

By: KEIFCA Chief Fishery Officer

To: Kent & Essex Inshore Fisheries and Conservation Authority
– 7 March 2023

Subject: **Terms and conditions of the licence: What entity should a licence be issued to?**

Classification Unrestricted

Summary:

The paper reviews the options of issuing a licence to an individual or keeping the current wording which would allow licences to be issued to an individual or to a company. *This decision also impacts paper B4 selling of a licence and paper B5 transitional arrangements.*

Recommendation:

Members are asked to:

1. **APPROVE** and **COMMENT** on officers developing legal wording applicable to the new Regulating Order based on option 2:

Licences are issued using the same wording as is currently issued in The Thames Estuary Cockle Fishery Order 1994 (allows companies to apply for licences).

Introduction

There has been a lot of feedback throughout the process of reviewing and developing new cockle fishery management regarding the 'ownership' of licences. Under the new Regulating Order KEIFCA could restrict the issue of licences to directly to an individual, or keep the current wording used in TECFO that gives the potential for either an individual or a company to apply for a licence. Consultation 3 sought to gather evidence and opinion on this issue to help inform the Authority's decision.

Options under consideration

Reviewing the feedback from the Listening Phase and from the Consultation 3 pre-consultation replies the members agreed to consult on the following options:

- 1. Licences are issued to individuals (using a process based on the Eastern IFCA wording)*
- 2. Licences are issued using the same wording as is currently issued in The Thames Estuary Cockle Fishery Order 1994 (allows companies to apply for licences).*

After a decision is made, steps will then be taken to develop legal wording applicable to the new Regulating Order.

The proposal to issue a licence just to an individual would be based on the wording Eastern IFCA have developed for its new cockle byelaw <https://www.eastern-ifca.gov.uk/wp-content/uploads/2022/11/Eligibility-Policy-Full-Wording.pdf>. A key part of Eastern IFCA's byelaw clearly removes the ability to sell the permit, with the permit instead being transferred to a family member or a nominated deputy who has been recorded on the permit for at least five years preceding the application (in KEIFCA's case we would be issuing a licence rather than a permit).

If the Authority voted for option 1, that licences are issued to individuals, paper B4 (Terms and conditions of the licence: Should a licence be transferred with a change in ownership of a company or return to KEIFCA?) would be removed from the agenda as this paper would not be compatible with the decision that the Authority will have already made.

In addition, if the Authority voted for option 1, that licences are issued to individuals, paper B5 (Proposed transitional arrangements for current TECFO licence holders) would also be removed from the agenda as the transitional clause is specifically worded to maintain the current licence holders' existing arrangements under TECFO, where the licences are issued to companies. Efforts would be made by officers to look at options of re-drafting transitional arrangements in future consultations.

Background

When TECFO was first set-up licences were issued to individuals, the Sea Fisheries Committee was then asked to change this arrangement so that licences could be issued to a 'person'. Although this might seem a minor change, in effect it meant that the licences could be issued to a company. Different to an individual holding a licence, the company could then be passed by the owner of the company to other members of their family. This change also had the result of it being possible, and legal, to buy and sell the companies issued with licences. In this way,

although the companies the Authority issues the licences to have remained the same over the whole period of the TECFO, the control of some of the companies has been exchanged either to members of the same family, to a co-worker, or purchased by a new company. With the creation of a new regulating order, the Authority faces the same decision of whether to issue a licence to an individual or to a company.

Issuing a licence to an individual creates a direct link between the owner of the licence and KEIFCA who issue the licence. Historically this owner has also been the operator of the licence, who has normally worked in the fishery over an extended period and has personally committed and invested significant time and money into the fishery and local community.

Issuing a licence to a company can achieve exactly the same relationship, however as the ownership of the company can be bought or sold, new investors can enter the fishery with a very different background and relationship to the fishery and having possibly not committed the same significant time to the fishery and local community. The ability to sell companies issued with licences also means that licences can be aggregated by a parent company that acquires the ownership of more than one company.

Whilst this scaling up of operations can be more efficient it can also lead to companies buying up licences and creating a dominant position in the market. Chapter II of the Competition Act prohibits the abuse of a dominant position by one or more undertakings having a dominant position in a particular market, insofar as it may affect trade within the UK (or any part of it). The Competition and Markets Authority (CMA) is the UK's competition and consumer protection authority and under powers from the Enterprise and Regulatory Reform Act 2013 has the statutory duty to promote competition, both within and outside the UK, for the benefit of consumers.

KEIFCA officers have been in dialogue with the CMA and would work with the CMA under their mergers and acquisitions function to help assess the position of a parent company acquiring the beneficial control of a significant number of licences issued under the new regulating order.

