

ANNEX A

SUMMARY OF INSPECTOR'S REPORT INCLUDING CONCLUSIONS AND RECOMMENDATIONS

1. This Annex provides a summary under the broad headings taken from the Inspector's report on the inquiry into the proposed Solway Regulating Order of the consideration of the issues covered at the local sitting and of the conclusions reached and recommendations made by the Inspector. As explained in the covering minute, our view is that the recommendations and the background to them should be conveyed formally to the SSMA so that, in conjunction with ERAD, consideration can be given to adjustments to the Regulating Order Management Plan and the restrictions and Regulations. In instances where the SSMA is of the view that these adjustments are inappropriate or impractical, we would need to be satisfied that this is the case before signing off the Management Plan and the restrictions and Regulations. The broad headings were as follows

- consultation & objection process
- composition of SSMA board
- hand gathering versus mechanical gathering
- suction dredge verses elevator dredge
- boats
- licenses
- fishing seasons & times
- fishing areas
- landing ports
- enforcement

Consultation and Objection Process

2. While the consultation and objection process was not discussed in detail at the hearing a number of issues were raised. The main points were a claim that inputs to the process were treated selectively; annoyance that the SSMA charged £5 for a copy of the Regulating Order and the belief that the consultation period was too short.

3. The Inspector concluded that in his view the consultation exercise was not, as had been alleged, seriously flawed. His view was that most relevant parties had been given a reasonable opportunity to have their views taken into account. He pointed out that the consultation period had been extended and took the view no party had suffered as a result of its duration. His view was that the £5.00 charge for the Management Plan was not unreasonable.

3. The Inspector **recommended** that no alteration should be made to the draft order or the Management Plan and that there was no need to repeat the consultation or objection processes.

Composition of SSMA Board

4. Objectors argued that the fishing community had lost confidence in the SSMA, that the board should include representatives from boats, tractors, hand gatherers and processors only in an advisory capacity and that the SSMA did not represent the interests of the Solway nature ecosystem, small businesses, hand pickers or the local community.

5. The Inspector having heard the complaints and the SSMA response concluded that the draft order did not describe the composition of the board; but that, in accordance with the Articles of Association, a deliberate attempt had been made to ensure that the board balanced the interests of conservation and those of catchers. He also concluded that the board was not unfairly weighted in favour of those wishing to fish by tractor and/or boat. The Inspector welcomed the proposal to establish a Licensing Sub-Committee made up of members of the board who had no vested catching interests. The Inspector saw no particular reason why organisations should be represented on the board specifically because they represented English interests in the fishery and he was not aware of any reciprocal arrangement relating to the Cumbria Sea Fisheries Committee. If, however, such an arrangement did exist, he was of the view that perhaps the SSMA might change its position on some point. He was also of the view that it was not unreasonable that fish processors should be specifically represented on the board. In addition the Inspector thought it would be reasonable for the various landowners/tenants on the Solway to be specifically represented on the board.

6. Having reached these conclusions, the Inspector was reluctant to recommend that the SSMA board must be altered. The Inspector **recommended** that there should be no change to the draft order. He also recommended, however, that the management plan should include a statement to the effect that the composition of the board would be changed once the fishery was open and established and that any person or organisation expressing an interest in becoming a member of the board could make an approach. He also recommended that our Licensing Sub-Committee should be referred to in the Management Plan.

Hand Gathering Versus Mechanical Methods

7. This was a key issue arising from the consultation and was discussed in some depth at the sitting. Key points were: whether dredging by vessels should be allowed on the fishery at all, on the basis dredging being more intrusive and more efficient and was, it was believed, the cause of the fishery being over-fished in the first place; the TAC split between hand picking and dredging; and the fact that the dredging TAC would be split amongst a relatively small number (originally 4 but later changed to 6) of boats. There was also a separate issue of a license for tractor dredging which is dealt with in Annex B.

8. The Inspector concluded that while he recognised that dredging was more likely to be an issue from an environmental standpoint this would be taken into account by the appropriate assessment process. He also recognised that dredging meant fewer licences overall and, therefore, fewer jobs overall. He did not believe, however, that there should be a policy of hand gathering only, at least at the initial stage, in the fishery. The Inspector also concluded that the TAC split of 50% to hand gathering and 50% to mechanical methods of fishing was entirely reasonable. In general he concluded that proposal to have both mechanical methods and hand picking was appropriate.

