers submitted for the IFCA quarterly meeting that is due to take place on the 18th June. This report indicates that work is on-going on this matter and that a report will be submitted to the next TSB meeting. This is scheduled to take place on the 11th August 2020.

2. Changes to Byelaws

- 2.1 The NW-IFCA is continuing to work on a revision of its byelaws regulating fishing for seafish using pots within its District. This byelaw has no implications for mussel fishing activities.

3. Bivalve Mollusc Working Group

- 3.1 The Bivalve Mollusc Working Group has recently considered a report from NW-IFCA scientific staff about the mussel and seed mussel resources available in Morecambe Bay. The Working Group meeting was called by IFCA officers to inform a subsequent decision by the Authority on its management approach for this area.
- 3.2 The report submitted to the Working Group appears to show that there is a stock of mussels on Foulney Island in Morecambe Bay which is accessible from the upper shore on foot or using a vehicle. There is a further stock located several hundred metres

offshore in an area known as the “Falkland Islands”. On a 0.5m spring tide this area could only be accessed by Mr Trevor Jones using a hovercraft. The location of these islands and some images taken by Mr Jones during his inspection of them are included at Annex A of this report.

- 3.3 The images of the survey conducted by Mr Jones show that there is a considerable stock of seed mussels located in the “Falkland Islands” area of Morecambe Bay. These seed mussels appear to be building up a layer of “mussel mud”, which should make them suitable for dredging in the near future. There is also evidence of a considerable number of starfish in this area, which could rapidly consume a large proportion of the mussel stock in this area.
- 3.4 It is understood that the hand gathering community in Morecambe Bay are currently of the view that the Falkland Islands area should not be opened for mussel dredging this year.
- 3.5 The Association will be aware that access to seed mussel resources has become a major challenge for the mussel farmers in the Menai Strait over the past few years. Securing access to an apparently plentiful seed mussel resource in Morecambe Bay that has been fished by dredgers on many occasions over the past 25 years could be vital for shellfish farming in the Menai Strait over the next few years.
- 3.6 At the Association meeting Mr Jones will be able to provide further information on his observations of the Falkland Islands mussels. Mr Kim Mould and Mr James Wilson have participated in the Bivalve Mollusc Working Group discussions and will be able to provide the Association with an update on the nature of the debate at these meetings.

MSFOMA Secretariat
June 2020

Annex A: Report of Falklands Mussel Inspection, May 2020 [Reproduced from NW-IFCA report to Bivalve Mollusc Working Group]

Falklands Mussel Inspection (Industry) 07/05/20

Report compiled by Mandy Knott - NWIFCA with information provided by Trevor Jones

Due to COVID-19 restrictions and safe distancing protocols, and the lack of access to this area by quad bike (necessitating RIB or helicopter fly over) NWIFCA officers were unable to carry out an inspection in April. A call was put out to industry via BMWG email, and the following offer of inspection and information was received and accepted.

Inspections carried out by hovercraft piloted by Trevor Jones. GPS tracking and geo-referenced photos provided by Trevor Jones, and mapped by Mandy Knott and Jon Haines.

LW: 18:48 0.5m (Liverpool tides)

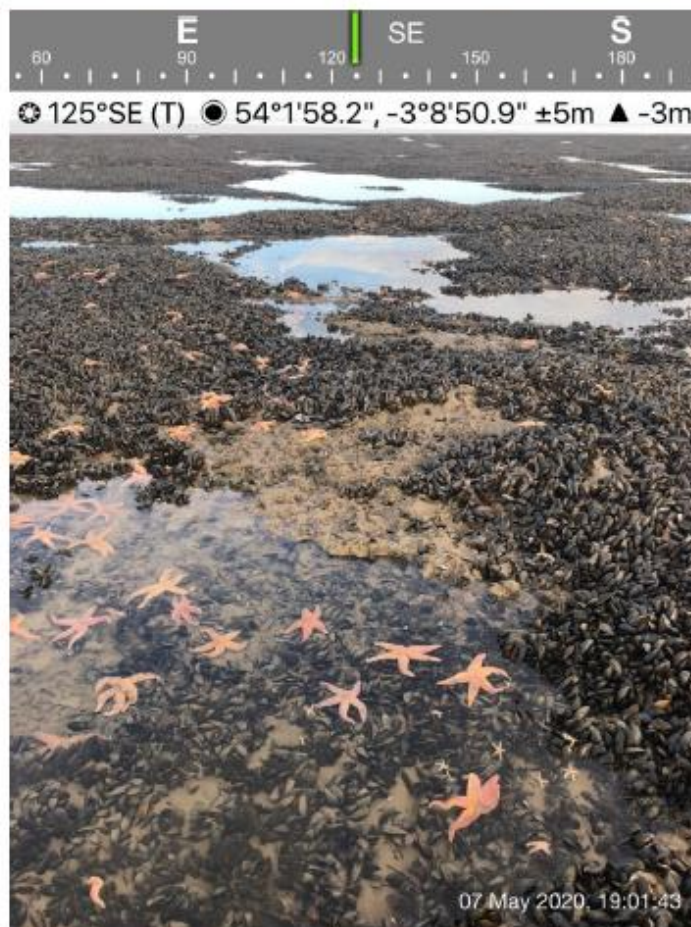
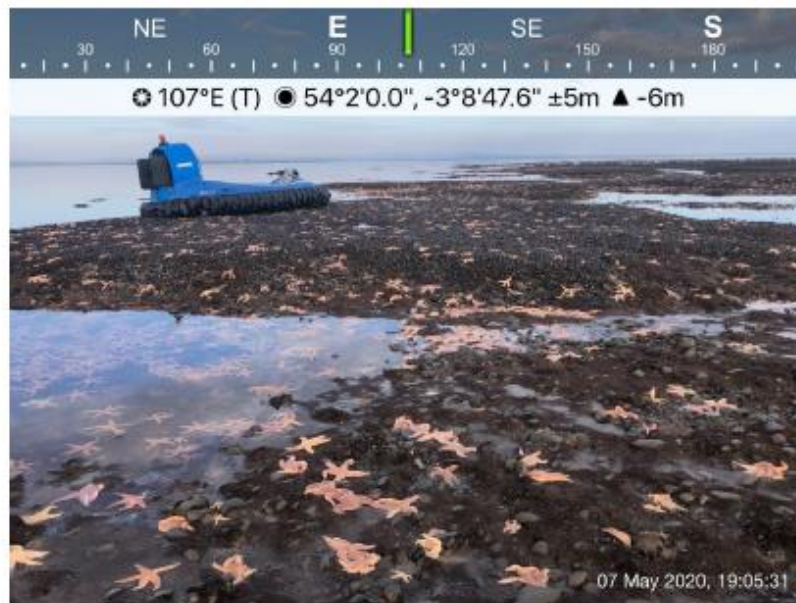
The low tide was about twenty minutes later than predicted and was much less of an ebb than expected. The surveyed area was therefore much smaller than that surveyed last month. One foot less ebb and fifteen millibar less pressure made the difference.

It was possible however to see more clearly through the shallow water around and between the surveyed areas than during the last visit. There was a good covering of mussels and a commensurately better covering of starfish there. More importantly, there have been considerable changes in the topography and fecundity of the two surveyed areas.

Small Island:

The patch of mussels nearest to where the "Mare Gratia" dried out last month has sprouted and built up considerable quantities of mud where large mussels have persisted. The areas where there are no large mussels were colonised by a tight carpet of smaller, more recent spat. The settlement of small spat seen on the larger mussels during last month's survey was also growing nicely. There was very little to no exposed cobble to be seen other than where the settlement petered out seawards. The cobble in amongst the mussels was certainly incapable of being dredged, given its small areas and the relative height of the surrounding mussel. The areas to seaward where the larger cobble and stone is, most of which was submerged during the inspection. It was possible to see however, that the areas were also covered in a tight carpet of spat, tapering to nothing where the small recruitments of laminaria commence.

GIS Mapping provided an estimate of area of this bed as 16.89ha. 22 photographs were provided taken in an area representing 0.15ha (0.9% of the bed) with some showing the wider view of the bed. A selection are shown below indicating the mussel settlement, the size mussel remaining from 2019, the mussel mud and the abundance of starfish.







Trailer Bank:

A similar story seemed to be playing out on Trailer Bank, albeit in a less vigorous manner than on Small Island. The larger mussel was beginning to build up mud, albeit to a lesser extent than on Small Island. It might be assumed that it will be in a similar condition to that which presently pertains on Small Island before too long. There was a markedly smaller presence of birds on Trailer Bank than on Small Island whilst waiting for the tide and during the survey.

