

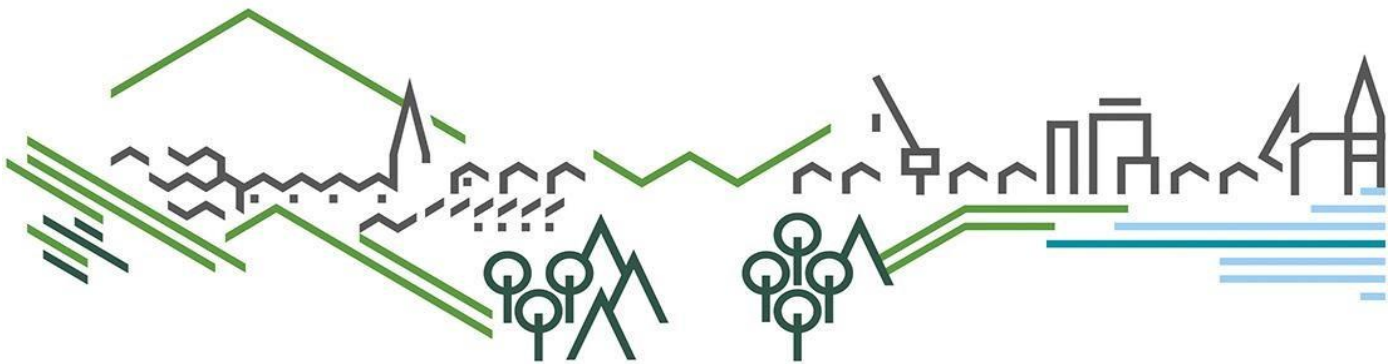


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Wales**

# **Dee Estuary Cockle Fishery Order (2008) Management Plan**

Natural Resources Wales

Revision Date: DRAFT Mar 2021



## **OVERVIEW**

1. This Management Plan relates to the Dee Estuary Cockle Fishery (**the Fishery**).
2. From 1 April 2013, Natural Resources Wales (**NRW**) and the Environment Agency became two separate Grantees with responsibility for the management of the Fishery pursuant to the Dee Estuary Cockle Fishery Order 2008 (**The Order**). NRW became the Grantee in relation to that area of the Fishery located in Wales with the Environment Agency the Grantee for that area of the Fishery located in England. As Grantees under The Order, NRW and the Environment Agency have powers to regulate the Fishery until 30 June 2028. To ensure continuity of the management and regulation across the Fishery, NRW and the Environment Agency have agreed that NRW will take the lead on day to day management and regulation of the whole of the Fishery. This Management Plan therefore identifies NRW's aims and objective in its management of the Fishery and sets down detailed arrangements for its management of the Fishery for cockles (*Cerastoderma edule*).
3. This Management Plan will be subject to an overall review at intervals of not greater than 5 years.

## **MANAGEMENT AIMS AND OBJECTIVES**

4. NRW's overall aim in its management of the Fishery is to develop a thriving cockle fishery in the Dee Estuary which supports, protects and enhances the needs of the community and the environment upon which it depends. The Environment (Wales) Act 2016 includes a requirement for NRW to embed the principles of sustainable management of natural resources throughout the way we work. Through applying these principles we can maximise our contribution to the well-being goals and pursue the sustainable management of natural resources. Such a thriving cockle fishery is an important aspect of The Water Environment (Water Framework Directive) (England and Wales) Regulations 2016 under which the Dee is a Shellfish Water Protected Area.
5. In order to achieve this aim, NRW has identified and will pursue, through its management of the Fishery, the following 3 objectives:

**Objective 1:** to deliver and maintain a sustainable fishery which can provide regular income to licensees.

**Objective 2:** to avoid adverse effects on the UK's national site network and local residents.

**Objective 3:** to improve management, monitoring, regulation and enforcement within the wild fishery.

## **GEOGRAPHICAL DESCRIPTION OF THE FISHERY**

6. The Fishery is located in the river Dee estuary between north Wales and Wirral. It is defined to the north by a line drawn between Red Rocks, northern most point of Hilbre Island and the old lighthouse, point of Ayr, and to the south by a line drawn at right angles to the training wall intersecting the Flint channel light at 53° 15' 13"N, 003° 06' 45"W.
7. Within the estuary there are currently nine cockle beds in the Fishery, namely West Kirby, Thurstaston, Mostyn, Mostyn Deep, Talacre, Caldy, No.3 Buoy, Salisbury Middle and Salisbury. These beds vary spatially according to spatfall, exploitation sediment changes and other external factors and it is possible that beds may change in the future.
8. Figures in Annex 1 show the definitive map of the of the Regulating Order, along with the 2020 locations of the cockle beds.
9. The total area of the Fishery, below mean high water springs (MHWS) on the Definitive Map is 10,656 hectares.

## **BACKGROUND**

10. The last review of the Management Plan was in 2015. This version of the Management Plan has been revised to take account of the standardising, as far as practical, of the management practices of the only Welsh Regulating Order Cockle Fisheries (Dee Estuary Fishery and Burry Inlet Fishery) and to take account of new plans and strategies including:
  - i. "Wellbeing of Future Generations (Wales) Act 2015", which requires public bodies to think about the long term impacts of their decisions and work better with people, communities and each other to prevent persistent problems such as health inequality and climate change;

- ii. “Welsh Marine Evidence Strategy 2019 – 2025”, is a collaborative agenda for marine research Monitoring and Analysis;
  - iii. “Welsh National Marine Plan 2019”, which forms policy for the next 20 years for sustainable use of our seas.
11. The Dee Estuary is an internationally important over-wintering site for wildfowl and wading birds and of European importance for its estuarine, mud and sand-flat and salt-marsh habitats and communities. It is designated as a Special Protection Area (**SPA**) under the EC Birds Directive, a Special Area of Conservation (**SAC**) designated under the EC Habitats Directive and a Ramsar Site under the International Convention on Wetlands. The Dee Estuary also encompasses Sites of Special Scientific Interest (**SSSI**) designated under the Wildlife and Countryside Act 1981: Dee Estuary SSSI, North Wirral Foreshore SSSI, Gronant Dunes and Talacre Warren SSSI, Red Rocks SSSI, Shotton Lagoons and Reedbeds SSSI, Inner Marsh Farm SSSI, Dee Cliffs SSSI - and part of the Hilbre Island Local Nature Reserve (**LNR**).
  12. The Dee Estuary has supported a commercial cockle fishery for well over a century. Following an application by the Environment Agency to the Secretary of State and National Assembly for Wales for a Regulating Order under section 1 of the Sea Fisheries (Shellfish) Act 1967, the Order was made in 2008 granting the Environment Agency (and now NRW and the Environment Agency) a right to regulate the Fishery for cockles.
  13. The Order relating to the Fishery generally prohibits unlicensed cockle fishing and allows for regulations and restrictions to be imposed (with the consent of the Secretary of State and the Welsh Ministers) which prohibit or regulate cockle fishing. Regulating Orders also encourage long term investment in the Fishery.

### **SHELLFISH HYGIENE MONITORING**

14. Shellfish harvesting areas are classified according to the extent of microbial (faecal) contamination as shown by monitoring of *E. coli* in shellfish flesh. Treatment processes are stipulated according to the classification status of the area.
15. Classification of shellfish waters in the Dee can be viewed on the following website:

<https://www.cefas.co.uk/data-and-publications/shellfish-classification-and-microbiological-monitoring/england-and-wales/classification-zone-maps/>

16. The Food Standards Agency (FSA) has a statutory responsibility for ensuring that monitoring and subsequent classification of cockle stocks occurs. This is conducted in collaboration with the Environmental Health teams at Flintshire and Wirral Councils.
17. In the event of monitoring results highlighting the need for a closure of the fishery, NRW will follow any closure notices issued by the FSA and suspend harvesting of cockles until the bed closure is lifted. NRW will work with FSA and local councils during any such closures to facilitate the reopening of beds when safe to do so.

