

By: KEIFCA Chief Fishery Officer

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

Subject: **Proposed transitional arrangements for current TECFO licence holders**

Classification Unrestricted

**Summary:**

This paper sets out potential transitional arrangements for current TECFO licence holders. The advantages and disadvantages of agreeing this clause are discussed in this paper and, based upon feedback, a further option with minor changes to the wording of the clause has been included as an additional option.

*The transitional clause would look to maintain the licence holders' current arrangements under TECFO, in which all the licences are in the name of companies. If the Authority voted to issue the new licences just to individuals (option 1 in paper B2), paper B5 would be withdrawn from the agenda. Officers would then explore possibilities of developing wording for a new set of transitional arrangements based on issuing a licence just to an individual, however this would be more challenging as the continuity in the current business would not be able to be maintained.*

**Recommendations:**

Members are asked to **APPROVE** their preferred option for inclusion into the licence application process.

**Background**

As part of the pre-consultation phase, a suggestion was put forward to 'grandfather on' the current 14 licence holders for the first 7-year cycle. The Authority members discussed this proposal and were happy to agree to the option being put forward to consultation along with attached conditions. If a current licence holder did not want to use this transitional arrangement, then the licence

would be issued following the full application process and the current licence holder could apply using that process along with any other applicants.

The transitional arrangements are designed to allow established companies and vessels which have taken part in the fishery in recent years to continue doing so for the first 7 years of the new regulating order. This is to allow time for those businesses which are set up under the current framework, to adapt to the new legislative landscape. The company and vessel must remain in the same legal and beneficial ownership throughout and a business plan must be submitted by the applicant to cover the first 7-years. When applying for the second 7-year cycle using the full Licence Application Process (LAP), the applicants progress against their plan would be scored as per the LAP.

**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

1. *During the first 7-year licencing cycle only, subject to annual renewal requirements, a licence will be issued to a company in relation to a relevant fishing vessel which has been named on a licence to fish for cockles within the TECFO 1994 at any time in the reference period 1 June 2021-7 October 2022.*
2. *Paragraph (1) only applies provided that*
  - (a) *the vessel remains in the same legal and beneficial ownership throughout the entire 7-year licenced period as during the reference period specified in Paragraph (1), and*
  - (b) *a 7-year business plan is submitted prior to a licence being issued for the first 7-year period.*
3. *No person who has been a shareholder or director of a licence holding company during the reference period specified in paragraph (1) may apply for any licence other than that issued under the arrangements provided for in (1).*

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

### **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 28-30.

#### **Comments from current TECFO licence holders who expressed concerns or issues regarding the transitional period clause**

*“The transitional period should serve so that the companies that opt for it can have time to adjust to the conditions of obtaining licenses under the new regulatory order in the second 7-year cycle. For this reason, the offer of a transition period in the first 7-year cycle is welcome and positively received. Ultimately, the opportunity to opt out of this transitional period should be approved even if only a small number of current TECFO licensees were interested.”*

*“I fully agree with grandfather rights. However if some of the fleet have “grandfathered” and some have not, all licences surely must be operating under the same clauses? For commercial fairness we cannot have licences issued without the same Ts and Cs? “*

*“The use of the transitional clause is accommodating but very restrictive, It may be that a company has no choice but to change the vessel during the 7 year period no company has the foresight to know for certain that this will not be the case, equally in these uncertain times of all business’s worldwide can a guarantee be given that needs won’t change thru financial or other pressures, although this is not anticipated it could happen and should the Authority be in a position to look at each case separately rather than a cart blanche effect of no flexibility. There has to be some sort of mechanism included to protect the company and structure should a shareholder become incapacitated, or death occurs, surely the licence should be retained in the estate of such person and passed to the beneficiary of the estate and not back to the Authority. I certainly agree that clause 3 should be included.”*

*“If an old fishing vessel needs to be replaced by a new vessel, the “relevant vessel” should be automatically transferred to the new registered vessel.”*

*“In that period, the licensees would have time to adjust their investment and their business vision to what the new regulating order aims at. This also means that the most important asset of the company - the boat - could be subject to modifications, if not to its total replacement.*