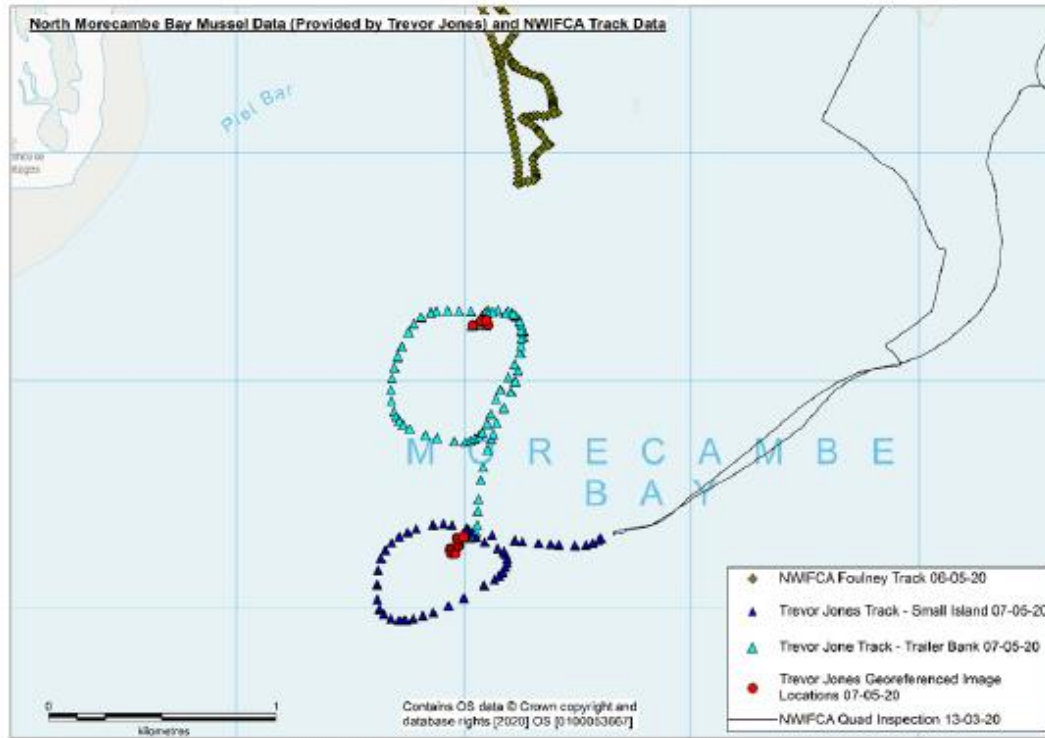
GIS Mapping provided an estimate of area of this bed as 26.53ha. 8 photographs were provided taken in an area representing 0.09ha (0.35% of the bed) with some showing the wider view of the bed. Combining tracks from NWIFCA survey of Foulney mussels, this bank lies around 500m off the southern edge of Foulney Island.

A selection of photographs are shown below indicating the mussel settlement, the size mussel remaining from 2019, the mussel mud and the abundance of starfish.









Menai Strait Oyster & Mussel Fishery Order 1962

Background

The Menai Strait Oyster and Mussel Fishery Order was made in 1962 and provides the legal foundations for the mussel fishery in the eastern Menai Strait. The Order is the basis for the most successful and productive aquaculture area in Wales.

The Order was made for a period of 60 years and is due to expire on 31st March 2022. MSFOMA needs to ensure that the Fishery Order is renewed on time to protect the local businesses and jobs that depend upon it.

This report considers the recent progress that has been made with the process for renewing this Fishery Order.

Recommendations

1. That the report is received
2. Liaison with Welsh Government officials over the renewal process is noted.
3. Progress against the agreed timetable for renewal of the Order is noted.
4. That the Association should consider the proposed new management measures proposed for the Regulated Fishery at Annex F of this report and, subject to revisions agreed at this meeting, these should be adopted.
5. The option identified for mitigating the risk of a delay in the renewal of the Fishery Order should be discussed.

1. Introduction

- 1.1 The Menai Strait Fishery Order sets out provision for both the cultivation of mussels and oysters and for the regulation of the fishery for wild mussels in the eastern end of the Menai Strait. It has been the most successful Fishery Order in the UK, allowing the Menai Strait mussel industry to develop and flourish.

2. Renewal of the Fishery Order

- 2.1 The existing Fishery Order will expire on 31st March 2022. The formal application for renewal of the Fishery Order was submitted to the Cabinet Secretary for Environment and Rural Affairs (now the Minister for Environment, Energy & Rural Affairs) on the 9th August 2018. In October 2019 it was confirmed that Welsh Government had put in place a procedure to enable it to process the application. Since that date WG and MSFOMA have been working closely together to progress the renewal of the Fishery Order.
- 2.2 Since the last meeting of the Association in December the Secretariat has been liaising regularly with WG officials to discuss progress. Telephone conference calls have also been held on the 1st May, 5th May, 1st June and 2nd June to discuss progress.

3. WG Progress

- 3.1 A copy of the timetable for renewing the Order that was considered at the last Association meeting is attached at Annex A of this report.
- 3.2 WG officials will provide an update on progress with the renewal of this Fishery Order at the meeting.

4. Current Issues / Challenges

- 4.1 At the last meeting of the Association it was agreed that in response to queries from Welsh Government, the Association should proceed with its application for a “hybrid” Fishery Order. A letter was sent by the Secretariat to Welsh Government after the meeting which confirmed the Association’s intentions (see Annex B).
- 4.2 Good progress with the application process has been made in subsequent discussions with WG officials. It has been confirmed that it should be possible to retain the use of the term “oysters” in the Menai East Order, rather than to specify “Pacific Oysters”.
- 4.3 On 5th June WG officials sent some further queries about the Order application to the Chair and Secretariat. These questions and the response is attached at Annex C.
- 4.4 In response to some earlier queries about the process that MSFOMA has adopted to issuing licences in the Regulated fishery, the Chair and Secretariat have updated and revised the procedures that were adopted by the Association in 2010 (see section 5 of this report below).
- 4.5 It is noted that a recurring theme in the queries raised by WG concerns how the Association will exercise the rights assigned to it as Grantee of a Fishery Order, and in particular how it will exercise those rights with respect to protected wildlife sites that may overlap with the Order boundary.
- 4.6 The Association is advised that this issue was considered in great detail by our own lawyers in 2014. The conclusion was then that the Association is legally bound to exercise its rights in accordance with the requirements to protect the wildlife within these sights (a copy of the advice is set out in full in Annex D of this report). Our lawyers’ view simply confirmed the approach that MSFOMA had adopted to the process of issuing leases and licences within the Fishery Order area since MSFOMA was established in 2010.
- 4.7 Since so many of the queries raised by WG seem to focus on this aspect of the application, it may be appropriate to ask our lawyers to confirm that they have not changed their view and to advise the Minister accordingly.

5. Procedure for issuing licences for shellfish gathering

- 5.1 During the period since the last MSFOMA meeting some queries have been raised about the procedure that MSFOMA has in place for issuing licences to permit hand gathering of shellfish in the Fishery Order area outside the boundary of the shellfish layings. In particular WG officials were interested in how the number of licences issued and the quantity of shellfish that could be removed by shellfish gatherers would be determined by MSFOMA.

- 5.2 The Association adopted a procedure for this purpose at its 2nd meeting in July 2010 (see Annex E). The procedure that the Association adopted at that time addressed the administrative procedures associated with issuing licences to individuals. It did not consider in detail how the number of licences would be determined (though the Association at that time and to this day understood that it is legally obliged to assess the impacts of issuing new licences in consultation with the statutory nature conservation authority).
- 5.3 The Chair and Secretariat have considered that it may be appropriate to revise the Association's policy for issuing licences so that it is explicit that the Association will take wider environmental issues into account before issuing any licences. A copy of the proposed new procedure is attached at Annex F of this report for consideration at this meeting.

6. Engagement with stakeholders

- 6.1 At previous meetings the Association has drawn up a timetable for progressing the renewal of the Fishery Order and ensuring that there is adequate engagement with stakeholders.
- 6.2 At the last meeting of the Association it was acknowledged that the Covid-19 pandemic presented an obstacle to progressing stakeholder engagement. It was agreed that the Association should use the video conferencing software "Zoom" as a medium for progressing this engagement.
- 6.3 Following the last meeting the Secretariat has taken out a subscription for "Zoom" on behalf of the Association. Work is underway to schedule stakeholder meetings that will be held using this software.

7. Contingency Plans

- 7.1 At the Association meetings earlier in the year it was resolved that contingency plans should be developed to address the risk of delay with the renewal of the Fishery Order.
- 7.2 Following careful consideration of the legal options available and the management approaches adopted in other parts of England and Wales, the Secretariat has concluded that:-
- a) There are no legal options that would provide the secure foundations needed for shellfish cultivation other than the creation of a new Several Order under the Sea Fisheries (Shellfish) Act 1967; and
 - b) If the existing Fishery Order should lapse before a replacement Order has been made, the only option that would serve to protect mussels in cultivation from being gathered as if they were wild mussels would be an emergency byelaw made by Welsh Government under the Marine & Coastal Access Act 2009. This could serve as a "stop gap" for a short period to protect the livelihoods of the people and businesses that work in shellfish cultivation in the Menai Strait.
- 7.3 This contingency plan is far from ideal. It is not so much a "safety net" to protect the industry from injury, but is more akin to a "field dressing" that might prevent its premature demise.

- 7.4 The outcome of this contingency planning underlines the importance of a new Order being in place by the 31st March 2022.
- 7.5 It is noted that in England, the IFCA's have been able to implement the emergency byelaw provisions of the Marine & Coastal Access Act very swiftly (two IFCA's have done this within a month of identifying a serious issue). It may be appropriate to ensure that Welsh Government has appropriate procedures in place to enable a swift response using this mechanism should this prove necessary.

MSFOMA Secretariat
June 2020

Annex A: Indicative schedule for the renewal of the Menai Strait Oyster & Mussel Fishery Order (from January 2020 discussions).

