

By: KEIFCA Chief Fishery Officer

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

Subject: **Terms and conditions of the licence: One licence per applicant**

Classification Unrestricted

Summary:

The paper outlines the rationale of issuing one licence per applicant (individual or company) and reviews feedback from the consultation. *Whether the applicant would be just an individual or an individual or a company would depend on the decision made in paper B2.*

Recommendation

Members are asked to:

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

Limit the number of licences an individual or a company can apply for to one.

Background

Under the current TECFO licencing arrangements 14 licences are issued to 12 companies, with 2 companies having 2 licences each. This is a result of the initial qualifying period for licences within TECFO which considered the individual vessels which had a track record. During the qualifying period for TECFO two companies owned two vessels both of which had a proven history of fishing for cockles within the reference period specified at the time and met the criteria.

Setting up a new regulating order

The application process for the new proposed regulating order is very different from the process and criteria used to qualify for a licence under the Thames Estuary Cackle Fishery Order 1994 and evaluates individual licence applications

against scoring criteria rather than basing application on evidence of commercial cockle fishing.

In setting up a new regulating order, the Authority has consulted stakeholders on the proposal of one licence per individual or one licence per company (depending on the decision made by the Authority in paper B2).

Option 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 option:

To limit the number of licences an individual or a company can apply for (depending on the decision made by the Authority regarding who the licence should be issued to) to one.

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

Officers have engaged with the companies who would be directly impacted by this decision, writing a letter to each company asking for engagement on this issue. The two companies involved have talked to officers directly and have been encouraged to write to the Authority outlining a potential way forward that could be amenable to their business and to KEIFCA. If the Authority does decide to limit licence applications in the new regulating order to one per individual or one per company, officers would look to arrange a specific meeting with the impacted businesses to agree a transition process. Legal opinion would be sought on any proposals, and the final decision on any proposals would be made by the Authority.

Feedback from Consultation 3

Below are illustrative examples of replies received from the consultation - For compilation of all the replies please read the Consultation Summary document pages 8-10.

Comments from current TECFO licence holders

“Consideration should be given to this/these company, maybe give them the opportunity to form a new company to run alongside their existing company with 1 boat in each company. I do not believe they should be penalised for having more than 1 boat. “

“ In my opinion it should be one licence per LTD company. And all beneficial owners should be local and have involvement in the running of that company.”

“It’s difficult to make a new regulation and ignore all that has gone before. The reality of the current situation is that two companies hold two licences at present and provide jobs for local boat crews. If those companies lose a licence will those crews also lose their jobs? I don’t think any policy that takes one persons job in order to give it to someone else is a good one. However if additional licences were to be considered in future it should be one company one licence”

“I believe it should be one licence per company. Fairest way going forward.”

“One licence per company seems fair.”

Comments from CFFPB permit holders and the Catching Sector

“How would this work as there is no limit to how many companies one individual can own. Dani seafoods and Lenger seafoods own at least 6 different companies that own current cockle boats. The companies all have different directors but the parent companies and major shareholder is the same for several current licences.”

“I like 1 licence per vessel, per application. Wage breakdowns, expenditure, hours worked etc can be more easily monitored. The actual turnover, and whats been caught is visible. More responsibility on that crew/skipper as not working for a big company. Easier to penalise or monitor as can't hide behind four licences. Will hopefully mean a better skipper, with more interest in the vessel, as they will have to pass keifcas application process, or at least their manager will.”

“Due to the low numbers of licences in the Tecfo fishery I Believe one license to one individual would be the best option, it would allow more fishers to take part in the fishery, and it would also ensure that there can be no monopolisation of the fishery by large/wealthier companies. The Wash has multiple licences but has 61 entitlements that will become Permits if the new Proposed Byelaw is passed. On top of this the Wash has an unlimited appeals process that the Keifca Authority has suggested it may not have. The reality is to give more opportunities to more fishers with only a few licences issued it must be done on 1 licence per one individual.”

Comments from the current companies with 2 licences each

“At this point of the Consultation with the consideration of one licence per application whether that be individual or company, We are currently in discussion with the Authority, as it stands we have held 2 licences since before the 1994 regulating order so this could have a serious impact on us.”

“If the new regulatory order establishes the limit of one license per applicant, an exception should be made for these two companies having 2 licences each to avoid the loss of jobs, investment and know-how, given that both companies met the criteria for license allocation at the time and have been part of TEFCO since its start.”

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 primarily with one of those evaluation questions – evaluation question 4:

4) To strengthen and support our dynamic local coastal community

a) Does the fishery provide fair opportunities for individuals and businesses, and help support young or new fishers?

Issuing one licence per company or individual fair transparent opportunity. Everyone would be treated the same. If the current system was to continue there would be a clear asymmetry between applicants.

Officer comments

- The whole application process is based on evaluating the merits of an applicant. It would be extremely difficult, if not impossible and unfair to capture and evaluate the experience of skippers of two different boats, with 2 different operations that could land and sell their cockles in different ways and take two different approaches to reducing their environmental impact, in one application form.
- If one company can have 2 licences, then it would only be fair to allow all companies to apply for 2 licences. This would mean that there could be a scenario where KEIFCA might issue the 15 licences to 8 different companies, if the first 7 companies each had 2 licences and the last company had one licence.
- Finally, our legal advice suggests that changing to 2 separate companies is not a technically or a practically difficult exercise to undertake. However, what is vital to all parties is that it is done in a legally sound and robust manner.

Recommendation

Issuing one licence per individual or company is not only fair but technically critical for the suggested application process to work and be applied fairly. The recommendation does have a significant impact on the two companies directly impacted, however there is a strong commitment from officers and the Authority to arrive at a fair process and agreement to address the specific impact on these two companies.

RECOMMENDATION

Members are asked to:

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

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