

# **Menai Strait Fishery Order Management Association**

## **Agenda & Papers- 2<sup>nd</sup> December 2020, 1030 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 & declarations of interests ([report](#))
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 - further leak
    - 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 (all are the 2<sup>nd</sup> Wednesday of the month):-
  - a. Q1 2021 - 10<sup>th</sup> March
  - b. Q2 2021 - 9<sup>th</sup> June
  - c. Q3 2021 - 8<sup>th</sup> September
  - d. Q4 2020 - 8<sup>th</sup> December [AGM]

# **Menai Strait Fishery Order Management Association**

**Meeting, 16<sup>th</sup> September 2020  
Zoom Video Conference Call**

## **Minutes**

### **Attendance**

#### *Members*

Alan Winstone\*  
Ioan Thomas  
Lewis le Vay

Chair  
Gwynedd County Council  
Bangor University

#### *Observers*

Gareth Bevington  
James Wilson\*  
Julian Bray  
Kate Griffith  
Kim Mould  
Michelle Billing  
Trevor Jones

Welsh Government  
Bangor Mussel Producers Ltd  
Welsh Government  
Natural Resources Wales  
BMWAG  
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 everyone to the meeting. The Chair proposed, and it was agreed, that items 11 & 12 on the agenda should be discussed immediately after the minutes of the previous meeting to allow full participation by Gareth Bevington (Welsh Government) who had a pressing appointment later in the day.

### **2. Apologies**

Gareth Roberts  
Howard Mattocks  
Iwan Huws  
Keith Andrews\*

Bangor City Council / Gwynedd C.C.  
Beaumaris Town Council  
Isle of Anglesey County Council  
Licensed hand pickers

### **3. Declarations of Interest**

Because this meeting was conducted as a video-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 17<sup>th</sup> June 2020 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 June meeting were discussed:-

### **Sand in Penrhyn Dock**

James Wilson has discussed this recently with the Estate's land agent. It was understood that the company that had been leasing the dock and unloading sand had relinquished its lease. The accumulation of sand was restricting the tidal window for accessing the dock. It was agreed that further efforts should be made to encourage removal of this sand.

**Action: JW, Secretariat**

### **Articles of Association**

The Articles had been signed and returned to the Association's accountants for posting on the Companies House website. This copy of the Articles was also posted on the Association's website.

### **Hydrographic Office / Admiralty Charts**

The Hydrographic Office have confirmed that the shellfish beds in the eastern Menai Strait are now included in the New Edition of GB Chart 1464 (Menai Strait).

### **Bangor pier**

The Secretariat had contacted the Pier Master, who had sent his apologies for the meeting. The Secretariat would make contact to confirm the current plans for reinstating the tea rooms on Bangor Pier.

**Action: Secretariat**

### **6. Register of Interests**

No changes were recorded.

### **7. Financial Update**

The financial report was accepted. It was noted that both income and expenditure had been lower than expected for the first quarter of the year.

It was agreed that the Secretariat should send reminders to debtors for unpaid invoices.

**Action: Secretariat**

It was agreed that the Secretariat should contact Bangor City Council and Beaumaris Town Council and ask them to nominate possible good causes for receipt of a donation from the MSFOMA Community Fund, which would be discussed at the next meeting.

**Action: Secretariat**

VAT registration was discussed. It was agreed that the Association should register for VAT.

**Action: Secretariat**

It was agreed that in order to facilitate management of the Association's accounts, the Secretariat should apply for access to the Association's electronic banking.

**Action: Secretariat**

## **8. Public Profile of the Association**

The number of tweets and profile of the Association continues to grow steadily. It now has over 1,000 followers and had over 45,000 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@gmail.com](mailto:avdsolivier@gmail.com)).

It was also agreed that appropriate 'headlines' from today's meeting would be produced and sent to Andy Olivier to use as tweets.

**Action: Chair, Secretariat**

## **9. Welsh Government Activity**

The Secretariat's report was noted and received.

### **a) Meetings**

A meeting of the Welsh Marine Fisheries Advisory Group (WMFAG) had taken place the evening before the Association meeting.

Julian Bray (WG) reported that WG staff have been working hard to maintain progress over the summer despite the challenges posed by Covid. The combined effects of Covid and Brexit were however obstacles to progress.

Trevor Jones is a member of WMFAG and expressed concern that many specific issues raised at WMFAG (notably by Mark Roberts from the scallop industry) had not been addressed.

No meetings of any other WG fisheries groups had taken place

### **b) Consultations**

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

### **c) Fisheries Bill**

The Secretariat provided a brief summary of the concerns arising from the Fisheries Bill: the key issue being that the timescales proposed for various instruments under this new legislation (which would apply without distinction to both fisheries and aquaculture) could clash with Fishery Orders made under the Sea Fisheries (Shellfish) Act 1967.

Since the last meeting WG fisheries officials had clearly stated that it was not the intention that the Bill should interfere with Fishery Orders. Nonetheless, members of the Association noted that other WG communications (such as the Minister's responses to comments on the Brexit & Our Seas consultation) suggested that there may be a range of views within Government.

James Wilson and the Secretariat had corresponded with the Shellfish Association of Great Britain about this. SAGB had raised this issue with Defra officials, who

had apparently been disinterested and had suggested that if SAGB wanted any changes to the Bill they should speak to politicians.

After some discussion of this matter it was agreed that SAGB should be asked to raise this issue with Defra officials again, and if necessary politicians should be asked to seek assurances from Ministers and / or to propose amendments to the Bill.

**Action: Secretariat & James Wilson**

#### **d) WG officials**

It was noted that regular engagement with WG officials has continued and that this was proving to be beneficial.

Kim Mould reported that WG officials had processed a request for seed mussel dredging at Caernarfon Bar very swiftly. Industry operators were very grateful for this.

#### **10. NW IFCA Activity**

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

There was great disappointment that the optimistic report received in June about abundant seed mussel resources in Morecambe Bay had not led to fishing opportunities. It was noted that this was not due to IFCA staff, but a result of objections that were made to the IFCA by shellfish gatherers from Morecambe Bay who had asserted that the seed mussel settlement in the Bay was likely to persist. Within 2 weeks of this assertion, the seed mussels had been swept away.

Trevor Jones reported that he was hoping to be able to take the IFCA's Senior Scientist out to visit the remaining mussel beds before its next meeting (on 18<sup>th</sup> September), in the hope that this could result in approval for some seed mussel dredging at these locations.

It was considered that it would be appropriate to await the outcome of the next IFCA meeting prior to responding to the IFCA on this issue. All felt that the key concern was that in the absence of a clear policy framework and set of decision rules for managing this resource, the IFCA and its staff were vulnerable to vocal local populist pressure determining the outcome of management decisions, rather than informed scientific evidence.

#### **11. Menai Strait East Fishery Order**

The Chair introduced this item. It was noted that the Association had applied for a new Fishery Order in the eastern Menai Strait in August 2018. The existing Order is due to expire on 31<sup>st</sup> March 2022. Progress with the new Order had fallen behind schedule during 2020. At a recent meeting with WG Officials, the Chair and Secretariat had been informed that further delays were likely to occur. Both the Chair and Secretariat were concerned that these delays could create a risk that a new Order might not be ready before the existing Order lapses.

Gareth Bevington stated to the meeting that Welsh Government are committed to delivering a new Order for the eastern Menai Strait on time. Past delays were regrettable, but the past could not be changed. Fishery Orders remain a priority for Welsh Government.

There was a discussion of the issues associated with the renewal of the Order and the grave implications of it not being renewed on time. Ioan Thomas expressed his dismay from a local authority perspective about the delays in the process of creating a new Order.

**a) Leasing and licensing procedures**

The Association recognised the need to revise and update the procedures in place for issuing leases and licences under the existing Order. The draft procedures that were presented to the meeting were endorsed. The Secretariat was asked to publish these procedures on the MSFOMA website, along with the application forms (both the PDF and electronic application form).

**Action: Secretariat**

**b) Engagement with stakeholders**

It was agreed that engagement with stakeholders was important, but there was still some uncertainty about the timetable for progress, which made it difficult to make firm plans to progress this. It was agreed that the Chair and Secretariat should work together to identify and progress opportunities for this.

**Action: Chair & Secretariat**

## **12. Menai Strait West**

The report was received and discussed.

WG officials reported that WG Science & Policy staff are still investigating the issues arising from the cultivation of Pacific oysters in the Menai Strait. WG Science staff have been working on this. The policy implications of their findings are still being evaluated, particularly with regard to coordinate the policy response with other UK administrations. The regular meetings between MSFOMA and WG officials had been suspended whilst this issue was being resolved.

There was a discussion about the status of Pacific oysters in the Menai Strait. It was noted that there have been small numbers of feral Pacific oysters in the area for some time. It was understood that the Defra process for determining a policy had been held up.

Kate Griffith (NRW) offered to make enquiries among her colleagues about the NRW response to any queries on this issue.

**Action: Kate Griffith**

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

**Action: Secretariat**

## **13. Funding proposals**

Lewis LeVay provided a brief update on the projects being progressed by the University that are relevant to MSFOMA. Fieldwork carried out by the University had resumed in late July after lockdown measures were lifted and safe working procedures had been developed. All staff are working from home when their attendance in the workplace is not necessary.

The Menai Offshore Subsurface Shellfish System (MOSSS) trials have continued. Spat collection lines have been deployed and recovered, and work to determine the optimal location and depth for spat collection continues. The University is grateful for the practical assistance that the shellfish operators have provided for this work.

The University has recently been approached by a consortium led by Exeter University about integrating mariculture and MPAs. It would seem that the Menai Strait could provide a good case study for this project. Lewis agreed to keep MSFOMA informed about progress.

**Action: Lewis Le Vay**

## **14. Fishery Management Issues**

### **1. Coastal / marine developments**

#### **i. Bangor Pier**

The pier master had given his apologies to the meeting. It was agreed that an update should be sought from the pier master.

**Action: Secretariat**

#### **ii. 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. Bangor to Treborth rising main**

A new leak in this sewer had been reported by NRW. Work to repair the sewer was due to start on the day of the MSFOMA meeting. James Wilson has raised concerns with NRW about the impact that a sewage leak could have on shellfish hygiene classification.

#### **ii. Shellfish hygiene classification**

The industry have been working closely with environmental health officers to try to maintain the shellfish hygiene classification of the area. During the period of the Covid-19 lockdown these officials had been unable to collect and analyse shellfish samples from the Strait.