Milestones	Duration of step		Date	
	Time	w/m/d	Start	End
WG Internal processes				
Internal consultation period	32	d	16/10/2019	17/11/2019
Post-consultation activity - addressing feedback, legal advice, conditions	70	d	17/11/2019	26/01/2020
Agree drafting instructions for LS	21	d	26/01/2020	16/02/2020
Prepare draft SI (6 weeks)	42	d	16/02/2020	29/03/2020
		d	29/03/2020	29/03/2020
External processes				
MSFOMA comments on proposed order	1	m	29/03/2020	29/04/2020
Revision of proposed order after MSFOMA comments	2	m	29/04/2020	29/06/2020
Consultation on draft Order	1	m	29/06/2020	29/07/2020
Post-consultation activity (addressing consultation feedback, PI if necessary, Ministerial determination).	12	m	29/07/2020	29/07/2021
Revision of Order after post-consultation activity - incl. translation & checking	6	m	29/07/2021	29/01/2022
Signature MA/SI/EM etc to LS/LPGU	7	d	29/01/2022	05/02/2022
Signature MA/SI/EM etc to PS Office (within the above days)		d	05/02/2022	05/02/2022
SI signed by Minister	2	d	05/02/2022	07/02/2022
SI register with OPSI	2	d	07/02/2022	09/02/2022
SI forwarded to LPGU for laying	1	d	09/02/2022	10/02/2022
6		d	10/02/2022	10/02/2022
Lay before WG	21	d	10/02/2022	03/03/2022
New Order ready	4.0	w	03/03/2022	31/03/2022
Expiry of existing Order			-	31/03/2022

Annex B: Letter from MSFOMA to Welsh Government, May 2020

Menai Strait Fishery Order Management Association

Port Penrhyn, Bangor, LL57 4HN

Lisa Connaire & Michelle Billing
Welsh Government
Marine & Fisheries Division

4th May 2020

By e-mail

Dear Michelle and Lisa

MENAI STRAIT (EAST) FISHERY ORDER RENEWAL

Thank you for sending us a series of legal queries about the proposals that we submitted for the renewal of this Fishery Order in 2018. We are glad that this application is progressing, and appreciate the efforts you are making on our behalf.

You requested a formal response from us. To provide this I have spoken with the Chair of the Association and the mussel farmers who work in this area. The consolidated response to each of the issues you have raised is set out in the attachment at Annex A.

During our discussion of your queries it became apparent to us that some misunderstandings have arisen or persist about key aspects of the area covered by the Menai Strait Oyster and Mussel Fishery Order 1962. We think that these misunderstandings may explain some of the queries raised.

Given the limited time now available for the renewal process to be completed we feel it is important to clarify these points. To recap very briefly:-

1. The 1962 Order established both a Regulated fishery and the right of Several Fishery throughout its entire area (the boundary shown in blue in our map of 19th February 2018).
2. The Association has leased 8 "layings" within this boundary, which are operated as Several Areas. These are the shaded areas in that map.
3. When licences have been issued for the Regulated fishery, the right to gather shellfish under the licences has applied to the area outside the layings; and with the permission of the lessees of these layings, licensed operators could fish within these areas as well.
4. The requirement to "*properly cultivate the ground for shellfish*" that you refer to applies to the layings (i.e. the "several fishery"). These areas are being cultivated.
5. The purpose of a Regulating Order is to regulate access to a fishery resource rather than to provide the basis for cultivation. There is no requirement in the Sea Fisheries (Shellfish) Act 1967 that shellfish cultivation should take place within a Regulated Fishery; rather the requirement is that the grantee is properly carrying into effect the restrictions and regulations contained in the Order. To support this view we would refer to the Burry Inlet and Dee Estuary Fishery Orders, each of which is a Regulating Order; in neither area are cockles cultivated. Although there are presently no licensed operators in the Menai Strait Order at the moment, the Association and its predecessors have ensured that they have complied with the requirements of the Order and parent Act in this regard.

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

Our conclusion is that it would be appropriate to progress with the "like for like" renewal of the Fishery Order as it currently stands. This will provide stability and security for existing operators and will not inconvenience any other fishermen or users of the area. For other fishermen who are not presently involved in the fishery, the retention of the Regulated Fishery may provide an opportunity for access to the fishery in the future.

We hope that these comments are helpful. If you have any queries please don't hesitate to get in touch with me.

Yours sincerely



Dr JIM ANDREWS
MSFOMA Secretariat

Encs

Annex A: Response to queries

Query	Response
1) Ballast Bank – Current status of the RO area.	First of all – “Ballast Bank” has been a laying since 2014. There is an area to the south of the laying that is outside the several area, and we have responded with respect to this area rather than for the “Ballast Bank” laying.
a. Has any mussel been laid in the Ballast Bank area? If so, when and by whom?	We have no records that any mussels have been relaid here.
b. What volume of mussel has been hand-gathered from the Bank since the last licences were issued?	None. Hand gathering of mussels from the Regulated Fishery can only be carried out under the authority of a licence: hence if no licences have been issued, no shellfish can be gathered.
c. The Order application refers to the mussels in the RO being of ‘poor’ and ‘fluctuating’ growth. Is this still the case with the mussel in this area?	See previous comments – no mussels are presently being gathered in this area and we have no samples from the area to determine the quality of any mussels that are presently found here.
d. In light of the above, what benefit does including the Regulating Order bring to MSFOMA and the management of the area?	<p>This area has no value at present, but it has provided some value in the past. The benefit of retaining it in the Fishery Order has two management benefits:-</p> <ol style="list-style-type: none"> 1. Future opportunities – it is likely that when seed mussel access returns to a more typical level there will be an overspill of mussels from the Ballast Bank laying, which licensed gatherers would be able to gather. 2. Flexibility – the industry anticipate that the shellfish market is going to change in the coming years in response to the UK’s exit from the EU. The pattern of use of the Fishery Order area that has developed over the past few decades has been largely the response of the industry to market demands from the EU. In a new domestic and global market place the industry will need the flexibility to adapt to new demands, which may result in changing patterns of fishing activity within the Fishery Order area.

<p>2) Licences – Further clarification is requested regarding the issuing of licences for the RO.</p> <p>You have stated that in ‘recent years’ no more than 2 licences have been issued.</p>	
<p>a) When was the last licence to hand-gather issued?</p>	<p>The last licences were issued in 2012, prior to the creation of the new laying on Ballast Bank.</p>
<p>b) Was the decision to issue only 2 licences based on:</p> <p>i. the quantity and quality of the mussel in the RO area;</p> <p>ii. a lack of interest from gatherers; or,</p> <p>iii. a combination of both?</p>	<p>The decision was based on the quantity and quality of mussels in the (old) Regulating Order area. This area included the area that now forms the Ballast Bank laying.</p>
<p>3) Where licences have been issued for the current order, how has this been managed, for example:</p>	
<p>a) Are opportunities to apply for a licence advertised?</p> <p>i. If yes, how?</p> <p>ii. If no, how do applicants find out about licence opportunities?</p>	<p>If MSFOMA identified an opportunity for new licences to be issued they would first of all be allocated to individuals on the waiting list. If there were no applicants on this waiting list then a public notice could be issued and licences allocated in accordance with the Association’s established policy.</p>
<p>b) Is there an open and fair process for application and decision?</p>	<p>Yes. The process for application and decision of fishing licence allocations was adopted by the Association at its second meeting in July 2010, and follows the policy of the previous grantee of the Fishery Order (see Annex B).</p>
<p>c) Is there a waiting list of successful licence applicants – how is this managed?</p>	<p>Yes, there is a waiting list. This is managed in accordance with the Association’s agreed policy (see Annex B)</p>

4) Status & condition of the mussel beds in the RO area.	
a) Do you have current information as to whether there is an interest for hand-gathering in this area?	There is interest from a small number of individuals on our waiting list for licences.
b) Has any, and what volume, mussel been hand-gathered from the Bank since the last licences were issued?	No mussels have been hand gathered from the regulated fishery since the last licences were issued (since this would be illegal).
c) Is there up to date knowledge regarding whether there is sufficient mussel in the area to recommence and sustain hand-gathering?	We have not conducted a formal survey of this area, but it is regularly inspected by the lessees of the layings. If there was an increase in the stock in this area then we would carry out a formal survey and consult with NRW before determining whether licences could be issued.
d) If there is insufficient interest and/or mussel on Ballast Bank, given the information supplied regarding the problems with mussel growth etc, what is your reasoning for including the RO in the application?	See response to 1(d) above.
e) One of the internal assessment requests reported that mussel mud and pseudo-faeces has become dominant and built up in the RO area, resulting in a lack of access for hand-gathering. Are you aware if this was or is still the case?	We haven't observed a build up of this nature. If further information could be provided we can investigate further.
5) Unused areas	
Further clarification is required on 4 areas within the overall boundary of the SO & RO area, which do not appear to be 'active' parts of the Order, either as leased lays or regulated for hand-gathering: a) 3 areas to the north of Order area. From conversation with yourself, it is our understanding that these areas will not be cultivated lays within the Several Order area, due to the location of various moorings and a reef feature at Bangor Pool;	To clarify:- a) The areas to the north of the Order area are not cultivated. They have formed part of the Order since 1962. The Order boundary follows the mean LW mark along the Anglesey coast, and there can be mussels below this level but above LW of spring tides that could be hand gathered in future. It is therefore appropriate to retain the control provided by the Regulating Order over these areas.