Whilst issuing licences to individuals provides scope to spread opportunity more evenly, by setting limits of how many licences an individual can hold, the challenge with issuing licences to an individual comes when the individual wants to retire or can't fish any more. At the point of retirement or death of a licence holder, the licence can no longer be issued by the licencing body. This means that the business which the licence holder ran, and its employees who are reliant upon the income from that licence, would be without the licence that they used to generate income. Eastern IFCA have developed legislation that can provide an answer to this problem, with the licence holder given the ability to provide a list of family

members or a co-worker that the licence would pass to <https://www.eastern-ifca.gov.uk/wp-content/uploads/2022/11/Eligibility-Policy-Full-Wording.pdf>. In addition to creating a mechanism for succession, another specific aim of the Eastern cockle permit byelaw is to remove the intrinsic value of the licence and not make the licence a tradable asset.

Feedback from Consultation 3 supporting issuing licences to a company

Below are illustrative examples of replies received from the consultation supporting the option of licences being issued to a company - For a compilation of all the replies please read the Consultation Summary document pages 4-8.

Comments from current TECFO licence holders

“Advantages of a company

- *It safeguards investment AND the fishery.*
- *Ease and transparency in transferring the ownership of the company and the licence it holds.*
- *Possibility of shared ownership by more than one individual.*
- *Possibility of better self-financing with the contribution of different partners involved in the company.*
- *Access to bank credits and financing.*
- *Increased access to potential grants*
- *Possibility to fix rights and obligations for the partners.*
- *Internal and external control in the way the company operates.”*

“The beneficial owners of a company have a very real vested interest in ensuring the viability of the Company in ensuring its economic performance, the wellbeing of its staff and that the company runs as efficiently as possible, whilst adhering to all aspects of its responsibilities from both a legal and environmentally sustainable structure, ensuring it is able to re-invest as necessary whilst keeping a reserve when times are more challenging and being able to change to market trends from experience and historical knowledge. A company structure is more likely to achieve financial backing than an individual when it can demonstrate its long-term durability.

This is possibly one of the main reasons a company should be in a position to market itself should the occasion occur, and it is imperative that the Licence is part of this as all of the companies would become worthless if this was not the case as the cockle vessels are not multi-purpose.”

“The choice of individual or company should not be exclusive. The applicant should be free to choose what to opt for. If the individual option were to be chosen, this would disadvantage all TEFCO licensed companies without exception because:

- *the shareholding may not consist of only one person, which would put the shareholders in conflict with each other in determining who applies.*
- *how could this individual "heir" to the company's licence enforce the company's track record?*
- *How would the transfer of the most valuable fixed asset - the ship- and the goodwill of the company be financially handled if only one individual were to be left in charge of the company's continued operation?*

The list of problems is endless.”

“For stability of the company employees and the fishery. a company has a business model and even if the company changes hands, that business model can be monitored. Individuals change. They change with age, with divorce or when they are bereaved or terminally ill. Individuals don't keep to a business plan when their personal lives change?”

Comments from CFFPB permit holders and the Catching Sector

“More protection from a limited company. Some organisations wont deal with individuals, there are many legal aspects too. We are not talking about a £50,000 pa business. “

“For my job security”

Feedback from Consultation 3 supporting issuing licences to an individual

Below are illustrative examples of replies received from the consultation supporting the option of licences being issued to an individual - For a compilation of all the replies please read the Consultation Summary document pages 4-8.

Comments from current TECFO licence holders

“Should be issued to an individual that has experience and track record in Thames cockles so the licence is held by that person and passed down to family not by a company that could be sold to anyone.”

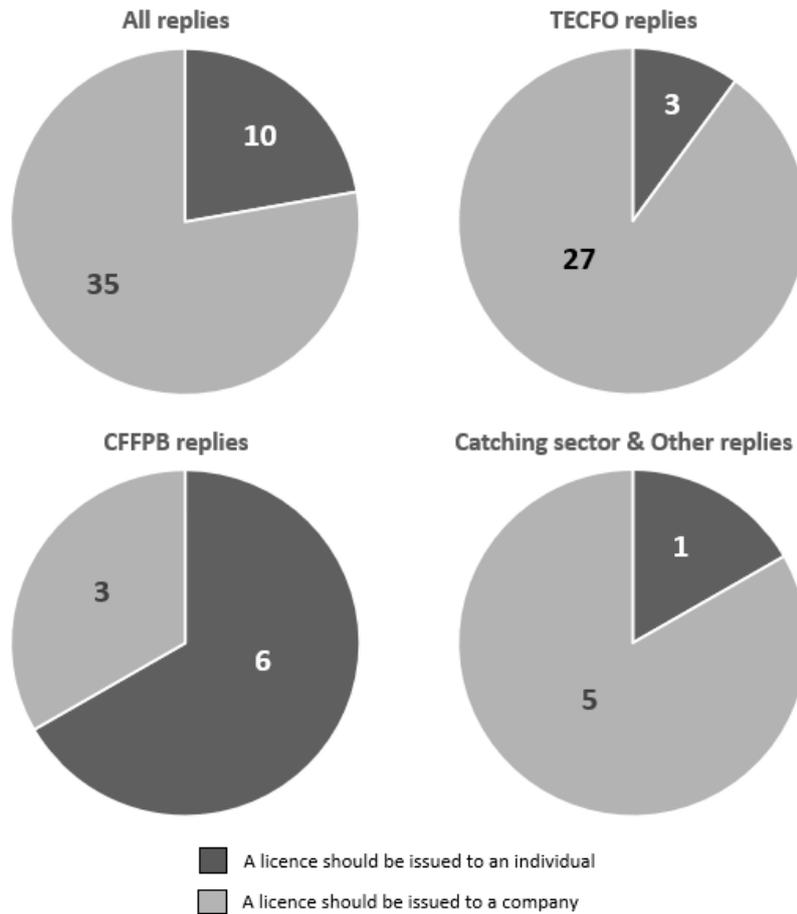
Comments from CFFPB permit holders and the Catching Sector

