

By: Chief Inshore Fisheries Officer/ Deputy Chief Inshore Fisheries Officer

To: Kent & Essex Inshore Fisheries and Conservation Authority
– 18 June 2025

Subject: **TECFO 2024 Licence Allocation Process**

Classification Unrestricted (Main report – open. Appendices include Exempt information under Section 100A, Schedule 12A paragraphs 1 and 3 of the Local Government Act 1972)

Summary:

The paper outlines the position following the publication of the recommended ranked List of licence applicants, highlighting the concerns raised by the fishing industry with regards to the Licence Allocation Process at the last Authority meeting. The paper confirms how Officers, acting on the direction of the Full Authority from the last meeting have sought to address the issues.

In terms of decision-making, the paper proposes steps to un-pause the Licence Allocation Process with a view to the Authority considering a ranked list of applicants at the next Authority meeting in August.

Recommendations:

- 1) The Authority to **NOTE** the decision made by the Chief Officer to apply for a regulating order.
- 2) The Authority to **CONSIDER** the comments from and issues raised by stakeholders at the last meeting along with the corresponding KEIFCA officer responses and **AGREE** to un-pause and continue with the Licence Allocation Process.
- 3) The Authority to **CONSIDER** the options available to move forwards with the Licence Allocation Process and **AGREE** the process under option (3) outlined in the paper whereby all of those eligible to apply for a transitional licence are given the opportunity to consider the type of licence they wish to apply for to cover the first 7 years of TECFO 2024.

Introduction

Following notification to TECFO 24 applicants of their position on the recommended ranked list, the Authority received nearly 40 pages of mostly negative, and in some cases, very detailed and technical feedback from applicants and local Fishing Associations. These letters are provided as Exempt Appendix 1.

The feedback included legal issues concerning the application of the transitional licence provisions within the Thames Estuary Cockle Fishery (No.2) Order 2024.

At the meeting on the 27 March 2025, the Authority agreed to the pausing of the TECFO 2024 Licence Allocation Process (LAP) to allow all comments to be reviewed and solutions explored, with the result that the recommended ranked list was not confirmed and no licences were offered or issued.

KEIFCA Officers and the KEIFCA legal team have worked through the feedback from industry, summarising and addressing each in turn. The issues were separated into procedural issues (concerns regarding the text or nature of the Management Plan and scoring framework, or how the LAP was applied) and specific legal issues and wording of the Regulating Order.

Procedural issues and queries

- 1. Concerns that applicants fishing boats were not capable of cockling/
KEIFCA officers had not carried out the proper checks*

KEIFCA starts from the point that we are not the marine regulator for assessing capability or safety of fishing vessels to use specific gears. The Maritime and Coastguard Agency (MCA) are the government body that regulate this area and inspect vessels to ensure that they comply with detailed requirements. As laid out in the management plan, KEIFCA officers used information supplied by the applicant in the application form and information from a series of vessel documents issued by other organisations to check the requirements in the management plan including; the Transcript of Registry (UK Ship Register), current fishing licence issued by MMO, and Small Fishing Vessel Certificate issued by the Maritime and Coastguard Agency (MCA). Officers also used these documents to ensure that the vessel complied with the KEIFCA vessel length and engine power byelaw (vessel length below 15m, engine size below 221kW). The statutory responsibilities of KEIFCA, as set out in the Marine and Coastal Access Act 2009, relate to the exploitation of sustainable fishing resources and marine habitat protection. MCA assess vessel safety requirements like vessel stability and loading levels; therefore, KEIFCA would be working outside its legal remit if it made these assessments.

KEIFCA consulted widely on the information required and checks by officers regarding the vessel and applicant were included as part of the application.

Apart from the clarification on vessel ownership in Consultation 3, the vessel requirements and the wording of the application process have not changed. The requirements were consulted on three times: Consultation 3, Consultation 4 and as part of the management plan in the statutory consultation of the Regulating Order and no comments or objections were submitted by stakeholders.

Since the comments have been received from the industry, further assurance was sought from the Authority's legal team as to the appropriateness and accuracy of the checks undertaken by Officers. The legal team have confirmed that the necessary processes were followed and the same technical conclusions were reached.