An accelerated programme of sampling is now being carried out to try to retain the classification, but there is a real risk that because this is being carried out in the autumn (with higher rainfall and thus a greater risk of CSO discharges), the classification may suffer. This, in turn, could impact the ability to export mussels from the Menai Strait to Europe after Brexit (because the indications are that live shellfish will only be eligible for export to the EU if they have an "A" classification).

#### **iii. Bonamia**

No further update.

#### **iv. Invasive Alien Species (IAS) / Invasive Non Native Species (INNS)**

Kate Griffith reported that a subtidal survey for *Crepidula fornicata* had been planned for April, but had been prevented by the Covid-19 lockdown.

NRW staff have looked for specimens in intertidal areas, but had not found shells or living individuals.

In lieu of a subtidal survey, NRW have asked SeaSearch for any records of *C. fornicata* in the area.

The Secretariat reported that he had circulated information about reporting occurrences of *Crepidula fornicata*. All were asked to look out for shells and individuals around the Strait.

**Action: All**

It was agreed that it would be useful to share information about the identification of *C. fornicata* on the Association's Twitter feed.

**Action: KG / Secretariat**

**v. Norovirus**

Lewis Le Vay reported that the University's Shellfish Centre is collaborating with SAGB to host an online conference about the proposed regulation of Norovirus in shellfish. The conference is due to take place on the 14<sup>th</sup> October 2020. Details about the conference, including registration details are available at the Shellfish Centre website ([here](#)).

**vi. Shellfish hygiene**

No updates

**15. Any Other Business**

**a) Correspondence**

No additional correspondence had been received.

**16. Dates for next meetings**

The dates for the remaining meetings in 2020 were confirmed as:-

- e. Q4- 2<sup>nd</sup> December 2020 [AGM]



## Summary of Actions

Item	Action	Responsibility
1.	Sand in Dock -contact Penrhyn Estate to raise further concerns about this issue & propose site visit.	JW / Secretariat
2.	Bangor pier - ask pier master for update about tea room proposal.	Secretariat
3.	Finances - send reminders to debtors.	Secretariat
4.	Community Fund - invite local authorities to apply for funding up to a total of £2,000 this FY.	Secretariat
5.	VAT - progress registration of Association	Secretariat
6.	Social media - Secretariat to send a summary of headlines from today's meeting, and all to send any items suitable for the MSFOMA Twitter feed to Andy Olivier ( <a href="mailto:avdsolivier@gmail.com">avdsolivier@gmail.com</a> ).	All
7.	Fisheries Bill - continue discussion about potential impact of the Bill with SAGB.	Secretariat
8.	Menai East - publish new procedures and application forms for leases & licences on MSFOMA website.	Secretariat
9.	Menai East - maintain monthly discussions with WG officials to ensure progress is maintained.	Secretariat
10.	Menai East - progress stakeholder engagement as far as possible.	Secretariat
11.	Menai West - enquire about NRW input to <i>C. gigas</i> discussions.	Kate Griffith
12.	Menai West - maintain regular discussions with WG officials to ensure progress is maintained.	Secretariat
13.	MPA & Aquaculture project - keep MSFOMA informed about progress.	Lewis Le Vay
14.	Look out for <i>Crepidula fornicata</i> and report sightings of any shells / individuals.	All
15.	Share information about <i>C. fornicata</i> ID for circulation on the MSFOMA Twitter feed.	Kate Griffiths & Secretariat.
16.	Date for next meeting - 2 <sup>nd</sup> December 2020	Secretariat

## **Register & Declarations of Interest**

### **Background**

The Association has procedures in place to manage the risk of either Members or Directors using their role on the Association to further their own interests. These include requirements in the Association's Articles; a standing item on each MSFOMA meeting agenda to allow for the declaration of interests; and a Register of Interests that is presented on the Association's website (follow a resolution on this matter in June 2019).

The purpose of this report is to review the processes and procedures in place for registering and declaring interests and to check that the current Register of Interests is up-to-date.

### **Recommendations**

1. That this report is accepted.
2. That MSFOMA should retain the standing agenda item at the start of each meeting to allow all participants to make a verbal declaration of their interests.
3. That MSFOMA should maintain a Register of Interests and publish this Register on its website.
4. That all participants should review the current Register of Interests (Annex B of this report) and advise the Secretariat of any changes that should be made.

### **1. Context**

- 1.1 One of the principles of public administration in the UK is that organisations and institutions which have been established by the Government to discharge a statutory function do so without acting to benefit the Members or Officers of that institution.
- 1.2 When MSFOMA was established, the potential for conflicts of interest was addressed by including a procedure for registering and reviewing potential conflicts of interest in the Articles of Association (at §18 of the Articles).
- 1.3 The procedure set out in the Articles of Association is in addition to the requirements that apply to Directors of the Association under the Companies Act 2006.
- 1.4 For many organisations and institutions the Government has set out statutory rules and formal guidance which requires that potential "conflicts of interest" are declared and evaluated. Such procedures ensure that individuals do not participate in decisions in which they have some kind of undeclared prejudicial interest.
- 1.5 The Association is a unique organisation, and there are no formal rules in place that apply directly or specifically to its activities. During 2019 the Association agreed that procedural changes should be made to ensure that its business is conducted in a manner that is consistent with that of comparable organisations.

### **2. Update**

- 2.1 Some proposals for recording Members' interests and options for a Code of Conduct were discussed at meetings of the Association during 2019. It was agreed that MSFOMA should have a standing agenda at all meetings to allow for the declaration of

interests, and that all participants in meetings (Directors, Members, Observers & Advisors) should be asked to complete a proforma which confirms their commitment to the “Nolan Principles” of public life and allows for interests to be declared. A copy of this proforma is attached at Annex A to this report.

- 2.2 It was further agreed in 2019 that the MSFOMA website will be updated with a list of Members’ key interests. A copy of the current list is attached at Annex B to this report.
- 2.3 All participants in the Association’s activities are asked to review the list at Annex B and to advise the Secretariat of any changes that should be made (i.e. any new interests that should be declared or any previously declared interests that are no longer current).

### **3. Duties of Directors**

- 3.1 Directors of the Association are reminded of their duties under the Companies Act 2006, which are, briefly:-
  - a) Duty to act within powers (§171)
  - b) Duty to promote the success of the company (§172)
  - c) Duty to exercise independent judgement (§173)
  - d) Duty to exercise reasonable care, skill & diligence (§174)
  - e) Duty to avoid conflicts of interest (§175)
  - f) Duty not to accept benefits from third parties (§176)
  - g) Duty to declare interest in proposed transaction or arrangement (§177), which may be exercised by:-
    - i. Verbal declaration at a meeting of the directors (§177)
    - ii. Written notice (by post or e-mail to the other directors) (§184)
    - iii. General notice by the director of an interest in a body corporate or firm or a connection with a specified individual (§185)
  - h) There may also be a duty to declare an interest in existing transactions or arrangements if the director has not declared them previously under §177 (§182).
- 3.2 Welsh Government officials have highlighted the need to ensure that these and other aspects of the Companies Act are complied with (see Annex C to this report).

MSFOMA Secretariat  
November 2020

**Annex A:** Copy of MSFOMA “Statement of Interests” proforma and list of the “Nolan Principles”.

### MSFOMA Statement of Interests

Name	
Organisation / Affiliation	
Statement of Interests <sup>1</sup>	
I agree to abide by the “Nolan Principles”* for holders of public office with respect to selflessness, objectivity, accountability, openness, honesty and leadership.	
Signed	
Date	

### \*The Nolan Principles

#### 1. Selflessness

Holders of public office should act solely in terms of the public interest.

#### 2. Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

#### 3. Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

#### 4. Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

#### 5. Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

#### 6. Honesty

Holders of public office should be truthful.

#### 7. Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

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<sup>1</sup> Please include a brief summary of what you / your organisation does, and list any interests that are relevant to shellfish farming in the Menai Strait.

**Annex B:** Current list of interests declared on the MSFOMA website (as of 25<sup>th</sup> November 2020).

**MSFOMA**

*The Menai Strait Fishery Order  
Management Association*

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**Statement of Interests**

The participants in MSFOMA meetings listed below have all agreed to abide by the "[Nolan Principles](#)" for holders of public office with respect to selflessness, objectivity, accountability, openness, honesty and leadership. For each participant a brief statement of their interests is provided.

**MSFOMA Members**

Members of the Association are entitled to attend meetings and vote on motions. The Members' statements of interest are summarised below.

**Alan Winstone, Chair\***

Alan has over 30 years of experience working in Fisheries Science and environmental management across Wales. At the Environment Agency Wales Alan was responsible for Fisheries Enforcement and management in North Wales for 15 years and led on the introduction of a Regulating Order for cockles in the Dee Estuary which resulted in the Fishery achieving MSC accreditation. Since retiring in 2014 has been actively involved in the Rivers Trust movement in Wales and is Chairman of the North Wales Rivers Trust.

**Interests**

- Chairman, Trustee and Director of the North Wales Rivers Trust
- Director and Trustee of Afonydd Cymru.

**Professor Lewis Le Vay, Bangor University**

- Research lead for a range of projects, some of which involve partnership working or co-funding from the shellfish industry.
- Member of the Shellfish Association of Great Britain

**James Wilson, Bangor Mussel Producers Ltd\***

James has worked in many different roles in the seafood industry over the past 25 years, including the National Federation of Fishermen's Organisations, Bord Iascaigh Mhara (BIM), Department of Fisheries and Oceans Pacific Region and as a researcher at CEMARE, University of Portsmouth. He has degrees in Marine Biology, Fisheries Economics, and Law. James is a founding Director of the Bangor Mussel Producers Ltd and MSFOMA. He is also director of Deepdock Ltd, one of the shellfish farming companies in the eastern Menai Strait. He is actively involved in various Committees and Associations (listed below), was a Board Member of Seafish from 2005-18, and has previously Chaired the Welsh Sea Fisheries Advisory Committee and the Shellfish Association of Great Britain Mollusc Committee.

**Interests**

- Mussel farmer, interested in all aspects associated with shellfish farming in the Fishery Order
- Board Member, Shellfish Association of Great Britain (2015-present)

- Member of the Welsh Food Advisory Committee and Food Standards Agency (FSA), so interested in food safety issues (2017-present).
- Board Member of Welsh Food & Drink Industry Board (FDIBW), so interested in matters of food policy and their application in a Welsh context (2015-present).

