

NWIFCA Quarterly Meeting: 21st March 2024

REPORT NO.
7

DEE COCKLE FISHERY OPTIONS PAPER

Purpose: To set out strategic options for NWIFCA's involvement in the future management of the Dee Estuary cockle fishery.

Recommendations: 1. The report is received.
2. Members vote to proceed with Option 2, to pursue a joint Regulating Order with NRW.

Background

Currently, all cockle beds within the Dee Estuary are managed by Natural Resources Wales (NRW) through a Regulating Order¹. The Order was established in 2008 due to significant overexploitation of the fishery. It is due to expire in just over four years, in June 2028. It was originally established by the Environment Agency (EA) as the sole grantee, when it had jurisdiction in both English and Wales, but since 2013, after NRW replaced EA in Wales, the Order has had two joint grantees, NRW on the Welsh side and EA on the English side. However, EA are no longer actively involved in managing the fishery nor enforcing the Order and its associated licensing scheme; NRW refer to EA as a 'sleeping partner'. Furthermore, EA have indicated to NRW that they do not feel they have the competence or jurisdiction required to continue to be involved in the fishery.

¹ The Dee Estuary Cockle Fishery Order 2008

Dee Cockle Beds

There are nine distinct cockle beds within the Dee Estuary. The ratio of cockles on the English and Welsh sides has never been systematically quantified, but it is estimated that approximately two thirds of the cockles within the Dee Estuary (by biomass) are on the English side.

An NRW map of the Dee cockle beds is shown below, along with the English-Welsh median line.



As the Regulating Order predates NWIFCA and our own Byelaw 3 permit regime for hand-gathering of cockles and mussels, this effectively removes the Dee cockle beds on the English side (namely the Salisbury Middle, West Kirby, Caldy and Thurstaston beds) from our Byelaw 3 regime and means our own Byelaw 3 permit holders do not have authorisation to fish for cockles on the English side of the Dee, unless they also hold a licence from NRW under *their* Regulating Order².

NRW have provided me with data from their surveys and licensees' returns. This shows that, over the last five years, there has been on average 8,802 tonnes biomass of cockle each year across the nine beds, although these biomasses vary considerably year-on-year. Of these 8,802 tonnes, 4,879 tonnes were from the four beds on the English side, with 3,923 tonnes were from the Welsh side. Therefore, just over 55% of classified cockles across the Dee were on the English side over the past five years. In terms of quantities fished, the five-year average has been 393 tonnes per year from the Welsh side, and 1,229 tonnes from the English side, representing almost 76% of harvested cockles coming from the English side. However, these year-on-year figures are also highly variable and for the last two years, twice as much cockle has been taken from the Welsh side than the English side (960 tonnes versus 451 tonnes).

² Our Byelaw 3 permit holders *do* still have authorisation to fish for *mussels* on the English side of the Dee, as mussels are not covered by the Dee Regulating Order.

NRW Licensing Scheme

Under the Order, NRW run a licence scheme for a specific number of individuals fishers, similar to our own Byelaw 3 permit scheme. They currently have 54 licensees who hand-gather cockles from beds all across the Dee Estuary³. Of these 54 licensees, 24 also hold a Byelaw 3 permit with us. 13 of these 54 licensees have addresses on the English side on the Wirral, whilst the remaining 41 are based in Wales. Most of the beds have to be accessed via boat, but once *in situ*, fishers hand-gather the cockles using the same methods as used across the rest of our district. Boats are then used to transport the cockles back to land, where they are landed at one of two NRW-designated landing sites, Greenfield on the Welsh side, or Thurstaston on the English side.

NRW reissue licences every year and currently charge £1,800 per licence. This fee was calculated on the basis that NRW aim for full cost recovery associated with managing, regulating, enforcing and administering the fishery by their staff. However, they have recently reviewed their licence fees for the fishery, as costs associated with running the fishery have increased; they anticipate that their licence fee will increase to over £3,000 for the start of the 2025/26 financial year for the remaining three years of the Order. NRW estimate that the fishery is worth up to £5,000,000 per year to the industry when stocks are high.

