

By: KEIFCA Chief Fishery Officer

To: Kent & Essex Inshore Fisheries and Conservation Authority
– 14 July 2023

Subject: **Cockle fishery review Consultation 4 – indicative legal wording and draft management plan**

Classification Unrestricted

Summary: This paper outlines the engagement undertaken in Consultation 4 as part of the review and development of management for the cockle fisheries in the KEIFCA district. *It is recommended that Members review the questionnaires held on the Consultation 4 section of the website when considering these papers.*

Recommendation: Members are asked to:

1. **APPROVE** and **COMMENT** on the actions taken by officers to engage stakeholders in the Consultation 4 process.
2. **APPROVE** and **COMMENT** on the revised indicative legal wording to allow a spare dredge blade to be carried on board
3. **APPROVE** and **COMMENT** on the revised indicative legal wording which provides a mechanism to enable restructured companies, which currently hold two licences within one company, to access the transitional arrangements for both existing licences
4. **APPROVE** and **COMMENT** on the draft management plan

Background

The indicative legal wording and draft management plan outlined in Consultation 4 bring together the previous decisions made by the Authority following Consultations 1 2 and 3. In developing the indicative legal wording and draft management plan, KEIFCA Members reviewed and discussed feedback from the Listening Phase, previous consultations, and the pre-consultation phase of Consultation 4 before agreeing the areas for consideration in the Consultation 4 document.

The original intention from the Authority was that Consultation 4 would focus on the practical day-to-day details of how the cockle fishery will be managed and run (i.e. reviewing regulations concerning the gear and equipment used in the fishery,

fishing trip details and management procedures). The plan also outlined the ambition to have a draft wording of the proposed legislation.

In preparation for this, a number of questions were included at the end of the Consultation 3 document that asked for feedback on a range of operational issues.

Apart from a few straightforward suggestions, overall feedback from both the Listening Phase and Consultation 3 regarding the 'nuts and bolts' operational regulations that underpin the current TECFO 1994 cockle fishery management, suggested stakeholders were happy with the current arrangements and strongly advocated retaining them in the new Regulating Order.

Taking this feedback onboard in combination with input from DEFRA, the Authority made the decision that Consultation 4 should be focused primarily on reviewing the wording and detail of the management plan in the new Regulating Order. As Consultation 4 was to be focused on the detail of the management plan, the evidence KEIFCA needed to review was expected to be written and detailed, and so there are no oral evidence sessions. As always stakeholders who had any questions about the consultation, were encouraged to speak to the Chief Officer or the Assistant Chief Officer.

This paper will review the feedback from Consultation 4. The agreed management plan and indicative legal wording will then be passed to DEFRA for a final review before the statutory consultation phase begins in the autumn of 2023. It must however be remembered that it is DEFRA that will draft the legal wording of the Regulating Order not KEIFCA.

Finally, it must be stressed that the intention of Consultation 4 was not to re-run issues covered by previous consultations, as the Authority has already made these decisions. The intention of Consultation 4 was to review and agree the detailed wording of the draft management plan and indicative legal wording. Any feedback replaying previous arguments has been included in the consultation feedback for Members, however it has not be analysed or summarised by officers.

Statutory consultation phase

Once this paper has been agreed by the KEIFCA members then the legislation will be taken through the appropriate statutory consultation and confirmation process for a Regulating Order.