**Keith Andrews, Menai Mussels Ltd\***

- No interests to declare.

**Ioan Thomas, Gwynedd County Council**

- Member of Gwynedd Council
- Member of Caernarfon Town Council
- Member of Caernarfon Harbour Trust
- Member of Plaid Cymru
- Member of Caernarfon Sailing Club
- Member of Prospect (Trade Union)
- Member of RICS (retired)

**Observers**

Observers are representatives of organisations that are invited to attend meetings and observe the business of the Association. They are not entitled to vote on motions. The Observers' statements of interest are summarised below.

**Julian Bray, Welsh Government**

- Head of Domestic Fisheries Policy and Management Branch.

**Michelle Billing, Welsh Government**

- Domestic Fisheries Policy and Management Branch – Fishery Orders

**Laura Harris, Welsh Government**

- Domestic Fisheries Policy and Management Branch – Several Orders

**Gareth Roberts, Bangor City Council**

- No interests to declare

**Iwan Huws, Isle of Anglesey County Council**

- Also Chair of Y Felinheli Community Council
- No interests to declare.

**Kim Mould, NW-IFCA Bivalve Mollusc Working Group Member**

Kim Mould BSc(Hons) has 46 years of experience working in the shellfish industry in U.K., Eire and Europe. His company Myti Mussels was established in Bangor in 1982, and was responsible for the revitalisation of the mussel cultivation industry in the Menai Strait. He has served as a Council Member of the Shellfish Association of Great Britain and worked closely with Seafish developing modern depuration systems for live bivalve molluscs. Once a

leading supplier of live mussels to the U.K. , Myti Mussels is now a leading company in the culture of *Mytilus edulis* for export.

#### Interests

- Leaseholder of lays in eastern Menai Strait Fishery Order
- Member of NW-IFCA's Bivalve Mollusc Working Group, established to advice on bivalve mollusc fisheries in Morecambe Bay.

#### Trevor Jones, Menai West Fishery Order Observer

- Leaseholder of a lay in the eastern Menai Strait Fishery Order area
- Prospective leaseholder for a lay in the western Menai Strait Fishery Order

#### Howard Mattocks, Beaumaris Town Council

- Beaumaris Bay is on the edge of the Fishery Order area.
- Beaumaris Town Council has an interest in the deep water mooring licensed by Anglesey County Council that are located within the Fishery Order area.

## Advisors

Advisors are individuals invited by the Association to provide advice on particular topics. Advisors are not entitled to vote on motions.

#### Jim Andrews, AWJ Marine Ltd

Jim has over 25 years' experience working in marine fisheries and environmental management. From 1992 to 2005 he worked first for English Nature and then for the North Western and North Wales Sea Fisheries Committee. At the NW&NWSFC he was responsible for managing three Fishery Orders in North Wales: at Conwy, the eastern Menai Strait and the western Menai Strait. He has subsequently provided expert advice to lawyers working on the Wash Fishery Order, and carried out a Marine Stewardship Council (MSC) assessment of the cockle fishery conducted in the Thames Fishery Order. He has carried out MSC assessments of bivalve fisheries in Denmark, Germany, India, Japan and Australia, and has worked on the management of bivalve shellfisheries with the Irish and Isle of Man Governments. He helped to establish MSFOMA in 2010, and has provided technical and administrative support to the Association for the past 10 years.

#### Interests

- Independent fisheries and environmental consultant
- Member of Shellfish Association of Great Britain
- MMO appointed Member of North West Inshore Fisheries & Conservation Authority (2015-present)

\* These individuals are also Directors of the Association. They are entitled to vote on motions in this capacity.

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MSFOMA

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## Annex C: E-mail from Welsh Government about governance issues

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### Jim Andrews

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**From:** Michelle.Billing@gov.wales  
**Sent:** 25 November 2020 11:15  
**To:** jim@awjmarine.co.uk  
**Cc:** alanjwinstone@gmail.com; Julian.Bray2@gov.wales  
**Subject:** MSFOM - Governance matters

Hi Jim,

Thank you for your time on Friday, it was good to talk and to be bringing clarity to the key issues. On those issues I took away 3 actions relating to:

- a) Statements of interest;
- b) Suggested amendments for the Articles of Association; and
- c) Suggested amendments/presentation on the website.

I also thought afterwards there was a 4<sup>th</sup> point which would help with the matter of transparency of membership, and that was the Register of Members. I don't think we have referred to a register in our Teams meetings, but it came up in recently and not requesting it from you has been an oversight on my part. I have added this below.

All section references are to the Companies Act 2006.

#### Statements of interest

We have discussed there is no obligation on MSFOMA to make declarations of interest publically available, these can be dealt with privately. However, they must be done in accordance with the Companies Act 2006. Each director must declare whether they have a "direct interest" (e.g. personal) or "indirect interest" (e.g. a close connection with someone with a direct interest) (s.182 (1)). There are exceptions including, for example, a director does not have to declare their interest if the interest cannot be reasonably regarded as creating a conflict of interest (s.182 (6)).

The "nature and extent" of the director's interest must be declared (s.177 (1)). The declaration should state whether the interest is direct or indirect (e.g. the "nature") and include sufficient information so as to understand why & how there is a conflict (e.g. the "extent").

Conflicts of interest can be declared in the following three ways:

- 1. Orally at a Board meeting (s.177 (2))
- 2. A specific written notice (s.184)
- 3. A general notice (s.185)

#### Articles of Association

We note you are reviewing the Company's Articles of Association with a view to improving their accessibility and welcome this. In particular we think that any person outside of those of us directly and regularly involved with MSFOMA could find it difficult to clearly identify what role NRW and Ynys Mon County Council currently hold, and this would be resolved by updating the company documents.

We are of course aware that in 2009 the company documents were drafted on the basis that those public bodies joining MSFOMA as members. In fact, for various reasons, each of those public bodies did not feel that would be beneficial and instead have shared their expertise with MSFOMA as observers. This model has worked well for both MSFOMA and those public bodies for many years. This arrangement appears settled for all parties, and if the Articles of Association were amended to more clearly record the current membership and



thereafter record the public bodies involved as observers (rather than as proposed members and as entitled to appoint Directors), transparency would be greatly improved.

If in the future, any of those public body observers wanted to become members of the Association, the Articles would be re-amended to permit that, at that time.

Of course we appreciate this is matter for the company and its legal advisors.

### **Website**

Although some changes have been made to the Membership & Participation page there is still room to improve the clarity of the information, and be consistent with the amended Articles of Association and register of members.

As per our letter of 19 November, you could consider replacing the current list with a table clearly showing all members along with their position and role.

We already noted above that there is no obligation on MSFOMA to make declarations of interest publically available. However, you have previously explained the decision to do so as being consistent with the requirement for public bodies to make their register of interests publically available. If you wish to make the members interests public you may want to consider a table format listing the director/member name and their interests.

### **Register of Members**

There is a legal requirement to keep a Register of Members (s.113 (1)). If a company does not have a register, then the company and every director is committing an offence (s.113 (7) & (8)).

For each member of the company the following details must be contained in the register (s.113 (2) & (3)):

- Full name;
- Address (which should be the member's residential address if they're an individual or their registered office if a corporate body);
- Date they became a member;
- Date they ceased to be a member (if applicable); and
- A statement of shareholding (if applicable).

In our letter of 19 November we said the remaining governance points must be addressed before the Minister can make a decision on the application, and I hope all of the above can be easily and quickly resolved – I know the Articles are on the agenda for next week's AGM.

If you would like to discuss further any of the above, please give me a call.

Regards,  
'Chelle

### **Michelle Billing**

Is-adran Môr a Physgodfeydd/Marine and Fisheries Division  
Llywodraeth Cymru/Welsh Government  
Rhodfa Padarn, Llanbadarn Fawr, Aberystwyth, SY23 3UR  
Tel/Ffôn: 0300 062 2215  
E-mail/E-bost: [michelle.billing@gov.wales](mailto:michelle.billing@gov.wales)

Dylai unrhyw ddatganiadau neu sylwadau a wneir uchod gael eu hystyried yn rhai personol ac nid yn rhai gan Lywodraeth Cymru, unrhyw ran ohoni neu unrhyw gorff sy'n gysylltiedig â hi.

Any of the statements or comments made above should be regarded as personal and not those of the Welsh Government, any constituent part or connected body.

## **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.

### **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. (Note that a revised plan was presented to the 2020 AGM for the next FY)
- 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 1<sup>st</sup> 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, 1<sup>st</sup> March 2020 to date**

Item	Year Budget 2020-21	Quarter 1 (1st March - 31st May)		Quarter 2 (1st June - 31st August)		Quarter 3 (1st Sept. - 30th Nov.)	
		Actual	Budget	Actual	Budget	Actual	Budget
<b>1. Expenditure</b>							
Administration of the Order*	£7,061.43	£7,347.61	£1,765.36		£1,765.36	£3,320.00	£1,765.36
Enforcement activity	£1,303.65	£0.00	£325.91		£325.91	£0.00	£325.91
Corporate core*	£1,303.65	-	£325.91		£325.91	-	£325.91
Renewal of Fishery Orders*			£0.00		£0.00		£0.00
Menai East	£20,000.00	-	£5,000.00		£5,000.00	-	£5,000.00
Menai West	£10,000.00	-	£2,500.00		£2,500.00	-	£2,500.00
Research & monitoring	£1,955.47	£0.00	£488.87		£488.87	£0.00	£488.87
Bank charges		£20.40		£19.00		£25.00	
<b>Total Expenditure</b>	<b>£41,624.20</b>	<b>£7,368.01</b>	<b>£10,406.05</b>	<b>£19.00</b>	<b>£10,406.05</b>	<b>£3,345.00</b>	<b>£10,406.05</b>
<b>2. Income</b>							
Leases for lays	£32,968.41	£8,185.92	<b>£16,484.20</b>		<b>£0.00</b>	£12,363.03	<b>£16,484.20</b>
Licences	£0.00	£0.00		£0.00		£0.00	
<b>Total</b>	<b>£32,968.41</b>	<b>£8,185.92</b>	<b>£16,484.20</b>	<b>£0.00</b>	<b>£0.00</b>	<b>£12,363.03</b>	<b>£0.00</b>
<b>Operating surplus / deficit</b>	<b>-£8,655.79</b>	<b>£817.91</b>	<b>£6,078.15</b>	<b>-£19.00</b>	<b>-£10,406.05</b>	<b>£9,018.03</b>	<b>-£10,406.05</b>
<b>Reserve</b>	<b>£29,804.37</b>	<b>£47,725.65</b>		<b>£49,973.03</b>		<b>£59,318.59</b>	

\* 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:-

- Income in Q1 was lower than budgeted; this was in part due to the ongoing deferral of lease fees for the Ballast Bank and Bangor Deep layings; and in part due to late payment of 3 invoices. Reminders have been sent.
- All invoices were paid for Q3 with the exception of those for Bangor Deep and Ballast Bank (see (a) above).
- Expenditure has been much lower than expected this year. This is in part due to delays in progress with the renewal of the two Fishery Orders and also delayed payments to, and invoicing by, some suppliers.
- The Association presently has a sum of £59,318 in its Reserves. This value is more than the target Reserve of £29,804 for the end of this FY.

