

NWIFCA Annual General Meeting:

26th June 2025

REPORT NO.

6

DEE COCKLE FISHERY REGULATING ORDER – UPDATE

Purpose: To update members on financial considerations with regards to pursuing a Regulating Order for the Dee Estuary cockle fishery and the risks associated with the Order not being confirmed and the Authority not being able to recover its application costs.

Recommendations: Members vote to continue to pursue the Regulating Order in light of the financial proposals and associated risks as set out below.

Background

At a meeting of the Full Authority on 21st March 2024, members voted for the Authority to pursue a new Regulating Order (RO) for the Dee Estuary cockle fishery as a joint grantee in conjunction with Natural Resources Wales (NRW). This was to follow on from the current RO, which is due to expire in June 2028 and is managed by NRW as a joint grantee alongside the Environment Agency (EA), who are no longer actively involved in the fishery's management. This decision was taken on the basis of an options paper I presented, which assessed options for not applying for a RO, applying solely or jointly, or allowing NRW to apply solely. Please refer to Report No. 7 from the March 2024 meeting for further details regarding the fishery and these options as presented to members.

Since that meeting, the financial implications for the Authority of applying for a RO have become clearer, and so it is incumbent upon me to set these out here for members to consider whether they wish to proceed with the Authority's pursuance of the joint application.

Cost Implications

As part of the options paper last March, I was not able to give any indication of the potential costs associated with making the application to Defra for a new RO. However, the pursuing of this RO has been on the basis that any costs borne by the Authority would eventually be recovered via the licence fees charged to the licence holders under the new RO. The caveat here is that this would be on the basis that the RO was confirmed by both the Secretary of State at Defra and the relevant Minister of the Welsh Government. If, for any reason, the RO was not confirmed, there would be no recourse for the Authority to recover any of the costs incurred through its application by way of licence fees, as no RO, and therefore no such licences, would exist.

These costs are essentially in two parts; costs associated with any public inquiry and those associated with paying for Defra lawyers to draft the RO.

Public Inquiry Costs

In proposing and discussing the options around the Dee cockle fishery last year, it was acknowledged that in applying for any RO, there was a high likelihood that ministers from either Defra or the Welsh Government (or both) would call a public inquiry if they felt there were significant objections to the application; this high likelihood remains. It was also acknowledged that the precedent for any such public inquiry was that the applicant bore the costs, and so, between the Authority and NRW, we would have to pay for the public inquiry and then recover the costs via the eventual licence fees. Naturally, it is difficult to predict the actual costs for a public inquiry, but a high-end estimate could be up to £80,000 (*i.e.* £40,000 each for the Authority and NRW). Please note that, in discussions already had between Authority officers, NRW, Defra and Welsh Government, it has been informally agreed that, if both English and Welsh ministers called for a public inquiry into the RO application, only one inquiry would be held to cover both sides of the application, rather than Defra and Welsh Government holding separate ones.

This risk here is that, if the joint application is made, a public inquiry is held and then either the English or Welsh Minister does not confirm the RO, it does not come into being, and the Authority and NRW are left to bear their respective share of the inquiry costs (*i.e.* up to £40,000 each) with no recourse for recovery.

Defra Costs

Whilst the costs associated with a potential public inquiry have always been recognised as part of the Authority's decision to apply for a new RO, Defra have recently announced that going forward they will be charging RO applicants for the costs associated with their lawyers' time in drafting ROs. In discussions with Defra towards the end of 2024, they indicated that, rather than officers drafting a proposed RO, as we do for byelaws, we would simply make an application, setting out what we wanted the RO to achieve, and it would then be for Defra drafting lawyers to draw up the RO, in consultation with the Authority as the applicant. Latterly, they indicated that they have changed their policies towards ROs and will now be seeking full cost recovery from applicants for their lawyers' time. This legal cost recovery is being implemented this year and, unfortunately, the Authority is likely to be the first RO applicant to be affected by this change in government policy. Defra have indicated that costs are likely to be up to £30,000 per application, but that they would work closely with applicants to keep these costs as low as possible. As with the costs for any public inquiry, it is anticipated that the Authority would recover these costs from industry via future licence fees.

Taking into account potential costs for both a public inquiry and Defra lawyers, I estimate that the Authority may have to incur costs of up to £70,000 for its application for a new RO for the Dee cockle fishery. Therefore, we would need to identify and ring-fence funds to cover these costs, with a view to then recouping them over a specific time frame via licence fees. A proposed cost defrayment and recovery plan is set out below, followed by a high-level assessment of the risks of the RO application being unsuccessful, and the Authority being left with unrecouped costs.