<p>b) An area beneath Ballast Bank, which we understand is not included in the RO.</p> <p>Could you please clarify why these areas are included within the overall boundary?</p>	<p>b) This is a misunderstanding. Ballast Bank has been a laying leased by MSFOMA to a local company with the approval of Welsh Government since 2014. The area south of Ballast Bank is included in the Fishery Order area and is part of the RO area.</p> <p>The reason for including these areas should be clear from the earlier responses.</p>
<p>If it is the case that they are not to be cultivated or managed under the new Order, please submit a new map with the overall boundary amended to exclude these 4 areas and confirm the amended Order area coordinates and size. (current map attached)</p>	<p>MSFOMA has formally resolved that these areas should be included within a new Fishery Order area to maintain the arrangements that have worked so effectively since 1962 and to ensure that this area retains the flexibility and integrity that we consider is necessary to meet the challenges of the UK's exit from the EU and to ensure that the Fishery Order continues to benefit the local community.</p>
<p>Please note: With regard to these areas and the Ballast Bank RO area that, in the case of any right of several or regulating order, the area must be properly in use and not solely for the purpose of excluding use by others. That is to say, the grantee must be properly cultivating the ground for shellfish to which the order applies and/or properly carrying into effect and enforcing any regulations contained in the order.</p> <p>Finally, could you please provide any other information or evidence that you have which you think would be helpful in order to understand these issues.</p>	<p>With regard to the RO area, the key provision of this section of the Sea Fisheries (Shellfish) Act 1967 (§5(1)) is that the Grantee is "...properly carrying into effect and enforcing any restrictions and regulations contained in the order and levying any tolls or royalties imposed thereby...". It should be clear from our response above that we are currently meeting these requirements.</p> <p>To avoid further confusion we have provided a revised map of the Fishery Order which shows where the laying are located and the extent of the area outside these layings where licensed operators could gather mussels or oysters (see Annex C).</p>

Fishing Licences 2010-2011

Background

A number of fishing licences are issued each year to allow fishermen to gather mussels within the Menai Strait from the areas outside the cultivated areas in the Fishery Order. This paper sets out proposals for issuing these licences in 2010.

Recommendations

1. The Association should endorse the approach to issuing licences that has been in place since 2003.

1. Licensing requirements & procedure

- 1.1 The Menai Strait Oyster and Mussel Fishery Order 1962 (the "1962 Order") requires any person wishing to gather mussels from within the 1962 Order area outside of the leased shellfish lays to obtain a licence from the Grantee of the Order. A limited number of licences are issued annually to allow this.
- 1.2 In 2003, the previous Grantee, the North Western & North Wales Sea Fisheries Committee, codified its approach to issuing licences in the 1962 Order area. The NW&NWSFC approach is set out in Appendix 1.
- 1.3 The Board is invited to review and endorse this approach to issuing licences to fish in the 1962 Order area.

June 2010

Appendix 1.

NORTH WESTERN AND NORTH WALES SEA FISHERIES COMMITTEE

MENAI STRAIT OYSTER & MUSSEL FISHERY ORDER 1964:

CRITERIA FOR ISSUE OF LICENCES

1. Background

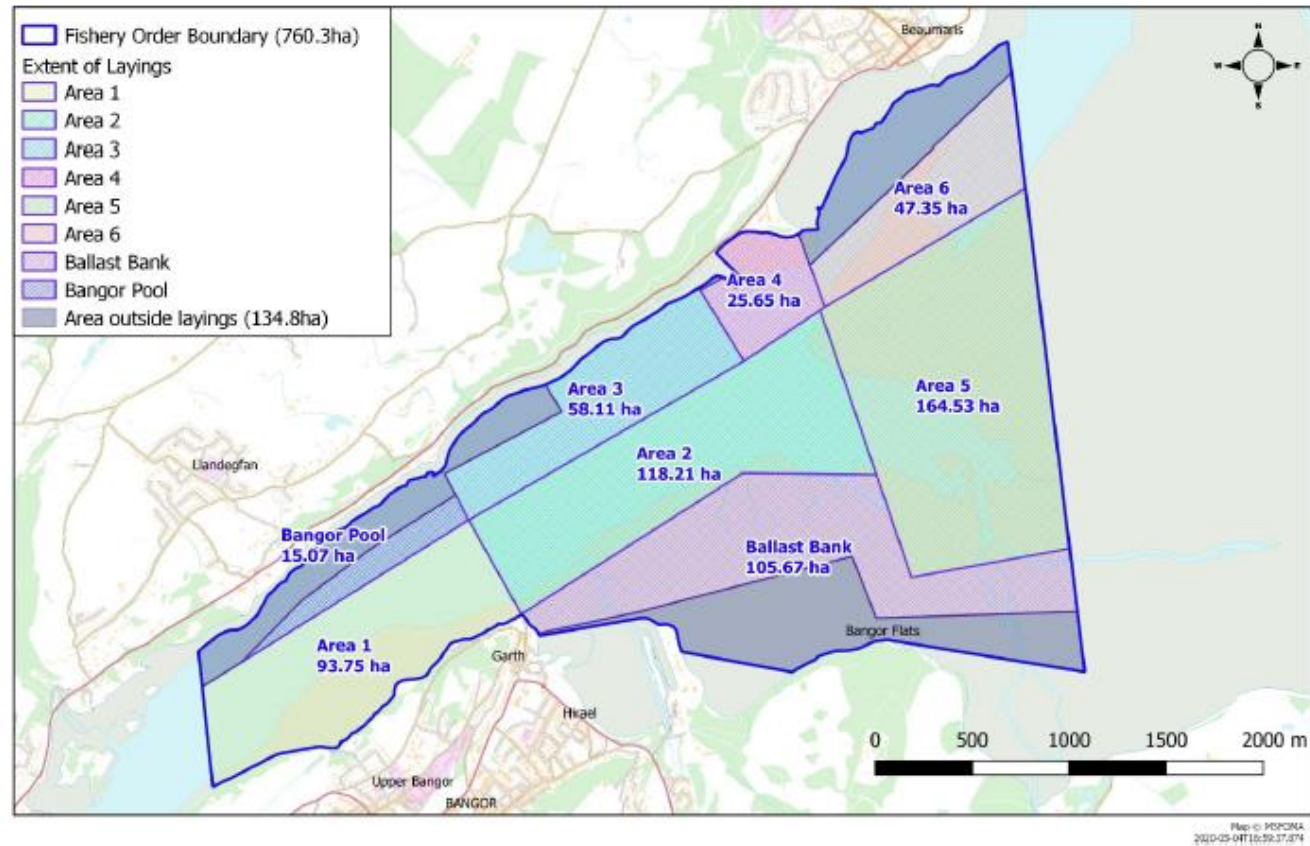
- 1.1 The Menai Strait Oyster and Mussel Fishery Order 1964 requires that any person wishing to fish for mussels in that part of the Fishery Order area known as Ballast Bank obtains a licence. This document sets out criteria, agreed by the Scientific & Byelaws Sub-Committee, to use in determining the issue of licences.

2. Criteria

- (a) Licences should be re-issued only to those fishermen who have fished for mussels at Ballast Bank during the previous year and who have complied with all of the licence conditions and regulations applying to the fishery.
- (b) Additional licences shall only be issued if the Committee agrees that the increased fishing effort is sustainable in terms of the mussel stocks at Ballast Bank, the quality of the environment, and the economic viability of mussel fishing in the Fishery Order.
- (c) If additional licences are to be issued, the Committee shall determine the number that shall be issued, having regard to the sustainable management of the fishery (as described in (c) above).
- (d) Additional licences shall be issued to fishermen who have written in asking to be placed on the waiting list. They shall be issued in chronological order, such that the fisherman who has been waiting longest is the first to be offered a licence.
- (e) Licences shall not be issued to any fisherman who is in debt to the Order, having failed to pay fully for a licence issued in any previous year.
- (f) The Committee shall not be informed of the personal details of any licence holder or fisherman on the waiting list, to ensure that the decisions taken are objective and are not prejudiced in any way.

JIM ANDREWS
Chief Executive
17th June 2003

Annex C – Updated map of the Fishery Order area with clearer shading of different areas



Annex C: Response to WG queries, June 2020

MSFOMA response to WG queries about the Regulated Fishery aspect of the Menai Strait Oyster and Mussel Fishery Order 1962.

Background

On 5th June 2020 some queries were received by the Menai Strait Fishery Order Management Association (MSFOMA) from Welsh Government officials concerning the application to create a new Order under the Sea Fisheries (Shellfish) Act 1967 in the eastern Menai Strait. MSFOMA had submitted an application for the “like for like” renewal of the Menai Strait Oyster and Mussel Fishery Order 1962 in August 2018. The response to these queries is set out overleaf.

MSFOMA note that all of the queries that have been raised by Welsh Government have been directed at aspects of the current Fishery Order that are currently showing no commercial activity: the Regulated Fishery aspect of the Order, which has not been active since 2012/13; and the new layings that were created in 2014.

MSFOMA believes that it is important to consider our responses within the context of how the Fishery has operated and developed over the past 30 years or so and also to look forward. The key point is that the flexibility of management between the Several and Regulated areas of the Fishery provides the ability to ‘future-proof’ the Fishery. For example it enables new layings to be established within the Order area and existing layings to revert to regulated areas in response to external factors such as market conditions, seed mussel availability and business investment. The Regulated Fishery also provides an opportunity for new entrants to participate in the Fishery and potentially provide resilience and succession to the several fishery as well as helping to develop local markets, economic activity and jobs. This aspect is in accordance with the principles of the Wellbeing of Future Generations (Wales) Act 2015 and contributes to achieving its seven well-being goals. MSFOMA also notes that under current Fishery Order legislation there is no requirement for a history of commercial activity to support an application and as far as we are aware there is no Welsh Government Policy to support this requirement.