There are some fundamental differences between NRW's Dee cockle licensing scheme and our Byelaw 3 permit scheme. For instance, NRW run an endorsement facility which allows a licence holder to temporarily nominate another individual to fish using their licence when they are not able to. They also run a points-based system for assessing suitability of new licence applicants. This was more relevant back when the Regulating Order was established in 2008 when people first started applying for licences but is still used now for the small number of new applicants who wish to enter the fishery⁴. This points-based system considers several criteria around the person's suitability to fish cockles in the Dee, and includes things such as whether they are local, their experience of fishing and other ties to the fishing community. By their own admission, NRW's licence application process is very complex, both for applicants and those assessing them. Their opening season is July to December, fishing only on daylight tides, usually Monday to Friday⁵, and they also apply a Total Allowable Catch (TAC) each time the fishery opens. Their current cockle minimum size of 20mm is the same as that that we apply throughout our district, although they have the ability to vary this.

NRW lead a management group of stakeholders to inform and develop the management of the fishery; this is known as the Dee Estuary Cockle Fishery Advisory Group (DECFAAG); NWIFCA sits on this group. The fishery is also MSC certified due to the sustainable hand-gathering nature of the fishery and the limited number of licensees.

³ NRW can issue temporary short-term licences to additional fishers in exceptional circumstance when stocks are particularly high.

⁴ Only two or three new licensees have joined the fishery in the last four years.

⁵ NRW can and do vary the days that licensees can fish; more recently it has been Mondays, Wednesdays, and Fridays only.

NRW-NWIFCA Engagement

Last year, NRW reached out to NWIFCA officers to open a dialogue about the potential options for future management of the fishery. In essence, these options were to look to progress a new Regulating Order to replace the existing one or allow the Order to expire and the Dee cockle fishery to return to a public fishery. In considering the option to apply for a new Order, NRW were mindful of EA's steer that they no longer wished to be involved in the fishery and identified NWIFCA as the natural alternative, given our jurisdiction over, and experience with, the cockle fisheries across our district.

In the proceeding months, we have had several discussions with NRW regarding the Dee cockle fishery, where they have brought us up-to-speed on how the fishery is managed and the challenges and opportunities it presents. We have also explored the potential benefits and disadvantages of the different options open to us, and latterly, discussions have involved Welsh Government, whose responsibility it would become for the cockle fishery on the Welsh side of the Dee if the Regulating Order was allowed to expire and the fishery became public. At our last meeting between NWIFCA officers, NRW and Welsh Government in January of this year, NRW were keen to get an indication from the Authority as to which options we might prefer. I therefore informed them that I would bring this Options Paper to the committee at this meeting with a view to gaining a strategic decision from members on which approach the Authority wishes to pursue / prioritise going forward. I can then progress discussions with NRW and Welsh Government (as well as Defra potentially) on the basis of the decision the committee makes.

It should be noted that NRW have informed me that the fishers who currently hold a licence with them to fish for cockles in the Dee are unanimously in favour of a new Regulating Order being applied for to maintain the fishery's private status.

This report sets out the four different options for the Dee cockle fishery going forwards, the implications for the Authority and the strengths and weaknesses of each option. It undertakes a SWOT analysis of each of the options, assessing the Strengths, Weaknesses, Opportunities and Threats of each.

Option 1 – Revert to Public Fishery

This is effectively the 'do nothing' option, because if neither NRW, NWIFCA or any other party successfully applies for a new Regulating Order for the fishery, then it will revert to a public fishery on 1st July 2028. In practice, this would mean that, for the cockle beds on the Welsh side of the Dee, these would come under the jurisdiction of the Welsh Government as the national fisheries authority there, and for the English side, these would come under our jurisdiction.

In this instance, the 54 current NRW licence holders under the Order would lose their exclusive access to fishing for cockles across the Dee Estuary. This would mean that the four cockle beds on the English side of the Dee would come under our current Byelaw 3 regime and would mean that our 150 current permit holders would gain access to these beds in addition to those beds they already have access to across the rest of the district. 24 of our 150 permit holders do also hold a licence under the Order, and so, for these individuals, they would continue to have access to cockles on the English side of the Dee, albeit under a different regulatory regime. For the Welsh side, the cockles here would come under the Welsh Government, who are currently developing legislation to set out a new regulatory framework for how they will manage their public cockle fisheries across Wales, and so, the beds on the Welsh side of the Dee would fall under this regime after the Regulating Order expired.