KEIFCA officers will continue to work closely with the MCA and could ask to see any MCA documentation regarding the modification of a vessel as part of the pre-approval licence process, before the final confirmation of a licence.

2. Concerns that newly created companies applied for a licence

The management plan did not include the length of time that a company has been active as a condition in the application process. Concerns were also raised regarding the trading status of companies that applied for a licence. Again, officers checked company details against the criteria laid out in the Management Plan. While concerns raised by parts of the industry on this point are recognised, as historic association with the relevant fisheries is viewed by industry as an important factor, this was not in scope of the application process and could not be taken into account by the Authority.

3. Concerns regarding the relative current cockling experience of some of the applicants

The criteria that make up the experience score section was consulted on extensively as part of the development of TECFO 24. For applicants not previously holding a TECFO 94 licence the experience score has two components; the number of years for which an applicant held a cockle permit, and an 'open response section' that assessed the applicants experience against specific criteria set out in the Management Plan. All relevant applicants were scored against these same criteria.

4. Questions regarding the fairness of the spread of licences within the Thames and to certain ports

The Licence Allocation Procedure, the application form, and the scoring criteria were all consulted upon in Consultation 3, Consultation 4 and the Statutory Consultation. The distribution of licences within the Thames and to vessels

based on specific ports was not raised during this process and was not included as a criteria. Where an issue was not part of the criteria it was not possible for the Authority to take this into account as part of application process.

All applicants vessels would be based in the KEIFCA district for the duration of the fishery. Vessels and fishing operations have the ability to move, land their catch or base themselves in different ports depending on the optimum logistics for their business.

5. *"KEIFCA should have considered additional factors like levelling up (help towards deprived areas), social mobility, corporate structure and community standing when allocating licences"*

The Licence Allocation Procedure, the application form, and the scoring criteria were all thoroughly consulted upon in Consultation 3, Consultation 4 and the Statutory Consultation. The determination as to the process and what factors would be taken into account was made by the Authority in 2023 and concerns regarding these elements should have been raised at that time.

6. *Complaints that the LAP and scoring framework favoured applicants supplying local processing plants.*

The Licence Allocation Procedure, the application form, the weighting of each section, and the scoring criteria were all thoroughly consulted upon in Consultation 3. Following this, Consultation 4 and then the Statutory Consultation provided further opportunity for comment and thorough consideration of these documents. The intent of the Authority was that applicants could gain a higher score for landing and cooking a greater percentage of their catch in local processing plants.

7. *Concerns regarding the eligibility of TECFO 24 licence applications whereby directors of companies that applied for Transitional Period Licences also applied as directors of different companies under the scored or 'open' process.*

Since proposals from Transitional Arrangements were first put forward in Section 7 of the Consultation 3 document (pg.24), and then discussed in detail as Agenda item B5 and the 7 March 2023 Authority meeting, there has been clear intent that if a director of a company applied for a transitional period licence they would then be ineligible to receive a 'standard' licence through the scored or open process. This intention was carried forward in draft Regulation Order text and in the Management, Plan documents in Consultation 4 and in the Statutory Consultation. The incorrect progression of this clear policy direction

from the Authority as part of the eventual legislation was a key reason for the pausing the licensing process and this report seeks to address the issues.

Questions and requests related to the decision-making process/ Licence Allocation Process and the scoring of applications

1. *"... grant permission to publish the scoring points in the ranked order of the successful 20 asking for the ranked points of each section in order, and do not seek to find out any further information from the application as they understand that this is highly commercially sensitive."*

Each applicant will be given a breakdown of their score once the licence issuing process has been concluded. The scores are commercially sensitive and KEIFCA does not intend to publish them.

2. *"The decision to release only the ranking of licence applications, without disclosing the detailed scores or any specific feedback, raises concerns regarding the transparency and fairness of the licence allocation procedure. The absence of clear and accessible information about the results creates an environment of uncertainty, leaving us unable to understand the rationale behind the decisions made. This lack of transparency has undermined our confidence in the integrity of the process."*

The Authority has conducted the license application process, via Officer activity and a Scoring Panel, in accordance with the procedure as laid out in the Management Plan. The Licence Allocation Procedure was consulted upon in Consultation 4 and the Statutory Consultation, and this issue was not raised during this process. The Application Process is designed to support the Authority making appropriate and well-informed decisions on the issuing of licenses – as per the previous comment, the Authority will engage with individual applicants to discuss the detailed scoring but there is no requirement for the details to be made publicly available and there would be significant risk of prejudicing the commercial operations of all applicants if the details were disclosed.