### **STOCK ASSESSMENT SURVEYS AND TOTAL ALLOWABLE CATCH (TAC)**

18. Stock assessment surveys are normally carried out twice a year in the Spring and Autumn using a standard methodology (Moore 2011). Surveys will estimate the cockle biomass of each year class from each bed within the Fishery.
19. A Total Allowable Catch (TAC) for the opening of the fishery is established each year based on the results of the Spring survey and the food requirements of the overwintering birds of the Dee SPA. Individual bird based models such as the one developed by the Centre for Ecology and Hydrology (CEH) have been universally acknowledged as the most appropriate method to set a TAC. The food requirements of the birds is calculated using the most up to date Bird Food Model.
20. Once the survey is complete the results are assessed, and the tonnage of cockle is calculated to leave enough food for the requirements of the overwintering birds and for a TAC for the fishermen. The catch returns from the licensees are monitored to see how much cockle is being removed each month in relation to the set TAC. This enables the TAC or daily quota to be amended if necessary to ensure enough food is left for the birds, and that the fishery is sustainable over the long term and provides a living for the licensees.
21. Following principles of sustainable management of natural resources, NRW will adaptively manage the fishery assessing the need to respond to mortalities, changing size demographics or natural environmental events such as rouching (see Annex 2)

## **LEGISLATIVE CONTEXT**

22. NRW may issue licences under the Order (Sea Fisheries (Shellfish) Act 1967) in such numbers and to such persons, and operative for such periods, and may authorise the dredging, fishing for or taking of shellfish at such times, in such manner and to such extent as it may determine. This includes the setting of licence conditions, daily and annual quotas and cockle size limits, and the determination of fishing times and areas and methods.
23. Under the provisions of the Sea Fisheries (Shellfish) Act 1967 NRW may, with the consent of the appropriate Ministers:
- i. revise the tolls leviable under the Order
  - ii. make or change regulations made under the Order
  - iii. adopt or change any policy as to whom, and under what conditions, they propose to issue licences.
24. Article 4 of the Dee Estuary Cockle Fishery Order, 2008 states that:
- (1) No person may dredge, fish for or take cockles within the fishery unless they do so under the terms of—
- i. a licence issued by the grantee; or
  - ii. an authorisation [an endorsement] under article 6.
- (2) A licensee must produce a copy of the licence if requested to do so by an authorised officer of the grantee and may not dredge, fish for or take cockles within the limits of the fishery until the licence has been produced.
- (3) Paragraph (1) does not apply to any person who—
- iii. takes by hand not more than five kilograms in live weight of cockles from the fishery in any one day for personal consumption; or
  - iv. dredges, fishes for or takes cockles in pursuance of provision made under section 3(1)(c) of the Act [the propagation of shellfish].
- (4) Schedule 1 (regulations and restrictions applicable to the fishery) has effect.

## **RESTRICTIONS AND REGULATIONS ON HARVESTING**

25. The following restrictions and regulations apply to the Fishery:

*21.1 The method shall be restricted to hand-gathering only with a rake head not exceeding 30 centimetres in width.*

*21.2 Cockle beds shall be opened and closed individually depending upon levels of harvesting and survey results (TAC) at the discretion of the grantees, in order to safeguard a sustainable population level.*

*21.3 Only cockles which are retained by a gauge having a square opening of 20 mm along each side of the square can be taken.*

*21.4 A cockle shall be deemed to be removed from the Fishery as soon as it is placed in any container (including bags, sacks and other similar receptacles), trailer, vehicle or vessel.*

*21.5 Sorting and washing of cockles must be undertaken before cockles are removed from the Fishery.*

*21.6 No cockle bags or other equipment or litter are to be left on the beds following fishing.*

*21.7 No person shall engage in any activity which disturbs or damages the Fishery without the prior written consent of the grantees.*

*21.8 No mechanically driven vehicles are permitted on the Fishery without the prior written consent of the Landowner and grantees.*

*21.9 No vessels greater than 10 metres may be used for the purpose of removing or receiving cockles and must be operated solely by a licence holder, except with the written approval of the grantees for the purpose of ensuring the safe navigation of the vessel.*

*21.10 Annual close season shall be from the 1st day of January to the 30th of June following.*

*21.11 No fishing for cockles between one hour after sunset and one hour before sunrise.*

*21.12 There shall be a weekly closed period on Sundays unless so directed by the grantees.*

21.13 *The decision whether to open the fishery will be taken in May/June each year, following completion of stock assessment surveys and consultation with the Dee Estuary Cockle Fishery Advisory Group (DECFLAG).*

21.14 *A TAC will be established each year based on cropping a scientifically calculated proportion of the available biomass above the ‘giving-up’ density on any one bed on the 1st July. This proportion is likely to be around 30% in most years but the proportion and the “giving-up density” may be varied as the grantees consider appropriate in the interests of maintaining a sustainable fishery, having regard to the stock assessment survey and in consultation with DECFLAG.*

21.15 *Fishing will not be permitted during periods when a severe weather order is in effect under section 2(6) of the Wildlife and Countryside Act 1981: closure and reopening of the beds will be in accordance with the guidelines established for the statutory suspension of waterfowl shooting in severe weather.*

21.16 *Except in emergencies or unless otherwise agreed by the grantees, no person may access the fishery for the purpose of dredging, fishing for or taking cockles, or leave the fishery after cockling, except—*  
*i. at points above mean high water, and at times, which may be designated by the grantees from time to time; and*  
*ii. in compliance with the terms and conditions of any such agreement given by the grantees.*

21.17 *The grantees shall ensure that any decision regarding designation of access made for the purpose of these regulations is given appropriate publicity in the vicinity of the fishery and to the licence holder.*

21.18 *The grantees may, in writing, exempt any person from any regulation or restriction if it is necessary for the purpose of preserving, improving, or developing the fishery or for scientific, stocking or breeding purposes.*

## **FISHING LICENCES**

- 22 Dynamic and reactive management of a commercial fishery in the marine environment which will by nature experience conditions that are difficult to predict, is best achieved through the imposition of licence conditions.
- 23 NRW will use licence conditions to manage the fishery effectively and efficiently. Examples of the licence conditions issued at the start of the 2020/21 season are shown below.



## **Licence Conditions**

- 23.1 No licensee shall fish for, take or attempt to fish for, or take or remove cockles from the Fishery except in accordance with the licence conditions and fishing restrictions and regulations.
- 23.2 A licence shall only be issued to an individual.
- 23.3 A licence shall not be transferable, although a temporary endorsement may be granted (see Endorsement guidance in Annex 3).
- 23.4 A licence must be carried by the licensee and be available for inspection at all times.
- 23.5 A valid licence must be produced when requested by a Grantee Officer and the licensee shall not continue to fish for cockles until a valid licence is produced.
- 23.6 Subject to regulation 4 of Schedule 1 to the Order, a licence shall cover the whole of the Fishery.
- 23.7 Each licensee (other than an apprentice licensee) will be allocated an individual daily and/or annual quota based on the total TAC, and following consultation with the DECFAG.
- 23.8 The licensee shall not, except with the prior approval of NRW,
- 23.8.1 transport beyond mean highwater more than their daily quota in the period between 0001hrs and 2359hrs of the same day, or
- 23.8.2 more than their annual quota during the period of the open season.
- 23.9 Information required on a licence shall include a photograph of the licensee, a unique licence number, name and address of licensee and period of validity.
- 23.10 Licences will run annually for the period specified on the licence.
- 23.11 When the beds are open, the licensee shall complete and submit on a monthly basis daily landing declarations. Such declarations shall include the date on which, and beds from which, any cockles were taken, weight (kg) harvested and (where appropriate) buyer details.

- 23.12 No licensee shall fish, take or attempt to fish for or remove cockles from the Fishery unless the licensee has complied with the provisions of condition 10.
- 23.13 Unless prior written authorisation has been obtained from NRW, no persons other than licensees are to be carried on vessels/vehicles authorised for use in cockling, while the licensee is engaged in cockling activity.
- 23.14 Unless prior written authorisation has been obtained from NRW, licensees may not be assisted by any other person except apprentices, in any way, including raking, riddling, bagging, carrying, clearing dead cockle and boat handling.
- 23.15 Licensees operating a vessel must comply with any direction given to them by the Dee Conservancy Harbour Master or the Port of Mostyn Harbour Master.
- 23.16 A licensee may use a jumbo (an implement with a flat base and vertical handle which is used to bring cockles to the surface) to assist hand gathering provided it has a base not exceeding 140 centimetres long and 40 centimetres wide.
- 23.17 A licensee shall not remove cockles from the Fishery other than in landing bags issued by NRW (Landing Bags) directly to that licensee and identified as being so issued by a numbered tag. Licensees shall not transfer Landing Bags, use Landing Bags issued to other licensees, alter or tamper with Landing Bags or otherwise treat Landing Bags in a manner whereby the individual Landing Bag cannot be identified by its numbered tag. A licensee shall upon request by a Grantee Officer make available Landing Bags and the contents thereof for inspection and shall not continue to fish until such landing bags are produced. It is the responsibility of the licensee to ensure that the bags are marked and the markings are visible.