Overview of cockle management development process

Listening Phase	<p>Listening Phase (Sept 2021 – Nov 2021)</p>	Gather views and ideas from stakeholders to understand what works well within the current fisheries management systems and where people believe changes need to be made.
Legislative Framework Phase	<p>Consultation 1 <i>Agree initial framework model outlines</i> (24 March – 9 May 2022)</p>	<p>The first step reviewed and evaluated a range of different management framework models for managing cockle fisheries within the KEIFCA district. The key features included the size and shape of any specific management zones, the type of fishing gear (e.g. suction dredge or other fishing method), whether access to a zone would be limited and if so to what kind of number/ range of licences or permits would likely be issued. Finally, whether the IFCA would use a Regulating Order or byelaw to manage the area.</p> <p>Following an extensive consultation and a special Authority meeting, the Authority voted for three framework models to be developed further in Consultation 2; New Jamaica, New Haiti and New Bermuda (all these options included a commitment to make a new Regulating Order). The Authority also agreed to develop a small-scale fishery in the area outside the Regulating Order, using the current flexible permit byelaw rather than running a small-scale trial.</p>
	<p>Consultation 2 <i>Agree access arrangements for framework models and a single framework to take to next stage</i> (22 July – 16 Sept 2022)</p>	<p>Consultation 2 explored the different methods, systems, or criteria that the Authority might use to manage, limit or control access to a specific cockle management zone. Building on the decisions made in Consultation 1, the wide range of different possible access arrangements or criteria for potential licence holders were thoroughly discussed and evaluated within the context of each agreed framework model.</p> <p>This is a complex legal area with very far-reaching long-term consequences which can not only impact current fishermen, but also has the potential to impact a generation of future fishermen. The Listening Phase highlighted that this was an area poorly understood by fishers outside of the current cockle fishery and it was important to spend time to clearly work through the mechanisms, outcomes and impacts upon different sectors, of different possible access arrangements. At the end of this step in the process the Authority agreed the final framework model and access arrangements/ criteria to develop further during the technical development phase.</p>
Technical detail development Phase	<p>Consultation 3 <i>Agree key features and detail of the agreed framework model.</i> (12 Dec 22 – 27 Jan 2023)</p>	<p>One of the key issues that has been raised throughout the Listening Phase is whether operators that acquire a licence could transfer that licence in the future either to an individual like a family member or via the purchase of their company. Having a clear management framework model with agreed access arrangements/ criteria will help inform this decision and allow a focused debate on what can be a very emotive discussion with very strong views on either side.</p> <p>Other important areas of detail that would need to be discussed and agreed include the fine detail concerning the review of the legislation, the access arrangements/ criteria and finalising the Regulating Order boundary with specific coordinates.</p>
	<p>Consultation 4 <i>Agree detail and final wording</i> (31 March – 26 May 2023)</p>	<p>The fourth consultation focuses primarily on the reviewing the wording and detail of the management plan and the draft wording of the new TECFO 2024 Regulating Order. Any feedback replaying arguments from previous consultations will be included in the consultation feedback for members but will not be analysed or summarised by officers.</p> <p>The agreed management plan and draft TECFO 2024 will then be passed to DEFRA who will draft the Regulating Order before the statutory consultation phase begins in the autumn of 2023.</p>

Consultation 4

Consultation 4 started on the 31 March 2023 with just over 200 emails being sent out to stakeholders and the Consultation 4 document going live on the bespoke KEIFCA cockle consultation website.

Throughout the process, senior KEIFCA officers worked closely with current and former KEIFCA Members and members of the industry to make stakeholders aware of the consultation, to help fishers engage in the process and to answer any questions regarding the consultation. By the end of the consultation a total of 204 emails and 196 e-bulletins were sent. Consultation 4 finished on the 26 May 2023.

The engagement process seems to have gone well although we received far less feedback for Consultation 4 than the previous three consultations. Feedback was received from across the spectrum including from existing interests in the Thames cockle industry, other cockle fisheries and non-cockle Thames fisheries, however the nature and details of the consultation meant we had a lot less input from fishers outside the current cockle industry. In total we had 10 consultation responses.

This general acceptance of the indicative legal wording and the draft Management Plan is very encouraging and is built on the hard work from all parties. Over the past 18 months, five separate consultations have taken place (Listening Phase and Consultations 1 – 4), with nearly 10,000 pieces of evidence being submitted to or collected by KEIFCA. This evidence included written responses to questionnaires, letters, oral evidence and one-to-one discussions with officers. A huge amount of work has been put into this workstream by both KEIFCA Officers and KEIFCA Members as well as the significant level of engagement by the fishing industry and other stakeholders. The stepwise approach which has been taken, along with the well-defined process and evaluation system has enabled the Authority to take onboard and build on views from stakeholders. The indicative legal wording and the draft management plan are the culmination of months of effort by all who have taken part and have been involved.