3. *"A fair and transparent system should allow for the opportunity to appeal or review decisions, particularly given the significant impact to the livelihoods of those affected. The Management Plan states only that 'the recommendations made by the Applications Panel are final', without offering any mechanism for applicants to dispute or seek to review the decision. The absence of a clear appeals process has limited our ability to address potential errors, misunderstandings, or perceived injustices in the decision-making process."*

This issue was previously raised and discussed through the final stages of the consultation process, in Consultation 3 and in the Statutory consultation.

As part of the Licence Allocation Process, KEIFCA included an oral evidence step to give applicants an opportunity to present their application and make their case within the Licence Allocation Process. Natural England have been very clear that 15 suction dredging licences would be the maximum for at least the first 7-year cycle. Therefore, if an appeal was successful, KEIFCA would then have to remove a licence from another applicant who would no doubt then appeal themselves.

There is no legal requirement for an appeals process within or under the TECFO 2024 SI or the Shellfish Act 1967. The Shellfish Act 1967 gives the right to regulate the fishery (including issuing of licences) to the grantee (Kent and Essex IFCA). The Act provides that the grantee may issue licences in such numbers and to such persons...as the grantee may determine, and that, if licences are not issued to all applicants, the grantee shall notify the appropriate Minister of their intention; and the appropriate Minister may give directions to the grantees. Therefore, as the grantee has the right to issue licences as they see fit and must notify the Minister of their intentions, there is no clear additional body or party who could hear an appeal. Therefore the appropriate process for dissatisfied stakeholders, directly affected by the situations, would be challenge the relevant decisions made by the Authority via relevant legal means.

4. *"In the letter sent by KEIFCA dated 14th March 2025, we were informed 'If you wish to provide any comment regarding your recommended ranked position...you may submit written representations'. The fact that this option is not documented anywhere within the Management Plan or other documents published by KEIFCA creates a risk that not all individuals will be aware of their rights. A transparent and fair process should make all relevant information readily available to all applicants, including the availability of an appeals process."*

KEIFCA hold quarterly public meetings and members of the local fishing industry regularly write to the Authority expressing their views on agenda papers or with the agreement of the Chairman can speak on a specific agenda item. All the applicants were informed in writing that they could submit representations and received the same text in their letter. KEIFCA officers were also on hand during this period to answer any questions that applicants had. As the letter dated the 14 March outlined, writing to applicants provided them with an additional opportunity for their views to be considered before the meeting, rather than it being managed through committee processes on the day of the meeting, which would have limited the scope for professional advice and meaningful consideration of any technical issues raised. Local fishers and Fisherman's Associations who were not contacted by KEIFCA also made written

representations to the meeting. This step was related to the balancing of the Authority acting as a Licensing decision-maker and as a formal committee setting.

Summary

After spending a significant time working through and addressing each of the procedural issues with our legal team, KEIFCA Officers can give assurances to the Authority that the correct procedures has been followed and the issues have been adequately addressed from a legal and procedural perspective. It is recognised that the implications of this may not be welcomed by various stakeholders but the priority in this space was the confirmation of proper due process and evidencing appropriate decision-making arrangements. Hopefully this procedure will help clarify the LAP and give the local community the reassurance that is has been applied fairly and consistently.

Specific legal issues and wording of the Regulating Order

Background

As discussed at the last Authority meeting on 27 March 2025, under agenda item B1A, the TECFO 2024 Licence Allocation Process was paused to allow full consideration and review of written representations from industry. Technical legal issues concerning the application of the transitional licence provisions within the Thames Estuary Cackle Fishery (No.2) Order 2024 were raised and officers informed the Authority that they were taking legal advice to better understand these issues. The Authority made the following resolution:

*That the Authority, in response to the raising of issues relating to the Thames Estuary Cackle Fishery Order, **APPROVED** the pausing of the TECFO 2024 Licence Allocation Process to allow all comments to be reviewed and solutions explored, with the result that at this time the recommended ranked list is not confirmed, and no licences are offered or issued.*

Following the direction of the Authority, KEIFCA officers reviewed comments and explored solutions as per the decision. KEIFCA officers sought legal advice and worked closely with DEFRA Policy concerning the technical legal issues raised by the feedback.