### **ISSUING LICENCES**

- 24 Under the Order, a licence is required to fish for cockles within the Fishery (unless you collect up to 5 kg per day by hand for your own consumption). It is an offence to fish for cockles without a licence. No individual may hold more than one licence for the fishery.
- 25 It is the aim of this management plan to allow at least 50 fishermen to participate in the Fishery, on an annual basis. Previously justification for 50 licensees has been based on:

25.1 Total Allowable Catch of between 500 to 2,500 tonnes

25.2 Maximum annual exploitation rate of 50 tonnes per licensee

- 26 In 2019 and 2020 the TAC has been over 2,500 tonnes and over 40% of licensees have harvested over 50 tonnes in a season.
- 27 At times when NRW considers that the fishery could sustain it, short-term non-renewable licences will be issued at NRW's discretion.
- 28 NRW require that participants in the fishery have the most up to date training and safety certificates prior to accessing the fishery (see Annex 4)

### **ALLOCATION OF LICENCES**

- 29 Licences are allocated to applicants in accordance with NRW's published licence allocation procedure (LAP), which can be found in Annex 5. This procedure includes details of the appeals process.
- 30 Payment for licences must be made prior to July 1<sup>st</sup>. No licence will be issued and no harvesting can occur before payment is made.
- 31 Separate arrangements apply for the allocation of apprentice and short term non-renewable licences exist; see LAP.

### **REGULATION AND ENFORCEMENT**

#### ***Regulation***

- 32 The principles of good regulation will be adopted in the Fishery. NRW will be transparent, accountable, proportionate, consistent and targeted in its regulatory and enforcement activities. These principles are explained further in NRW's Enforcement and Prosecution Policy (Annex 6)
- 33 NRW will also follow its principles to deliver sustainable management of natural resources through its regulatory approach in the Fishery.
- 34 NRW will support licensees compliance with the restrictions and regulations in the Fishery through engagement, education and enabling. Should any licensee

commit a breach of the restrictions and regulations they will be dealt with in accordance with NRW's Enforcement and Prosecution Policy.

### ***Enforcement***

- 35 The full range of enforcement tools will be used to achieve compliance in the Fishery and tackle illegal activity. This includes but is not limited to providing advice and guidance, issuing warnings, offering formal cautions and taking prosecutions.
  
- 36 When deciding on a suitable enforcement response consideration is given to the desired outcome of the response. Actions may be taken to stop an activity, restore or remediate, bring into compliance, punish and/or deter or a combination of all of these.
  
- 37 Public interest factors are considered for each case in determining the suitable responses to offences. These include intent, environmental effect, previous history and attitude. A full list of public interest factors and further details can be found in NRW's Guidance on Enforcement and Sanctions.
  
- 38 Where a licensee is convicted of an offence, their suitability to retain the licence will be reviewed and if appropriate, Grantees may seek Ministerial consent to cancel the licence.
  
- 39 Licences may be suspended for certain offences at the discretion of NRW.

### **STAKEHOLDER ENGAGEMENT AND COMMUNICATION**

- 40 The principal mechanism for stakeholder engagement will be the Dee Estuary Cockle Fishery Advisory Group (**DEC FAG**). DEC FAG will meet twice a year and work with NRW to inform and develop the management of the fishery.
  
- 41 Membership of the group needs to represent the range of community and regulatory bodies and their views, but not be too large to work in detail together and maintain consistent attendance. NRW will invite people who can show that

they represent the views of others, not just individual opinions. The membership list will include up to 9 representatives of the Dee Estuary Licenced Cockle Gatherers, representatives from NRW, and a representative from each of the following organisations: Local Authorities, Environment Agency, NWIFCA, NE, WG, Dee Estuary Conservation Group and cockle processors. Other people will be invited to meetings as required.

- 42 Changes to any licence conditions, bed closures, payments and general fishery operations will be communicated to all licensees in writing.

### **EVALUATION/MONITORING OF PLAN OBJECTIVES**

#### **Objective 1: to deliver and maintain a sustainable fishery which can provide regular income to licencees**

This objective will be monitored through:

- Liaison with Dee Estuary Cockle Fishery Advisory Group (DEC FAG) to agree the TAC, daily quotas and other management decisions
- Stock monitoring / maintenance of exploitable stock at predicted levels and improve understanding of cockle population dynamics.

#### **Objective 2: to avoid adverse effects on the European designated sites and local residents.**

This objective will be monitored through:

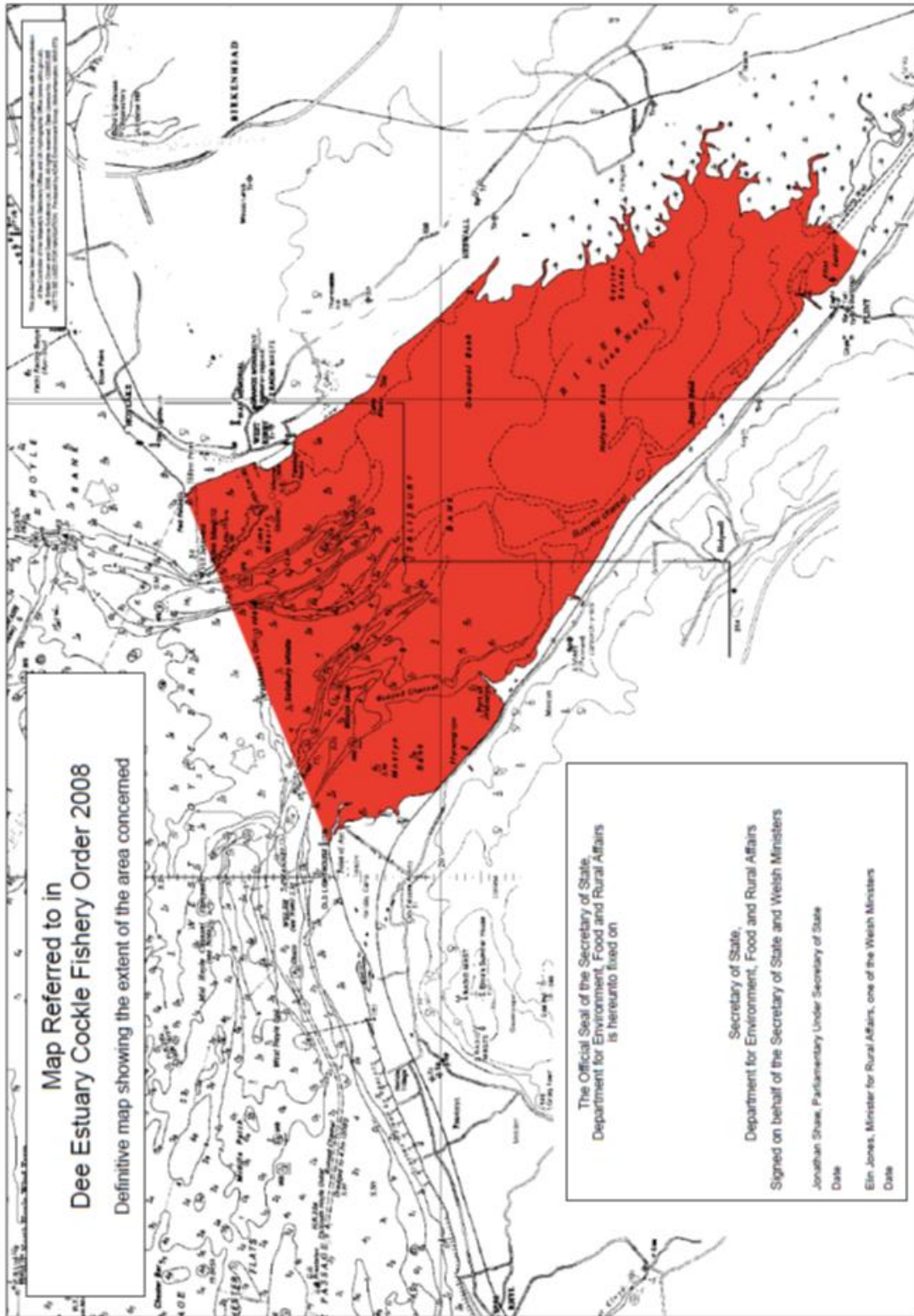
- Completing and implementing the latest and most appropriate bird food / stock models available with regard to calculating the TAC
- Ensuring there is no detriment to the achievement of Favourable Conservation Status (FCS) for relevant SAC, SPA and Ramsar features
- Monitoring beds for illegal fishing
- Ensuring access and exit from the Fishery is at agreed points.