Officer comments

Officers have spoken to industry representatives throughout this consultation period and the general narrative seems to be that the indicative legal wording and the draft management plan did not contain any surprises for the industry. There was a reflection that the key decisions which underpin both these documents, such as number of licences and application criteria, have already been made by the Authority, and that the documents just bring together these decisions into a written framework.

Feedback from Consultation 4 regarding the indicative legal wording

Below are the replies received from the consultation regarding the indicative legal wording supplied.

Comments from current TECFO licence holders

Comment	Officer feedback
<i>"Please consider all vessels operating in the TECFO area to be able to carry on board 3 spare blades for the cockle dredge. As we fish in the maplin ranges and we receive Lots of damage to the blades when fishing"</i>	This licence condition was initially incorporated into the proposed new regulating order in order to clarify a specific enforcement requirement. The proposal is sensible and officers recognise that blades can be damaged and might need replacing whilst cockle harvesting.
RECOMMENDATION	The relevant licence condition be amended to allow one complete dredge blade to be carried on board: <i>"8. As an exception to (7) one complete spare dredge blade may be carried on board which must be the same dimensions as the blade fitted to the dredge."</i>

Comments from CFFPB permit holders and the Catching Sector

Comment	Officer feedback
<i>"It is very similar to how it always has been but just the loss of the Margate sand which has only recently had a set of cockles. I feel that more than one extra license should be available. "</i>	<p>The boundaries of the new regulating order and the number of licences to be issued were discussed at length in Consultation 1 and Consultation 2, and the Authority made difficult decisions weighing up a wide range of views and information.</p> <p>As part of the new arrangements productive beds including Margate Sands and Scrapsgate will be part of the Cockle Fishery Permit Byelaw rather than included in the new Regulating Order.</p> <p>The framework for issuing licences, as well as the number of licences to issue in the first 7-year cycle was discussed specifically in Consultation 2. There was a lot of engagement from the industry on this issue and the Authority heard strong arguments from a range of stakeholders. After considering these points, the Authority agreed to issue 15 licences for the first 7-year cycle.</p>

Feedback from Consultation 4 regarding the draft Management Plan

Below are the replies received from the consultation regarding the draft Management Plan.

Comments from current TECFO licence holders

Comment	Officer feedback
<i>"Complications made by none allowing of Companies Directors apply that have no control over the Company. Also [Directors] that must have been removed and just added for track record should be able to apply."</i>	The Authority made the decision following Consultation 3 to allow a transitional period for all existing vessels with the provision that no existing company shareholders or directors would be able to apply for additional licences at the same time. This transitional period is for the first 7 years of the new regulating order. After the first 7 years anyone may apply for a licence following the criteria set out in the draft Management Plan.
<i>"you have put everything in the management plan that industry wanted"</i>	Over the past 18 months, five consultations have been undertaken with 9,909 pieces of evidence being received by the Authority. Each stage has built upon the feedback and input of stakeholders, with the Authority making decisions along the way.

Comments from CFFPB permit holders and the Catching Sector

Comment	Officer feedback
<i>"Track Record over a lifetime of working as a fisherman in the Thames Cockle Fisheries also including other cockle fisheries around the UK should be the focus on eligibility criteria. To have a points system were landing and cooking into the local area scores more favourably when assessing an applicant's criteria in the scoring of future applications to gain a TECFO entitlement is discriminative."</i>	The Authority consulted on the licence application criteria during Consultation 3 and took on board all of the comments and feedback provided by stakeholders. The Authority voted on the criteria they wished to consider following Consultation 3 and made a decision at that point.

Other comments and feedback from Consultation 4

Below are the replies received from the consultation covering any other comments.