MSFOMA’s Articles of Association set out the objects of the Company. Foremost among these are the object “*To protect, preserve and improve the shellfisheries of the Fishery Areas*”. It is in pursuit of this object that MSFOMA has permitted new layings to be established in the Fishery Order area, and has applied for a “like for like” replacement for the existing Fishery Order.

The history of the Menai Strait Oyster and Mussel Fishery Order 1962 shows that it took many years for reliable mussel cultivation methods to be developed in this area. Prior to the 1990s many different companies tried to cultivate mussels in the area unsuccessfully. The wisdom of both Welsh Ministers and the Grantee of the Order in persevering with the Order was ultimately rewarded by its success over the past 30 years which has made it the UK’s leading aquaculture site.

MSFOMA’s considers that the Fishery Order area is entering a phase of challenge and transition. The economic and environmental conditions that provided for its success over the past 30 years (frictionless trade with the EU and reliable wild seed mussel resources nearby) are changing. The Association considers that “like for like” renewal of the Order is vital to allow the fishing industry in North Wales the flexibility to respond to these challenges.

MSFOMA
June 2020

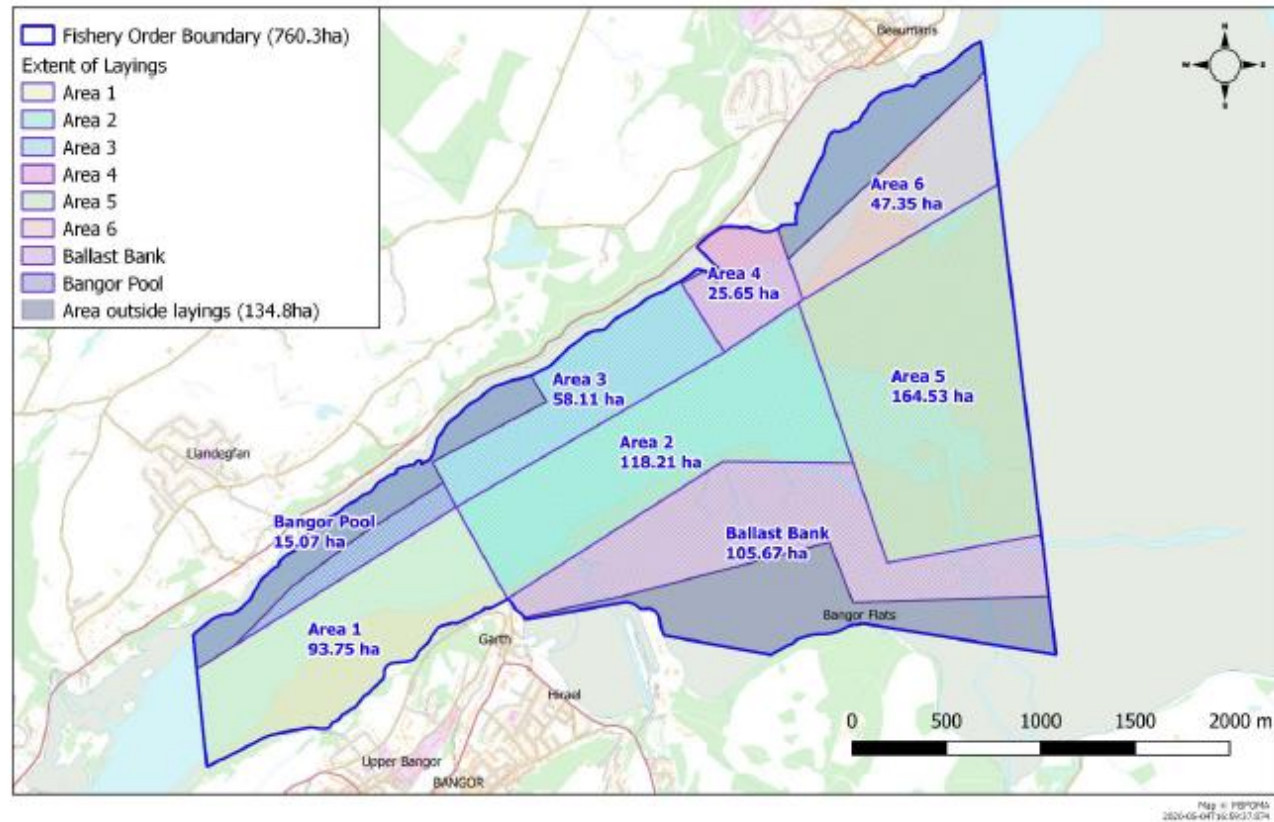
Response to specific queries

Query	Responses
1. When was the last permit issued? Is it currently feasible to hand gather in each of the areas? What is their current potential for hand gathering in their current status? Please can you estimate what weight of mussels could be gathered from each area per annum.	<p>i. The last permits were issued in 2012.</p> <p>ii. It is certainly feasible to hand gather in all parts of the Regulated Fishery (i.e. those areas not presently leased for cultivation), but we have not surveyed or estimated the biomass of mussels in these areas so do not know whether this would be an economically viable activity.</p> <p>iii. We are not certain of the current potential for hand gathering.</p> <p>iv. We cannot presently estimate what weight of mussels could be gathered from each or all of the areas.</p>
2. Within the scope of a regulating order – providing for the maintenance and regulation of an area of shore/seabed - do you propose any maintenance the areas? If so, please can you outline the steps involved and potential for gathering each site has after maintenance, once again in weight please.	<p>i. We do not propose any maintenance of any of the areas lying in the Regulated Fishery area. We do, however, propose to regulate access to areas outside layings in the new Fishery Order area.</p> <p>ii. See comment above.</p>
3. Are you in a position to provide a survey of each area, proposed monitoring requirements and TAC calculations?	<p>i. We have not carried out a survey of the Regulated Fishery.</p> <p>ii. Our past monitoring has required fishermen to provide monthly catch returns so that the quantity of shellfish removed from the fishery can be determined.</p> <p>iii. There has in the past been no TAC set for the fishery.</p>
4. We understand no permits for hand gathering have been issued since 2012. Please can you confirm whether those permits were for all of the 4 areas named above, or for individual areas. If individual please could you confirm which areas. If the permits issued in 2012 related only to the Ballast Bank & Bangor Flats area please confirm when the last permits were issued for the 3 areas to the North or North-west of areas 1,3 & 6?	<p>i. This is correct, no permits have been issues since the 2012-13 season.</p> <p>ii. MSFOMA and its antecedents have never distinguished between the 4 areas (see attached permit from the 2012-13 fishery). Permits allow for hand gathering in all areas outside the leased layings.</p> <p>iii. See response above.</p>

Query	Responses
5. How is it envisaged that the application process will enable new entrants to hand gathering?	i. MSFOMA adopted a policy for issuing licences to new entrants in 2010 and this has been provided in the application. An updated policy is due to be adopted at the next MSFOMA meeting in June 2020 and the proposed version is appended for information.
6. In relation to Ballast Bank was it the case that until 2014 only naturally occurring mussels plus overspill from areas 2 & 5 were available for hand gathering under permit in that area? Has cultivation of farmed mussels been undertaken since 2014? Did it occur across the entire area of Ballast Bank? Please can you confirm the terms under which the leaseholders of Ballast Bank operate? Including what annual fee they pay? Have they paid an annual fee each year since 2014?	i. Yes. ii. No. Cultivation has not been possible due to the very limited availability of seed mussels since 2014. iii. See above. iv. The lease for Ballast Bank is the same as for all other leased areas in the Menai Strait. v. The annual fee for Ballast Bank is currently £4,121.05 for the 2020-21 financial year. vi. No. In response to the unprecedented shortage of seed mussels both in Wales and North West England in the past 5 years, MSFOMA has resolved to permit the lay holder to defer their lease fee until they are able to cultivate this area. MSFOMA has been keeping this situation under review.
7. Are Ballast Bank and Bangor Pool comparable with/let on the same basis as the other 6 layings? Are they viable fisheries in the same way as the other areas, or are they more akin to regulated areas?	i. Yes. The leases and lease fees are identical. ii. Both Ballast Bank and Bangor Pool are considered likely to be viable as cultivation areas in the same way as the other layings in the Fishery Order area.

Map of Areas

Menai Strait Oyster & Mussel Fishery Order 1962 (as amended 1964)
Fishery Order & Cultivation Area Boundaries



Licence No: MSFOMA-2

MENAI STRAIT FISHERY ORDER MANAGEMENT ASSOCIATION

**MENAI STRAIT OYSTER AND MUSSEL FISHERY ORDER 1962 AS
AMENDED BY THE MENAI STRAIT OYSTER AND MUSSEL FISHERY
(AMENDMENT) ORDER 1964**

S.I.'s 1962 No. 705 and 1964 No. 550

LICENCE TO TAKE MUSSELS

1. UNDER THE PROVISIONS of Article 6 of the above Order

Mr D.W. Morris
36 Stadty Croes
Llanfair PG
Anglesey
LL51 5JR

is hereby licensed for the period **1st May 2012 to 30th April 2013** to take **MUSSELS** for commercial purposes from any part of the area of the Order except any area leased or proposed to be leased under Article 8 of the Order.