From this rapid review, it was established that there were drafting issues in the 2024 Order which had unintended consequences and did not deliver the policy intent that the Authority had agreed at the 7 March 2023 and the 14 July 2023 Authority meetings.

Specifically, the wording prevented nearly half of the transitional licence applicants from being able to hold a transitional licence, significantly impacting a

number of long-established companies whose business models are built around access to TECFO.

The intention of the Authority which evolved through the cockle review process has consistently been to facilitate a transition from the 1994 Order and to provide certainty and continuity for all holders of the 1994 Order licence, with that transition ending after 7 years to allow greater and more diverse opportunity for the holding of licences under the 2024 Order going forward. The Authority was consistent that the intention was for all fourteen TECFO 1994 Order licence holders to have the opportunity to apply for a transitional licence. This principle is clearly established within Annex 5 of the Management Plan.

KEIFCA worked closely with DEFRA to understand the full implications of the situation and then seek solutions that allowed for a positive resolution, in line with the stated intention of the Authority, within a reasonable timeframe. There was a need to resolve this issue as quickly as possible, as a delay to opening the TECFO fishery would start to have a significant negative economic impact on the value of cockle landings and earnings, which could subsequently have a knock-on impact to local jobs and investment.

As the problem was contained in the wording of the Thames Estuary Cockle Fishing (No.2) Order 2024, specifically Article 5(12), a new regulating order was required to amend this issue and deliver the policy intent that the Authority had previously agreed. DEFRA informed us, that to start this process an application for a new regulating order was required.

Applying for new regulating order

In accordance with the Scheme of Delegation – powers of delegation No. 20, in the KEIFCA Constitution and Standing Orders, the Chief Officer has authority and responsibilities for implementing committee decisions taken by the Authority. After discussing the matter with the Chair and Vice-Chair, the decision was taken to apply for a new regulating order to amend the TECFO 2024 on the 8 April 2025 (Appendix 2 Record of Officer Decision).

Over the next 3 weeks KEIFCA officers worked closely with DEFRA policy and legal teams to help develop what became the draft Thames Estuary Cockle Fishery (No. 2) (Variation) Order 2025.

Members briefing

On the 29 April 2025, Officers informed Authority members that an application for an order had been progressed, under relevant delegated authority, and that the expectation was that a draft variation order would be published and circulated in early May. Following a 30-day period for stakeholders to make objections or representations, DEFRA and the Minister would review all feedback before deciding whether or not to make the Variation Order or hold a public enquiry.

Publication of draft order and Ministers' decision.

Following Defra's process and the requirements set out in the Sea Fisheries (Shellfish Act) 1967, the draft Thames Estuary Cockle Fishery (No.2) (Variation) Order 2025 was published on the 2 May and objections and representations were required to be received by KEIFCA and DEFRA by midnight on the 3 June.

Following the closure of the period for representations and objections, KEIFCA was informed that Daniel Zeichner, Minister for Food Security and Rural Affairs, agreed that the Thames Estuary Cockle Fishery (No. 2) (Variation) Order 2025 should be made as set out under Schedule 1 of the Sea Fisheries (Shellfish) Act 1967.

The intention is that the order will be laid in Parliament in July and come into force in early August. Once the order comes into force, the Authority will be able to hold a meeting to take the relevant decision regarding the issuing of licences for the 2025 fishery and the first 7-year period.

Unpausing the Licence Allocation Process

As detailed previously in these papers, the comments received prior to 27 March which led to the pausing of the Licence Allocation Process have been reviewed and explanations or responses from the Authority are provided in this report.

The proposed way forward to address the legal issues, of a variation order, is a relatively simple solution which retains the original Order but makes amendments that will rectify the drafting error.

KEIFCA is now in the position of needing to 'un-pause' the Licence Allocation Process which includes deciding upon the next steps in the process to take into account the text of the Variation Order.

Current position within the process

The licence allocation process has not yet been concluded, and no decision has yet been taken by the Authority. The process is still active and can simply be resumed, but conducted from the time of lifting the pause, subject to application of the amended wording of the Order.