9. The Inspector **recommended** that there should be no alteration to draft order. He also recommended that the Management Plan should allow the SSMA flexibility to alter the split between hand picking and mechanical methods in future if the circumstances indicated that this should be the case. In addition, the Inspector recommended that, should there be difficulties associated with mechanical methods of fishing as part of the appropriate assessment process, provision should be made for hand gathering to take place in any case.

Suction Dredging Versus Elevator Dredging

10. The main issue was that suction dredging was seen as more intrusive or damaging than elevator dredging and that it was prohibited elsewhere in Scotland. It was also pointed out that another method of cockle fishing, namely the “blow” method, was equally intrusive and damaging and was not being allowed on the Solway.

11. The SSMA proposal was to allow suction dredging in year 1 of the fishery and then, based on monitoring and research, to consider whether there should be a move to elevator dredging in the second or future years. The Inspector concluded that this was a reasonable and realistic approach. He did recognise, however, that changing from a suction dredge to an elevator dredge would mean that boat owners would incur significant costs. He pointed out, however, that this would only impact on a small number of boats and that the costs involved would be significantly smaller than the costs claimed by boat owners.

12. The Inspector **recommended** that no alteration should be made to draft order.

Boats

13. The issue here was the dimensions of boats and the fact that they would be fitted with FVMS. There was also the important issue of how many boats would receive a licence. The objectors argued that bigger boats should be allowed, based on a technical point about registered length and overall length, and that 6 boat licences was too few.

14. The Inspector concluded that there was a case for being bound by registered length as opposed to overall length thus allowing slightly bigger boats to fish in the Regulating Order area rather than limiting the fishery to boats measuring 12m overall, which was the proposal in the Management Plan. This conclusion was based in part on safety reasons. He also concluded that there was a persuasive argument for increasing the number of boats to which licences would be given. While he accepted that more boats would mean a heavier enforcement requirement, the Inspector pointed out that the boats would be fitted with FVMS and that there would be significantly extra income from additional licence fees which would meet any extra enforcement resources required. He also pointed out that while more boats would have access to the fishery but there would be change to the TAC.

15. The Inspector was reluctant to make a firm **recommendation** on this basis in case there would be adverse implications of which he had not been made aware or there were other alternatives which offered more appropriate solutions. He made it clear, however, that in his view serious consideration should be given to increasing the number of vessels licensed to fish for cockles from 6 to 10. He recommended that, while there should be no alteration to the draft order, the management plan should be altered in the sense that the word “overall” should be replaced with the word “registered” allowing slightly bigger and safer boats to fish the fishery.

Licences

16. The key points raised were the SSMA's proposals to increase tolls and levies, the duration of licences, the licensing criteria and health and safety issues. Also raised were: the belief that there was the need for the provision of a health and safety course; a proposal that the number of hand picking licenses should be increased from 100 to 200; concerns about young fishermen being able to enter the fishery; the weighting of experience in the licensing assessment process; the consideration of "historic rights"; and the treatment of outside fishermen.

17. Having heard the various points in evidence and the responses made by the SSMA the Inspector concluded that he was reassured to learn that the SSMA would issue guidance to each licensed fisherman. He also said, however, that in his view the SSMA should take the lead in providing local health and safety courses. He thought an increase to 200 hand picking licences undesirable. The Inspector's view was that some status should be attached in the licensing system to those whose fishing activity in the area covered by the Order was abruptly stopped when the fishery was closed. In addition, he recognised that it would be unreasonable to expect a vessel licence applicant to provide a fishing gear assessment study in year 1. He also accepted the SSMA's inference, however, that an application accompanied by such an assessment may well be preferred to one that is not.

18. The Inspector **recommended** that both the draft Order and the Management Plan should be altered to reflect the SSMA's proposed increases in tolls and levies. In addition he recommended that there should be a statement to the effect that the SSMA would issue health and safety guidance to each successful applicant and that it will co-ordinate and/or arrange relevant health and safety courses. He was also of the view that a system of licence revocation should be included in the Management Plan. The inspector stated that serious consideration should be given to the revision of the licensing criteria to take account of experience of cockle fishing on the Solway by vessel as a whole and give advantage to fishermen who had fished the Solway more regularly and, as such, had the working knowledge to fish such a dangerous area.

