



KENT AND ESSEX INSHORE FISHERIES & CONSERVATION AUTHORITY

RECORD OF OFFICER DECISION

Executive

DECISION TAKEN BY: Dr W H WRIGHT Chief Officer KEIFCA	DECISION REFERENCE: TECFO/RO/25/3/27/WW
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Subject: The Thames Estuary Cackle Fishery Order - TECFO

Decision: To submit a regulating order application to DEFRA, allowing DEFRA and the minister if he is so minded, to draft an amendment to the Thames Estuary Cackle Fishery (No.2) Order 2024.

DECISION TYPE

Implementation decision of Authority Resolution

The Chief Fishery Officer has, in accordance with the Scheme of Delegation – powers of delegation No. 20, in the KEIFCA Constitution and Standing Orders, the authority and responsibilities for implementing committee decisions taken by the Authority.

Authority Decision to which this action relates:

7 March 2023 members considered Agenda Item B5 - Proposed transitional arrangements for current TECFO licence holders the Authority.

The paper laid out indicative legal text options for potential transitional licence arrangements as well as consultation feedback. The Authority **APPROVED** option 3 as outlined in the paper and gave direction for inclusion into the development of final legal wording.

14 July 2023 members considered Agenda Item B1 - Cackle fishery review Consultation 4 – indicative legal wording and draft management plan.

The paper summarised stakeholder feedback from the consultation on both documents and provided members with the opportunity to review the indicative legal wording concerning transitional arrangements as well as the transitional arrangement explanatory text in the draft management plan. The Authority **APPROVED** the revised indicative legal wording and the draft management plan.

27 March 2025 members considered Agenda Item B1A - Pausing of TECFO 2024 Licence Allocation Process to allow full consideration and review of written representations from industry.

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.

Reason(s) for decision:

As outlined in Agenda item B1A - Pausing of TECFO 2024 Licence Allocation Process, 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 have also been raised via the written representations. Officers are taking legal advice to better understand these issues and other legal queries stakeholders have raised concerning the Licence Application Process (LAP).

Following on the direction of the Authority, KEIFCA officers reviewed comments and explored solutions as per the recommendation. 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.

KEIFCA worked closely with DEFRA to understand and then look at finding solutions and ways of fixing this issue.

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.

The option of 'doing nothing' or keeping the Thames Estuary Cackle Fishing (No.2) Order 2024 as written was considered, however this clearly did not deliver the intent of the Authority as outlined at the Authority meetings held on the 7 March 2023 and the 14 July 2023.

As the problem was contained in the wording of the Thames Estuary Cackle 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 agreed. DEFRA informed us, that to start this process an application for a new regulating order was required.

In accordance with the Delegation scheme and prior Full Authority decisions taken (as noted above), the Chief Fishery Officer determined the application be developed and submitted.

Financial Implications:

KEIFCA

The Authority has ringfenced a £60,000 legal budget to address any possible legal issues with the introduction of the Thames Estuary Cockle Fishing Order 2024 (TECFO 24). In addition, the Authority has £130,000 in reserves which it can use for circumstances such as these.

The Local economy

The TECFO fishery is a very valuable local fishery that supports a number of local businesses and is a significant source of employment in the district. The fishery normally runs from the end of June until early October over 16 weeks. Cockle yields typically reduce at end of October and whilst the fishing season can be compressed with more trips per week, there is a maximum number of trips determined by the capacity of cooking plants.

Whilst there is a small window of 4-5 weeks whereby the delay into the start of the fishery will have minimal financial impact on the value of the cockles landed, delaying the start of fishery significantly will impact the profitability of the fishery and the market position of the fishery, which could have a knock-on impact on employment within the industry. Addressing the legal issue quickly is imperative to reduce any possible financial loss. Whilst the exact financial impact is hard to estimate lower yielding cockles can easily lose 50-60% of their value when compared to a high yielding cockle.

Legal implications:

Starting in September 2021, KEIFCA initiated the process of developing cockle management options for the Thames cockle fishery as the Thames Estuary Cockle Fishing Order 1994 was due to expire on the 28 September 2024. Over a series of five consultation steps the Authority agreed to apply for a new regulating order under the Sea Fisheries (Shellfish) Act 1967. On the 16 April 2023 KEIFCA submitted an application for a new regulating order which became the Thames Estuary Cockle Fishing (No.2) Order 2024. KEIFCA's application for a new regulating order to amend the Thames Estuary Cockle Fishing (No.2) Order 2024 follows the same legal route and application process.

As outlined and discussed at previous Authority meetings (30 January 2024) the potential for judicial review on the Authority's decisions regarding; the development of TECFO 24, its Management Plan and Licence Allocation Process; is significant, due to the limited number of licences issued and the historic value of annual landings per licence.

Comments received from any Members or Officers consulted:

Deputy Chief IFCO – The Deputy Chief and I have worked closely on the TECFO 24 workstream since it started in September 2021. We discussed both the of the do-nothing option and the apply for a regulating order option, in detail with our legal advisor. After discussing the issue, we all felt the direction from the Authority was clear and the policy intent was consistent from when it was agreed by the Authority (Consultation 3, Consultation 4 and the statutory consultation). We both agreed that it was important to submit the application as soon as possible so we could address the

issue and work towards opening the fishery as close as we could to the normal late June date as the financial implications of delaying the start of the fishery were significant.

Chairman –The chairman supported the decision to progress with the regulating order application and highlighted the need to seek a swift resolution to minimise delays to the licensing process.

Vice-Chairman –The vice-chair, having sought clarity on the timescales and highlighting to need to minimise delays due to the impact on the relevant fisheries and the affected industry, endorsed the plan to apply for a Regulating Order.


Any alternatives considered and rejected:

Do-nothing option - Keeping the Thames Estuary Cackle Fishing (No.2) Order 2024 as written was considered, however this option clearly was not consistent with the policy intent of the Authority as agreed at the Authority meetings held on the 7 March 2023 and the 14 July 2023. This option would have a significant economic impact on the 5 companies and their staff that would be ineligible for a licence.

Bring this decision to the next Authority meeting – Delaying the decision to apply for the Regulating Order until the next Authority meeting 18 June would push back the whole process by at least 6 weeks and result in unacceptable delay, with significant negative impact on key stakeholders. The holding an emergency meeting was considered but DEFRA advised that any delay would impact the viability of laying the new Order in parliament for approval prior to the Summer recess. In the event that the Regulating Order is not approved by parliament in this timescale, there would be a significant delay to the Fishery.

Any conflict of interest declared by any Authority Member consulted by the decision maker and any dispensation granted by the Proper Officer:

No

 Dr W H Wright, Chief IFCO Signed	8 April 2025 Date
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