

Annabel Stockwin
Coastal Waters Policy Branch
Defra
Area 7E
3-8 Whitehall Place
LONDON
SW1A 2HH

8 September 2006

Dear Annabel,

Re: Proposals to modify the Sea Fisheries (Shellfish) Act 1967

Wildlife and Countryside Link are very grateful for the opportunity to comment on Defra's proposals for modification of the legislation and practice governing Several and Regulating Orders in England.

We welcome Defra's objective of modernising the current legislation governing Several and Regulating Orders to encourage their use as a fisheries management tool. We have always supported the sensitive use of Several and Regulating Orders (SROs) as a way of fostering environmentally responsible management practices, although we are aware that some necessary changes to the relevant legislation are required to update the current system.

We agree with Option 2, "take steps to pursue proposed changes to the Act through the Marine Bill", as we think that changes to the current system are necessary, and that the forthcoming Marine Bill represents the perfect opportunity to make the necessary legislative changes.

In general, we are happy with the proposals as set out in the consultation document. We feel that the proposed changes to the legislation and policy for Several and Regulating Orders are positive advances on the current situation, and show that Defra is ready and willing to respond proactively to concerns raised by stakeholders.

However, we note that in general the proposals presented seem to address practical concerns about the administration of Orders (e.g. the length of time it takes to apply). We would like to see more fundamental changes made to reflect the growing inclusion of marine environmental objectives in inshore fisheries management. Rather than just removing perceived barriers to applying for and using Several and Regulating Orders (which is an important consideration) it will be necessary for Defra to make such changes as to allow environmentally sound, ecosystem-based management through Fishery Orders.

The future is likely to bring added pressure to bear on the inshore sector if current fishing trends continue. In addition, work is underway to identify further development opportunities for England's shellfish stocks via the industry's shellfish strategy for England. Therefore it is

important to revise the legislation and policy relevant to Several and Regulating Orders to address the perceived problems with applying for and using them to manage inshore fisheries in an environmentally sustainable manner.

Yours sincerely,

A handwritten signature in black ink that reads "Joan Edwards". The signature is written in a cursive, flowing style.

Joan Edwards
Chair, Wildlife and Countryside Link Marine Task Force

On behalf of the following organisations:

- Marine Connection
- Marine Conservation Society
- Royal Society for the Protection of Birds (RSPB)
- The Wildlife Trusts
- WWF-UK

PROPOSED AMENDMENTS TO LEGISLATION SUPPORTING SEVERAL AND REGULATING ORDERS FOR SHELLFISH THROUGH THE MARINE BILL

Response from Wildlife and Countryside Link September 2006

Wildlife and Countryside Link (Link) is a coalition of the UK's major environmental non-governmental organisations concerned with the conservation, enjoyment and protection of wildlife, the countryside and the marine environment. Taken together, our members have the support of over eight million people in the UK.

This response is supported by the following organisations:

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PROPOSED AMENDMENTS TO LEGISLATION SUPPORTING SEVERAL AND REGULATING ORDERS FOR SHELLFISH THROUGH THE MARINE BILL ANSWERS TO SPECIFIC CONSULTATION QUESTIONS

1. Applying for an Order

Question 1: Do you agree that the criteria for holding a public inquiry should be relaxed in this way?

We welcome the attempt to expedite the currently lengthy application process, as we are aware that this is a definite barrier to the more widespread uptake of Several and Regulating Orders as a fisheries management tool. We agree that it would not be appropriate to remove entirely the possibility of holding a public inquiry, as the public inquiry process guarantees safeguards that protect the rights of the public.

We also agree that a potential solution would be to give the SoS greater discretion to decide whether a public inquiry is necessary, in order to reduce the likelihood of a full inquiry being triggered for relevant but relatively minor objections.

We would welcome more information on precisely what form this 'greater discretion' would take.

2. Effect of grant of right of regulating a fishery (Section 3) – Enforcement powers

Question 2: Should SFOs have their current enforcement powers extended?

We think that it makes a great deal of sense to extend the current enforcement powers of the SFOs under this Act in relation to Several and Regulating Orders. Their enforcement powers under an Order should be brought into line with the powers they possess under the 1966 Act as suggested in para 34, which is itself now undergoing modification.

Question 3: Should SFO enforcement powers allow them to go into adjoining SFC districts when enforcing an Order? What are the current problems this would solve?