#### **Objective 3: to improve management, monitoring and enforcement within the Fishery.**

This objective will be monitored through:

- Regulation of the Fishery according to current statutory requirements.
- Use of appropriate resources to improve understanding of population dynamics.
- Application of this Management Plan.
- Ensure regular monitoring of catch and compliance with the Management Plan.
- Use the most appropriate stock model to predict food requirements for the birds of the SPA and SSSI, predict effects on the bird populations of different management scenarios, and recommend methods for setting sustainable TAC.

# Annex 1 – Maps



1. Dee Estuary Cockle Regulating Order 2008, Definitive Map

Figure

Figure 2. Location of beds within Dee Estuary, 2020 (Map under construction)



## Annex 2 - Rouched Cockle Procedure

The following steps outline the procedure for reporting and substantiating large scale rouching events following which NRW may temporarily suspend or relax licence conditions to facilitate the removal of rouched cockle.

1. Rouched cockle events are reported to NRW by a licence holder
2. NRW will endeavour to substantiate rouching and establish quantity and location, preferentially by site attendance the same or following day. Where this is not possible alternative ways of confirming the occurrence may be used.
3. NRW will review the catch return data to date against the TAC and the estimated volume of rouched cockle
4. NRW documents details of the rouching event and makes a decision with regard to suspension or relaxation of licence conditions
5. Authorisation to remove rouched cockle by suspending or relaxing licence conditions may not be granted for a number of reasons, including, if:
  - a. There is limited capacity within the TAC and it is considered that this activity could result in the fishery having to be closed prematurely once the TAC is reached
  - b. NRW has been unable to substantiate the rouched cockle event
  - c. The quantity of rouched cockle is insufficient to warrant the process, e.g. will naturally be cleared within a couple of days under existing daily quotas
  - d. It is considered that the authorisation may be detrimental to the fishery in any way
6. Where it is appropriate to suspend or relax licence conditions this may include changes to any of the following:
  - a. Maximum daily quota
  - b. Minimum or maximum sizes (if applicable)
  - c. Requirement to tag bags
  - d. Restrictions on the equipment that can be used to collect cockle
  - e. Use of short-term, non-renewable licences
  - f. Fishery opening periods
7. A written Notice to Cocklers detailing the temporary changes to licence conditions and the timeframe in which these are relevant will be sent to all licence holders by post.
8. If a Notice to facilitate the clearing of rouched cockle is not issued, all existing licence conditions remain regardless of whether rouched cockle is present and

being gathered. Any breach of licence conditions when a Notice is not in place or of a condition not relaxed or suspended through a Notice is an offence.

## Annex 3 - Dee Estuary Cockle Fishery Endorsement Procedure

### **Introduction**

- 1 Natural Resources Wales is committed to ensuring the Dee Estuary Cockle Fishery Order 2008 (DECFO), is correctly used for the benefit of licensees, wildlife and the wider estuarine environment.
- 2 Article 6 of the DECFO gives NRW the discretionary power to authorise ie endorse, a second person on a licence to dredge, fish for, or take cockles within the fishery under the same conditions as the licensee.
- 3 **For the avoidance of doubt, this means that an endorsee cannot harvest cockles from the fishery at the same time as the licensee.**
- 4 NRW recognises and acknowledges that as licensees are self-employed, they lose income if they are incapable of working. NRW are therefore using the power granted under the DECFO for the benefit of licensees who have genuine reasons for being unable to work their licence for *short term* periods. NRW has put in place limits on the duration of endorsements in any one season in order to encourage proper use of the licensing system and to allow potential new entrants into the fishery to gain experience.
- 5 NRW aims to achieve this through effective monitoring and management of any endorsements.

### **Scope**

- 6 This procedure applies to:
  - all Dee Cockle Fishery licensees
  - all potential endorsees proposed by Dee Cockle Fishery licensees
  - all NRW staff involved in the processing of endorsement requests

### **Endorsement**

- 7 Endorsements will only be available during the cockle gathering season i.e. during the period July 1<sup>st</sup> to December 31<sup>st</sup>. An endorsement will last for a period of up to 28 days. A licensee may request up to 3 separate endorsements per season. A licensee may not have more than 1 endorsement active at any given time. A licensee may apply for 3 consecutive endorsements in one application (using the same endorsee). While the application may be approved in principle, certificates for the subsequent endorsement periods will not be issued until the endorsee has completed and submitted catch returns for the prior endorsement period.

### **Request to Endorse**

- 8 Licensees are to submit a written request (via post or email) to NRW to have a person endorsed on their licence. All requests for endorsement must be sent at least 14 days

before the requested endorsement start date. This initial request must be directed to the Dee Cockle Officer (at Natural Resources Wales, Chester Road, Buckley, CH7 3AG or [dee.cockle.fishery@cyfoethnaturiolcymru.gov.uk](mailto:dee.cockle.fishery@cyfoethnaturiolcymru.gov.uk)). This request must include:

- The reason(s) for the request
- The duration of the endorsement requested
- The name and contact details of the proposed endorsee

## **Endorsees**

- 9 Any individual proposed as an endorsee must pass a Fit and Proper Person Assessment (FPPA) before they will be considered for entry into the fishery. Full details of the FPPA are contained in Annex 7. **(The FPPA is currently under review by NRW. Annex 7 is not included in this document for consultation. Details of the FPPA will be available before the beginning of the 2021 season when the endorsement process is being used)**
- 10 NRW will make a fit and proper person assessment of the proposed endorsee at this stage. If a proposed endorsee fails this FPPA NRW will inform them. The licensee will then be asked to propose an alternative candidate.
- 11 Proposed endorsees who have applied for and hold a position on the Licence Allocation list for a for full Dee Cockle Fishery licence will have already completed the FPPA for that process. In the event that their FPPA was passed within 12 months of an application for endorsement, they will not need another FPPA. If the application for an endorsement occurs more than 12 months after they passed a FPPA, a new one must be completed.
- 12 Following completion of a FPPA and initial approval of a proposed endorsee, the licensee and proposed endorsee will be contacted and asked to provide the following documentation in support of their application.
- 13 For the licensee:
  - A valid Gangmasters and Labour Abuse Authority licence
- 14 For the proposed endorsee:
  - An identity document showing the proposed endorsee is over 16 years of age
  - A document showing proof of address (Driving licence, bank statement or utility bill)
  - Original Survival at Sea certificate
  - Original First Aid at Sea certificate
  - Original Foreshore Gatherer's certificate
- 15 Certificates for health and safety related training courses (Survival at Sea, First Aid at Sea, Foreshore Gatherer) will not be accepted if they are more than 5 years old.
- 16 And if the endorsee proposes to operate a boat on the fishery:

- Certificate proving minimum of RYA Powerboat Level 2
- RYA VHF Radio Operators certificate or equivalent

17 It is the responsibility of the licensee to remain in regular contact with the Dee Cockle Officer during this period. Failure to update or supply the required paperwork may result in the process being delayed until the correct paperwork has been received.

### **Recording and Processing of Documentation**

18 NRW will create a file for each endorsement request and make photocopies/scans of all relevant paperwork in support of the request. This file will contain personal information and will be treated in accordance with the General Data Protection Regulations (GDPR).

### **Review Panel and Interview**

19 Once all supporting paperwork has been provided, the Dee Cockle Officer will pass the information to an internal review panel. This panel will consist of at least three NRW members of staff who will consider the request and supporting paperwork to ensure consistency and fairness.

20 If the internal review panel approve the request, the Dee Cockle Officer will then arrange for the licensee and proposed endorsee to attend the Buckley office for interview together with a member of the Enforcement Team. This interview will only take place for a first-time endorsement. Any subsequent applications, within a single season will not require further interviews unless the licensee changes his endorsee. If the internal review panel reject the request, the licensee and proposed endorsee will be informed by the Dee Cockle Officer.

21 During the interview, the Dee Cockle Officer and/or a member of the Enforcement Team will also highlight the responsibilities of both the licensee and the endorsee within the fishery. Endorsees will be authorised to cockle under the same Restrictions and Regulations and Licence Conditions as the licensee. A copy of these will be supplied to the endorsee during the meeting. For the avoidance of doubt, an endorsee cannot harvest cockles from the fishery at the same time as the licensee.

22 The licensee and endorsee will sign an acknowledgement slip indicating they both understand the terms of the endorsement and that the endorsee has received the endorsement as well as a copy of the Restrictions and Regulations and Licence Conditions.

