

NWIFCA Technical, Science and Byelaw Sub-Committee

2nd May 2014: 10:00am

**REPORT
NUMBER**

6

MORECAMBE BAY HYBRID FISHERY ORDER

Purpose: To review financing and benefits of the proposed Order.

Recommendation

1. Issues below be considered and discussed.

Background

1. Following the 2 days of discussions on the details of the proposed Order in January and December, officers have still to make the agreed changes to the Management Plan. Time constraints mean that we have not been able to respond to Defra's latest draft of the Order received in November 2013 and some further delay to the development of the Order is inevitable.
2. The extensive marine protected area work required by Defra on European Marine Sites and MCZ in recent months has prevented progress with the Fishery Order. Science officers have been unable to dedicate the time required since the discussion meetings. We expect that the Defra MPA work will continue unabated for the next 2-3 years at least.
3. Some of the main issues which remain to be addressed in the Management Plan for the Order or for which decisions still have to be finalised are as follows:
 - a. The reliability of the points system for hand-gathering licences needs to be investigated using a variety of examples. We also must determine the definition of 'satisfactory evidence of use of the licence' in order to maintain entitlement to a licence.
 - b. Whether to include a regular fixed seasonal closure (currently May 1st to August 31st) or to try and include flexibility.
 - c. A tighter definition of stock density per unit area so that the 20m⁻² stock density threshold (or whatever threshold is agreed to be appropriate) can be given force in regulations.
 - d. The management of the Order by the Authority and decision making structure needs to be defined in the Management Plan.
 - e. An application process and firm criteria for assessment and approval of Several Area applications must be prepared. Written lease agreements and determination of lease fees are also required.
 - f. A process for determining when and how many temporary hand-gathering licences should be issued must be agreed and a fee defined. It was provisionally suggested this fee should be double the normal licence fee to compensate for regular licence holders paying for licences during years of poor stock.

- g. Enforcement and Sanctions. This section needs re-drafting and checking legally to see if it is acceptable. Work will be carried out by Mr Deary and Ms Knott and brought back to TSB for approval;
 - h. A 2/5 year licence retainer procedure is proposed for hand-gathering to permit older fishers to maintain a right to a licence, whereby they would pay a nominal fee to retain their track record but have no entitlement to fish. If this is required, it must be legally robust and the procedure must be prepared.
- 4. These issues can be discussed and decided on in future TSB meetings however, there are 2 areas which the TSB could consider now. Firstly, the finances of the Order must be reconsidered to ensure the Order is financially viable.
 - 5. Secondly, the Authority now has 2 years' experience of operating the comprehensive cockle and mussel permit Byelaw 3 for the whole District. This byelaw makes use of the enhanced IFCA powers provided by MACAA and the advantages of a Regulating Order for the Morecambe Bay area alone over this byelaw are now less obvious. The pros and cons of an Order are therefore re-examined below.

Financing the Order

- 6. The Order will require a full time administrator to run the licence schemes, collect data, maintain records, report annually to Defra on the running of the Order, maintain the accounts of the Order and report to the Authority as required. The administrator post would have to be permanent and full time to ensure continuity and capacity in busy years.
- 7. The cost of the administrator includes salary, national insurance, pension, training, field equipment, IT, office support, travel, licence holder meetings and other communications. Additional work on the Order by other Officers, such as survey and data collection should also be covered by the fees levied under the Order. Routine work on Morecambe Bay which would be done by the Authority would not be charged to the Order. The minimum annual budget required to operate the Order in addition to the NWIFCA budget is estimated at approximately £60,000.
- 8. This cost must be covered whether or not there is any fishing. Initial proposals for a £300 hand-gathering licence fee will not raise sufficient income to cover the costs of the Order. This would raise $50 \times £300 = £15,000$. The Order will also provide for additional income from levies per ton of catch if there is fishing, however, the levies cannot be relied on to cover the costs of a full time permanent officer. They should be reserved to help cover the additional costs to operate the Order in busy years.
- 9. The Order will also receive seed mussel licence fees from dredging. Currently these are based on vessel length and raised approximately £20,000 in 2013-14 when 8 vessels were authorised. This was a particularly good year for seed mussel. Depending on how the licence fee is administered in some years income from seed mussel licences could be very low (table 1) although in general previous experience with the Morecambe Bay Regulating Order which expired in 2008 showed that there is a reasonable seed mussel fishery in most years.
- 10. Part of the aims of Fishery Orders is that they should be self-financing although they are not permitted to make a profit. Any surplus obtained should be used for the management and development of the regulated and several areas.
- 11. For the Morecambe Bay Order to be self-financing the core costs of the Order should be covered from the 50 cockle and mussel licence holders and the seed mussel boat dredge fishery. As a starting point for discussion, we suggest the costs should be split 50:50 between the 2 fisheries.