*This is in direct conflict with the obligation to maintain the boat for the entire transitional period. This obligation is totally contradictory to the spirit of this transitional period: if a company determines that it may be better able to renew a license in the second 7-year cycle by investing in better equipment -including a new boat- should be free to do so.*

*Also, boats may have problems –or accidents- that warrant their change. The boat of a licensee who benefits from this transition period could suffer a mishap that would make it impossible for him to continue with his activity. In the current order there is the possibility of being able to change boats.*

*Therefore, the obligation to keep the boat in ownership should not be considered as mandatory in order not to lose the license in this transition period.”*

*“Company Directors change as a matter of course, people moving on, changing jobs etc. I believe it would be unfair against a company if they were not allowed to have a change of director.”*

## Comments from current TECFO licence holders who do not support a transitional period

*“As a current TECFO licence holder it would seem the easiest route to take, had it been offered in consultation 1. For nearly thirty years TECFO has been accused of being a closed shop along with the help of the IFCA according to other local and outside stakeholders. Also for those seven years there will be certain conditions for this clause including no beneficial ownership changes. To me it feels like you are borrowing that licence. This is why there needs to be a full application process to prove that you have the right knowledge, experience and the capability to catch and carry 13 tons of cockles with your vessel in the correct and safe way. Some of the current TECFO fleet have grown complacent and I feel that this process will sort this out. The application process should hopefully bring fresh blood into the fishery. So NO I do not agree with the transitional arrangements.”*

## Comments from CFFPB permit holders and the Catching Sector

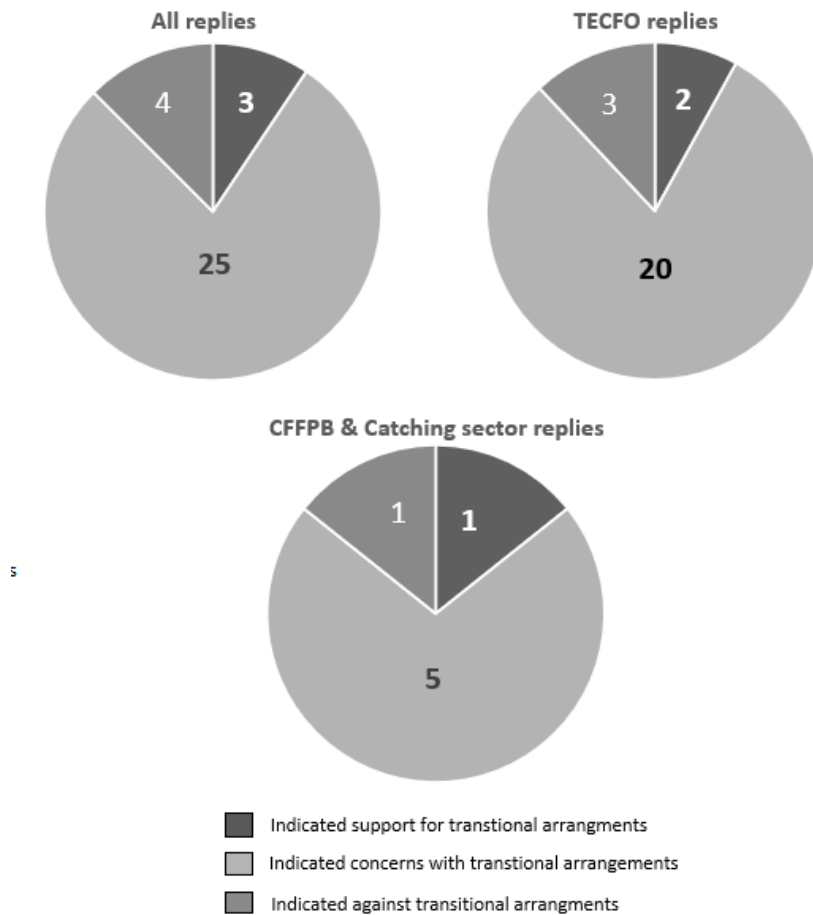
*“How would this work as there is no limit to how many companies one individual can own. Dani seafoods and Lenger seafoods own at least 6 different companies that own current cockle boats. The companies all have different directors but the parent companies and major shareholder is the same for several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