Link is happy to leave this question to those organisations with relevant practical experience, but notes that this may not be an issue if SFC boundaries are re-drawn with a view to enclosing fishery biomes through the ongoing modernisation of England's SFCs.

Question 4: Should the granting of Regulating Orders be restricted to SFCs?

If, following the Minister's announcement earlier this summer, the SFCs are modernised and improved as has been suggested, then it could make sense to restrict the granting of Regulating Orders to SFCs.

Link is in favour of a modernised SFC structure for England, whereby the total number of SFCs is reduced and any areas around the English coastline that are currently out of SFC jurisdiction are brought into SFC jurisdiction. So for example, areas in which the Environment Agency currently takes SFC powers to regulate fisheries should rather be put under the control of the local SFC.

However, it might not be necessary to restrict the granting of Regulating Orders in this way. A better option might be to transfer the administration of Several and Regulating Orders to the SFCs, but leave the granting of Regulating Orders open as it stands at present, where some fishermen's organisations can act as the grantee for a Regulating Order. This system seems to work well at present, for example the Teign mussel fishermen in Devon run a Regulating Order successfully.

Other enforcement and licensing issues

Question 5: Do you agree with this proposal?

Link is happy to leave this question to those organisations with more relevant expertise.

Question 6: Are there any other situations that should be covered in this way?

Link believes that provision should be made within the legislation and/or guidance for regulation to apply to all vehicles (e.g. tractor dredgers as well as boats), as well as all activities associated with fishing (e.g. the use of quad bikes to remove catch from the shore). These comments are expanded below, under 'Further Issues'.

3. Sharing application and management costs

Question 7: What costs should grantees be able to take into account when calculating the level of tolls or royalties?

We agree that the criteria for applying tolls and royalties should be clarified to ensure that the grantee is able to recover all additional start up and general management costs incurred that benefit the fishery in the long-term.

4. Reviewing the criteria under which the Secretary of State can cease an Order

Question 8: Do you agree with this proposal? Are there other circumstances under which the Secretary of State should make a certificate to cease an Order? What are they?

We agree that there are other circumstances besides those outlined in the legislation already (1967 Act, Section 5) where the SoS should be empowered to make a

certificate to cease an Order. These should include circumstances where a fishery is no longer viable or profitable, but more importantly we think they should include situations where significant environmental damage is occurring, either directly within the Order areas, or where it is having impacts outside the boundary, or where stock sustainability is at risk.

NB that this is with the proviso that withdrawal of the Order is accompanied by other measures put in place to ensure that the fishery is not left vulnerable to uncontrollable exploitation.

5. Other minor amendments to the Act **Protection of Several Fisheries**

Question 9: We propose to take a similar approach in England as has been taken in Scotland and amend the Act to allow other implements to be specified in the Order – do you agree?

Link is aware that in many cases, fishermen have opposed the granting of Several Orders because it excludes virtually all fishing methods from an area, rather than just those activities that would be harmful to the Several interests. We would agree with a relaxation of the prohibition of other fishing practices within the Several Order so that any form of fishing is allowed, providing that it can be demonstrated that the fishing activity in question will not harm the Several interests (e.g. through and EIA).

Question 10: Or, should we confer a discretion on grantees to consent to other implements being used?

We believe that the approach outlined in para 47 and Question 9 is more suitable. This would allow the decision about what fishing methods are suitable within the Several area to be taken on an individual area basis when the Order is drafted, taking into account the local conditions and fishing activities, and being consulted upon and subject to wider approval. In our view, the alternative approach outlined here would give too much power to the Several Order grantees and there would be little to stop grantees consenting to no other implements being used (i.e. we would have the status quo).

Question 11: Are there other examples of activities which could be permitted in a Several fishery, but which are currently prohibited?

Link is happy to leave this question to those organisations with more relevant expertise.

Amendments to Existing Orders

Question 12: Would an amended application process resolve problems of amending an Order mid-term?

We agree that an amended application process would help to resolve the problems of amending an Order mid-term. Link is in favour of allowing Orders to be amended much more easily, as we believe that the current system has suffered from its inflexibility.

Taking of edible crabs for scientific purposes

Question 13: Should Section 17(2) be extended in this way?

Link is happy to leave this question to those organisations with more relevant expertise.

List of licence holders to be made available to other public bodies

Question 14: Do you agree to this approach?

Yes – we agree in general with the principle of sharing information between different bodies.