12. For hand gatherers this implies an annual charge for the 50 licence holders of a minimum of £600
13. For seed mussel dredgers, charges are dependent on the number of companies permitted. Using a start date of the last open fishery (ie 2013) if 5 years or more track record are required this would limit the fishery to 4 companies paying £7500 each.
14. Table 1 shows what the seed mussel dredge licence fee would be using track record over various numbers of years:

Table 1 Track record and licence fee options for the South America seed mussel fishery			
No. of Years Track Record	Years	Number. of Companies	Fee per Company (£)
6	2006 - 2013	4	7500
5	2007 - 2013	4	7500
Low Bottom fished – no seed on South America	2008	4	7500
	2009	No fishery – bed sanded over	n/a
4	2010 - 2013	3	10000
3	2011- 2013	6	5000
2	2012 - 2013	7	4286
1	2013	8	3750

15. In years when there is seed mussel and/or cockles, there will be additional costs to the Authority of operating the Order. These will include additional survey, stock estimates and monitoring and additional enforcement. The Authority should aim to build up a reserve to cover these costs of the Order so that additional science projects can be undertaken and additional enforcement drafted in as and when required. The Authority may wish to consider higher initial annual fees and/or reserving the tonnage levies on both fisheries for these purposes.
16. These costs are relatively modest compared with the Dee Cackle Fishery Order where the 50 licence holders will pay £1300 each in 2014.

Use of Byelaw versus Fishery Order

17. Since the application was submitted to Defra in 2011, the NWIFCA has made major changes in its regulation of cockle and mussel fisheries with the introduction of Byelaw 3, which brought in much tighter controls on hand-gathering including a reduction in the number of permit holders from the previous scheme under the old Byelaw 5. Enforcement capacity within the NWIFCA has also increased. The Foreshore Gatherers Safety course has been reviewed and is being redesigned, along with a new course for boat users in the fishery, both of which will be mandatory for new permit holders.
18. There is a need to review Byelaw 3 to tighten some of the wording and add further provisions. Based on our experience and learning from implementing and enforcing this Byelaw, the Authority may consider an amended version to be the most suitable regulatory measure for managing the cockle and mussel fisheries on a District-wide basis, to include Morecambe Bay and the Duddon Estuary, and therefore consequently to cancel our application for the Morecambe Bay Fishery Order. A separate and new application would need to be submitted for a Several Order.

19. If the decision is taken to continue with the Hybrid Fishery Order application there is a large amount of work still needed to be done. Every time a delay is incurred this workload is added to as documents need updating, Defra personnel change etc. In view of the changing workload due to the EMS Review, the Senior Scientist recommends that a designated officer would need to be recruited forthwith to action this work, and have a lead-in period for training in order to manage the Order once in place.
20. Whatever is decided about the Regulating Order part of the Morecambe Bay Hybrid Order, the Several Order component will still be an essential measure to promote aquaculture in Morecambe Bay. Development of this element of the Order must be continued but the Order would become a Several Fishery Order rather than a Hybrid Fishery Order.

Table 2 comparing the powers of Byelaws and Regulating Orders to manage cockle and mussel fisheries		
Regulatory powers and measures	Byelaw	Regulating Order
Regulations can apply to the Whole District	Byelaws can be made for all or part of the District	Theoretically but Orders at a District scale have not been tried and may not be allowed in case they give the grantee too much power
Regulation of fishing methods (e.g. hand gathering, dredges etc), fishing periods (e.g. days, tides)	The Authority has byelaws which can do this	RO gives the grantee these powers
Dredging specifying the number, size, design of dredges	The Authority has byelaws which can do this	RO gives the grantee these powers
Limited licence or permit schemes based on track record for dredging or handgathering with waiting lists as required with fixed charges for permits	Yes. Byelaw 3 uses track record for hand gathering and could be replicated for dredging.	RO gives the grantee these powers
Total allowable catch over defined time (days to weeks) period per person or per vessel based on scientific evidence.	Byelaw 13A allows this but the procedure and legal status is in doubt. An improved byelaw mechanism should be possible.	RO gives the grantee these powers
Detailed regulations to suit individual fisheries covering e.g. access routes, transport, use of boats, safety equipment, additional permits when stocks are high	Not technically within IFCA powers but can be achieved under byelaw special permits as at Foulnaze in 2012. Procedure is rather complex.	Not clear but we expect it will be possible to write such powers into the Order.
Sanctions such as suspension of permit for contravention of regulations	No. Not so far found a way of doing this under byelaw. Generally fisheries sanctions must be imposed by a court following conviction.	Not clear and will be investigated to see if sanctions can be included in an Order.
Apprenticeship scheme for young people to enter the fishery with training	Probably too complex for a byelaw	Not supported by the Authority for an Order