## **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. Stakeholders were not specifically asked to tick a preference box, and officers characterised the replies into the three groupings however, the results do help to 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 primarily with two of those evaluation questions – evaluation question 3 and 4:

### **3) Helping support a prosperous and resilient local coastal economy**

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

The transitional arrangements are designed to allow established business that are currently working in the TECFO fishery time to adapt to the new legislative landscape and assist them in their long-term planning and help provide more confidence to investment in the fishery and the local economy.

### **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?*

There is always a balance to be struck between supporting established business and providing opportunities for new businesses. If the transition clause was agreed by the Authority and the current licence holders did apply to use it, it would mean that 14 out of the possible 15 licences would have already been allocated, with the remaining applicants competing for the final licence.

As the current TECFO licence holders have remained the same for the last 28 years and have been aware when that TECFO would finish for the last 30 years, there is a strong argument that making all applicants apply on merit in the new regulating order would provide a fair and equal opportunity to each applicant.

### **Officer comment**

As the replies from the consultation show there was not overwhelming support for the introduction of transitional arrangements with just over three quarters of the replies expressing concerns or issues with the transition clause rather than support. When this feedback was broken down further into the current TECFO licence holders, who would be directly affected by the transition clause, there was a similar distribution of responses, with replies focusing on problems or concerns with the clause rather than support.

The feedback from the current TECFO licence holders consultation replies did not match up with conversations officers had had with members of this sector, where there had been a lot of support for the transition clause but some requests for clarification or a little bit more flex in the clause.

Feedback from the other sectors was split with half the replies opposing the transition clause and half raising concerns with the transitional clause.

### **Building on feedback to develop a third option.**

The aim of the transitional clause was to create a simple mechanism that provided an opportunity for the current TECFO business time to change and adapt to the

new regulations. If the wording of a simple clause can not be reached the obvious path would be to withdraw the clause and all applicants would apply through the application process outlined in the consultation document.

However, taking onboard the feedback from the consultation officers have worked with our legal team to develop an additional exceptional circumstances clause that could address many of the concerns outlined in the consultation feedback. Below is the draft wording which has been developed. This draft wording allows for a vessel to be replaced during the 7- year period, suggests a provision for a change of ownership in the event of death or incapacity of a shareholder and also includes a suggested provision which prevents, in the event of a licenced company going into administration, administrators disposing of the licence to the benefit of creditors. If this option is chosen by members, steps will be taken to further develop final legal wording applicable to the new Regulating Order which includes these principles.

1. *Contrary to paragraph 4(3), for the first 7-year licencing cycle only, subject to annual renewal requirements, a licence may be issued to a company which has operated a relevant fishing vessel named on a licence to fish for cockles within the TECFO 1994 at any time in the reference period 1 June 2021-29 September 2024.*
2. *Paragraph 5(1) only applies provided that:*
  - (a) *the company remains in the same legal and beneficial ownership throughout the entire 7-year licenced period as during the refence period specified in Paragraph 5(1), and*
  - (b) *a 7-year business plan is submitted prior to a licence being issued for the first 7-year period, and*
  - (c) *during the first 7-year licencing cycle, no petition is filed or no Order is made or an effective resolution is passed for the winding up of that company in any jurisdiction whatsoever (otherwise than for the purpose of any reconstruction or amalgamation as shall be approved by KEIFCA) or an Administrator, Administrative Receiver or a Receiver is appointed over the undertaking or property of the company or the company suspends payment or ceases to carry on its business or makes special arrangements or composition with its creditors.*
3. *No person who has been a shareholder or director of a licence holding company during the reference period specified in paragraph 5(1) may apply for any licence if a licence is issued to the company under the arrangements provided for in paragraph 5(1).*
4. *Paragraph 2(a) will not apply in exceptional circumstances where the licence holder or a shareholder is deceased during the term of the licence, or they suffer physical or mental incapacity. An application to vary the legal and beneficial ownership of the company must be made in writing to the Authority for a decision to be made.*