The below table is a SWOT analysis on Option 1 to let the Order expire and revert to a public fishery.

Strengths	Weaknesses
<ul style="list-style-type: none"> • No new Order application to make • Timeframes would not be an issue (Order is just allowed to expire) • Byelaw 3 permit holders would gain access to four new cockle beds 	<ul style="list-style-type: none"> • <i>Some</i> current Order licence holders would lose access to English cockle beds • Increased workload for officers dealing with four more cockle beds within the district • Increased costs for the Authority⁶
Opportunities	Threats
<ul style="list-style-type: none"> • Formal agreement between Welsh Government and the Authority on how to manage our respective cockle fisheries on either side of the Estuary • Partnership working with Welsh Government leading to sharing of best practice and resources, and improved standards for the Authority • All cockle fisheries across district are managed in a consistent manner through our Byelaw 3 regime 	<ul style="list-style-type: none"> • The Authority may have to increase council levies or seek funding from Defra to cover additional resourcing costs • Deviation of regulatory approach either side of Estuary (different opening seasons, fisher returns requirements, minimum sizes <i>etc.</i>) • Difficulties enforcing access across median line; threat of non-compliance from either side • Strong opposition from current NRW licence holders • Large increase in effort on fishery (up to 150 fishers on English side, unknown number on Welsh side) • Impacts on conservation features of the Dee Marine Protected Areas from increased effort • Loss of MSC Certification • May need to amend its Byelaw 3 to incorporate the Dee cockle beds on the English side • Choosing this option doesn't necessarily mean it will happen; NRW or another party could still decide to apply for a new Order without us

⁶ May need to employ one new IFCO and one new Science Officer.

This option provides some benefits to the Authority and would likely garner significant support from those of our current Byelaw 3 stakeholders who do not have NRW licences and so would gain access to four new cockle beds on the English side of the Dee. However, there is a real and significant risk of regulatory deviation across the Dee over time, with Welsh Government and the Authority adopting different regulations, survey approaches and fisheries management plans (FMPs) in the years following the reversion to a public fishery. Securing a Memorandum of Understanding with Welsh Government would help foster consistency of approach and clarity for fishers, but this would not be legally binding on either party who could chose to deviate from it at any point. There would likely be significant enforcement challenges for both authorities, with the potential for a minority of fishers to use deviation in regulations to undertake non-compliant activities. There would also be a challenge for our Science Team around surveying and monitoring of the beds on the English side if there were significant differences on the Welsh side. These differences could be more readily addressed than with those associated with enforcement, as approaches to surveying and monitoring would not be defined in legislation and so modifications on either side could be made to bring about alignment.

In its most basic terms, this option involves drawing a line down the middle of the fishery⁷ and having two separate fisheries authorities deciding how best to manage the cockle beds on their own side. I do not believe this offers a particularly workable approach for stakeholders, the Authority or Welsh Government.

⁷ Including intersecting the Mostyn Deep / Salisbury Middle beds with no clear separation on the median line.

Option 2 – New Regulating Order with NWIFCA as Joint Grantee

This is the first of three options which involves applying for a new Regulating Order to replace the existing one, with the aims of each option being that it would allow a continuation of a private fishery with no 'air gap' between the current one expiring at the end of June 2028 and a new one being in place. The difference in each of the three options is the level of involvement the Authority has with actively regulating and managing the fishery under any new Order.

Under this option, NWIFCA would apply for a Regulating Order as a joint grantee alongside NRW. If successful, the Dee cockle fishery would remain a private fishery accessible to a relatively small number of licence holders, and would be managed under one regulatory regime across the entire Estuary, with the Authority and NRW acting as 'equal partners'. The Authority would work in partnership with NRW to decide how many licences there should be and who should hold one. It is likely that a management group similar to the current DECFAG would need to be formed, made up of representatives from the Authority and NRW, alongside licence holders and other stakeholders such as marine conservation and local community representatives. Decisions on how the fishery was managed would be taken by this group, with the new Order forming the legislative basis upon which any management decisions were taken, implemented and enforced. A new FMP for the fishery would likely need to be produced, similar to the current Dee Cockle FMP that NRW have in place under the current Order. The Authority would undertake its fair share of scientific and enforcement work across the Dee Estuary and would help run the management group of stakeholders. As per NRW's current approach, the aim would be for the costs associated with our joint management of the fishery to be fully recoverable through licence fees.