2. THIS LICENCE does not cover the taking of mussels for transplanting purposes and is subject to the following conditions:-
- (a) Mussels may only be taken by hand or with a hand rake and no dredge may be used.
 - (b) No mussels under 45 mm in length shall be taken.
 - (c) That the licensee provides the Menai Strait Fishery Order Management Association, by no later than the 15th day of **May 2013**, a mussel log sheet (as supplied by the Association). NIL returns are requested.
 - (d) This authorisation does not exonerate the holder from other sea fisheries legislation nor does it override or provide permission to go over or fish over private land.

.....
Dr Sue Utting, Chair

Date:1st May 2012.....

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

MSFOMA Policies for Licensed Fishery
Current Licensing Policy (Adopted June 2010)

Menai Strait Fishery Order Management Association

Item 9 on Agenda

Fishing Licences 2010-2011

Background

A number of fishing licences are issued each year to allow fishermen to gather mussels within the Menai Strait from the areas outside the cultivated areas in the Fishery Order. This paper sets out proposals for issuing these licences in 2010.

Recommendations

1. The Association should endorse the approach to issuing licences that has been in place since 2003.

1. Licensing requirements & procedure

- 1.1 The Menai Strait Oyster and Mussel Fishery Order 1962 (the "1962 Order") requires any person wishing to gather mussels from within the 1962 Order area outside of the leased shellfish lays to obtain a licence from the Grantee of the Order. A limited number of licences are issued annually to allow this.
- 1.2 In 2003, the previous Grantee, the North Western & North Wales Sea Fisheries Committee, codified its approach to issuing licences in the 1962 Order area. The NWS&NWSFC approach is set out in Appendix 1.
- 1.3 The Board is invited to review and endorse this approach to issuing licences to fish in the 1962 Order area.

June 2010

Appendix 1.

NORTH WESTERN AND NORTH WALES SEA FISHERIES COMMITTEE

MENAI STRAIT OYSTER & MUSSEL FISHERY ORDER 1964:

CRITERIA FOR ISSUE OF LICENCES

1. Background

- 1.1 The Menai Strait Oyster and Mussel Fishery Order 1964 requires that any person wishing to fish for mussels in that part of the Fishery Order area known as Ballast Bank obtains a licence. This document sets out criteria, agreed by the Scientific & Byelaws Sub-Committee, to use in determining the issue of licences.

2. Criteria

(a) Licences should be re-issued only to those fishermen who have fished for mussels at Ballast Bank during the previous year and who have complied with all of the licence conditions and regulations applying to the fishery.

(b) Additional licences shall only be issued if the Committee agrees that the increased fishing effort is sustainable in terms of the mussel stocks at Ballast Bank, the quality of the environment, and the economic viability of mussel fishing in the Fishery Order.

(c) If additional licences are to be issued, the Committee shall determine the number that shall be issued, having regard to the sustainable management of the fishery (as described in (c) above).

(d) Additional licences shall be issued to fishermen who have written in asking to be placed on the waiting list. They shall be issued in chronological order, such that the fisherman who has been waiting longest is the first to be offered a licence.

(e) Licences shall not be issued to any fisherman who is in debt to the Order, having failed to pay fully for a licence issued in any previous year.

(f) The Committee shall not be informed of the personal details of any licence holder or fisherman on the waiting list, to ensure that the decisions taken are objective and are not prejudiced in any way.

JIM ANDREWS
Chief Executive
17th June 2003

Menai Strait Fishery Order 1962 – Regulated Fishery Harvest Control Rules

Harvest Control Rules

1. Input controls

- a. Licences shall only be issued to permit the removal of mussels from the regulated fishery if the Association has determined that fishing effort is sustainable in terms of the mussel stocks in the fishery, the quality of the environment, and the economic viability of mussel fishing in the Fishery Order.
- b. The Association shall only issue licences after consultations have been carried out with Natural Resources Wales and after notifying the Welsh Ministers of the intent to issue the licences.
- c. Licences issued by the Association shall only permit the removal of mussels from the Regulated fishery by hand or using a rake.
- d. The Association shall determine the number of licences that shall be issued for the regulated fishery in accordance with the sustainable management of the fishery (as set out in paragraph 1.a).
- e. Any licences shall be issued on the 1st April of each year and will expire on 31st March of the following year.

2. Output controls: if it is determined that the Association should issue permits for the regulated fishery:-

- a. The Association may apply one or more of the following controls to the regulated fishery:-
 - i. Total Allowable Catch (TAC) to ensure that the fishery removals are sustainable;
 - ii. Spatial controls to limit the area where fishing is permissible; and
 - iii. Temporal controls to limit the period when fishing is permissible.
- b. The Association may determine a quota for each operator that may limit the quantity that they may gather in a specified period of time.
- c. Licensees shall be required to submit a return of fishing activity to the Association by the 10th day of the month following any month when fishing has taken place.
- d. The Association may close the fishery if the controls are breached or if necessary for the sustainable management of the fishery (as set out in paragraph 1.a).

Administration

1. Licences should be re-issued only to those individuals who have fished for mussels in the Fishery Order area during the previous year and who have complied with all of the licence conditions and regulations applying to the fishery.
2. Additional licences shall only be issued if the Association agrees that the increased fishing effort is compatible with the sustainable management of the fishery (as set out in paragraph 1.a).
3. If additional licences are to be issued, the Association shall determine the number that shall be issued, having regard to the sustainable management of the fishery (as set out in paragraph 1.a).
4. Additional licences shall be issued to

- a. Individuals who have previously held a licence in earlier years and who remain eligible to hold a licence, having complied with all of the licence conditions and regulations applying to the fishery; and if additional capacity remains, then to
 - b. Applicants who have written in asking to be placed on the waiting list. They shall be issued in chronological order, such that the applicant who has been waiting longest is the first to be offered a licence.
5. Licences shall not be issued to any applicant who is in debt to the Order, having failed to pay fully for a licence issued in any previous year.
 6. At any meeting to determine the issuing of licences, the Association shall not be informed of the personal details of any licence holder or fisherman on the waiting list, to ensure that the decisions taken are objective and are not prejudiced in any way.

MSFOMA
June 2020

Annex D: Legal advice to MSFOMA concerning wildlife legislation, May & June 2014.

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

Dear James

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

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

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

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

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

Yours sincerely,

Andrew

Andrew Oliver
Partner

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Andrew Jackson

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Please don't print this e-mail unless you really need to.

Opinion received from Andrew Oliver, May 2014.

In the Matter of the Sea Fisheries (Shellfish) Act 1967

OPINION

I have been asked to provide my legal opinion upon difficulties being faced by the Menai Strait Fishery Order Management Association (MSFOMA) in connection with their attempts to have granted to them a Several Order under the Sea Fisheries (Shellfish) Act 1967 (67 Act) in respect of The Menai Strait (West)

As I understand it, the Welsh Assembly Government (WG) (and more recently DEFRA) believe there is some form of conflict between the 67 Act and their obligations under the Habitats Directive (and the regulations resulting therefrom). I have read with interest all of the documentation that you have sent to me and also the White Paper issued by the WG. Obviously, we have not had the benefit of seeing any of the advice that WG legal advisers have produced in connection with this matter, but I actually believe they are seeing a problem that does not actually exist and which cannot be catered for within the terms of the 67 Act. As I have indicated in previous emails, I actually feel the answer to this issue is relatively simple.

It seems clear that the 67 Act was considered in some depth when the Marine and Coastal Access Act 2009 (MACA) was being drafted. The 67 Act has been amended by MACA not least by the insertion of Sections 1(6)-(14) to overcome the difficulties that were created in the Menai case (*Isle of Anglesey CC v Welsh Ministers [2009] 3 All E.R. 1110*). I have not researched deeply into Hansard or any of the other documentation that may be online with regard to what detailed considerations were given relating to the 67 Act when MACA was being drafted, but it would seem obvious that if there had been any perceived conflicts between the 67 Act and the Habitats Regulations the drafting of MACA and the amendments that MACA could have provided to the 67 Act would have been the obvious time to resolve any such differences.

It seems the issue really boils down to the fact that WG believe that the granting of an Order under the 67 Act for any reasonable length of time would be contrary to the obligations imposed upon them under the Habitats Regulations regarding the ongoing assessment of the impact of that Order on the environment, and in particular any European Marine Sites (EMS) affected by the Order. Further, they are of the view that if the Order had to be amended then the only route open to them is under Section 1(6) of the 67 Act to vary or revoke the Order, which is equivalent to drafting a new Order and brings into play all the procedures under Schedule 1 of the 67 Act. Whilst not spelt out as such, clearly the difficulties with invoking the procedures under Schedule 1 of the Act is that it opens up the application to scrutiny and objection from environmental campaigning groups which could delay the making of any revocation or amendment, and which would be in nobody's interest - neither the fishermen in terms of operational certainty nor the Minister in being able to act swiftly to counter any perceived threat to the environment.

This situation is not without precedent. Indeed, towards the latter half of last year I acted for a number of Inshore Fishery Conservation Authorities (IFCAs) in England in connection with a problem relating to the flexibility in making byelaws. As you will no doubt be aware, DEFRA imposed a requirement on IFCAs to make byelaws to protect EMS. This was in accordance with the "matrix" that they had published. One of the issues faced by IFCAs was how to respond rapidly to any variations that may be required once a byelaw had been made. The issue I was asked to advise on was the possibility of introducing flexibility into byelaws once made so that

those byelaws could contain varying spatial restrictions and the ability to review these restrictions and provide for the issue of permits and permit conditions under a base byelaw.