23 The licence endorsement details will be copied to the Enforcement Team so that effective monitoring of compliance with licence requirements can be carried out.

### **Continuing Certification**

24 The duration of any single endorsement will be up to 28 days. Each licence holder will be entitled to a maximum of three separate endorsements in any one season. It is the responsibility of the licensee to request further endorsements. Where a licensee has requested 3 continuous endorsement periods using the same endorsee, the licensee and

endorsee will not need to resubmit supporting documentation, nor will they be required to attend a second interview.

- 25 An endorsee must not harvest cockles beyond the expiry date of an endorsement. An endorsee will only be able to continue to harvest cockles once a new endorsement certificate is issued by NRW. Enforcement action will be taken against any endorsee caught cockling without a valid endorsement. Any further endorsements will not be issued if:
- the licensee or endorsee have outstanding catch returns
  - the endorsee has committed an offence within the fishery
  - the enforcement team have an ongoing investigation concerning either the licensee or the endorsee
- 26 Where an endorsee is working continuous endorsement periods, catch returns for the first 21 days of the endorsement period must be submitted before a certificate will be provided authorising the subsequent endorsement period. The remaining catch returns (days 22-28) must be submitted to the Buckley office within 7 days of the new endorsement period beginning. Failure to comply with this will result in the suspension of the endorsement.
- 27 It is the responsibility of the endorsee to note the end date and time of the endorsement and not harvest cockles from the fishery beyond this date unless another valid endorsement has been issued. If they participate in the fishery beyond the end date of the endorsement, they will be committing the offence of fishing without the benefit of a valid licence and will be subject to appropriate enforcement action.

### **Withdrawing the Endorsement**

- 28 NRW may withdraw the endorsement if:
- A licensee wishes to revoke an endorsement before the expiry date on the certificate issued. NRW must be informed in writing. This will result in the endorsement being withdrawn from the endorsee.
  - Any information or evidence is received which casts doubt on the validity of any paperwork submitted as part of an endorsement application (See Fraudulent Information below).
  - NRW considers that the endorsee or licensee has breached any of the Restrictions and Regulations or Licence Conditions.
- 29 As the endorsement process is entirely discretionary, NRW may review an endorsement at any time and subsequently affirm, modify or withdraw the endorsement.

### **Fraudulent Information**

- 30 If NRW gain information or evidence that a licensee or endorsee has submitted fraudulent paperwork, any current endorsement will be immediately withdrawn.

- 31 NRW have the discretion to liaise with other public bodies or government agencies should it be found that a licensee or endorsee has submitted any fraudulent paperwork.

## Annex 4 – Safety Requirements

This document draws attention to the health and safety guidance and requirements for gathering cockles and working intertidally for licensees and other users of the fishery.

### **Qualifications for cockle gathering**

- Foreshore gatherers safety course/certificate.
- Survival at sea certificate
- First aid at sea certificate

### **Boat use**

The qualifications below will be required for licensees using a vessel to access the fishery:

- Royal Yachting Association (RYA) Power Boat Level 2 with command endorsement training or equivalent course or Sea Fish Industry Authority under 16.5m skipper ticket.
- RYA VHF Radio Operators certificate or equivalent

### **Safety advice for boat use/vessels**

See the information and guidance below provided by the Marine and Coastguard Agency on safety advice for boat/vessels involved in cockling operations and their responsibility to regulate and enforce:

A vessel involved in any manner with regard to the transportation of personnel, equipment or cargo for cockling in the area will be operating commercially. It will be expected that all commercially operating vessels are certificated and comply with the appropriate United Kingdom legislation and guidance, including but not limited to:

SI2016/354 - The Merchant Shipping (Small Workboats and Pilot Boats) (Amendment) Regulations 2016

[http://www.legislation.gov.uk/uksi/2016/354/pdfs/uksi\\_20160354\\_en.pdf](http://www.legislation.gov.uk/uksi/2016/354/pdfs/uksi_20160354_en.pdf)

SI1998/1609 - The Merchant Shipping (Small Workboats and Pilot Boats) – see above amendments

<http://www.legislation.gov.uk/uksi/1998/1609/made>

MSN 1892 – The workboat code edition 2 (for vessel constructed after 31st December 2018)

<https://www.gov.uk/government/publications/msn-1892-m-the-workboat-code-edition-2>



MGN 280 - Small Vessels in Commercial Use for Sport or Pleasure, Workboats and Pilot Boats – Alternative Construction Standards (for vessel constructed before 31st December 2018)

<https://www.gov.uk/government/publications/mgn-280-small-vessels-in-commercial-use-for-sport>

SI1997/2962 - The Merchant Shipping and Fishing Vessels (Health and Safety at Work)

<http://www.legislation.gov.uk/uksi/1997/2962/made>

MIN 538 – Authorization of certifying authority

<https://www.gov.uk/guidance/min-538m-codes-of-practice-authorisation-of-certifying-authorities>

These regulations cover vessels up to 24m load line length and carrying up to 12 passengers or equivalent weight in cargo (approximately 1000kg). More cargo may be permitted if the vessel has appropriate approved stability information.

The Maritime and Coastguard Agency has delegated the survey and certification work to certifying authorities. MIN 538, as listed above, provide the details of the certifying authorities.

Additionally, any Registered Fishing Vessel used for transport of catch will be classed as cargo carrying and as such will also be required to comply with the above regulations.

It is the responsibility of the owner/managing agent and skipper to ensure that they are complying with all the relevant applicable legislation.

These types of operations are associated with specific risks and hazards including, but not limited to, night work and fatigue, effect of tides, adverse weather conditions, towing. The owner shall evaluate the risks with the aim of reducing them and creating a safe working environment, adopting procedures and instructions which shall be documented and form part of a Safety Management System.

Contravention of any provision shall be an offence by the owner and the master of the vessel punishable on summary conviction by a fine not exceeding the statutory maximum, or on conviction on indictment by imprisonment for a term not exceeding two years or a fine, or both.

In any case where a vessel does not comply with the requirements of these Regulations, that vessel shall be liable to be detained.

Further information on this legislation can be sought from the MCA website, <https://www.gov.uk/government/organisations/maritime-and-coastguard-agency>

or in the links below:

<http://www.legislation.gov.uk/uksi/1998/1609/made>

<http://www.legislation.gov.uk/uksi/1997/2962/made>

<https://www.gov.uk/government/publications/mgn-280-small-vessels-in-commercial-use-for-sport>

<https://www.gov.uk/guidance/min-538m-codes-of-practice-authorisation-of-certifying-authorities>

[http://www.legislation.gov.uk/uksi/2016/354/pdfs/uksi\\_20160354\\_en.pdf](http://www.legislation.gov.uk/uksi/2016/354/pdfs/uksi_20160354_en.pdf)

<https://www.gov.uk/government/publications/msn-1892-m-the-workboat-code-edition-2>

## ANNEX 5 - Licence Allocation Procedure

1. This procedure will be used in the issuing of probationary licences under the Dee Estuary Cackle Fishery Order 2008, along with providing a framework for the ranking of applicants eligible for a short-term, non-renewable licence within the fishery. An individual may not hold more than one licence within the Dee Estuary Cackle Fishery.
2. A ranked list created according to this procedure in 2021 will be valid until December 31<sup>st</sup> 2023, with applications being opened again in January 2024, to create a new ranked list valid until December 31<sup>st</sup> 2027 (The final day of the fishing season prior to the expiry of the Regulating Order on June 30<sup>th</sup> 2028).
3. Applicants in 2024 will have their 2021 score rolled over into the 2024 process. An applicant who applies in 2021 will only need to provide evidence for 2021, 2022 and 2023 during the 2024 application process. Points for these years will be added to their 2021 score. New applicants in 2024 will be able to submit a full range of evidence dating back to pre-1995.

### **Licence Applications**

4. The decision to advertise applications for a probationary licence will be at the discretion of NRW and primarily based on permanent licence availability. A secondary use of the ranked list will be to identify individuals to receive short-term, non-renewable licences if NRW chooses to issue them.
5. Advertisements for applications are to be placed on the NRW website and other appropriate media. The advertisement for applications will run for a minimum of 4 weeks.
6. Applications must be received by NRW by the closing date set out in the advertisement. Applications will not be accepted after the closing date.
7. An application will not be considered from any applicant who has not reached 16 years of age before the first day of the season in the fishery for which the ranking list is valid. NRW will not accept evidence gained when the applicant was under 16 years of age.
8. In cases where fraudulent information is supplied as part of and/or in support of an application, that application shall be deemed null and void. Where said fraudulent information has been supplied by another applicant, their own application shall also be deemed null and void.