“I think licences should be issued to an individual. If licences are issued to companies this leaves the opportunity of someone with zero experience in cockle fishing purchasing shares of a company and this could then lead to them being given the chance of fishing the TECFO area. Lack of experience and knowledge in cockle fishing could lead to potential damages to the site and other fishers who take part. I think EIFCAs model of allowing licences to be passed down to a family member or business partner/representative should be used to stop licences, from basically being purchased by the highest bidder. I also think the person who is nominated for the licence to be passed on to them, by the previous holder, has to have experience in cockle fishing to enable a safe working practice and to keep the fishery sustainable. If a person who is decided to be given the licence doesn't meet a relevant criteria, this licence should be handed back to KEIFCA and given to somebody who does. This enables new people who haven't previously had the opportunity to fish for cockles in the TECFO area a chance to do so”

“I believe the licence should be issued to an individual with the option to allow them to provide a list with a family member or co-worker so that the fisherman can pass this licence on should they retire or face any health issues. The reasoning behind this is because it could be debilitating for a family or company to completely loose income that they rely on.”

Statistical breakdown of the consultation replies

Care needs to be taken in interpreting these summary pie charts as some consultation questionnaires responded on behalf of businesses employing numerous people, the results do however help give an overview of the majority view of different groups of stakeholders.



Evaluation questions

As part of the management development process at the June 2022 Authority meeting KEIFCA agreed a vision statement and 13 evaluation questions. The 13 questions create a framework to systematically review different options and have been used by officers in Consultations 1 and 2 to give a technical evaluation of the different options under consideration. The options outlined in this paper, overlap with two of these evaluation questions – evaluation question 1 and evaluation question 3:

1) Creating a well-managed fishery

a) Does the fishery have a simple framework that is easy for fishers, Authority members and other stakeholders to understand and work within?

Whilst KEIFCA are confident both proposed options are legally sound and can be practically implemented, there is a difference in the legal construct that is needed to make the different options function. If licences are issued to individuals, KEIFCA would build on the process developed by Eastern IFCA as a part of its new cockle byelaw. The current wording of the relevant legal clauses is 2-3 pages long and whilst not overwhelming, the process is more detailed and complex than the standard process of selling and buying a company.

3) Helping support a prosperous and resilient local coastal economy

c) Does the fishery help assist long-term investment and growth in the local economy, supporting local shore side infrastructure and supply chains?

Both options provide a sound mechanism for business continuity, however a company structure can provide a more straightforward route to securing loans or additional investment. A company structure can also be more tax efficient for its directors.

Officer comments

- Under TECFO, the option to issue licences to companies as well as to individuals has been used since 1995. By 2000 all of the licences issued in individual names had been transferred to being held by a company. This set-up is different to a wide range of other inshore fisheries and more specifically to other cockle fisheries, for example the Wash cockle fishery, however the Thames cockle fishery is a very different fishery in terms of its size, scale and investment than other inshore fisheries. In some regard, the cockle fishery has more in common with some of the bigger offshore fisheries that require the same sort of investment and produce the same scale of returns.
- All of the companies that have bought into a cockle licence are active members of the national and international cockle industry rather than generic investment companies.

- Companies that buy into a licence have a clear interest in achieving a return on their investment and growing the company and can bring in new ideas to the fishery as well as new contacts and access to new or different markets.
- In nearly 30 years the large majority of licences have remained in local ownership.
- There is an interesting wider political or moral argument on how opportunity should be allocated; whether it should be given on an individual's merit or should be inherited, supporting generational involvement.

Recommendation

While there are strong arguments for both options, that have been clearly and articulately expressed by respondents, when the options are judged against the vision and the 13 evaluation questions the option 2 would seem to provide a better opportunity to assist long-term investment and financing and creates a straightforward and commonly used method of providing business continuity. Over the years all the current TECFO licence holders have set themselves up as a company and to require licences to be in individual names now would be extremely challenging. It should also be noted that option 2 allows licence holders to make their own choice as to whether they want to structure themselves as an individual or as a company.

RECOMMENDATION

Members are asked to:

1. **APPROVE** and **COMMENT** on officers developing legal wording applicable to the new Regulating Order based on option 2:

Licences are issued using the same wording as is currently issued in The Thames Estuary Cockerle Fishery Order 1994 (allows companies to apply for licences).