It seems to be that that situation is mirrored with regard to Orders made under the 67 Act. What effectively is being said by WG is that they cannot make an Order under the 67 Act as it is inflexible and does not provide for the terms of the Order to change to reflect environmental issues that may arise during the lifetime of the Order. I actually think that this is already permissible under the 67 Act. I note from the WG White Paper they suggest that the 67 Act will need to be amended so that they can provide for what they refer to as a Management Plan. My view is that the 67 Act does not stand in the way of the creation of a Management Plan, and that just as the IFCA's can make byelaws which then allow for a degree of flexibility in their operation, there is no reason why the same principles could not be applied to an Order under the 67 Act.

The starting point for this is Section 1(1) of the 67 Act. This states as follows:

- (1) Subject to the provisions of this section, the appropriate Minister may, on an application made to him in accordance with subsection (2) of this section, by Order provide for the establishment or improvement, and for the maintenance and regulation, of a fishery for shellfish of any kind specified in the Order, on any portion of the shore and bed of the sea, or of an estuary or tidal river, above or below, or partly above and partly below, low water mark and within waters adjacent to England and Wales to a distance of 6 nautical miles measured from the base lines from which the breadth of the territorial sea is measured (which shore and bed are in this Act referred to as the "sea shore") and, if desirable, for the constitution of a Board or Body Corporate for the purpose of the Order.

Section 2 then deals with the effect of the grant of a right of several fishery:

- (1) Where an Order under Section 1 of this Act confers a right of several fishery, then, subject to any restrictions and exceptions contained in that Order and to Section 12 of this Act, the grantee shall have within the limits of the fishery, or that part of the fishery within which the right is exercisable, the exclusive right of propagating, dredging, fishing for and taking shellfish of any description to which the Order applies and in the exercise of that right...."

Analysing these two sections, I would comment as follows;

Section 1 clearly states that the Order can provide for the "establishment or improvement, and for the maintenance and regulation" of a fishery. The Act clearly contemplates both several Orders and regulating Orders. My view is that on a proper construction of the Section 1 the words "establishment or improvement", and "for the maintenance and regulation" relate equally to both several and regulating Orders. I do not believe that "establishment and improvement" relates to several Orders and "maintenance and regulation" relates to regulating Orders. Therefore, it is my view that the aim of a several Order under Section 1 would be for not only the establishment and improvement but also for the maintenance and regulation of a fishery.

The Act is not prescriptive over the actual terms of the Order and what may or may not be included therein. I myself saw a number of Orders when working on the Menai litigation which contained specific terms and conditions to suit local situations and conditions. Furthermore, Section 2 clearly states that they can confer a right of several fishery subject to "restrictions and exceptions" contained in the Order. On that basis I cannot see that there is any difficulty in an Order being made which makes specific provision for the operation of a flexible management plan.

One of the issues that was raised when the IFCA's were trying to introduce a degree of flexibility into their byelaws was the issue of sub-delegation. The general view is that a law making body cannot sub-delegate its functions to a third party. Thus in the context of the IFCA byelaws when IFCA makes a byelaw relating to regulation of fishing within an EMS then that byelaw should be definitive and final on the issue. It would be objectionable to the law if once a byelaw was made there was a degree of flexibility granted to a third party in how that byelaw was operated and in terms of changes to the application of the byelaw. I am aware that this same issue has been raised in connection with 67 Act in that once the Order is made by the Minister it would be objectionable if issues that the Minister should have control of and should be within the process of making the Order could be sub-delegated to a third party. Thus, there would be an objection if an Order was made which then on the face of it provided for further decisions to be made by a third party, such as in this case, the Grantee.

I am pleased to say that after a good deal of toing and froing DEFRA backed down on the issue of sub-delegation in respect of IFCA byelaws and we are therefore now seeing a number of byelaws being approved by DEFRA which do provide for sub-delegation. In the case of the IFCA byelaws, this operates on the basis that the byelaw will provide for a complete restriction on fishing activities within the IFCA's district but then there can be partial alterations to those restrictions by the IFCA under controlled circumstances.

I do have the benefit of a briefing document produced by DEFRA on this issue and in particular how they could see sub-delegation work under the IFCA regime. I can see no reason why sub-delegation could not work with an Order made under the 67 Act in a similar way to allow for the operation of a Management Plan.

The DEFRA/MMO position on sub-delegation within IFCA byelaws is as follows:

1. that the IFCA should always consider using their byelaw making powers and that sub-delegation should not be used as a means to bypass the byelaw making procedure.
2. IFCA's can use permit conditions and notices to fill out detailed elements of the byelaw and that these can be made/reviewed/amended by the IFCA's provided that:
 - a) It is made clear on the face of the byelaw what condition/provisions are to be dealt with by permitting or notices;
 - b) Specific limits are applied to the conditions or sub-delegated detail on the face of the byelaw insofar as is possible;
 - c) the reason/trigger for the sub-delegation is clearly justified (particularly with respect to spatial closures to protect European Marine Sites and Marine Conservation Zones);
 - d) associated with the byelaw there are formal operational procedures which set out the processes, and circumstances, by which the IFCA will make/review/amend the conditions or notices that contain the detailed matter sub-delegated from a byelaw. It is important that the procedures are transparent, fair and always followed by the IFCA.

The briefing which I have then goes into considerably more detail regarding the matters outlined above.

My view, therefore, is that it would be within the Minister's power to make an Order under the 67 Act which provided for flexible management of the fishery. My view is that such flexible management would fall within the definition of maintenance and regulation under Section 1(1). It would in my view be necessary for the basis of the flexibility to be put in place at the time of the making of the Order and would effectively be a schedule to the Order. This would ensure compliance with the DEFRA advice set out a paragraph 2 above. The basis of flexibility would set out the clear and unambiguous procedures and circumstances in which the fishery is managed, and the way in which any decisions that must be taken under the flexible management regime I have not, at this stage, gone so far as to draft a potential flexible management regime clause as that would be beyond the remit of my instructions in this matter. However, it seems to me that this would be an appropriate way forward and should allow the Minister to make an Order for a period which was of sufficient duration to make the grantee's investment viable, and provide sufficient certainty going forward for the grantee, but would allow flexibility in the management of the fishery to cater for the Habitats Regulations being observed and complied with.

To summarise, it seems to me that there is no intrinsic legal obstacle to the creation of a Fishery Order under the 67 Shellfish Act within a European Marine Site. There seems to be no legal, scientific or practical reason why such an Order should be limited to a time period of 7 or fewer years. The law appears to me to allow for the development and perpetuation of aquaculture activities within European Marine Sites that would also be compatible with the requirements to protect and nurture the wildlife of such sites. The Minister in Wales is able to meet both his obligation to protect European wildlife and his national commitment to develop the shellfish industry in Wales using his existing powers.

It is my view that this is a concept that should be suggested to WG and I would be happy to develop that concept further with those who instruct me if that is necessary. As I have already indicated I have some considerable experience acting for IFCA's in drafting the byelaws that are compliant with the DEFRA guidance on sub-delegation.

I would be happy to discuss the contents of this advice with you over the telephone or alternatively, to meet with you at a convenient location.

Yours sincerely

Andrew C Oliver LLB
Partner
Andrew Jackson Solicitors
Hull

Annex E: Original procedure for issuing licences in the Regulated Fishery, 2010

Fishing Licences 2010-2011

Background

A number of fishing licences are issued each year to allow fishermen to gather mussels within the Menai Strait from the areas outside the cultivated areas in the Fishery Order. This paper sets out proposals for issuing these licences in 2010.

Recommendations

1. The Association should endorse the approach to issuing licences that has been in place since 2003.

1. Licensing requirements & procedure

- 1.1 The Menai Strait Oyster and Mussel Fishery Order 1962 (the "1962 Order") requires any person wishing to gather mussels from within the 1962 Order area outside of the leased shellfish lays to obtain a licence from the Grantee of the Order. A limited number of licences are issued annually to allow this.
- 1.2 In 2003, the previous Grantee, the North Western & North Wales Sea Fisheries Committee, codified its approach to issuing licences in the 1962 Order area. The NW&NWSFC approach is set out in Appendix 1.
- 1.3 The Board is invited to review and endorse this approach to issuing licences to fish in the 1962 Order area.

June 2010

Appendix 1.

NORTH WESTERN AND NORTH WALES SEA FISHERIES COMMITTEE

MENAI STRAIT OYSTER & MUSSEL FISHERY ORDER 1964:

CRITERIA FOR ISSUE OF LICENCES

1. Background

- 1.1 The Menai Strait Oyster and Mussel Fishery Order 1964 requires that any person wishing to fish for mussels in that part of the Fishery Order area known as Ballast Bank obtains a licence. This document sets out criteria, agreed by the Scientific & Byelaws Sub-Committee, to use in determining the issue of licences.