### **Licence Allocation Process**

- 9 All applicants must pass a Fit and Proper Person Assessment (FPPA) before they will be considered for entry into the fishery. Full details of the FPPA are contained in Annex 7. (The FPPA is currently under review by NRW. Annex 7 is not included in this document for consultation. Details of the FPPA will be available before the beginning of the 2021 season when the endorsement process is being used)

10. An applicant who fails the FPPA will have their application rejected. NRW shall initially consider all applications by assessing:
  - 10.1 The fit and proper persons assessment (FPPA)
  - 10.2 The details on the application form
  - 10.3 The supporting documentation accompanying the application
  
11. The above categories of information, all of which should be submitted to NRW in writing, shall collectively be called the Assessment Information.
  
12. The Assessment Information should demonstrate the extent to which the applicant has:
  - 12.1 Shown that they are a suitable person to participate in the Dee cockle fishery. Failure to pass the fit and proper persons test will result in an application being rejected.
  - 12.2 Actively and materially participated in the Dee cockle fishery or in a cockle fishery elsewhere
  - 12.3 Operated as a commercial fisher on the Dee or as a commercial fisher elsewhere
  - 12.4 Owned a registered fishing vessel or been qualified as a vessel skipper
  
- 13 In submitting Assessment Information to NRW, applicants should take into account the following:
  
- 14 *Evidence of active and material participation in the Dee cockle fishery, or as a commercial fisher on the Dee or elsewhere could include:*
  - Tax returns, catch returns, sales invoices, landing documentation
  - MCA records of ownership of vessels, fleet registers, original certificates showing relevant qualifications
  - Evidence from a verifiable source to demonstrate activity in fishing industry such as, but not limited to, NWIFCA or MMO permits or communications. Photographic evidence may be accepted if it is legible and verifiable (e.g. photos of permits/licences) but will not be accepted if it is unverifiable (e.g. a photo of an individual standing on/next to a fishing boat).
  
- 15 *Evidence of an illness or disability inhibiting participation in the fishery:*
  - Where an applicant can demonstrate active and material participation in the fishery during at least one full fishing season and consider that they would have been able to demonstrate participation in the fishery during one or more subsequent fishing seasons but for the illness or disability, then they may submit evidence of their illness or disability in lieu of evidence of participation in the fishery during the fishing season(s) in question.
  - Evidence of illness or disability could include evidence of statutory payments received throughout the period in question (for example, in the form of statutory sick pay, disability living allowance or incapacity benefit, or other statutory payments that relate to disability

or incapacity to work), or production of contemporaneous medical records which satisfactorily demonstrate that the applicant was medically unfit to participate throughout the fishing season(s) in question.

- 16 NRW reserves the right to request additional information to verify applications. Submission of medical records must be accompanied by a waiver giving NRW permission to contact the applicant's medical practitioner for verification.
- 17 NRW are looking for applicants to demonstrate their prior experience of cockling on the Dee, other commercial fishing experience on the Dee, and/or cockling experience elsewhere. NRW shall consider the Assessment Information for each applicant and their evidence of active and material participation in either the commercial cockle fishery or other commercial fishery against the following criteria:

**Section 1:**

**Pre 1995** (any 1 Year, *Maximum 5 points*)

5 points for evidence of commercial fishing activity on the Dee

**Section 2:**

**1995-2007** (13 Years, *Maximum 33 points, cockle fishery was only open in 1997, 2001, 2002, 2003 an 2005*)

5 points for evidence of commercial cockle fishing on the Dee

OR

1 point for evidence of other commercial fishing activity on the Dee

**Section 3:**

**2008-2014** (7 Years, *Maximum 35 points*)

5 points for each year of evidence of cockle fishing on the Dee as a licence holder, permit holder or endorsee

OR

4 points for each year of evidence of other commercial fishing activity on the Dee

OR

3 points for each year of evidence of cockle fishing elsewhere

OR

2 points for each year of evidence of other commercial fishing activity elsewhere or evidence of ownership of a registered fishing vessel or qualified vessel skipper certification

**Section 4:**

**2015-2020** (6 Years, *Maximum 30 points*)

FOR THE PERIOD 2015-2020 AN INCOME TAX RETURN MUST BE SUBMITTED FOR EACH YEAR OF EVIDENCE. THE INCOME TAX RETURN MUST STATE THAT AT LEAST SOME OF THE INCOME WAS DERIVED FROM COMMERCIAL FISHING ACTIVITY. IF NO INCOME TAX RETURN IS SUBMITTED FOR A GIVEN YEAR NO POINTS WILL BE SCORED IN THAT YEAR.

5 points for each year of evidence of cockle fishing on the Dee as a licence holder, permit holder or endorsee

OR

4 points for each year of evidence of other commercial fishing activity on the Dee  
OR  
3 points for each year of evidence of cockle fishing elsewhere  
OR  
2 points for each year of evidence of other commercial fishing activity elsewhere or evidence of ownership of a registered fishing vessel or qualified vessel skipper certification

18 In the 2021 application process the maximum possible score will be 103 points. In future years a maximum of 5 points per year will be available. For example, during the 2024 application process a maximum of 15 points will be available for the period of 2021-2023.

19 A sample point scoring checklist is attached in Appendix A.

## **Decisions**

20 Upon receipt, applications will be reviewed by a member of the cockle fishery management team. The cockle fishery management team will be composed of, at a minimum, the Dee Estuary Cockle Officer, the line manager of the Cockle Officer and the Dee Estuary Cockle Fishery Manager. The management team may also include other individuals from the NRW Marine Service Area with appropriate background and experience.

21 The application will be provisionally scored by the Dee Estuary Cockle Officer. The applicant will then be contacted by a member of the cockle management team and notified of their provisional score. The applicant will then be given 5 working days from the date of being notified of their provisional score to provide further evidence they consider relevant. 10 working days from the date of being notified of their provisional score, the applicant will be asked to confirm, by signature, that they have provided all relevant evidence to back up their application.

22 Once all applications have been provisionally scored and applicants have confirmed that they have provided all relevant evidence, the applications will be assessed by a minimum of 3 members of the NRW cockle management team in order to determine the final points award and subsequent ranking of applicants.

23 The cockle management team will examine all information that they have obtained including:

23.1 The Completed FPPA

23.2 The Assessment Information that has been substantiated

23.3 Any other information that NRW has obtained during the application process

24 For all evidence provided for Sections 1 and 2 (paragraph 15) the cockle management team will consult with a verification group comprising a subset of DECFAG members. This means that all evidence of Dee based activity from the period before the Regulating Order will be assessed by a stakeholder group who are recognised to have knowledge of historical activity on the Dee. Members of this group will not be party to any application and/or scoring details outside of their verification

requirements. No evidence submitted for the period 2008 and onwards will be presented to this group.

- 25 Any applicant who has a provisional score adjusted by the cockle management team at this stage will be notified of this decision and will be given an opportunity to appeal this decision.
- 26 Any appeals generated as a result of such a point adjustment will be processed before a final ranked list can be generated.
- 27 NRW will record the proceedings of scoring by the management team and following the approval of final scores of applications will generate a ranked list of applicants.
- 28 The ranked list of applicants will be held as a closed document within NRW. Individual applicants in the top 10 will be informed of their place on the list. Applicants outside the top 6 will be informed that they are not in the top 6. In the event that a licence is issued, and the successful applicant is removed from the list, the 'new' top 6 will be notified of their positions. These new positions will also apply in the event of short-term, non-renewable licences being issued (see paragraphs 47-55 below).

### **Right of Appeal**

- 29 In the event that an applicant has their provisional score adjusted by the cockle management team they will be notified of their right to appeal.
- 30 Together with notification of the right of appeal the applicant shall be supplied with:
  - The decision documentation, subject to any legal restrictions
  - A copy of the Appeal Procedure (below)

### **Appeal Procedure**

- 31 On receipt of an appeal from an applicant, NRW will convene an Appeal Panel. The appeal panel should consist of 3 individuals, of which 2 will be NRW managers. The third member of the panel will be appointed by the Environment Agency. A legal adviser shall also support the panel.
- 32 The Appeal Panel will be chaired by one of the NRW managers, but all decisions will be reached by consensus. A full written record will be made of all Appeal Panel proceedings.
- 33 If an applicant has their provisional points score adjusted by the cockle management team and chooses to appeal they must register the grounds for their appeal in writing within 10 working days of the date of NRW's written confirmation of their score. When registering their grounds for appeal, the applicant must stipulate whether they propose to attend in person and be heard by the Appeal Panel or to submit their appeal in writing only. Arrangements will then be made for a meeting of the Appeal Panel within 28 days of the registration of the appeal. The Dee cockle officer will liaise with

the applicant to ensure any written evidence is submitted to NRW at least 5 working days in advance of the hearing.