Fishing Seasons/Times

19. The issues raised under this heading were the proposals to have a closed season when spatting takes place and that fishing should not be allowed at night.

20. Arguments put forward were that restricting cockle picking to specified times would make hand gathering during the season (approximately October to March) non-viable and that hand gatherers would be forced to fish in conditions which were dangerous. There were also some arguments that cockle spawning was not restricted to April to August and that, therefore, there was no biological reason to apply a seasonal ban. There were also questions about why, if vessels were to be fitted with FMS, there was a proposal to restrict fishing by boat to daylight hours.

21. In his conclusions the Inspector appreciated that it was the case that higher prices could be obtained for cockles during the summer months. He was of the view, however, that it was undesirable to allow harvesting during the spawning season, which evidence which had been made available confirmed took place over the summer months. He believed that only

experience would confirm whether the proposed 6 months season was of the appropriate duration his view was that starting off on this basis with an annual review as proposed by the SSMA was a reasonable approach. The Inspector also concluded that restricting fishing by boats to daylight hours placed a greater emphasis on safety of fishermen and the same applied to the possibility of hand gathering at night. He also pointed out that restricting fishing to daylight hours addressed concerns about disturbance to wading birds.

22. The Inspector's **recommendation** was that there should be no alteration to either the Draft Order or the Management Plan in relation to fishing seasons/times.

Fishing Areas

23. Discussion of this issue focused on whether or not the fishing areas within the fishery should be reviewed annually as proposed by the SSMA or more frequently as proposed by some objectors.

24. The Inspector concluded that it would be impractical to review fishing areas more frequently than annually, despite recognising that the Solway, given the nature of the estuary, was ever changing.

25. On this basis, the Inspector **recommended** that there should be no alteration to the Draft Order or Management Plan.

Landing Ports

26. The issue discussed was the proposal by the SSMA that landing of cockles by boats would only be permitted at designated landing ports all of which should be within Scotland and that landings by hand gatherers and tractor dredgers would only be permitted at designated access points, again all of which would be in Scotland.

27. There were concerns that these proposals were discriminatory in the case of boats on the basis that there was no provision for landing from boats in England despite the possibility that licenses might be issued to English registered boats. A key issue for the SSMA was that allowing landings outside the area covered by the Order would raise particular enforcement difficulties.

28. The Inspector concluded that the SSMA's stance on enforcement had been over-emphasised and pointed to the fact that VFMS would be in operation. He pointed out that if licences were issued to vessels based in English ports it would be particularly inconvenient for these vessels to have to land in the designated Scottish ports.

29. The Inspector **recommended** that serious consideration should be given to an arrangement whereby a vessel wishing to land its catch in a port other than a designated landing port could do so provided that it had first gone to a designated landing port to have its catch inspected or recorded by the SSMA. He also suggested that a similar arrangement might be implemented on a reciprocal basis and that this was something which could be explored with the Cumbria Sea Fisheries Committee.

Enforcement

30. The discussion under this heading covered concerns about the ongoing difficulties in enforcing closure at present, the incidents of illegal fishing and how the Regulating Order would be enforced when in place.

31. The Inspector concluded that, in his view, the successful operation of the fishery would be largely dependent on fishermen obtaining licences and then abiding by the various restrictions set out in them. His view was that FVMS would be a considerable asset to the enforcement process. He also recognised that some individuals would see the opening of the fishery as an opportunity for a free-for-all and that as such there were likely to be a number of enforcement incidents. His view was that the police and the SFPA could have a busy period.

32. The Inspector **recommended** that there should be no alteration to the Draft Order but that the Management Plan branch should recognise that 2 full time fishery officers had already been appointed. He also recommended that the SSMA should continue to liaise with the SFPA and the police to help ensure that harvesting on an illegal basis was prevented. In addition the Inspector recommended that consideration should be given to the suggestion that legislation should be introduced to enable confiscation of cockles, power to detain vehicles and to provide a means by which buyers of illegally procured cockles would be criminalised.