## **Recommendation**

The new regulating order does make some significant changes to the licence application process and whilst there is clear benefit in introducing a transition clause to provide established companies working in the local cockle industry time to adapt, there is also a strong argument that requiring all applicants to apply through the application process would be the fairest way of allocating licences in the new regulating order. It is difficult to recommend a transitional period clause without the clear backing of the companies it is designed to help. Officers have made minor changes to the clause responding to feedback, and this third option can be considered by Members. In choosing a recommended option, Members are asked to consider that the options presented can have a significant impact on how companies and cockle operations will be undertaken in the future.

### **Option 1. No transition clause**

This option means that there will be no transitional period and all licences issued for the first 7-year cycle will be as a result of following the Licence Application Process set out in paper B6.

### **Option 2. Transition clause as consulted upon**

This option provides a licence to those licence holders who held a licence within the TECFO 1994 during a specified reference period. This option restricts licence holding companies to being in the same ownership and using the same vessel as was used within the TECFO 1994 during the reference period.

1. *During the first 7-year licencing cycle only, subject to annual renewal requirements, a licence will be issued to a company in relation to a relevant fishing vessel which has been named on a licence to fish for cockles within the TECFO 1994 at any time in the reference period 1 June 2021-7 October 2022.*
2. *Paragraph (1) only applies provided that*
  - (a) *the vessel remains in the same legal and beneficial ownership throughout the entire 7-year licenced period as during the refence period specified in Paragraph (1), and*
  - (b) *a 7-year business plan is submitted prior to a licence being issued for the first 7-year period.*
3. *No person who has been a shareholder or director of a licence holding company during the reference period specified in paragraph (1) may apply for any licence other than that issued under the arrangements provided for in (1).*



### **Option 3. Post-consultation transition clause**

This option provides a licence to those licence holders who held a licence within the TECFO 1994 during a specified reference period. This option allows a change of vessel during the 7-year cycle and also allows a change of company ownership in the exceptional circumstances of death or incapacity of a shareholder.

1. *Contrary to paragraph 4(3), for the first 7-year licencing cycle only, subject to annual renewal requirements, a licence may be issued to a company which has operated a relevant fishing vessel named on a licence to fish for cockles within the TECFO 1994 at any time in the reference period 1 June 2021-29 September 2024.*
2. *Paragraph 5(1) only applies provided that:*
  - (a) *the company remains in the same legal and beneficial ownership throughout the entire 7-year licenced period as during the refence period specified in Paragraph 5(1), and*
  - (b) *a 7-year business plan is submitted prior to a licence being issued for the first 7-year period, and*
  - (c) *during the first 7-year licencing cycle, no petition is filed or no Order is made or an effective resolution is passed for the winding up of that company in any jurisdiction whatsoever (otherwise than for the purpose of any reconstruction or amalgamation as shall be approved by KEIFCA) or an Administrator, Administrative Receiver or a Receiver is appointed over the undertaking or property of the company or the company suspends payment or ceases to carry on its business or makes special arrangements or composition with its creditors.*
3. *No person who has been a shareholder or director of a licence holding company during the reference period specified in paragraph 5(1) may apply for any licence if a licence is issued to the company under the arrangements provided for in paragraph 5(1).*
4. *Paragraph 2(a) will not apply in exceptional circumstances where the licence holder or a shareholder is deceased during the term of the licence, or they suffer physical or mental incapacity. An application to vary the legal and beneficial ownership of the company must be made in writing to the Authority for a decision to be made.*

**Vote 1 - Members are asked to vote for the option they DO NOT think should be chosen.**

**Vote 2 – From the 2 remaining options Members are asked to vote for the option they DO NOT think should be chosen.**

The remaining option may now be considered for adoption as the preferred framework for progression to Consultation 4.

**Recommendation: Members are asked to APPROVE their preferred option for inclusion into the development of final legal wording.**