In addition, no legitimate expectations have been created by the publication of the recommended ranked list prior to the 27 March meeting. This is clear on the basis that that list was published with a request for written representations which the Authority could take into account prior to making a decision, which were subsequently received. No unambiguous representations have been made by the authority, and no party can be said to have relied upon any such representation.

In such circumstances, and in particular given the Order is only being amended, and therefore remains in legislative force, the most appropriate way to lift the

pause is to do just that and to recommence the licence allocation process after considering the revised and amended wording of the Order and the existing management plan. This is subject to the confirmation of the variation order through parliamentary process, in any case no final decision regarding the offer of licences shall be made until the variation order comes into force.

Providing that the licence allocation process is reinstated, the next question that falls to be considered is whether the process simply picks up at the point it was paused, or whether there needs to be any adjustment to the process to reflect the amendment to the Order. In particular, the Authority must consider and determine whether the original recommended ranked licence allocation list be revisited.

KEIFCA officers have worked closely with our legal team to review a range of options as to how the process of issuing TECFO 2024 7-year licences could now be run. Three potential options have been developed which will allow the Authority to make a final decision on licence allocation, licences to be issued, and a fishery commenced in 2025.

Whichever of these options is agreed by the Authority, the recommended ranked list of applicants will be updated as required and put before the Authority to consider at the next Authority meeting on the 6 August 2025.

Options for taking account of the variation order

- 1. Do Nothing – un-pause the LAP and undertake no further considerations of applications received.*

The recommended ranked list as published prior to the 27 March meeting, would be republished and presented to the Authority.

The cockle review process involved a listening phase, four separate consultations, a number of public meetings of the IFCA authority, as well as a period under Schedule 1 of the 1967 Act for representation and objections. In respect of the then draft Order, which eventually was made by Parliament as the No 2 Order.

At the stage of Consultation 3 in December 2022 the issue of transitional provisions for existing licence holders under TECFO was actively discussed. Stakeholders actively participated in this discussion. A firm position was arrived at which allowed for all existing TECFO licence holders to have the option to apply for what was termed as a transitional licence to "replace" the existing TECFO licence they held. This provided TECFO licence holders certainty in connection with their continuing fishing operations for the first 7 years of the new order.

The intention of the Authority was clear, as an explanation of the transitional provisions was included in Annex 7 of the draft Management Plan, which stated.

"As part of the T24 consultation, a suggestion was put forward to 'grandfather on' the 14 TECFO 1994 licence holders for the first 7-year cycle. The Authority members discussed this proposal and agreed to this along with attached conditions"

Some respondents to the published draft order have stated that they made certain decisions regarding their individual applications because they felt that they understood the wording of the order, and that now the wording has been varied it would be unfair to undertake this option.

2. Rather than 'unpausing' the LAP, cancel the entire current process and start again

Several respondents to the published draft order stated that they felt that as the legislation had been changed, the whole Licence Allocation Process should start again and that a new application window should be started for all applicants. There are three considerations that should be understood if this was the agreed way forwards.

First, as stated above, the chosen way forward of a variation order retains the original Order, albeit varying one specific aspect of it. The Licence Allocation Process has already been undertaken under that Order for the first 7 years and the applications for it scored accordingly. The LAP has only been paused in order for issues to be explored and resolved, the Authority is empowered to 'unpause' the current LAP and decide on a route forwards after considering the variation order amendments.

Secondly, article 6(1)(b) of the Order states that the applicant must be:

"making an application for a transitional period licence for the first time under the provisions of this Order"

Therefore, precisely because the original order is still valid and licence applications have been received under the provisions of the original order, if the LAP was restarted, no applicant who had previously applied for a transitional licence would be able to do so again. This would make the application of the variation order irrelevant and the intention of the Authority to provide a transitional period would not be able to take effect.

Thirdly, the timeframe to undertake a re-run of the LAP. The process takes approximately 4 months, and the Authority would not be able to start this until the Order had been laid, at the earliest. This would mean that the process would conclude in or around November, which would allow a fishery start in December/January. The fishery normally takes place in June – October, which is when the meat yields are highest. Over the winter, the meat yield, and the value, of the cockles drops considerably, with a 50-60% reduction not

uncommon. This would have significant implications for market value and jobs connected to the fishery.