- 34 If the applicant elects to attend the hearing, they are entitled to have one legal adviser or other representative or supporter in attendance. They are also entitled to call a maximum of three witnesses to support their appeal. They must inform the Appeal Panel at least 5 working days in advance of the hearing if they propose to have witnesses or have any other person present evidence on their behalf at the hearing.
- 35 At an attended appeal hearing the Chair of the Appeal Panel will provide an opportunity for NRW and the applicant or their representative to present evidence, to call relevant witnesses and for each to question the other for clarification or to challenge evidence presented.
- 36 If the applicant chooses to present their case in writing only, NRW will ensure that all evidence for the Appeal Panel is provided in writing.
- 37 Whatever the appeal format, NRW will, as a minimum, provide to the Appeal Panel all the information supplied to the applicant regarding the decision to adjust a score as laid out above.
- 38 Within 5 working days of the Appeal Panel hearing or their consideration of written submissions, the decision of the Appeal Panel will be communicated in writing via the Dee cockle officer to the applicant.
- 39 The Dee cockle officer will ensure, and make a written record, that the applicant is in possession of:
  - The information supplied when the provisional point scoring was adjusted
  - The written record of the appeal hearing
  - A record of any new information considered in the appeal
  - Any findings of fact and the reasons for the decision of the Appeal Panel

### **Procedure For Offering Licence**

- 40 In the event that a licence is to be allocated, NRW will write to the applicant at the top of the ranked list, advising them of the offer of a licence on payment of the appropriate duty and informing them of the last date upon which payment may be made (the payment deadline).
- 41 In the event of a licence being offered during the period June 1<sup>st</sup> to December 31<sup>st</sup>, the payment deadline will be 20 working days from the date of the offer. When a licence becomes available between Oct 1<sup>st</sup> and Dec 31<sup>st</sup> NRW can use its discretion as to whether the licence is issued immediately or for the beginning of the following season. In the event of a licence being offered during the period Jan 1<sup>st</sup> to May 31<sup>st</sup> the payment deadline will be June 30<sup>th</sup>. NRW will issue a licence on receipt of a cleared payment provided that the payment is received (and cleared as necessary) no later than 5:00pm on the payment deadline.



- 42 NRW will not issue a licence until payment is made and if payment has not been received (and cleared as necessary) by 5:00pm on the payment deadline, the offer of a licence will lapse and NRW will be entitled to offer the licence to the next ranked applicant. An applicant who allows the offer of a licence to lapse in this way will be removed from the ranked list.
- 43 If the licence offer is accepted, the successful applicant(s) will be required to serve the first two seasons as a probationary period, with the potential for removal if the required standards are not met. The minimum standard would be adherence to the Licence Conditions and compliance with the minimum fishing effort detailed in paragraph 42 below. Should the probationary licensee(s) be convicted of an offence on the Fishery or otherwise commit an offence which would cause the probationary licensee to fail the FPPA, the licence(s) would be cancelled.
- 44 Except in exceptional circumstances, all probationary licensees must also fish a minimum of 45% of available tides in each of the probationary seasons. A probationary licensee will not be allowed to use an endorsee.

### **Allocation Of Licences In Subsequent Year**

- 45 Individuals who have held a licence (other than a short-term, non-renewable licence) in the preceding season, will be notified by NRW of the need to apply for the coming season by post. This letter, together with an application form will be sent out by NRW as soon as possible after the end of the season.
- 46 Applications for the coming season must be received by NRW within 6 weeks of the date of the letter from NRW being sent. The exact deadline will be specified within the letter.
- 47 If a licensee from the preceding season has not returned their application form by this deadline, NRW will contact them to consider whether any special mitigating circumstances warrant late acceptance of an application. Any decision to allow a late application to proceed will be at NRW's discretion.
- 48 Licences will be allocated to all individuals who held a licence (other than a short-term, non-renewable licence) during the preceding season, who wish to continue fishing. If a licensee has their licence revoked they will not be eligible for a licence in the subsequent season.
- 49 Failure to renew a licence in any year when licences are available will result in the individual losing their entitlement to a licence. Exception will only be made for long term illness on receipt of medical evidence and at NRW's discretion.

## **Issuing Of Short-Term, Non-Renewable Licences**

- 50 The decision to issue short-term, non-renewable licences, including the number and duration of such licences, will be at the discretion of NRW and based on the: results of the annual stock assessment of the Fishery; the analysis of catch returns; and the appropriate assessment to be carried out in accordance with the Conservation of Habitats and Species Regulations 2017. A short-term, non-renewable licence will be issued for a period of less than a full season, and will only be valid within a single season.
- 51 The ranked list generated by the Licence Allocation Process will remain valid for the periods specified in paragraph 2 above.
- 52 Should NRW wish to issue short-term, non-renewable licences, they will be offered to the highest ranked individual(s) on the ranked list after the previous successful applicant. NRW will write to each individual advising them of the offer of a short-term, non-renewable licence on payment of the appropriate duty and informing them of the last date upon which payment may be made (the payment deadline). Calculation of fees for short-term, non-renewable licences is addressed in paragraph 57 below
- 53 The payment deadline will be twenty eight days after the date of the offer letter.
- 54 NRW will issue a short-term, non-renewable licence upon receipt of a cleared payment provided that the payment is received (and cleared as necessary) no later than 5:00pm on the payment deadline.
- 55 NRW will not issue a short-term, non-renewable licence until payment is made and if payment has not been received (and cleared as necessary) by 5:00pm on the payment deadline, the offer of a short-term, non-renewable licence will lapse and NRW will be entitled to offer the short-term, non-renewable licence to the next highest ranked individual on the ranked list.
- 56 A short-term, non-renewable licence issued under this section can only authorise an individual to fish for cockles for the duration of the dates specified on the licence and for the fishing season to which it relates.
- 57 The allocation of a short-term, non-renewable licence under this section does not entitle an individual to allocation of a licence (short-term, non-renewable or otherwise) in subsequent seasons.
- 58 Individuals who receive an offer of a short-term, non-renewable licence under this section will retain their place on the ranked list for the issue of a probationary licence irrespective of whether they accept or decline the offer of a short-term, non-renewable licence.

## **Licence Fees**

- 59 The licence fee for the 2020 season was £1,800. The full season licence fee payable is reviewed periodically and is based on the predicted costs of monitoring, management and enforcement for the year including staff time and on-costs:

$$\text{Licence Fee} = (A \times B) / N$$

Where:

A = annual working days on survey, enforcement, administration and other related work

B = staff cost per working day (£)

N = number of licences

- 60 The licence fee for a partial season or short-term, non-renewable licence will be calculated in the same way as full season licences. However, fees will be charged on a pro rata basis based on the fishing season lasting from July 1<sup>st</sup> to December 31<sup>st</sup>. In the event of short-term, non-renewable licences being issued for a period of less than 1 week, there will be a minimum licence fee of £200.

## Appendix A – Sample Point Scoring Checklist

YEAR	5 POINTS (cockling on Dee)	4 POINTS (other fishing on Dee)	3 POINTS (cockling elsewhere)	2 POINTS (other fishing elsewhere or boat ownership or skipper certificate)	1 POINT (other fishing on Dee)
2020					
2019					
2018					
2017					
2016					
2015					
2014					
2013					
2012					
2011					
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1998					
1997					
1996					
1995					
Pre 1995					

## Annex 6 - Enforcement and Prosecution Policy

### **Introduction**

From 1st April 2013 the Natural Resources Body for Wales took the combined functions of the Countryside Council for Wales, and the Welsh devolved functions of the Environment Agency in Wales and the Forestry Commission in Wales. This policy supersedes all previous enforcement policy documents of these legacy bodies in Wales and is the first enforcement policy statement covering the new organisation in Wales. This policy also applies to ongoing investigations which were commenced by the Environment Agency in Wales, the Forestry Commission in Wales and the Countryside Council for Wales prior to 1st April 2013.