In terms of the Regulating Order application process, it is understood that, as joint grantees, NWIFCA and NRW would have to make applications to the respective ministers at both Defra and Welsh Government. This is likely to be a long, complex and costly process involving multiple parties and there would be a good deal of work to do to ensure agreement on the Order's proposed content.

Upon implementation of a new Order, in the short-term it is likely there would be little change in how the fishery is managed, given a well-established FMP and regulatory framework are already in place. However, as a joint grantee, NWIFCA would have significant say and sway in how the fishery is managed over the next few decades into the late 2040s.

The below table is a SWOT analysis on Option 2 for the Authority to apply for a new Regulating Order as a joint grantee.

Strengths	Weaknesses
<ul style="list-style-type: none"> • Provides continuity for stakeholders in short- to medium-term⁸ • Strong support from current NRW licence holders • Additional costs to the Authority once the Order is implemented are fully recoverable through licence fees⁹ 	<ul style="list-style-type: none"> • Significant timeframes involved; application process would have to start soon to avoid 'air gap' in 2028 • Increased workload for officers dealing with more beds within the district
Opportunities	Threats
<ul style="list-style-type: none"> • Ability for the Authority to influence management of the fishery • Partnership working with NRW leading to sharing of best practice and resources, and improved standards for the Authority 	<ul style="list-style-type: none"> • Significant workload for senior officers in drafting new Order; no additional funding available for this stage of work • Staff / ministers from Defra / Welsh Government are disengaged or cannot commit to timeframes, leading to 'air gap' before new Order is in place • Ministers could change any part of draft Order, leading to Authority and NRW having to manage and regulate the fishery under different conditions to those applied for • Current Byelaw 3 permit holders remain excluded from fishery • Small risk of legal challenge from excluded fishers • Current NRW and NWIFCA differences in fisheries management approaches would need to be aligned • Authority operating two different cockle management regimes across the district • Difficulties in working out levels of resource the Authority and NRW would each provide and how licence fees would be distributed

⁸ Albeit with no guarantees for the existing 54 licence holders that they would continue to have a licence under the new Order.

⁹ May need to employ up to one new IFCO and one new Science Officer.

This option presents the most realistic opportunity for the Authority to have some influence of the management of the Dee cockle fishery for the long-term, providing for a single regulatory regime across both sides of the Estuary whilst allowing the Authority to manage the cockle fisheries on the English side. It is however not without its potential challenges and would mean the Authority would be operating two separate fisheries management regimes for cockles across its district. It would require close partnership working with NRW to make this approach a success, something I am confident we could achieve using the foundation of our existing working relationships with our NRW colleagues.

Option 3 – New Regulating Order with NWIFCA as Sole Grantee

This option is the second one involving the application for a new Regulating Order for the Dee Estuary cockle fishery, but instead of proceeding on a 50:50, joint basis with NRW, NWIFCA would apply with the intention of acting as the sole grantee for the Order. To that end, the proposal under this option is similar to the current arrangement, where there are two grantees under the current Order (NRW and EA) but with only NRW actively managing the fishery. In this option, either there would only be the Authority as the sole grantee, or if there NRW were a joint grantee, they would be the 'sleeping partner' whilst we took on the full management of the cockle fishery across the entire Estuary.

As per Option 2, it is assumed two applications would still need to be made for the Regulating Order under this arrangement, one to Defra and one to Welsh Government. Discussions would then proceed on the basis of reaching agreement that we would effectively replace the role that NRW currently fulfils as the sole regulator and manager of the fishery. The Authority would undertake all scientific and enforcement work across the entire Dee Estuary and would run any associated management group of stakeholders. As per NRW's current approach, the aim would be for the costs associated with managing the fishery to be fully recoverable by the Authority through licence fees.

The below table is a SWOT analysis on Option 3 for the Authority to apply for a new Regulating Order as the sole active grantee.