3. Revisit transitional applications only

The precise nature of the variation order, and its specific application to the transitional period licence process, limits the impact on the Licence Allocation Process to those applicants that could have applied for a transitional period licence. In light of this, officers could write to all of those eligible to apply for a transitional licence and give them the opportunity to consider the type of licence they wish to apply for to cover the first 7 years of TECFO 2024.

Only those persons who held a TECFO 1994 licence on 30th January 2024 had the opportunity to apply for a transitional licence. Of the fourteen companies who meet this requirement, twelve applied for a transitional licence under article 6. Two applied for licences issued under article 5, via the specified Licence Allocation Process.

The fourteen eligible applicants would be asked to either:

- (a) confirm you will remain with the type of application (article 5 (open) or article 6 (transitional)) that you submitted in the 19 December 2024 – 19 January 2025 application window, or*
- (b) submit a new application form for the alternative type of licence. E.g. if you applied for an article 5 licence but would instead like to apply for an article 6 licence, or vice versa.*

This would have the effect of allowing those applicants whose applications could be affected by the variation order the ability to consider their application in light of it, whilst not giving a second opportunity to anyone who could never have been affected by the variation order.

Any applicant who previously applied for a transitional licence but who now chooses to exercise the option to go through the open process will have their application scored as set out in the Management Plan, which will take a period of time to do. Any applicant who previously applied for an open licence but now chooses to exercise the option to take a transitional licence will be scored equal first with all other transitional licence applicants, in accordance with the Management Plan and relevant Transitional licence arrangements.

The Authority must be advised that were this option to be progressed, there is a possibility that any subsequent modified list produced will result in some of those who were ranked in positions 1-15 in the recommended ranked list, dropping down the list in favour of another who was ranked below position 16 in the recommended ranked list.

It should be clarified that revisiting the transitional element, subject to confirmation of the type of application from affected applicants being received, does not negate the prior recommendations of the Panel. The Applications Panel developed a recommendation for the Full Authority to consider based on the applications received at the time – any revisiting of the recommended ranked list at this point represents new applications arising from the relevant applicants being able to submit a different type of application. This is in line with the requirement for the authority not to fetter its discretion by being tied to uphold its earlier conclusions, but instead to make a decision solely based on the criteria in the Order as amended and the Management Plan.

Summary

Throughout this entire process KEIFCA has always tried to listen and work closely with the industry. However as outlined in the first cockle review process paper back in September 2021, there are always going to be more licence applicants than there are licences available and creating a new regulating order and issuing new licences was always going to be a challenging task.

The introduction of the variation order compounds this challenge given where we are in the Licence Allocation Process. However, a pragmatic path forwards needs to be agreed in order to get the fishery running, not only in 2025, but for the next 7 years. While some stakeholders may have concerns that they are negatively impacted by the current situation or the TECFO generally, failure by the Authority to make timely and appropriate decisions that support the implementation of the TECFO and appropriate fishing activity would lead to disadvantage to all key stakeholders.

Therefore, the recommendation is to take forward option 3. All those applicants that held a TECFO 94 licence, and were therefore eligible under article 6 of the Thames Estuary Cocker Fishery (No.2) Order 2024 to apply for a transitional period licence, will be given the opportunity to retain their original TECFO 2024 application or to switch to the alternate type of application after considering the implications of the variation order. Should this be approved by the Authority, the applicants that this applies to will be written to individually and asked to complete and return the necessary paperwork by the 7 July 2025, indicating which of these options they would like to take.

In addition, all applicants will be written to confirming the decision of the Authority with clarification as to how it may impact them.

Recommendations:

- 1) The Authority to **NOTE** the decision made by the Chief Officer to apply for a regulating order.
- 2) The Authority to **CONSIDER** the comments from and issues raised by stakeholders at the last meeting along with the corresponding KEIFCA officer responses and **AGREE** to un-pause and continue with the Licence Allocation Process.
- 3) The Authority to **CONSIDER** the options available to move forwards with the Licence Allocation Process and **AGREE** the process under option (3) outlined in the paper whereby all of those eligible to apply for a transitional licence are given the opportunity to consider the type of licence they wish to apply for to cover the first 7 years of TECFO 2024.