### **Audience - All employees, in particular legal and operational staff.**

**Our aim-** Our aim is deliver the best possible environmental, social and economic outcomes for people and communities in Wales both now and in the future. We will achieve this through education, by providing advice and by regulating activities. Provision of clear advice and guidance will be our main approach to secure compliance but securing compliance with legal requirements, by using enforcement powers including civil sanctions and prosecution, is an important part of achieving this aim.

**Our functions -** Our functions are extensive. They include the management of Wales's forests and woodlands, pollution control, waste regulation, the management of water resources, flood and coastal risk management, fisheries, navigation and the safeguarding of protected sites and species. We regulate a range of activities, from recreational pursuits and the control of plant diseases, to the protection of rare species and the control of emissions from complex industrial processes.

**Working with others -** Our staff work with local government and other regulators on matters such as planning, air pollution, public health and occupational safety to ensure coherent regulation. They also work with many conservation bodies, voluntary groups and non governmental organisations in order to achieve common goals. Where we and another enforcement body both have the power to take enforcement action, we will liaise with that other body to ensure we take a co-ordinated, effective and consistent approach, and to ensure that any action we take is appropriate for the offence.

**Our general approach -** We regard prevention as better than cure. Our general approach is to engage with landowners and business to educate and enable compliance or prevent harm. We offer information and advice to those we regulate and seek to avoid bureaucracy or excessive cost. We encourage individuals and businesses to put the environment first and to integrate good environmental practices into normal working methods. We will give proper consideration to the value of economic progress.

**Our approach to non compliance -** If an operator or individual is not complying, we normally provide advice and guidance to help them do so. Where appropriate, we agree

solutions and timescales for making any improvements. We try to match our response to the circumstances. The use of formal enforcement powers and sanctions may also be necessary.

Principles - This policy sets out the general principles we follow in relation to enforcement and sanctioning. It is to be used in conjunction with the more detailed Guidance on Enforcement and Sanctions and any published Regulatory Position Statements Natural Resources Wales may chose to adopt. We will also make appropriate information available on our use of sanctions.

### **Our approach to enforcement**

Definition - For the purpose of this statement, enforcement means any action we take where we suspect an offence has occurred or in some cases is about to occur. This may range from providing advice and guidance, serving notices through to prosecution, or any combination that best achieves the desired outcome. In some cases, under the Environmental Damage Regulations 2009, enforcement action may be required in the absence of any suspected offence, but in most cases an activity that leads to 'environmental damage' under the Regulations will also constitute an offence under environmental legislation.

Use of sanctions - Within this overall approach, where an offence has been committed and the delivery of advice and guidance has not or will not achieve the necessary outcome, we will normally consider issuing some form of sanction as well as taking any other preventative or remedial action necessary to protect the environment or people. We aim to use civil and criminal sanctions in a manner that is appropriate to the offence, as described in our Guidance on Enforcement and Sanctions.

### **Enforcement options**

The options we have available include:

- providing advice and guidance.
- issuing a warning.
- statutory enforcement notices and works notices.
- prohibition notices.
- suspension or revocation of environmental permits variation of permit conditions.
- injunctions.
- carrying out remedial works.
- civil sanctions.
- other civil and financial sanctions including Fixed Penalty Notices.
- issuing a formal caution.
- prosecution and orders ancillary to prosecution.
- sanctions used in combination.

We believe that publishing information on our enforcement activities, where appropriate, raises awareness of the need to comply. We issue press releases and other publicity relating to offences and offenders, proportionate to the sanction.

Cost recovery - Where the law allows, we will always seek to recover the costs of investigation and enforcement proceedings. Where we incurred costs, for example where we have carried out remedial works, we will seek to recover the full costs incurred from those responsible in accordance with the 'polluter pays' principle.

### **Penalty principles**

We expect full voluntary compliance with relevant legislative requirements and permit provisions. When considering the appropriate course of action to ensure compliance we aim to follow the Macrory Penalty Principles which are set out in the Regulators' Compliance Code.

These state that enforcement and sanctions should:

- aim to change the behaviour of the offender.
- aim to eliminate any financial gain or benefit from non-compliance.
- be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction.
- be proportionate to the nature of the offence and the harm caused.
- aim to restore the harm caused by regulatory non-compliance, where appropriate.
- aim to deter future non-compliance.

### **Principles of regulation and enforcement**

Regulators Compliance Code - We must take account of the provisions in the Regulators' Compliance Code when devising and implementing regulatory policies and systems. However those provisions do not apply directly to individual cases.

The requirements of the Code do not apply in certain situations, for example:

- where it is necessary to respond immediately to either prevent or respond to a serious breach or incident.
- where following the provisions would defeat the purpose of the proposed enforcement action
- where there are reasonable grounds to suspect that a serious criminal offence has been committed, in particular where such offending would have a damaging effect on legitimate business and desirable regulatory outcomes.

### **Principles of firm but fair regulation**

We believe in firm but fair regulation.

Underlying our commitment to firm but fair regulation are the principles of:

- proportionality in the application of the law and in securing compliance.
- consistency of approach.
- transparency about how we operate and what those we regulate may expect from us.
- targeting of enforcement action.
- accountability for the enforcement action we have taken.

### **Proportionality**

Concept - In general, the concept of proportionality is included in much of the regulatory system by balancing action to protect the environment against the risks and costs of such action.

Balancing our response to the risk - Some incidents or breaches of regulatory requirements cause, or have the potential to cause, serious environmental damage. Others may interfere with people's enjoyment or rights, or our ability to carry out our activities. Our first response will be to prevent harm to people and the environment from occurring or continuing. Any enforcement action we take will be proportionate to the risks posed to people and the environment and also to the seriousness of the breach of the law and its impact on legitimate business.

### **Consistency**

Approach - Consistency means taking a similar approach in similar circumstances to achieve similar ends. We aim to be consistent in the advice we give, how we respond to pollution and other incidents, use powers, and decide whether to prosecute and what sanction might be appropriate.

Discretion - However, we recognise that consistency does not mean simple uniformity. Officers need to take account of many variables:

- the scale of environmental impact.
- the attitude and actions of individuals and managers of businesses.
- and the history of previous incidents or breaches. Decisions on enforcement action are a matter of professional judgement and our officers need to be able to exercise discretion. We will continue to develop arrangements to promote consistency, including effective ways to liaise with other enforcing authorities.

### **Transparency**

Approach - Transparency is important in maintaining public confidence in our ability to regulate. It means helping regulated entities and others to understand what is expected of them and what they should expect from us. It also means making clear why an officer



intends to take, or has taken, enforcement action. Our Guidance on Enforcement and Sanctions provides transparency on how we will approach and deal with offences.

How we do this - Transparency is integral to an officer's role and we will continue to train our staff and to develop our procedures to ensure that:

- where remedial action is required, we clearly explain why the action is necessary and when it must be carried out, making a distinction between best practice advice and legal requirements.
- we provide the opportunity to discuss what is required to comply with the law before formal enforcement action is taken, unless urgent action is required, for example to protect the environment or to prevent evidence being destroyed.
- where we require an operator to take urgent action, we will provide a written explanation of the reasons for this as soon as possible after the event.
- we will provide a written explanation of any rights of appeal against formal enforcement action at the time the action is taken.

### **Targeting**

Focus - Targeting means making sure that regulatory effort is directed primarily towards those whose activities give rise to or create the risk of serious environmental damage, where the risks are least well controlled, or against deliberate or organised crime. We will focus action on lawbreakers or those directly responsible for the risk and/or those who are best placed to control it.

Risk based approach - Our risk-based approach allows us to prioritise our inspection activity. This includes categorisation of non-compliances at permitted sites and categorisation of other incidents based on an assessment of risk to and actual impact on the environment. We will give high priority to investigations that involve organised crime, overtly criminal activity, substantial profit, threats of violence or other aggravating factors.

Regulated industry - In the case of regulated industries, management actions are important. Repeated incidents or a series of related breaches of regulatory requirements may indicate an unwillingness to change behaviour, or an inability to achieve sufficient control. These may require a review of the regulatory requirements, the ability of the operator to run the site and/or additional investment. We recognise that a poorly-managed relatively low hazard site or activity, can present a greater risk to the environment than a higher hazard site or activity, where proper control measures are in place.

### **Accountability**

Responsibility and consultation - Accountability means that we take responsibility for our decisions and will justify them where appropriate. Our notices and enforcement and sanctioning paperwork include relevant information on how to appeal and complain. We

will consult on changes to this statement and the supporting Guidance on Enforcement and Sanctions.

Working with Government - We will support periodic Government reviews of our regulatory and enforcement activities and we will report on our enforcement and sanctioning activities as required by legislation.