Fisheries Conservation Division
November 2005

ANNEX B

SUMMARY OF INSPECTOR'S REPORT INCLUDING CONCLUSIONS AND RECOMMENDATIONS (ISSUES WHERE EXECUTIVE INPUT IS REQUIRED)

1. The broad headings for the issues covered by this Annex are:

- Tractor
- Environmental impacts
- Rights of landowners and tenants.

Tractor

2. The issue discussed was the proposal by the SSMA to allow one tractor dredging licence subject to various conditions set out in a code of conduct. There was some discussion about whether more than one tractor dredging licence should be allowed and on the different types of dredge. The SSMA made the point that there was scientific material to support the proposal and that tractor dredging would be licensed in conjunction with research with a view to improving the design of equipment.

3. The inspector concluded that in light of historical and scientific evidence it would not be unreasonable to allow a license for tractor dredging on a trial basis and in line with the code of practice.

4. On this basis, the inspector **recommended** that there should be no revision to the draft Order or the Management Plan.

5. **Officials are currently considering the scientific material put forward to support the proposal to issue a tractor dredging licence and what legal issues surrounding this possibility might need to be explored in making a decision on whether or not to issue such a licence.**

Environmental Impacts

6. This issue generated much discussion, (possibly because those objecting to the proposed Order saw the need for an appropriate assessment under the Habitats Directive as their main means of preventing the Order from being made). The need for an assessment was highlighted and there were claims that the reduction in the TAC which would be required as a result of the assessment would make the fishery unviable. There were claims that the appropriate assessment should include a public consultation process and the assessment in this case should have been carried out some time ago. Also raised under this heading was the minimum landing size for cockles proposed under the Order.

7. The Inspector's conclusions do not go further than consideration of which body is responsible for the appropriate assessment, what should be in an assessment in addition, in this case, to the scientific material already held by the SSMA, and when it should be carried out. He also dealt in his conclusion with the minimum landing size for cockles.

8. The Inspector recommended that legal advice be sought on the material required by an appropriate assessment, who was responsible for carrying out an assessment and when. He was also of the view that consideration should be given to ensuring that the requirements of the assessment do not unduly delay the opening of the fishery, at least for the least damaging forms of fishing.

9. **Officials having received the necessary data from the SSMA on which to base an appropriate assessment are currently working on the process.**

Rights of landowners and tenants

10. There was substantial discussion under this heading about the private rights of landowners. The general standpoint was that landowners did not want their land (the foreshore) to be fished for cockles under the proposed Regulating Order, except by themselves. There was a belief that landowners held rights to the cockle fisheries and it was made clear that they did not want to relinquish these. The differences between the right to fish for cockles and mussels was also discussed. In addition the public access across private land to cockle beds was raised.

11. The inspector concluded that consent from landowners to access to cockle beds under the Regulating Order was unlikely to be forthcoming. He recognised that at least one application for a Several Order had been made and saw this as a difficulty. The Inspector was uncertain about whether a Regulating Order could legitimately cover all of the areas in private ownership and pointed out the claim that at least one estate held a historical Several Order.

12. The Inspector **recommended** that discussions should continue to take place between the SSMA and private owners and that with a view to settling differences so that the Order could be made without the risk of a legal challenge. He also recommended that legal advice should be taken on the public right to fish for cockles and on access to the foreshore across private land.

13. **The understanding is that where private land is contained within a Regulating Order area there is a public right to fish for cockles. That being the case the right to fish for cockles cannot be passed by the crown to an individual. Therefore, even if there is foreshore that has been granted to a private individual by the crown the foreshore is granted subject to the right of the public to continue to exercise the right to take cockles from that foreshore. As a result, our view is that by making that foreshore subject to a Regulating Order we are not falling within Section 1(5) of the 1967 Act where we require individuals' consent to the making of the Regulating Order because we are not taking away or abridging any right because the right of ownership of the foreshore was a right subject to the public right to fish for cockles and all we are doing with the Regulating Order is regulating that public right.**

14. **We are presently confirming the legal position in relation to the claimed historical Several Order. Once this process is complete we will convey the formal position to the SSMA.**

Fisheries Conservation Division
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