Comments from current TECFO licence holders

Comment	Officer feedback
<i>"All Directors to be named on a cockle licence"</i>	The directors and shareholders for a company are required to be supplied by the licence applicant as part of the licence application form. Specific questions within the application form require applicants to supply information on the staff structure and personnel employed by them. These were voted on and approved by the Authority following Consultation 3.

<i>“Breakage Rates, there should be tighter controls on these. However if both TEFA and industry can work together it should make it less painful.”</i>	One of the criteria which applicants must address when applying for a licence is how they intend to reduce their impact of fishing operations on both the seabed and the cockle stocks. Officers are happy to work with the industry to reduce damage rates and see this as an important area to improve.
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Comments from CFFPB permit holders and the Catching Sector

Comment	Officer feedback
<i>“Part of the process is to try and supply the catch local to the Thames processing factories so a young local fisherman should get the extra license if it becomes available. Also people that have sold their licenses should still not be eligible to apply for a new license.”</i>	<p>The number of licences was consulted upon in Consultation 2 and the decision made by the Authority at that point to issue 15 licences for the first 7 years of the new Regulating Order. Following Consultation 3 the Authority approved the criteria which applicants will be assessed against when applying for a new licence. These are set out in the draft Management Plan.</p> <p>The Authority made the decision following Consultation 3 to allow a transitional period for all existing vessels with the provision that no existing company shareholders or directors would be able to apply for a licence if they had been a Director or Shareholder on a specified date. This transitional period is for the first 7 years of the new regulating order. After the first 7 years anyone may apply for a licence following the criteria set out in the draft Management Plan.</p>
<i>“wish local fishing family to be recognised by the committee in the cockle Licencie application for a regulating licence as they are a local supplier and employ and train local fishermen”</i>	Following Consultation 3 the Authority approved the criteria which applicants will be assessed against when applying for a new licence. These are set out in the draft Management Plan.

Addressing the single licence requirement, the transitional period and how they affect the current companies which are issued with two licences.

At the March 2023 Authority meeting, as part of Consultation 3, Members made the decision that each licence applicant would only be able to apply for, and be issued with, one licence. Members also approved a transitional period for the first 7-year cycle only, so as to ensure a level of continuity between the outgoing TECFO fishery and the incoming new T24 Regulating Order fishery, where current TECFO-licensed vessels could be issued with a licence without applying through the regular licence allocation procedure.

For the majority of the current TECFO-licensed vessels, this presents no significant issues and each company is issued with one licence. However, two of the companies, Cardium Shellfish Ltd and Coral Island Seafoods Ltd, are each issued with two licences. This has been the case since the start of the current regulating order (TECFO 1994) and was a result of ownership changes carried out by the

cockle industry whilst the TECFO 1994 was being established (companies moving from Sole Trader or Partnership status into Limited Company status).

As part of the recommendations on agenda item B3 (7 March 2023 meeting)- Terms and conditions of the licence: One licence per applicant, the following text was included:

The recommendation does have a significant impact on the two companies directly impacted, however there is a strong commitment from officers and the Authority to arrive at a fair process and agreement to address the specific impact on these two companies.

Following the Authority agreeing the recommendations of Agenda item B3 - Terms and conditions of the licence: One licence per applicant, officers wrote to the two companies concerned to open a dialog as to how this ambition could be achieved. Both companies have responded with proposals which would suit their individual business requirements. As a result of the proposals received, officers have developed additional wording for the transitional period clause of the regulating order as follows, with the notable addition being paragraph 5(2) and 5(3):