## 3. Community Fund

- At the last meeting of the Association it was resolved that local authorities around the Menai Strait should be invited to apply for the £2,000 allocated for the MSFOMA Community Fund. It has not yet been possible to progress this resolution, and it is recommended that it is carried forward to the next quarter.

MSFOMA Secretariat  
November 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
<b>1. Recurring Expenditure - inflated at 2.8%.</b>						
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
<b>Total Expenditure</b>	<b>£21,500.00</b>	<b>£37,999.60</b>	<b>£23,807.59</b>	<b>£41,624.20</b>	<b>£31,949.68</b>	<b>£12,284.27</b>
<b>2. Recurring Income - inflated at 2.8% to increase value of reserve.</b>						
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
<b>Total</b>	<b>£30,347.20</b>	<b>£31,196.92</b>	<b>£32,070.44</b>	<b>£32,968.41</b>	<b>£33,891.52</b>	<b>£34,840.49</b>
<b>Operating surplus / deficit</b>	<b>£8,847.20</b>	<b>-£6,802.68</b>	<b>£8,262.85</b>	<b>-£8,655.79</b>	<b>£1,941.84</b>	<b>£22,556.22</b>
<b>Reserve</b>	<b>£37,000.00</b>	<b>£30,197.32</b>	<b>£38,460.17</b>	<b>£29,804.37</b>	<b>£31,746.22</b>	<b>£54,302.43</b>

## 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 the Association should keep a watching brief on the new Fisheries Bill to ensure it doesn't have any adverse unintended consequences for shellfish aquaculture.

### **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.
  - 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 published WMFAG minutes were for the meeting on 24<sup>th</sup> June (published on 18<sup>th</sup> November [here](#)), at which it was reported:-

*Trevor [Jones, MSFOMA] asked regarding the Menai West and Menai East Several Orders*

*Julian [Bray, Welsh Government] responded:*

*Menai West - there is a particular issue in Menai West and if able to solve that then the several order would be in place early next year*

*Menai East – due to expire in April 22 - WG working to ensure that new order will start on the demise of the old one.*

*Julian said that he recognised the importance of Several Orders for Menai East and Menai West and understood the concerns for Menai East but the team is working in a systematic way and aiming for that date. It is currently on target.*

- 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 ([here](#)) that are directly relevant to MSFOMA.

### **4. New legislation**

- 4.1 As part of the preparations for the UK leaving the European Union, the UK Government is working on new fisheries legislation.
- 4.2 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”.
- 4.3 At the last meeting of the Association some concerns about the potential unintended consequences of the Bill were identified. These concerns were subsequently raised with Welsh Government and the Shellfish Association of Great Britain (see Annex A of this report).
- 4.4 Although assurances have been given that the Fisheries Bill should not adversely affect aquaculture, some concerns remain about the risk of unintended consequences.

### **5. Welsh Government Officials**

- 5.1 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).

## **6. Communications with Cabinet Minister**

- 6.1 The Chair wrote to the Cabinet Minister in November 2020 in connection with the renewal of the Fishery Order in the eastern Menai Strait (see item 11 on the agenda).

MSFOMA Secretariat  
November 2020



## **Annex A:** Correspondence with SAGB concerning the Fisheries Bill

**From:** Jim Andrews <jim@awjmarine.co.uk>

**Sent:** 05 October 2020 17:46

**To:** 'Sarah Horsfall' <sarah@shellfish.org.uk>; 'James Wilson' <jamesmussels@gmail.com>

**Cc:** 'David Jarrad' <david@shellfish.org.uk>; 'Alan Winstone' <alanjwinstone@gmail.com>

**Subject:** RE: Fisheries Bill

Hi Sarah, All

I hope you are keeping well.

After something of an hiatus I am following up on this.

We discussed the Fisheries Bill at our Menai Strait Fishery Order Management Association meeting last month. We remain concerned about the perverse / mischievous consequences that may arise from the rather slack wording of the Bill with respect to aquaculture (as outlined below). The response from Defra and WG suggests indifference and is not very reassuring.

I wonder if it would be appropriate for us all to try to pin the relevant officials (and / or Ministers) down about this? The key question seems to me to be something along the lines of:-

*“Can you confirm that the proposals set out in the Fisheries Bill will not hinder the creation of new Fishery Orders made under the Sea Fisheries (Shellfish) Act 1967 that endure for periods that exceed the review cycles specified in the Fisheries Bill (i.e. the 6 year period for “Joint Fisheries Statements”, “Secretary of State Fisheries Statements” and “fisheries management plans”).”*

It seems to me that we need a clear and unambiguous answer to this simple question from a senior level.

Any thoughts?

Jim

**From:** Sarah Horsfall [sarah@shellfish.org.uk](mailto:sarah@shellfish.org.uk)

**Sent:** 05 October 2020 18:37

**To:** jim@awjmarine.co.uk

**Cc:** James Wilson <jamesmussels@gmail.com>; David Jarrad <david@shellfish.org.uk>; Alan Winstone <alanjwinstone@gmail.com>

**Subject:** Re: Fisheries Bill

Hi Jim,

Yes I am well thank you, I hope you are too.

Great minds think alike, we sent a letter to DEFRA formally last week to address this, I am happy to copy you in on progress as we will be following it up in our fortnightly shellfish meetings with them.

Kind regards,

Sarah

Sent from my iPhone

## **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 encourages the NW-IFCA to update and implement a Mussel Management Plan for 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 3<sup>rd</sup> November 2020. A quarterly meeting of the IFCA was held on the 18<sup>th</sup> September, and the next quarterly meeting is due to be held on the 10<sup>th</sup> December 2020.
- 1.2 The mussel stock in Morecambe Bay has been the subject of detailed consideration by the IFCA in the past 6 months and also a degree of controversy. This is considered in more detail in item 4 of this report.

### **2. Changes to Byelaws**

- 2.1 The next Authority meeting is being asked to consider a new byelaw regulating the Minimum Conservation Reference Sizes for fish and shellfish species. This byelaw does not mention mussels and therefore has no direct relevance to the Association's activities.

### **3. Bivalve Mollusc Working Group**

- 3.1 No meetings of the Bivalve Mollusc Working Group have taken place since the last MSFOMA meeting.

### **4. Dredge fishery for mussels in Morecambe Bay**

- 4.1 It was reported to the Association meetings earlier this year that there were signs of a good seed mussel settlement in Morecambe Bay and that there were prospects for a successful dredge fishery in 2020.
- 4.2 In June 2020 the IFCA authorised a dredge fishery on two mussel beds in the vicinity of Fleetwood at Perch Scar and Black Scar. Menai Strait operators obtained permits

from the Authority on the strength of this authorisation, and the fishing vessel *Mare Gratia* fished in this area.

- 4.3 In late July 2020 the IFCA's Senior Scientist recommended to the TSB sub-Committee that a seed mussel fishery for both hand gathering and dredging should be opened in the northern part of Morecambe Bay. This recommendation resulted in objections from 5 hand gatherers and triggered the an "extraordinary" meeting of the TSB on 4<sup>th</sup> August. This resulted in a decision to open part of the seed mussel bed for dredging, but by the time the necessary consultation and administrative procedures had been completed the mussels had been lost.
- 4.4 In response to this chain of events the Chair wrote to the NWIFCA to express disappointment at the loss of the opportunity to dredge for the abundant mussels at South America, and to request that the IFCA considers the possibility for dredging to take place at the locations known as the Falkland Islands, Tractor Bank and Small Island.
- 4.5 It is disappointing to note that despite the efforts of Mr Jones to access these sites and photograph them on behalf of the IFCA officers who were unable to get to them, it was not possible for a seed mussel dredge fishery to progress in Morecambe Bay this year.
- 4.6 It was noted at the last MSFOMA meeting and in subsequent discussions that the failure of the Morecambe Bay seed mussel dredge fishery this year has not been due to the mussel stock, as it has been in recent years, but due to the lack of a clear set of decision rules and procedures to guide and inform management. With this in mind, Mr Jones and Dr Andrews recommended at the most recent IFCA TSB meeting that consideration be given to updating and implementing the IFCA Mussel Management Plan for Morecambe Bay.
- 4.7 It would seem appropriate for the Association to write again to the IFCA to encourage the adoption of a Morecambe Bay Mussel Management Plan in good time for any seed mussel dredge fishery in 2021.

MSFOMA Secretariat  
November 2020

## **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 31<sup>st</sup> March 2022. MSFOMA needs to ensure that a new Fishery Order is in place by this 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 making a new Fishery Order.

### **Recommendations**

1. That the report is received
2. Liaison with Welsh Government officials over the process for making a new Order is noted.
3. Progress against the agreed timetable for making a new Order is noted, and the consequences of recent delays are considered.
4. That the Association should consider the WG queries about the scope of the new Order set out in this report and determine whether or not it wishes to alter any aspect of the application for a new Order.
5. The options identified for mitigating the risk of a delay in the making of a new Fishery Order should be further 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.

### **2. Renewal of the Fishery Order**

- 2.1 The existing Fishery Order will expire on 31<sup>st</sup> March 2022. Discussions with WG officials about the replacement of this Order started in 2013, and the formal application for a new Fishery Order was submitted to the Cabinet Secretary for Environment and Rural Affairs (now the Minister for Environment, Energy & Rural Affairs) on the 9<sup>th</sup> 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 September 2020 the Secretariat has been liaising regularly with WG officials to discuss progress. Telephone conference calls have also been held by the Chair with WG officials on the 6<sup>th</sup> and 22<sup>nd</sup> of October and the 11<sup>th</sup> and 20<sup>th</sup> of November.

