

Agenda item B1

From: **Chief Officer and Deputy Chief Officer**

To: Kent and Essex Inshore Fisheries and Conservation Authority -
6 August 2025

Subject: **Consideration of request to change TECFO licence-type
applied for by WG and SJ Dell Ltd**

Classification: **Unrestricted**

Summary: The paper summarises the work undertaken to implement the Authority's decisions of 18 June 2025 to recommence the TECFO Licence Allocation Process. The Authority will be provided with information necessary to decide whether they approve the change of TECFO licence-type for WG and SJ Dell Ltd based on whether he was prejudiced by the change of text of article 5(12)

Recommendations: That the Authority:

NOTE the decision made by the Chief Fishery Officer to progress with the TECFO 24 7-year Licence Allocation Process taking into account legal advice of King's Counsel.

CONSIDER the submissions made in the change request process as well as the legal summary provided and **DECIDE**, in regards to WG and SJ Dell Ltd, whether they are either;

1. **satisfied** that the applicant was prejudiced by the change of text of article 5(12)

or

2. **not satisfied** that the applicant was prejudiced by the change of text of article 5(12)

Introduction

At the Authority meeting on the 18 June 2025 KEIFCA Officers and the KEIFCA legal team presented agenda item B1 to Authority members, that addressed the feedback received from industry prior to the last Authority meeting held on the

27 March 2025. From the three options presented, the Authority agreed to Option 3:

- a) continue with the TECFO Licence Allocation Process and,
- b) subject to the variation order being passed and no legal impediment, to a process by which all of those eligible to apply for a transitional licence be given the opportunity to request a change to the type of licence for which they applied in light of the changes made by the variation order.

Only those who were eligible for a transitional licence in line with the requirements of Article 6 of TECFO 2024 would be given the opportunity to request a change to the type of licence for which they applied as the article 5(12) as made or varied could not and does not apply to any other type of applicant, including those deemed to be ineligible under the order as made.

Legal challenges

One day prior to the 18 June Authority meeting, both Defra and the Authority received a Pre-Action Protocol letter from solicitors representing one of the TECFO24 licence applicants, regarding the application for and making of the variation order. A PAP letter is the first step in applying for a judicial review. KEIFCA has responded to this letter of claim, following the appointment of King's Counsel.

On 27 June 2025, the Authority received a second PAP letter from a second TECFO24 licence applicant, regarding the decision which the Authority had made on 18 June in relation to continuing the LAP. KEIFCA has responded to this letter of claim, following the appointment of King's Counsel.

Making of variation order

The order was signed by Minister Zeichner on 14 July 2025 and was laid in Parliament on 15 July 2025. The order will come into force on 5 August 2025.

Actioning the decision of the Authority from 18 June 2025

Following the meeting on 18 June, officers commissioned further legal advice from King's Counsel. The advice suggested that granting those eligible for a transitional licence an unrestricted ability to decide whether or not to switch the type of application they are making could give rise to accusations of procedural impropriety and unfairness.

The advice suggested an essential consideration must be whether anyone applying to switch their licence type has been unfairly prejudiced by the change made to Article 5(12) of TECFO 2024. If any applicant does make a request to

change, they should be required, as part of their request, to satisfy the Authority that they would have applied for a different type of licence had Article 5(12) not precluded companies with common officers or shareholders from each holding transitional licences.

Having reflected upon that advice, and after discussing the legal situation with the Chairman and Vice Chairman, the Chief Officer made a decision in line with his delegated duties under the Standing Orders to implement the decision made by the Authority on 18 June 2025 taking into account the legal advice from King's Counsel (decision record presented in Appendix 1 dated 15 July 2025).

On the 15 July 2025, those TECFO 24 licence applicants who were eligible for a transitional period licence under Article 6 were emailed (Appendix 2/2a) with the following request to be submitted by 3pm on the 23 July 2025:

Taking into account the Thames Estuary Cockle Fishery (No.2) Order 2024 as varied by the Thames Estuary Cockle Fishery (No.2) (Variation) Order 2025, please consider the type of licence for which you applied (transitional/non-transitional) and then, via completion of the TECFO-001a form (attached), confirm whether you wish to remain with the type of licence you have already applied for or request a change to the type of licence you have applied for.