Financing Proposals

With potential costs of up to £70,000 to apply for the RO, the Authority needs to identify and agree where these funds should come from.

As reported earlier in this AGM, at the end of 2024/25, the Authority held £1,139,786 in Other Reserves. £80,000 of this needs separating out on future reports for funds ring-fenced for the Authority prospective office moves, as agreed at May's Finance and Personnel Sub-Committee meeting. However, even after this deduction, there is still around £1,059,786 of unallocated Other Reserves. Therefore, it would seem appropriate that the anticipated costs of £70,000 for the RO application would come from this part of our Reserves, and the funds could be ring-fenced and separated out, to be defrayed as and when required to pay Defra for their lawyers' time and to cover half of the costs of any public inquiry, should one be called.

No other financing options are presented here, as it would not seem viable to fund the application from any other component of the Authority's reserves, which are already allocated for other expenditure. Equally, it would not be appropriate to request a levy increase from our nine funding local authorities for 2026/27, primarily because the majority of our local authorities hold no stake or interest in the Dee Estuary cockle fishery, with it being at the southern end of the district, and covering only two authorities' areas – Wirral, and Cheshire West and Chester.

Cost Recovery

Assuming the RO was confirmed at the end of the application process, then it is proposed that the Authority would seek to recover the entirety of its application costs from the licensees who were deriving a direct benefit from the new RO by being exclusively authorised to fish cockles within the Dee Estuary. These application costs would be in addition to the annual costs associated with the licence, which for the Authority's element would be based on full cost recovery of the operational resource costs associated with managing the fishery by way of its enforcement, surveying and administration. Further detailed calculations will need to be produced for exactly what the Authority's element of any licence fees would be, based on full annual cost recovery, but at this stage, I estimate that, based on the current 54 licensees, an individual licensee would pay £2,370 per year to the Authority as part of their licence¹. This would likely be to fund two additional officers (one IFCO and one Science Officer) to support the Authority's substantial additional workload in managing the Dee cockle fishery, which would otherwise be an additional cost of approximately £128,000 per year to the Authority in the first few years².

In addition to these baseline fees for recovery of the Authority's resourcing costs, fees would also need to be applied to cover the Authority's eventual application costs. In the event the application did cost £70,000, and assuming 54 licences were granted, this would equate to an additional £259 per licence over the first five years. Clearly, there are several variables here that could affect the additional application cost recovery fees; the Authority's final application costs, the number of licensees, the number of years over which the cost recovery was spread. For example, if there were more than 54 licensees this would reduce individual licence costs, whilst aiming to recover the entirety of the

¹ This does not include NRW's costs, which would be added to the licence fee and paid to them.

² The Authority would seek to have the RO drafted so that it could vary its licence fees to cover any rising costs associated with the additional resources required.

Authority's application costs in the first year alone would significantly increase the licence fees in the RO's first year (e.g. an additional £1,296 per 54 licences for £70,000 application costs if entirely recovered in the first year). Based on the proposed five-year recovery fee of £259, this would mean a licence to fish for cockle in the Dee Estuary under the future RO could cost £2,629 for the North Western IFCA element, before considering NRW's charges.

Rejection Risk

Of course, with any application for a RO, there is a risk of it being rejected. I cannot make a quantitative assessment of what the likelihood of this is. However, officers would work closely with colleagues at NRW and Defra to ensure that we submitted an application that stood the best chance of being confirmed and we would ensure that we undertook sufficient consultation with all potential stakeholders to minimise the chance of there being a public inquiry and, if they were one, mitigate and assuage the inevitable objections that would be put forward. However, this does not entirely remove the risk that the RO would not be confirmed by both the Defra and Welsh Government ministers, and that the Authority would therefore have no recourse to recover its costs incurred in making the application.

It is for Authority members to decide whether to continue to pursue this joint RO with the knowledge of the potential costs and risk of the RO not being confirmed, leading to no ability for the Authority to recover said costs. With estimated costs being up to £70,000, it is my recommendation that the Authority continues to pursue the application, as I believe the benefits of achieving the RO and having direct responsibility for managing one of the district's most important fisheries outweigh the costs associated with the application and their not being recovered.

Mark Taylor, North Western IFCA CEO, 12th June 2025.