### 3. WG Progress

- 3.1 A copy of the timetable for renewing the Order that was discussed with WG officials in January 2020 is attached at Annex A of this report for reference.
- 3.2 It had been anticipated that a draft of a new Fishery Order would be available for discussion by the Association earlier this year (initially in March, then in June and then for the meeting in September). These delays and the subsequent correspondence with the Minister were discussed at the September meeting of the Association.
- 3.3 It was reported at the last meeting of the Association in September 2020 that WG officials had confirmed at that time that once MSFOMA had implemented new procedures for issuing leases and licences, all of WG's queries about the Fishery Order application would have been addressed.
- 3.4 At its last meeting of the Association adopted the new procedures for issuing leases and licences as requested by WG.
- 3.5 At the time of writing this report the Association has still not been provided with a draft of a new Fishery Order, nor is it clear when this may happen. The ongoing delays are a deep concern for mussel farmers in the Menai Strait, one of whom recently wrote to the First Minister on this matter, in his own words "*...out of a sense of exasperation and desperation.*" (see Annex B).
- 3.6 In response to concerns about the timescale for renewal of the Order, the Chair of the Association wrote to the Minister in October 2020 (Annex C). The Minister responded in early November, and in her letter identified a number of issues that her officials considered needed further attention (Annex D). The issues listed in the Minister's letter were:-
  - a) Duration of the Order;
  - b) Inclusion of oysters;
  - c) The hybrid application for both a regulating and several Order; and
  - d) Governance of the Association
- 3.7 These comments have been considered carefully by the Chair and Secretariat. In response to them:-
  - a) The detailed assessment of the duration of the Order that was presented to the MSFOMA meeting in September 2020 is included again here as Annex E to this report.
  - b) A detailed consideration of items (b) and (c) is presented in section 4 of this report.
  - c) The Secretariat wrote to Welsh Government (Annex F) for details of the issues of concern with the Governance of the Association, and a response is appended as Annex G for consideration.

- 3.8 WG officials are due to attend the meeting and will be able to provide further background on these issues.

#### 4. Current Issues / Challenges

- 4.1 During discussions with WG officials over the past 12 months, several issues concerning the potential scope of the new Fishery Order for the eastern Menai Strait have been raised on a number of occasions. These are the type of Fishery Order that is granted to the Association; the species that it applies to; and its geographic extent.

- 4.2 The Association formally considered all of these issues in turn at its meeting in April 2020. After careful consideration the Association resolved to proceed with a “like for like” application for a new Order.

- 4.3 In an effort to expedite progress the detailed summary that was presented to and discussed at the April 2020 MSFOMA meeting is reproduced here in the hope that it will provide a framework for both a constructive and hopefully conclusive discussion of these issues.

- 4.4 **Type of Fishery Order:** under the Sea Fisheries (Shellfish) Act 1967 it is possible to make three types of Fishery Order for different purposes:

- a) **Several Fishery Order** – this is a fishery that is “severed” from the public fishery and within which the Grantee of the Order has the right of fishery for the species named in the Order. This type of Order is used to allow shellfish cultivation.
- b) **Regulated Fishery Order** – this is a fishery within which the Grantee can impose restrictions and regulations on fishing for the species named in the Order, and to charge a fee for permits to fish in the area. This type of Order is used to protect shellfish stocks, and to encourage husbandry of the named species.
- c) **“Hybrid” Fishery Order** – this is a term used to describe a fishery within which the Grantee has both the right of Several Fishery and of Regulating a fishery (i.e. both (a) and (b) above. The existing Menai Strait Oyster and Mussel Fishery Order is a “hybrid” Order. MSFOMA has applied for renewal on a like-for-like basis.
- d) **Issues to consider** – there are a number of issues to consider with respect to the type of Fishery Order that MSFOMA is granted:-
  - i. Utility – although the existing Fishery Order is a “hybrid”, MSFOMA is presently only issuing leases for the Several fishery, and has not issued licences for the Regulated fishery for a number of years.
  - ii. Economic flexibility – the shellfish industry faces challenges that it has never met before. Brexit is likely to change the market for shellfish, and Covid-19 will also impact markets and supply chains. The model for shellfish cultivation and management in the Menai Strait that has worked well for over 50 years may not be the ideal model for the future. It is important that a new Order provides a solid foundation for cultivation that allows the industry to respond to changes in market conditions.

- iii. Complexity & timescales – the main risk to the shellfish industry in the area is that a new Order is not made by the end of March 2022. A “hybrid” Order may be more complex than a “several” order and it could take WG longer to process the application for a hybrid order as a consequence. It is appropriate for MSFOMA to consider the balance of costs and benefits of a “hybrid” Order in this context.

4.5 **Species listed in the Order:** the Shellfish Act allows Fishery Orders to be made for “...shellfish of any kind specified in the order...”. The rights referred to in para 4.4 above can only apply to the species falling in these categories that are named in the Order itself. The current Menai Strait Oyster and Mussel Fishery Order names “oysters” and “mussels” and does not identify the species of either type of shellfish. This point and other issues associated with the named species are summarised below:-

- a) **Mussels** – there are 3 native mussel species of the genus *Mytilus* that are found in northern Europe: the blue mussel *Mytilus edulis* (the species found in the Irish Sea and farmed in the Menai Strait); the Mediterranean mussel *Mytilus galloprovincialis* (found on the west coast of England, Ireland & Scotland outside the Irish Sea); the foolish mussel *Mytilus trossulus* (found in the Baltic Sea); and a hybrid between *M. edulis* and *M. galloprovincialis*, which is widespread outside the Irish Sea.

The different species are difficult to distinguish from one another in terms of their morphology, habitat preferences and ecological role. The distribution of *M. galloprovincialis* and its hybrid with *M. edulis* is expanding in the UK.

The only species of *Mytilus* farmed in the Menai Strait at present is considered to be *M. edulis*.

- b) **Oysters** – the only native oyster species in the British Isles is the flat oyster, *Ostrea edulis*. This species supported a massive fishery around the UK until the 19<sup>th</sup> century but suffered a major decline in the early 20<sup>th</sup> century. In response to this, various non-native oyster species have been farmed in the UK (initially the American oyster *Crassostrea virginica* and the Portuguese oyster *Crassostrea angulata*). Following disease problems with these species and successful trials conducted by the MAFF laboratory at Conwy in the 1960s, the Pacific oyster (*Crassostrea gigas*) has become the main cultivated oyster species in the UK. This species has good growth characteristics and was considered to be unable to become established in the wild because UK waters were too cold for it to reproduce successfully.

Since the 1960s, sea water temperatures have risen, and there have been problems in the UK and northern Europe with “feral” oyster populations becoming established in the wild at some locations. These feral oysters can impact natural habitats. The main solution to this risk is to cultivate “triploid” oysters which are sterile.

At present there is no cultivation of oysters of any species in the eastern Menai Strait (though oyster cultivation and husbandry was a major fishery in this area in the 19<sup>th</sup> century).

- c) **Issues to consider** – there are a number of issues to consider with respect to the species that should be named in a new Fishery Order for the eastern Menai Strait:-



- i. Utility - as noted above, no leases for oyster cultivation have been issued in the eastern Menai Strait for decades.
- ii. Environmental change - it is possible that 10 or 20 years' from now it may not be possible to profitably cultivate either *M. edulis* or *C. gigas* in the Order area: *M. edulis* could be usurped by *M. galloprovincialis* or their hybrid; and other oyster species may prove to be more appropriate to farm in this area than *C. gigas*.
- iii. Economic flexibility - as noted above, the shellfish marketplace may change in the next few years, and a new Order must be capable of responding to economic as well as environmental changes.
- iv. Scope of the Order - taking into account these issues, it would seem to be appropriate for the new Order to replicate the existing Order by referring to "mussels" and "oysters" (or perhaps "Mytilidae" and "Ostreidae" to seem more scientific) rather than specifying the species concerned. It should be noted that this would not provide *carte blanche* for MSFOMA to authorise the cultivation of new species, since any new Order will require that leases for shellfish cultivation are subject to the consent of the Minister.
- v. Complexity & timescales - there was once considered to be a risk that a wider definition of the named species could delay the process. However WG lawyers are understood to have advised earlier this year that a "modular" approach to WG oversight of the industry can be implemented (i.e. that the Fishery Order is first subject to Ministerial approval, and then each new lease issued under that Order is also subject to Ministerial approval). Hence the inclusion of oysters in the Order should not add complexity or affect timescales.

4.6 **Boundary of the Order** - the current boundary of the Menai Strait Oyster and Mussel Fishery Order is illustrated in Annex H. The larger part of this area is currently leased for mussel cultivation. The remainder of this area forms the "Regulated Fishery" where mussels can be fished by any licensed operators. The issues arising from this are:-

- i. Utility - although the existing Fishery Order is a "hybrid", MSFOMA is presently only issuing leases for the Several fishery, and has not issued licences for the Regulated fishery for a number of years. There may therefore be an argument that this area may be surplus to requirements (but note the comments made above regarding environmental change and economic flexibility).
- ii. Security, safety and coastal zone management - although no licences have been issued for the regulated fishery for a few years, the existence of the larger boundary has created an area within which shellfish gathering by itinerant gangs has never taken place. This means that the safety risks associated with such activity have not been an issue in this area, and neither have the adverse impacts on other coastal users which can be associated with such activity.

4.7 **Issues for consideration** – MSFOMA is asked to determine how best to approach these issues, taking into account the possible impacts on timescales:-

- a) **Type of Order** – should this still be a “hybrid order”?
- b) **Species** – should these still be “oysters” and “mussels” (or perhaps the Families “Mytilidae” and “Ostreidae”) rather than limited to genera or species?
- c) **Boundary** – should the existing boundary be retained?

## 5. Engagement with stakeholders

- 5.1 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.
- 5.2 At the last meeting of the Association it was felt that in view of the combined uncertainties with the timetable for renewal of the Order and the Covid-19 pandemic it was inappropriate to organise stakeholder meetings as it was not clear what the Association would be able to communicate.
- 5.3 Stakeholder engagement is very important to this process and the Secretariat would recommend that meetings are convened with stakeholders once there is some certainty about the content of a new Order and the timescale for its implementation.

## 6. Contingency Plans

- 6.1 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. The advice provided to the June 2020 meeting is reproduced here in view of the continuing uncertainties associated with the process of establishing a new Fishery Order.
- 6.2 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.
- 6.3 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.