If you are requesting a change to the type of licence for which you are applying, you will need to say why you are requesting the change and explain how your decision to apply for the type of licence you did was prejudiced by the wording of the TECFO 2024 as made. You should provide any and all evidence which you feel supports your request.

Only one request to change was received from the fourteen applicants eligible to apply for a transitional licence. The request was from WG and SJ Dell Ltd and was received on 20 July 2025 (Appendix 3).

Officers then wrote to WG and SJ Dell Ltd on 21 July 2025 to request clarification/confirmation on some aspects of the request (Appendix 4). WG and SJ Dell Ltd provided this information on 23 July 2025 (Appendix 5).

A further additional request was then made of WG and SJ Dell Ltd on 24 July 2025 (Appendix 6) to enable the Authority to consider all pertinent information, this was provided by WG and SJ Dell Ltd on 25 July 2025 (Appendix 7).

Consideration of the request to change from WG and SJ Dell Ltd

Applicants have been informed that any submitted request will be considered alongside the following: the applicant's responses during the cockle review process, the applicant's TECFO-001 application form, any relevant prior

communications between the applicant and KEIFCA or its officers, and legal advice provided to the Authority.

Submitted request to change

WG and SJ Dell Ltd have provided the following explanation of how they were prejudiced against by the TECFO(2) Order as made:

Had Article 5(12) not precluded companies with common officers or shareholders from each holding a transitional licence, we would not have applied for a non-transitional licence.

This is because we would have anticipated that there would be far fewer spaces available for non-transitional licence applicants. We would have assessed the risk of applying for a non-transitional licence very differently and, based on the business considerations outlined above, made entirely different decisions.

In addition, WG and SJ Dell Ltd provided the following reasons for submitting a non-transitional application:

- *Extensive and long-standing history of operating within the Thames Cockle Fishery, supported a view that applying for a non-transitional licence was a justifiable and relatively low-risk decision.*
- *Concerned to ensure the continued operation of the business should anything happen to the directors.*
- *Keen to ensure that business expansion and potential outside investment could be supported by virtue of the appropriate licence type.*

TECFO-001a clarification

In their responses to the two clarification letters sent to WG and SJ Dell Ltd, they stated that they became aware of the wording of Article 5(12) on the 9 December 2024, when the text was circulated by KEIFCA as part of the publication of the SI required by the Shellfish Act 1967, prior to the Order coming into force on the 18 December 2024.

WG and SJ Dell Ltd stated that there was no documentary evidence to support the statement from their TECFO-001a form that Article 5(12) had been read, understood and relied upon as part of the decision to apply for a non-transitional licence. WG and SJ Dell Ltd asserted that their letter of 23 March 2025 (Appendix 8), as the first formal communication from them after receiving the complete ranked list, did provide evidence of this.

Previous communications with KEIFCA and officers

In their letter of 23 March 2025 to KEIFCA, after being informed that they had been ranked in position 18 on the recommended ranked list, WG and SG Dell Ltd drew the Authority's attention to the erroneous wording in Article 5(12) of the Order. This letter also raised complaint with several components of the Licence

Allocation Process itself and also provided additional information pertinent to their original TECFO-001 application expanding on some points. WG and SG Dell Ltd set out in para 8.3 their rationale for applying for a transitional licence. The letter did draw attention to the erroneous wording and provided an explanation of why a non-transitional licence had been applied for. It did not include any mention of consideration of Article 5(12).

Prior to this letter, an earlier draft had been sent to the Deputy Chief IFCO three days before on 20 March 2025.

This draft resulted in two phone calls and an email response between Mr Dell and the Deputy Chief IFCO. None of these communications referred to Article 5(12), the first time it was raised with the Authority, formally or otherwise, was on 23 March 2025.

In their clarification to this response WG and SJ Dell Ltd made the following comments:

Mr S Dell spoke with the Deputy Chief IFCO on 14 March 2025. At that stage, the full ranking list had not yet been published, there was no indication that there had been a misapplication of TECFO 2024 and no reason to specifically mention Article 5(12).