Strengths	Weaknesses
<ul style="list-style-type: none"> • Provides some continuity for stakeholders in short- to medium-term¹⁰ • Support from current NRW licence holders • Additional costs to the Authority are fully recoverable through licence fees¹¹ 	<ul style="list-style-type: none"> • Significant timeframes involved; application process would have to start soon to avoid 'air gap' in 2028 • Increased workload for officers dealing with significantly more beds within the district
Opportunities	Threats
<ul style="list-style-type: none"> • Ability for the Authority to lead on management of the fishery • Streamlined fisheries management regime that allows the Authority to adopt same cockle fisheries management principles in Dee as it does throughout the rest of the district 	<ul style="list-style-type: none"> • Significant workload for senior officers in drafting new Order; no additional funding available for this stage of work • Staff / ministers from Defra / Welsh Government are disengaged or cannot commit to timeframes, leading to 'air gap' before new Order is in place • Ministers could change any part of draft Order, leading to Authority having to manage and regulate the fishery under different conditions to those applied for • Current Byelaw 3 permit holders remain excluded from fishery • Small risk of legal challenge from excluded fishers • Authority operating two different cockle management regimes across the district • Negative perceptions from our funding councils for managing a fishery which is, in part, outside of the district¹² • Politically unpalatable in Wales due to perceptions around giving over management of a Welsh fishery to an English fisheries authority

¹⁰ Albeit with no guarantees for the existing 54 licence holders that they would continue to have a licence under the new Order.

¹¹ May need to employ at least one new IFCO and one new Science Officer.

¹² Even with full cost recovery, there is still likely to be some spillover resourcing impacts on the Authority, as the running of the entire Dee cockle fishery solely by NWIFCA cannot be done in a vacuum by specific officers.

I believe this option offers some potential benefits to the Authority and its stakeholders, in that it would enable us to take on full responsibility for the management of the entire Dee Estuary cockle fishery as a continued private fishery and coordinate approaches in the Estuary with those we currently apply through the rest of the district. However, it is likely the option would not gain the necessary support politically in Wales and would face some significant opposition there as the Regulating Order started to take shape and worked its way through the respective governments.

Option 4 – New Regulating Order with NWIFCA as Inactive Grantee

This option is the final one involving applying for a new Regulating Order and replicates the current arrangement, with NWIFCA replacing EA as the inactive grantee of the Order, with NRW retained as the active grantee.

As per Options 2 and 3, it is assumed two applications would still need to be made for the Regulating Order under this arrangement, one to Defra and one to Welsh Government. Discussions would then proceed on the basis of reaching agreement that the Authority would effectively replace the role that EA currently fulfils as the inactive ‘sleeping partner’, whilst NRW would continue fulfil its current role as the sole primary regulator and fishery manager. Alternatively, NRW could apply for a Regulating Order as the sole grantee, with no involvement from the Authority at all.

Strengths	Weaknesses
<ul style="list-style-type: none"> • Provides continuity for stakeholders in short- to medium-term¹³ • Support from current NRW licence holders 	<ul style="list-style-type: none"> • Significant timeframes involved; application process would have to start soon to avoid ‘air gap’ in 2028 • Authority takes no active part in managing the fishery
Opportunities	Threats
<ul style="list-style-type: none"> • Removes risk of legal challenge from NRW licence holders 	<ul style="list-style-type: none"> • Staff / ministers from Defra / Welsh Government are disengaged or cannot commit to timeframes, leading to ‘air gap’ before new Order is in place • Current Byelaw 3 permit holders remain excluded from fishery • Small risk of legal challenge from excluded fishers

I believe this option offers little value to the Authority, in that we would simply replace the EA as an inactive grantee, or not be involved at all (*i.e.* NRW applied as the sole grantee). Once implemented, the Authority would take no further meaningful part in the management of an important fishery within its district.

¹³ Albeit with no guarantees for the existing 54 licence holders that they would continue to have a licence under the new Order.

Conclusion

All four options presented herein have significant strengths and weaknesses associated with them, along with potential opportunities and threats that could present themselves. However, my view is that Option 2, to pursue an application for a new joint Regulating Order alongside NRW represents the best strategic option for the Authority. It affords us the opportunity to become actively involved in a fishery that is, in part, within our district and which therefore on principle, we should be involved in managing. It also represents the only viable option to provide continuity to the stakeholders on both sides of the Estuary who fish the cockle beds, whilst at the same time ensuring a holistic, consistent management approach, without any regulatory, enforcement or scientific differentiation across both sides of the border.

Mark Taylor, North Western IFCA CEO, 6th March 2024.