- 6.4 The outcome of this contingency planning underlines the importance of a new Order being in place by the 31<sup>st</sup> March 2022.
- 6.5 It is noted that in England, the IFCAs have been able to implement the emergency byelaw provisions of the Marine & Coastal Access Act very swiftly (two IFCAs 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  
November 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
<b>WG Internal processes</b>				
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
<b>External processes</b>				
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
<b>New Order ready</b>	<b>4.0</b>	<b>w</b>	<b>03/03/2022</b>	<b>31/03/2022</b>
<b>Expiry of existing Order</b>			-	<b>31/03/2022</b>

## **Annex A: Letter from James Wilson to First Minister, Welsh Government, 15<sup>th</sup> November 2020**

RT HON MARK DRAKEFORD MS  
FIRST MINISTER  
WELSH GOVERNMENT

15 November 2020

Dear First Minister

My name is James Wilson, involved in extensive aquaculture, growing mussels in the Menai Strait. I have met you on a few occasions in the past; when you undertook a visit to the Centre for Applied Marine Sciences at Bangor University (we have worked closely with the University over the past 20 years) to review Irish sea regional cooperative networks; some years before that when you were involved in the development of the Welsh Government's approach to the 2014-2020 period of European funding; and at the most recently at the 2019 ST David's day Celebration in Brussels, an event that we have supplied with the mussels that we grow in the Menai Strait since 2010.

Much has changed over the years, profoundly in many ways (Covid, Brexit – externalities that for sure will affect permanent change to Wales), however some other things have not changed that much if at all. Wales continues to perform in a less than optimal manner in terms of its economic contribution to the wider UK, there remain huge social injustice and inequalities – although of course these are not isolated to Wales but are certainly very pronounced here.

For us, closer to home, one other thing that hasn't changed at all – is the Welsh Government's inability to effectively understand, manage and apply policy objectives to develop the Fisheries and Aquaculture sectors in Wales.

Government has completely failed. Failed to meet its policy objectives and targets, failed the industry it seeks to support and failed the Welsh economy

Strategy after strategy, either produced by Government (2008, 2013) or supported by it (2016), all more or less seeking the same outcomes – a demonstrable move toward an ever more sustainable wild capture fisheries sector and further development of the already highly sustainable aquaculture sector. And yet, in the time frame 2008-2020, with only minor exceptions, there has been no real progress in the sector – despite the willing and open minded engagement of both fishermen and shellfish cultivators. Perversely there has been regression.

We have been completely let down by Government, and by those Civil servants in Government who have been tasked with the responsibility of applying policy.

From the perspective of here - there seem to have been a multiplicity of reasons for this, but in principle these can be corralled into three main areas – (1) Civil servants who have no competency, background or training in the specific requirements of fisheries and aquaculture; (2) Risk adverse, inconsistent and context free advice by Welsh Govt legal advisers; (3) Lack of political will/engagement/interest to implement change.

Given the policy objective, the latter has always been the most difficult for us, as participants and recipients of Government approaches, to get our heads around. Engagement with Government, rather than being

orientated around collaboration, and shared objectives – a philosophy that the sectors have readily embraced – we are confronted with an Administration that is unable to progress beyond an institutional mindset fixed in conflict and an ‘Us and Them’ dynamic.

All this despite a recognition within the 2008 Fisheries strategy of the importance and value of collaboration and the development of co-management approaches. The Well Being and Future Generations Act 2015 elevated this commitment to a duty in respect of the sustainable development objective.

IN the early 2010's, Welsh Government sought to apply this through a range of different dialogue groups, Inshore Fisheries Groups (IFG's – North, Mid and South) – the original intent was that these groups would provide fishermen and aquaculturists with a route to feed issues of concern up the decision chain to Government, who would then consider ways to find resolution. Unfortunately it became apparent that Government was incapable of taking on board Industry needs, instead it sought to use the IFG's as routes to communicate Government's issues, an isolated top down approach – which, from the outside had the appearance of collaboration but in reality was nothing of the sort.

The vapidness of these IFG was eventually recognised by one senior Fisheries Official, who actually sought to change the government / industry dynamic for the better; He suspended the IFG's, bought about a higher level group (Welsh Marine and Fisheries Advisory Group (WMFAG)) that sought to connect needs with action unfortunately this caught the attention of his senior managers and this individual was forced out of his role. A sorry tale indeed.

Subsequently the WMFAG has reversed to type, with actions raised by Industry invariably left unresolved whilst Government failed to deliver beyond the absolute basics – and even then, more often than not, failed to deliver even these.

The implications of this systemic failure ?? A scallop fishery in Cardigan Bay in 2011 that was a standing joke amongst the wider UK industry for its utterly failed approach to / abdication of management, much to the detriment (economic, social and cultural) of the indigenous Welsh fleet, though of course Wales has its own bad actors too. The Whelk stock in Wales, a stock that had been subjected to two previous cycles of biological ‘boom bust’ fisheries (Early 1990's, Early 2000's) where industry appeals for changes to management practice took from 2010 to 2019 to bring forward any progression in management direction – a time frame which encompassed what looks to all like a further boom bust fishery, and further stupid pointless waste. More recently a complete failure of enforcement to prosecute very extensive illegal fishing targeting Sea Bass stocks – this despite legitimate fishermen providing Government with accurate, timely intelligence of those undertaking this illegality. These, just a few examples of many to provide illustration.

For us, in extensive shellfish cultivation, it's a similar story. Government policy objectives to increase production being frustrated at every turn by the behaviour and approach of Officials, endless processes designed never to reach any point of decision, internal government legal advice that appeared to conflict entirely with established precedent and case law, misunderstanding by officials of the basic nature, identity and activity of the sector, all sandwiched up between the usual suspect of staff churn and any old excuse to re-direct resources elsewhere.

What this has led to is the Menai based sector, which for 20 years, dominated UK shellfish cultivation has reduced output and production as the Fishery order, which provides for the seabed property right on which it depends, moves toward its end date of 31/03/22. Moves to provide for a replacement order through legislation, which informally began in 2013 and formally in 2018, have so far progressed pretty much nowhere, and have recently reached a low point of rancour – with senior officials, seemingly unable to justify, rationalise and reflect upon this lack of progress, lashing out with spurious accusations that can be seen through with even the most minimal scrutiny.



Not that this should have come as a surprise to us, as similar moves to provide for a new fishery Order at the other end of the Menai Strait, have been similarly frustrated, with an application first lodged in 2008, a further reviewed application in 2012 and various promises made by responsible Ministers, having come and gone, passing by without trace.

The one Ministerial purple patch came during Carl Sargeant's tenure. Despite his busy agenda and the limited amount of time he had in the role, his legacy of securing the assent of the Well Being And Future Generations Act, The Environment (Wales) Act and the Planning (Wales) Act is highly impressive.

For shellfish cultivation, he provided the political will to allow Government officials to seek a *second opinion* on internal Government legal advice, which had concluded that despite the relevant primary legislation allowing for Fishery Orders to be provided for a substantial period (up to 60 years), advice to Government was that this in fact could not be any longer than 7 years. The external advice supported the view that the 7 year period was an incorrect reading of statutory obligations and so things moved forward. This, after 4 years of circular discussions with Government officials!

If Wales doesn't want a fisheries or aquaculture sector, and doesn't seek to sustain the economic, social and cultural effects that these sectors have on the economy – then I guess that's fine. But at least have the bravery to be honest about that.

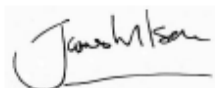
If it does, and it should; extensive shellfish aquaculture is globally acknowledged to be the Most sustainable form of animal based protein production, and in addition provides multiple additional ecosystem goods and services, and specifically the Welsh mussel second has a research track record and evidence base, which any other country would struggle to mirror; the Welsh Fishing sector is innately one of the most sustainable, but consciously the most environmentally progressive – then Government officials need to completely change their approach to how they deal and relate to the Industry.

I have been lucky enough, through education (BSc, MSc, LL.M), to have found work in many different segment in the global fisheries and seafood world – in academia, management, Science, representative organisations and at the coal face – objectively I can appreciate the difficulties in fisheries management and aquaculture policy, but quite honestly, it is not that difficult to get right. Officials in Wales, over at least the last 10 years, have proven themselves, time and time again to be pretty much incapable of doing so.

First Minister I fully appreciate how incredibly busy you must be at the moment, indeed I don't expect that you will have any time to read this, its too long and we are, in the grand scheme of things, pretty insignificant. However I am writing this out of a sense of exasperation and desperation.

The implications of Covid and, equally profoundly, Brexit will undoubtedly have huge adverse consequences for Wales. However Government can at least avoid making a bad situation worse. Stop looking to be in a fight with industry all the time, work together, share, as we all want the same thing.

Yours sincerely



## Annex C: MSFOMA Letter to Minister for Environment, Energy & Rural Affairs, October 2020

### Menai Strait Fishery Order Management Association

Port Penrhyn, Bangor, LL57 4HN

Lesley Griffiths, AM  
Minister for Environment, Energy & Rural Affairs  
Welsh Government  
Cardiff Bay  
Cardiff  
CF99 1NA

30th October 2020

By Post and e-mail

Dear Minister

#### Menai Strait Oyster and Mussel Fishery Order 1962

I am writing further to our earlier correspondence about the making of a new Fishery Order for the eastern Menai Strait to replace the Order that is due to expire on 31<sup>st</sup> March 2022.

To recap very briefly, the Fishery Order in the eastern Menai Strait has provided the legal foundation for the most important aquaculture site in all of Wales. We submitted an application for the renewal of the Fishery Order on a "like for like" basis on 9<sup>th</sup> August 2018. No progress was made with the application for over a year whilst new administrative processes were put in place (explained to us in your letters of 28<sup>th</sup> February and 30<sup>th</sup> July 2019). Your officials informed us in October 2019 that work had commenced on the renewal process with the goal of renewing it before 31<sup>st</sup> March 2021. We have been having regular meetings and discussions with your officials since then.

We regret to report to you that all of the milestones for the renewal process that we had agreed with your officials in October last year have been missed over the past 12 months. The problems that we face are those that we have seen repeated time and again in our work with the Fisheries Department over the past 10 years: a sorry pattern of staff changes; legal advice that is constantly shifting; missed deadlines; broken promises; and the absence of a clear strategic direction for developing shellfish farming in Wales.