2. Criteria

- (a) Licences should be re-issued only to those fishermen who have fished for mussels at Ballast Bank during the previous year and who have complied with all of the licence conditions and regulations applying to the fishery.
- (b) Additional licences shall only be issued if the Committee agrees that the increased fishing effort is sustainable in terms of the mussel stocks at Ballast Bank, the quality of the environment, and the economic viability of mussel fishing in the Fishery Order.
- (c) If additional licences are to be issued, the Committee shall determine the number that shall be issued, having regard to the sustainable management of the fishery (as described in (c) above).
- (d) Additional licences shall be issued to fishermen who have written in asking to be placed on the waiting list. They shall be issued in chronological order, such that the fisherman who has been waiting longest is the first to be offered a licence.
- (e) Licences shall not be issued to any fisherman who is in debt to the Order, having failed to pay fully for a licence issued in any previous year.
- (f) The Committee shall not be informed of the personal details of any licence holder or fisherman on the waiting list, to ensure that the decisions taken are objective and are not prejudiced in any way.

JIM ANDREWS
Chief Executive
17th June 2003

Annex F: Proposed new procedure for issuing licences in the Regulated Fishery, 2020

Menai Strait Fishery Order 1962 – Regulated Fishery Harvest Control Rules

Harvest Control Rules

1. Input controls

- a. Licences shall only be issued to permit the removal of mussels from the regulated fishery if the Association has determined that fishing effort is sustainable in terms of the mussel stocks in the fishery, the quality of the environment, and the economic viability of mussel fishing in the Fishery Order.
- b. The Association shall only issue licences after consultations have been carried out with Natural Resources Wales and after notifying the Welsh Ministers of the intent to issue the licences.
- c. Licences issued by the Association shall only permit the removal of mussels from the Regulated fishery by hand or using a rake.
- d. The Association shall determine the number of licences that shall be issued for the regulated fishery in accordance with the sustainable management of the fishery (as set out in paragraph 1.a).
- e. Any licences shall be issued on the 1st April of each year and will expire on 31st March of the following year.

2. Output controls: if it is determined that the Association should issue permits for the regulated fishery:-

- a. The Association may apply one or more of the following controls to the regulated fishery:-
 - i. Total Allowable Catch (TAC) to ensure that the fishery removals are sustainable;
 - ii. Spatial controls to limit the area where fishing is permissible; and
 - iii. Temporal controls to limit the period when fishing is permissible.
- b. The Association may determine a quota for each operator that may limit the quantity that they may gather in a specified period of time.
- c. Licensees shall be required to submit a return of fishing activity to the Association by the 10th day of the month following any month when fishing has taken place.
- d. The Association may close the fishery if the controls are breached or if necessary for the sustainable management of the fishery (as set out in paragraph 1.a).

Administration

1. Licences should be re-issued only to those individuals who have fished for mussels in the Fishery Order area during the previous year and who have complied with all of the licence conditions and regulations applying to the fishery.
2. Additional licences shall only be issued if the Association agrees that the increased fishing effort is compatible with the sustainable management of the fishery (as set out in paragraph 1.a).
3. If additional licences are to be issued, the Association shall determine the number that shall be issued, having regard to the sustainable management of the fishery (as set out in paragraph 1.a).
4. Additional licences shall be issued to

- a. Individuals who have previously held a licence in earlier years and who remain eligible to hold a licence, having complied with all of the licence conditions and regulations applying to the fishery; and if additional capacity remains, then to
 - b. Applicants who have written in asking to be placed on the waiting list. They shall be issued in chronological order, such that the applicant who has been waiting longest is the first to be offered a licence.
5. Licences shall not be issued to any applicant who is in debt to the Order, having failed to pay fully for a licence issued in any previous year.
6. At any meeting to determine the issuing of licences, the Association shall not be informed of the personal details of any licence holder or fisherman on the waiting list, to ensure that the decisions taken are objective and are not prejudiced in any way.

MSFOMA
June 2020

Annex G: Updated timetable for progressing the renewal of the Menai Strait Oyster and Mussel Fishery Order 1962.

Year	Quarter	Activities	Plan / Update / Progress
2018	Q1	a) Prepare application for renewal of Fishery Order	<ul style="list-style-type: none"> Draft application forms presented to MSFOMA meetings in January & February.
		b) Ongoing liaison with stakeholders, NRW, land owners.	<ul style="list-style-type: none"> Consultation carried out with public bodies (February 2018) Meetings held with Anglesey Boat Company, Ynys Môn County Council (landowners).
	Q2	c) Prepare application for renewal of Fishery Order	<ul style="list-style-type: none"> Review of application; discussions of requirements with Welsh Government.
	Q3	d) Submit formal application for renewal of Fishery Order.	<ul style="list-style-type: none"> Application submitted in August 2018.
		e) Plan liaison with wider stakeholder community (public, recreational users, NGOs etc)	<ul style="list-style-type: none"> Organisations have been identified.
	Q4	f) Liaison with wider stakeholder community. g) Respond to WG queries about application.	<ul style="list-style-type: none"> Initial approaches made to key organisations. Arrangements for stakeholder events to be agreed by MSFOMA.
2019	Q1/Q2	h) Ongoing stakeholder liaison. i) Respond to WG queries about application.	<ul style="list-style-type: none"> Attend Caernarfon Harbour Trust meeting. Liaison with WG officials about application
		j) Respond to WG queries about application	<ul style="list-style-type: none"> Meeting held with Royal Anglesey Yacht Club. Ongoing liaison with WG officials
2020	Q1/Q2	k) Respond to WG queries about application	<ul style="list-style-type: none"> Ongoing liaison with WG officials
	Q3/Q4	l) (Possible) Formal consultation on Fishery Order. m) Progress application process. n) Respond to consultation feedback.	
2021	Q1/Q2	o) Progress application process. p) Address consultation issues either informally or through Public Inquiry.	

Year	Quarter	Activities	Plan / Update / Progress
	Q3/Q4	q) Progress application process.	
2022	1 st April	r) DEADLINE FOR NEW ORDER	

Menai Strait West Fishery Order Application

Background

In 2012 the Association resolved to work with shellfish farmers from the western Menai Strait to renew the Menai Strait West Fishery Order, which lapsed in 2008. An application for renewal of this Fishery was submitted to Welsh Government in 2013. The renewal of the Order is essential to secure the future development of shellfish farming in this area.

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

This report provides an update on recent progress.

Recommendations

1. That the report is received
2. That MSFOMA and WG should continue to work together with the aim of producing a revised draft of the proposed new Fishery Order at the earliest opportunity.

1. Update on Renewal of Fishery Order

- 1.1 The Menai Strait (West) Fishery Order was established in 1978 for a period of 30 years. This Fishery Order provided the basis for the development of some oyster and mussel farming activity in the western Strait. The Order lapsed in 2008, preventing the further development of these businesses. An application for renewal of the Order was submitted to Welsh Government by MSFOMA in 2013.
- 1.2 After a series of discussions with Welsh Government officials in the years following this application, a draft Fishery Order was published for consultation in 2015. This consultation generated many objections from the local community. The Association worked closely with the objectors during the period 2015-17 to allay and address their concerns. In July 2017 the Chair of the Association wrote to the Cabinet Secretary to ask her to determine the application for the Fishery Order.
- 1.3 This report provides an update on recent progress with this application.

2. Update

- 2.1 At the March 2019 meeting of the Association it was reported that the Minister for Energy, Planning and Rural Affairs Lesley Griffiths AM had made a commitment to complete the process for making a new Menai West Fishery Order by August 2019.
- 2.2 At the Association meeting in September 2019 WG officials indicated that they were working with lawyers to determine the conditions that would be associated with the Fishery Order. It was anticipated that this would meet the December 2019 deadline proposed by the Minister.

- 2.3 In November 2019 WG officials provided some informal feedback from their legal advisors concerning a condition that could be included in the Order, requiring that Ministerial consent was given for leases before they were issued. This proposal was discussed at the last MSFOMA meeting and considered to be consistent with the approach set out in the 2015 Draft Order.
- 2.4 At the December 2019 Association meeting some concerns were raised by WG officials about the mitigation approach for Pacific oysters. At the April 2020 meeting it was reported that work was still underway to address these issues.
- 2.5 MSFOMA representatives have discussed the issues concerning Pacific Oysters in detail with WG and NRW officials on several occasions (on 17th December 2019, 31st January, 13th March, 7th April 2020, 5th May & 2nd June). The issues arising from these discussions are considered in more detail below.

3. Pacific Oysters

- 3.1 Welsh Government is still working to determine an appropriate approach to managing and mitigating the risk of Pacific oysters (*Crassostrea gigas*) from cultivation areas becoming established in the wild as “feral” oysters (see the previous agenda item for some background on this issue).
- 3.2 At the most recent discussion of this matter on 2nd June it was reported that WG Science are doing a desk study (“Pacific Oyster Review”) of the situation in the Menai Strait, assisted by the University of Bangor. This will provide the evidence base for informing the Habitat Regulations Assessment (HRA) of leases for Pacific oyster cultivation in the Strait. The report is expected in the 1st week of July.
- 3.3 In response to a request from MSFOMA, WG legal advisors consider that it would be best not to change the reference in the Draft Order from “Pacific Oysters” to “Oysters” as this could be regarded as a material change to the Order that could undermine its integrity.

4. Consultation with stakeholders

- 4.1 It has been noted at meetings for over a year that the Association is keen to engage with stakeholders to raise awareness of the content of a new Fishery Order at the earliest opportunity. In the absence of certainty about what may be in a new Fishery Order, it is still not considered prudent to initiate stakeholder engagement.
- 4.2 As noted in the previous agenda item, the Covid-19 pandemic may influence the Association’s consultation strategy and it may be appropriate to use electronic media rather than more conventional methods to liaise with stakeholders in the area.

MSFOMA Secretariat
June 2020