5. Transitional Period

1. *Contrary to paragraph 4(2), and subject to 5(2), for the first 7-year licencing cycle only, subject to the annual renewal requirements specified in 4(3), no more than one licence may be issued to a company which owned and operated a relevant fishing vessel named on a licence to fish for cockles within the Thames Estuary Cockle Fishery Order 1994 on the specified date of 30th September 2022.*
2. *Where any company, on the specified date in 5(1), held two licences, the second licence not issued under 5(1) may be issued to a company which owned and operated a relevant fishing vessel named on a licence to fish for cockles within the Thames Estuary Cockle Fishery Order 1994 on the specified date of 29th February 2024*
3. *Paragraph 5(2) only applies provided that the sum of the beneficial ownership of the company issued with a licence under paragraph 5(1) and the company issued with a licence under paragraph 5(2) is the same as the ownership of the company which held two licences on the date specified in paragraph 5(1).*
4. *Paragraphs 5(1) and 5(2) only apply provided that:*
 - (a) *the company remains in the same legal and beneficial ownership throughout the entire 7-year licenced period as it was on the relevant date specified in paragraph 5(1) or 5(2); and*
 - (b) *a 7-year business plan is submitted prior to a licence being issued for the first 7-year period, and*
 - (c) *during the first 7-year licencing cycle, no petition is filed or no Order is made or an effective resolution is passed for the winding up of that company in any jurisdiction whatsoever (otherwise than for the purpose of any reconstruction or amalgamation as shall be approved by the Auth) or an Administrator, Administrative Receiver or a Receiver is appointed over the undertaking or property of the company or the company suspends payment or ceases to carry on its business or makes special arrangements or composition with its creditors.*
5. *No person who was a shareholder or director of a company holding a TECFO 1994 licence on the relevant date specified in paragraph 5(1) or 5(2) may apply for any other licence either as an individual or as a director or shareholder of another company if a licence is issued to the TECFO 1994 licence holding company under the arrangements provided for in paragraph 5(1).*
6. *Paragraph 5(3)(a) will not apply in exceptional circumstances where the licence holder or a shareholder is deceased during the term of the licence, or they suffer physical or mental incapacity. An application to vary the legal and beneficial ownership of the company must be made in writing to the Authority for a decision to be made.*

This addition will provide some flexibility for the two companies concerned. However, officers are intending that no companies will be sold and that the overall beneficial ownership of the companies which are issued with the four licences will be the same as at present. This additional clause has been added to the indicative legal wording and the full revised wording is presented in Appendix 1.

Officers intend to continue to work with the companies concerned to enable them to restructure in a way which allows them to continue with their operations in the

new regulating order without either a) disadvantaging them or b) giving them an advantage, compared to the other existing TECFO-licenced companies.

Next Steps

The indicative legal wording and draft management plan will, once approved by the Authority, remain in a draft form as the final development cycle is to be carried out by Defra rather than by KEIFCA. This is because a Regulating Order is a Statutory Instrument which can only be made by Parliament.

Defra is ultimately responsible for developing the legal text of the new regulating order, and that is why the legal text consulted upon is described as 'indicative'. The indicative legal wording was shared with Defra at the same time as the application for the new regulating order was submitted in April 2023. Officers will continue to work with Defra on the new regulating order and are in the process of requesting a meeting between officers and the Defra legal team who will write the new legislation.

Recommendation

This general acceptance of the indicative legal wording and the draft Management Plan is very encouraging and is built on the hard work from all parties. The only component which was not part of the overall consultation but has been discussed with those affected is the legal wording surrounding the current TECFO companies which hold two licences and how the one licence restriction for the transitional period over the first 7 years will affect them. This was not consulted upon more widely as the relevant decisions had already been made by the Authority and the remaining aspects are commercially sensitive.

Given that the regulating order is yet to be subject to formal consultation as part of Defra's process for making it, the recommendation is therefore to approve the indicative legal wording as amended by officers to enable restructured companies, which currently hold two licences within one company, to access the transitional arrangements for both existing licences.

Recommendation:

Members are asked to:

1. **APPROVE** and **COMMENT** on the actions taken by officers to engage stakeholders in the Consultation 4 process.
2. **APPROVE** and **COMMENT** on the revised indicative legal wording to allow a spare dredge blade to be carried on board
3. **APPROVE** and **COMMENT** on the revised indicative legal wording which provides a mechanism to enable restructured companies, which currently hold two licences within one company, to access the transitional arrangements for both existing licences
4. **APPROVE and COMMENT** on the draft management plan