We have seen this pattern before with our application for a new Order in the western Menai Strait. You will recall that when we met with you at Port Penrhyn in June 2018 you told us that you were planning to give us a decision on the Menai West application within 2 months. Subsequently I wrote to you in January 2019 pointing out that the Americans took 8 years to put a man on the moon, less time than Welsh Government has needed to deal with the Menai West Order application. In your reply of 28<sup>th</sup> February 2019 you provided a new timescale with *"a best estimate of a coming into force date no earlier than August 2019"*. Sadly your prediction proved to be correct – August 2019 is a distant memory and there is no Fishery Order in force yet.

We had been optimistic that with the provision of external legal support to your officials in the past 12 months that progress with the East Strait Order would be better. Instead there have been more delays as a consequence of other issues (Brexit and Covid-19) being given a higher priority than work on Fishery Orders within the Fisheries Department (and presumably with your own lawyers) and so the benefits of this external support have been limited.

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Menai Strait Fishery Order Management Association  
Company registered in England and Wales No 07163889



We all understand that Brexit and Covid-19 are complex issues with a national and international dimension and that an appropriate Welsh Government response is essential. The renewal of this Fishery Order is by comparison a relatively simple process. To illustrate this, we have produced a draft Order ourselves to help us understand more fully how the new Order could operate. This took two of us less than a day. We have shared our draft Order with your officials. We do understand that there are other processes in the Order making process but to go back to my earlier simile – *“it is not rocket science”*! It is, however, no less important than Brexit or Covid-19 for the future of Welsh aquaculture; perhaps the more so given these external challenges.

Renewing Fishery Orders should be routine bread and butter work for the Fisheries Department rather than the endless uphill bureaucratic challenge that it has become. A Fisheries Department that can deliver new Fishery Orders swiftly and efficiently will achieve outcomes that make a difference to the people, fisheries, and economy of Wales.

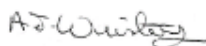
If the Fishery Order in the eastern Menai Strait is not renewed on time, Wales will lose all of its most important aquaculture businesses. The biggest threats to these businesses right now are not Brexit or Covid-19: they are the management decisions currently being taken at a senior level in the Welsh Government’s Fisheries Department. The staff taking these decisions, and hence the outcome of this process, are fully within your control.

Our past experience clearly shows that progress is only made when you, the Minister, and your predecessors have personally intervened in the process. In view of the serious situation we now find ourselves in because of delays in the Fisheries Department I am writing once again to respectfully request that you instruct your senior officials to “ring fence” and prioritise the staff commitment that is needed to renew this Fishery Order on time.

We feel that your intervention in this process is essential to protect jobs and to preserve Wales’ position as the UK’s leading exporter of sustainably produced farmed shellfish to the EU.

We look forward to hearing your response to our request. We would also very much welcome the opportunity to meet with you and your officials to discuss these points, as this has proved so often in the past to be the best way to expedite progress.

Yours sincerely



ALAN WINSTONE  
Chair, MSFOMA

cc. Rhun Ap Iorwerth, AM

**Annex D: Response from Minister for Environment, Energy & Rural Affairs,  
November 2020**

Lesley Griffiths AS/MS  
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig  
Minister for Environment, Energy and Rural Affairs



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref LG/02604/20

Alan Winstone  
Chair  
MSFOMA

info@msfoma.org

19<sup>th</sup> November 2020

Dear Alan,

Thank you for your letter of 30 October, regarding progress with the Menai East Fishery Order application.

I recognise the history and success of the current fishery order in the eastern Menai Strait for aquaculture in Wales. The current challenges presented by Brexit and Covid-19 related work are stretching resources across the Welsh Government but my officials are still progressing MSFOMA's application, and we are aware of the March 2022 deadline.

In your letter you have suggested renewing a fishery order such as this should be 'straightforward' and is 'not rocket science'. To be clear, this is not a renewal application, your application is for a new Order. The Act does not provide for renewal of the current Order. The nature of MSFOMA's application is neither routine nor straightforward and must be subject to full due diligence and assessment.

As a result of rigorous analysis undertaken by my officials they have identified some difficult and complex aspects of the application, and have been in regular dialogue with you in order to obtain clarity on those issues. The issues are the length of the lease, the inclusion of oysters, and the hybrid application for both a regulating order and a several order.

Bae Caerdydd • Cardiff Bay  
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[Correspondence.Lesley.Griffiths@gov.wales](mailto:Correspondence.Lesley.Griffiths@gov.wales)

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding

I understand a number of governance concerns identified in due diligence checks have been discussed with you, and my officials have written to you on this matter. As you are aware, these matters must be resolved before I am able to take a decision on the application

We remain committed to working with MSFOMA in relation to the application, and I ask that you continue to work with my officials on the matters outlined above.

Yours Sincerely,



**Lesley Griffiths AS/MS**  
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig  
Minister for Environment, Energy and Rural Affairs

Bae Caerdydd • Cardiff Bay  
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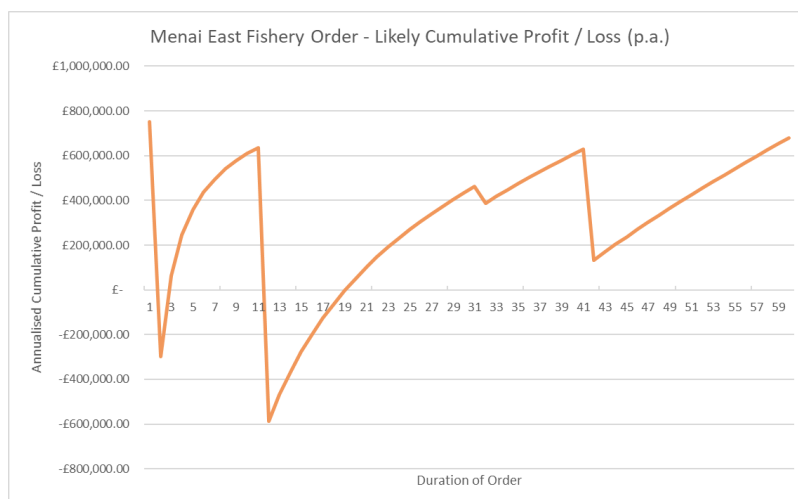
Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

**Annex E:** Extracts from financial projections submitted to WG, August 2020

The cumulative profit / loss for a new Fishery Order in the eastern Menai Strait has been predicted in the figure below using the following assumptions:-

1. An annual inflation rate of 1.9% applies to both income and expenditure.
2. Expenditure is based on estimated fixed annual costs for 2020 (subject to inflation), and also recurring overheads of vessel replacement every 30 years and a vessel refit after 20 years of vessel life.
3. Income has been based on a mid-point between good and bad years in the current Order. For the past 10 years there have been more bad years than good. For the preceding 20-30 years there were more good years than bad, and in the early years of the Order the output was variable.



On the basis of a 7-year cycle of leases, the optimum Fishery Order durations under this scenario are 7, 35 and 56 years. A 7 year Order duration would provide inadequate security for investment. WG have indicated that an Order would not be granted for a period of 56 years. An ideal duration of 35 years is therefore indicated.

Duration (years)	Profit / Loss p.a.		
	Minimum	Maximum	Mid-Point
7	-£411,946	£1,402,160	£495,107
14	-£1,337,545	£604,297	-£366,624
21	-£939,394	£1,142,177	£101,391
28	-£745,356	£1,489,202	£371,923
35	-£726,503	£1,675,711	£474,604
42	-£1,159,972	£1,426,135	£133,082
49	-£1,028,887	£1,759,097	£365,105
56	-£934,840	£2,074,952	£570,056

## Annex F: E-mail from Secretariat to Gareth Bevington, Deputy Director, Marine & Fisheries, Welsh Government

**Jim Andrews**

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**From:** Jim Andrews <jim@awjmarine.co.uk>  
**Sent:** 17 November 2020 11:03  
**To:** 'Gareth.Bevington@gov.wales'  
**Cc:** Michelle.Billing@gov.wales; Julian Bray (julian.bray2@gov.wales); Alan Winstone (alanjwinstone@gmail.com)  
**Subject:** Fishery Orders in the Menai Strait

Dear Gareth

It was good to talk to you last week. During our discussion you identified 4 key areas that need to be addressed in connection with the application for a new Fishery Order in the eastern Menai Strait that we submitted in August 2018. I am writing to seek some clarification and guidance on how MSFOMA should respond to these issues, and very much hope that you will be able to assist us with this request.

You will recall that both MSFOMA and the mussel farmers in the Menai Strait are very concerned that the existing Order will lapse on 31<sup>st</sup> March 2022, and that mussel farming in the Menai Strait will immediately become inviable after that date unless a new Order is in place, with the resulting loss of many jobs and livelihoods. We are therefore very keen not to lose another moment in the process of making a new Order. With this in mind, Alan and I convened a meeting with the mussel farmers to discuss the issues that you raised after we had spoken to you.

Following our discussions and reflection on the points that you raised, we have some queries which we hope you will be able to respond to swiftly so that we can take appropriate action to address these issues at our upcoming AGM and quarterly meeting on 2<sup>nd</sup> December.

1. **Governance of the Association:** you mentioned to us that various concerns existed about the governance of the Association. The only specific concern that you mentioned is that the Directors of the Association do not include any representatives of local authorities. It would be a great help to us if you could:-
  - a. State which aspects of the Association's Governance you feel are inappropriate and should be improved;
  - b. Confirm whether or not any complaints about the Association's Governance have been made since 2010;
  - c. Detail what has changed since MSFOMA was set up in partnership with Welsh Government in 2010 for the express purpose of being Grantee of a Fishery Order; and
  - d. The changes that you feel MSFOMA should make to address these concerns?
2. **Regulating Order:** you indicated that there were concerns about granting a new Regulating Order for the area to MSFOMA. It would be a great help if you could be more explicit about the reasons for this, and specifically:
  - a. What are the legal and / or policy obstacles to MSFOMA being Grantee of a new Regulating Order;
  - b. Confirm whether and complaints have been made about MSFOMA's actions as Grantee over the past 10 years; and
  - c. What you feel MSFOMA should do to overcome the obstacles you have identified?
3. **Term of the Order:** At the meeting you confirmed that a 35-year term appeared to be appropriate, which is good news.
4. **Pacific Oysters:** we discussed this issue, which has more immediate relevance for Menai West than Menai East and hence is not a significant obstacle to progressing the new Menai East Order at present.

In both cases your concerns about items 1 & 2 above are not just relevant to the new Order, but are also relevant to our management of the existing Order. In each case these concerns have immediate practical relevance for the Authority, so we are keen to address them swiftly.