Extending protection under the Act to owners of private mussel beds

Question 15: Do those with rights to private mussel fisheries have problems with third parties removing mussels or entering their areas and damaging the mussels or the fishery?

Link is happy to leave this question to those organisations with more relevant expertise.

Questions 16: If the answer to the last question was “yes” would the extension of the protection afforded to private oyster beds be of assistance?

Link is happy to leave this question to those organisations with more relevant expertise.

ADMINISTRATIVE CHANGES

Duration of an order

Question 17: Should Orders be granted for longer or shorter periods? On what basis do you say this?

We support the granting of Orders for much shorter periods than is currently allowed in the legislation. Current practice is to grant a Regulating Order for a maximum of 20 years and a Several Order for a maximum of 10 years, and we believe that these are sensible maximum lengths for these Orders. We would not want to see Orders granted for up to 60 years, as is currently permitted by the legislation.

Our support for granting Several and Regulating Orders for shorter rather than longer periods is based on the opinion that this practice gives a greater degree of control over the SRO grantee, and allows for more frequent, full review of the situation.

However, granting Orders for shorter periods would reinforce the need for the application process to be streamlined and the likelihood of public inquiry to be greatly reduced so that these Orders remain attractive to potential applicants.

Monitoring of Orders

Question 18: Do respondents think this review system would benefit the grantee, the fishery and the general public?

We agree that improved practice on monitoring of Orders would help to reduce the risks associated with the granting of Orders for longer periods. We still believe that the maximum lengths for Several and Regulating Orders should be 10 and 20 years respectively.

It is our opinion that compulsory 5-yearly review of any Order would benefit the grantee, the fishery and the general public as it would help to ensure that the fishery and associated ecosystem was kept in good health. It would also give the opportunity for relatively early warning of any decline in the condition of the fishery and associated ecosystem. The SFCs would be best placed to carry out such a review.

Improved guidance

Question 19: Are there any particular issues you would like to see covered in update guidance that are not mentioned above?

We fully support the proposal to produce updated guidance on applying for Several and Regulating Orders, as we think this can help to make the application process less arduous. We also agree that Defra should provide further guidance on the legislation governing SROs in particular as it applies to grantees of Regulating Orders: this will be invaluable in aiding grantees and others.

We would like to see the promotion of sustainable certification for fisheries added to any guidance developed.

COSTS AND BENEFITS

Question 20: Can respondents provide more information on the costs of maintaining and applying for an Order?

Link is happy to leave this question to those organisations with more relevant expertise.

FURTHER ISSUES

There are some further minor amendments to the legislation and associated guidance that we would welcome:

- We would welcome clarification of what species can be covered by Regulating and/or Several Orders – we would like to see all shellfisheries covered (with the exception of EU quota species, such as *Nephrops*).
- We would welcome clarification on what methods of harvesting are covered – we would like to see Regulating Orders and ensuing regulations applying clearly and unambiguously to all vehicles (tractor dredgers as well as boats) and methods of fishing, including hand-gathering in particular.
- There should also be provision for taking into account activities associated with fishing activity under the Regulating Order that may also cause environmental damage. For example the vans/quad bikes that have been used by hand gatherers harvesting shellfish to collect their catch from the beach. Use of these vehicles can lead to tonnes of shellfish being taken on a daily basis by hand gatherers alone, and these vehicles can also cause significant damage to an area's wildlife interest e.g. they may damage sensitive saltmarsh areas by driving across them to access the beach.
- The size of Several Order areas: sizes of Several Order areas currently range from 22ha to 894ha. We would like to see a maximum size imposed in the legislation or at least firm policy guidance on the maximum size to be granted. As the legislation stands at the minute, there is nothing to stop a Several Order covering a whole estuary, and while such a situation is unlikely, it would cause a serious problem if it did occur.
- The owners of private fisheries (oyster and mussel beds) and lessees of Several Order areas should be required to operate in line with sustainable use of the resources and with regard to the environment both within and without the area under their ownership.
- Regulating Orders provide an opportunity for grantees to license fishermen operating within the area of the Order. Link believes that there should be provisions for a more effective licensing system, facilitating the sustainable exploitation of all stocks, and providing a mechanism to adjust fishing effort rapidly in response to conditions e.g. stock levels. The Regulating Authority must have the ability to be more flexible in restricting the number of licences issued, and it should be possible to set conditions on these licences. Licences



should cost, with any money raised in this manner spent on the management of inshore fisheries.