The full ranking list was published on 20 March 2024 and Mr S Dell then spoke with the Deputy Chief IFCO again shortly after the list became public. There had not yet been sufficient opportunity to review the information and to digest its consequences. Once we had reviewed the rankings and understood the impact of the Order's interpretation, we formalised our concerns in our objection letter submitted on 23 March 2025.

Summary

There is a significant amount of detail in the paper, and in the attached documents. The timeline for the relevant actions and events is as follows:

25th November 2024	The Thames Estuary Cockle Fishery (No.2) Order 2024 is laid in Parliament
9th December 2024	Email from KEIFCA to all stakeholders circulating the order.
18th December 2024	The Thames Estuary Cockle Fishery (No.2) Order 2024 comes into force.
19th December 2024 to 19th January 2025	Licence Application window
14th March 2025	Applicants informed of their place on the recommended ranked list. Only top 15 are recommended for licences.

14th March 2025	Mr S Dell calls officers. No mention of Art. 5(12)
17th March 2025	Draft appeal letter drafted by WG and SJ Dell Ltd
20th March 2025	Draft appeal letter (above) received by email timed 15:48. No mention of Art. 5(12).
20th March 2025	Recommended ranked list is published. Only top 15 are recommended for licences.
20th March 2025	2 x calls between Mr S Dell and Dominic Bailey. No reference to Art.5(12)
23rd March 2025	Appeal letter from WG and SJ Dell Ltd. Problem with Art 5(12) wording raised.(Appendix 8)
14th July 2025	The Thames Estuary Cockle Fishery (No. 2) (Variation) Order 2025 is made and laid to come into force on 6th August 2025.
16th July 2025	TECFO-001a forms and letters sent out to ask if any applicant wishes to change the type of licence they originally wished to apply for. (Appendix 2 & 2a)
20th July 2025	WG and SJ Dell Ltd replies saying wishes to convert non-transitional to transitional. (Appendix 3)
23rd July 2025	First clarification letter from WG and SJ Dell Ltd in response to a request for information. Says aware of the Art. 5(12) issue from the 9th December 2024.(Appendix 4 & 5)
25th July 2025	Clarification letter from WG and SJ Dell Ltd in response to request for information. No documentary evidence submitted to show reliance on Art 5(12) was provided. Art 5(12) was not mentioned in the telephone calls with Dominic Bailey as it was not relevant. (Appendix 6 & 7).

Decision

The Sea Fisheries (Shellfish) Act 1967 gives the grantee of a regulating order, in this case Kent and Essex IFCA, the power to issue licences to fish. In line with Section 4(4) of that Act, such licences “*may be issued under the order in such numbers and to such persons ... as the grantees may determine*”. In other words, the Authority has the discretion to decide to whom it will issue licences.

The Authority has been provided with King’s Counsel legal advice in relation to this decision.

In exercising that discretion, Members must start with an open mind and have regard to all of the relevant evidence. Members should consider the evidence which is put in front of them which pertains solely to this question, rather than considering any implications as to Licence Allocation Process and should weigh up each piece of evidence before making a decision.

Members should also be aware that this paper contains a summary of the information and communications which have occurred between the Authority and the applicants. Members should apprise themselves of the full versions of the information presented, which is contained in the appendices.

It is now for the Authority to consider whether it is satisfied that WG and SJ Dell Ltd would have applied for a different type of licence had Article 5(12) not precluded companies with common officers or shareholders from each holding transitional licences. In other words, would they have applied for a different type of licence had the Order as varied been in force during the application window.

If the Authority is not satisfied that this is the case then they should not accept the request to change the licence of WG and SJ Dell Ltd to a transitional licence. Conversely if they are satisfied that this is the case then they should accept the request to change the licence type to transitional.

Recommendations: That the Authority:

NOTE the decision made by the Chief Fishery Officer to progress with the TECFO 24 7-year Licence Allocation Process taking into account legal advice of King's Counsel.

CONSIDER the submissions made in the change request process as well as the legal summary provided and **DECIDE**, in regards to WG and SJ Dell Ltd, whether they are either;

1. **satisfied** that the applicant was prejudiced by the change of text of article 5(12)

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