Our Articles require that we circulate a notice of the meeting and any papers at least a week in advance of the meeting on the 2<sup>nd</sup> December. To give us time to prepare any reports and / or make revisions to our Articles of Association in time for consideration at that meeting it would be a great help to us if you could respond to our queries above by the 20<sup>th</sup> November 2020. We realised that time is tight, but the queries above are all clarifications of the points that you made at the meeting, so responding should not be too time-consuming.

I would also like to take this opportunity to invite you, Michelle Billing and Julian Bray to attend the meeting on the 2<sup>nd</sup> December. This would give you an opportunity to observe how the Association conducts its business, including the AGM, and might reassure you that the Association conducts its affairs diligently and responsibly.

If you have any queries about the requests above or the meeting on the 2<sup>nd</sup> December please do not hesitate to get in touch with me.

Kind regards

Jim

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## Annex G: WG Response to Secretariat, November 2020

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### Jim Andrews

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**From:** Michelle.Billing@gov.wales  
**Sent:** 25 November 2020 11:15  
**To:** jim@awjmarine.co.uk  
**Cc:** alanjwinstone@gmail.com; Julian.Bray2@gov.wales  
**Subject:** MSFOM - Governance matters

Hi Jim,

Thank you for your time on Friday, it was good to talk and to be bringing clarity to the key issues. On those issues I took away 3 actions relating to:

- a) Statements of interest;
- b) Suggested amendments for the Articles of Association; and
- c) Suggested amendments/presentation on the website.

I also thought afterwards there was a 4<sup>th</sup> point which would help with the matter of transparency of membership, and that was the Register of Members. I don't think we have referred to a register in our Teams meetings, but it came up in recently and not requesting it from you has been an oversight on my part. I have added this below.

All section references are to the Companies Act 2006.

#### Statements of interest

We have discussed there is no obligation on MSFOMA to make declarations of interest publically available, these can be dealt with privately. However, they must be done in accordance with the Companies Act 2006. Each director must declare whether they have a "direct interest" (e.g. personal) or "indirect interest" (e.g. a close connection with someone with a direct interest) (s.182 (1)). There are exceptions including, for example, a director does not have to declare their interest if the interest cannot be reasonably regarded as creating a conflict of interest (s.182 (6)).

The "nature and extent" of the director's interest must be declared (s.177 (1)). The declaration should state whether the interest is direct or indirect (e.g. the "nature") and include sufficient information so as to understand why & how there is a conflict (e.g. the "extent").

Conflicts of interest can be declared in the following three ways:

1. Orally at a Board meeting (s.177 (2))
2. A specific written notice (s.184)
3. A general notice (s.185)

#### Articles of Association

We note you are reviewing the Company's Articles of Association with a view to improving their accessibility and welcome this. In particular we think that any person outside of those of us directly and regularly involved with MSFOMA could find it difficult to clearly identify what role NRW and Ynys Mon County Council currently hold, and this would be resolved by updating the company documents.

We are of course aware that in 2009 the company documents were drafted on the basis that those public bodies joining MSFOMA as members. In fact, for various reasons, each of those public bodies did not feel that would be beneficial and instead have shared their expertise with MSFOMA as observers. This model has worked well for both MSFOMA and those public bodies for many years. This arrangement appears settled for all parties, and if the Articles of Association were amended to more clearly record the current membership and

thereafter record the public bodies involved as observers (rather than as proposed members and as entitled to appoint Directors), transparency would be greatly improved.

If in the future, any of those public body observers wanted to become members of the Association, the Articles would be re-amended to permit that, at that time.

Of course we appreciate this is matter for the company and its legal advisors.

#### **Website**

Although some changes have been made to the Membership & Participation page there is still room to improve the clarity of the information, and be consistent with the amended Articles of Association and register of members.

As per our letter of 19 November, you could consider replacing the current list with a table clearly showing all members along with their position and role.

We already noted above that there is no obligation on MSFOMA to make declarations of interest publically available. However, you have previously explained the decision to do so as being consistent with the requirement for public bodies to make their register of interests publically available. If you wish to make the members interests public you may want to consider a table format listing the director/member name and their interests.

#### **Register of Members**

There is a legal requirement to keep a Register of Members (s.113 (1)). If a company does not have a register, then the company and every director is committing an offence (s.113 (7) & (8)).

For each member of the company the following details must be contained in the register (s.113 (2) & (3)):

- Full name;
- Address (which should be the member's residential address if they're an individual or their registered office if a corporate body);
- Date they became a member;
- Date they ceased to be a member (if applicable); and
- A statement of shareholding (if applicable).

In our letter of 19 November we said the remaining governance points must be addressed before the Minister can make a decision on the application, and I hope all of the above can be easily and quickly resolved – I know the Articles are on the agenda for next week's AGM.

If you would like to discuss further any of the above, please give me a call.

Regards,  
'Chelle

#### **Michelle Billing**

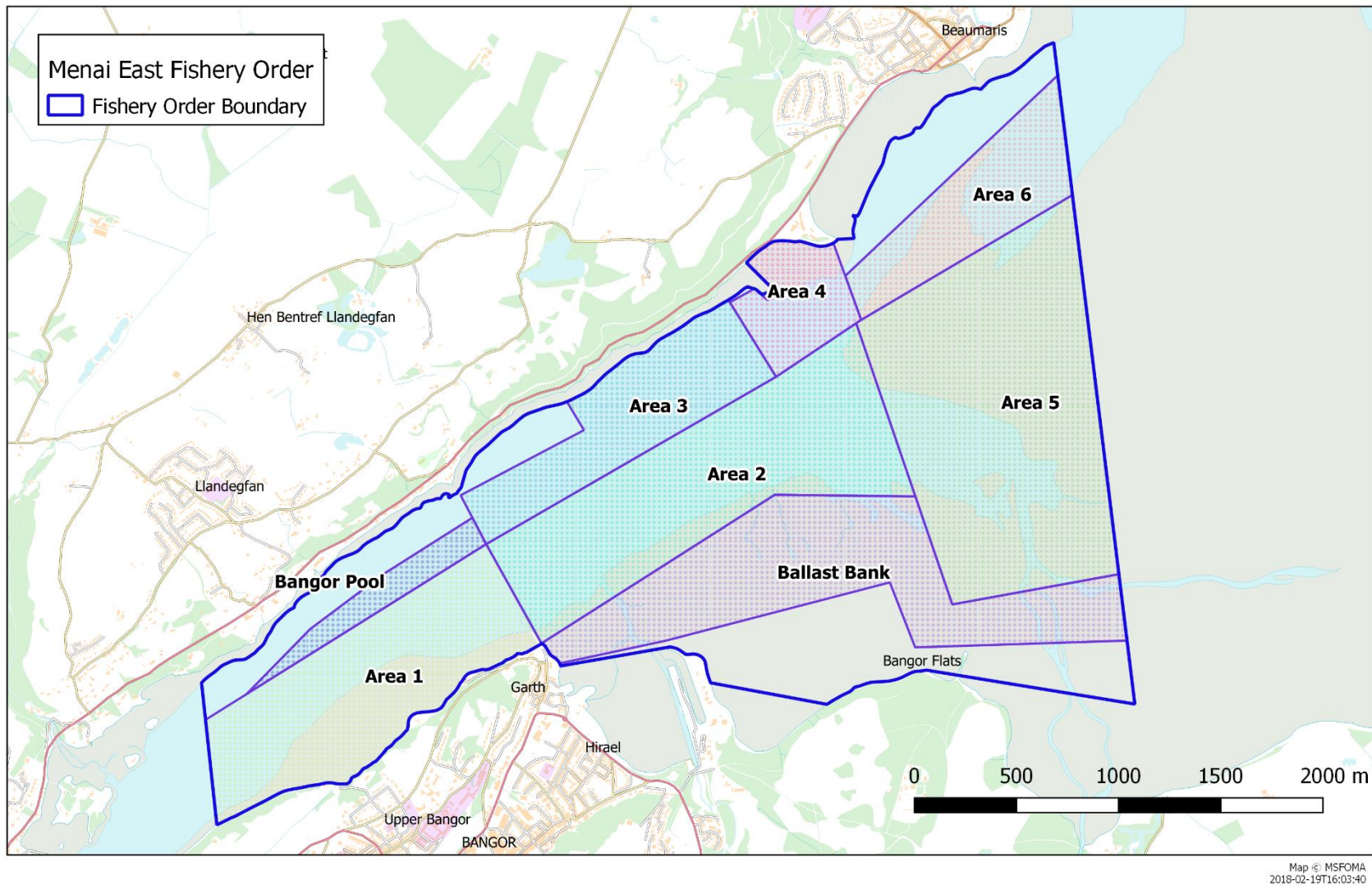
Is-adran Môr a Physgodfeydd/Marine and Fisheries Division  
Llywodraeth Cymru/Welsh Government  
Rhodfa Padarn, Llanbadarn Fawr, Aberystwyth, SY23 3UR  
Tel/Ffôn: 0300 062 2215  
E-mail/E-bost: [michelle.billing@gov.wales](mailto:michelle.billing@gov.wales)

Dylai unrhyw ddatganiadau neu sylwadau a wneir uchod gael eu hystyried yn rhai personol ac nid yn rhai gan Lywodraeth Cymru, unrhyw ran ohoni neu unrhyw gorff sy'n gysylltiedig â hi.

Any of the statements or comments made above should be regarded as personal and not those of the Welsh Government, any constituent part or connected body.



**Annex H:** Map of the current extent of the Menai Strait Oyster and Mussel Fishery Order 1962 and leased areas.



## **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 earlier this year (on 17<sup>th</sup> December 2019, 31<sup>st</sup> January, 13<sup>th</sup> March, 7<sup>th</sup> April 2020, 5<sup>th</sup> May, 2<sup>nd</sup> June & 28<sup>th</sup> July). 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 In July it was reported that WG Science have produced a draft desk study (“Pacific Oyster Review”) of the situation in the Menai Strait, assisted by the University of Bangor. This review was intended provide the evidence base for informing the Habitat Regulations Assessment (HRA) of leases for Pacific oyster cultivation in the Strait.
- 3.3 At the time of writing this report no further progress has been reported by WG. WG officials may be able to provide an update on the current status of this review and the development of WG policy for Pacific Oysters at the meeting.

### **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, both the delays in the process and the ongoing 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  
November 2020