

Wash Several Order 2022 Application

Informal Consultation: Outcome



This document presents the outcome to the informal consultation on Eastern IFCA's Wash Several Order 2022 Application. This consultation ran from 18th January 2022 to 25th February 2022.

We asked

We consulted stakeholders about our application to become the grantee of a new Several Order to manage aquaculture in The Wash. The new Several Order will replace the [Wash Fishery Order 1992](#) which expires in January 2023.

We also consulted on the draft Fisheries Management Plan which shows how Eastern IFCA will manage aquaculture in the Wash including where aquaculture 'lays' are allocated and to whom, as well as restrictions on their use.

More information about the consultation, including consultation materials, is available through our website: [Wash Several Order 2022 application: informal consultation - Eastern IFCA \(eastern-ifca.gov.uk\)](#)

WFO Lay holders, wildfowler associations, the Crown Estate, the le Strange Estate, the Ministry of Defence, the Wash and North Norfolk Marine Partnership and the Royal Society for the Protection Of Birds (RSPB) were contacted directly in addition to material being posted on the Authority's social media accounts and website. The Authority has been in dialogue with Natural England separately in seeking their formal advice as informed by the associated HRA.

You said and our response

Limited responses to the consultation were received from stakeholders. Five responses were received in total, three from fishing interests, one from a wildfowlers association and one from the RSPB. One of the responses designated as 'fishing interests' was reported as representing the response from 'the majority of the holders of all licences and lays under the Wash Fishery Order'.

The key objection raised related to the proposals for changes to the process for allocating lays and their review once allocated to ensure effective use. A summary of these key concerns is set out in the table below which also outlines our consideration and actions taken in response.

Location based or numbers-based information, including information that could be related back to individual responses, is not included in this table. The below anonymised table addresses the key questions or concerns which emerged in individual responses.

Read what was said and our responses in the below.

You said	Our response
<p>Objection raised</p> <p>Expiry of the WFO The WFO will expire before a replacement Order is in place. This will risk the livelihoods of those who depend on the lays and put people out of business as shellfish in private lays will become part of the public fishery.</p> <p>A two-year extension to the WFO will mitigate this risk.</p> <p>There is unanimous support throughout the industry for a 2 year extension to the WFO.</p>	<p>Consideration and actions taken</p> <p>The Authority is significantly delayed in its work to develop an FMP and HRA to support the application for a Several Order to replace the WFO. However, the Authority can use byelaws to protect areas of shellfish aquaculture and still permit cultivation of the same by the lay holder. This mitigates the risk of private shellfish stocks becoming part of the public fishery.</p> <p>Extending an existing Order does not require any less time or process than implementing a 'new' Order. Therefore, this will not mitigate the risk identified.</p>
<p>Application process Submission of a business plan as part of an application for a lay is unnecessarily bureaucratic and burdensome on fishing industry.</p> <p>It is not possible to forecast expected production from a lay because seed availability is too variable.</p> <p>The Authority lacks the expertise to determine if a business plan is credible.</p> <p>The proposed process will favour unrealistic applications and business plans which forecast exaggerated production in favour of more conservative and accurate forecasts.</p> <p>A business plan is intended to set fishermen up to fail a review and remove a lay from them.</p> <p>It is not appropriate for the Authority to require commercial information as part of the application / business plan (e.g. business partners, seed providers etc.).</p>	<p>The application process in version 4 of the FMP included a requirement to submit a business plan and that the Authority would consider the merits of such when making a decision on whether to grant the lay and if the proposed operations will be in keeping with the restrictions in place to protect the environment. The business plan is also intended to be the basis for a review of the success of the lease when considering re-issuing it. In addition, information about the structure of the businesses associated with applications is required for the Authority to make informed decisions about lay ownership in the context of ensuring fair and equitable access (as is the case under the WFO which prohibits partnerships from being formed between lay holders without the consent of the Authority for example).</p> <p>It is not intended to be overly burdensome, and consideration of operations against a business plan during a review will take into account the issues highlighted in the responses including availability of seed, environmental conditions and the situation of each lay holder.</p> <p>We acknowledge that this represents additional burdens on applicants and the difficulties in accurately forecasting production on lays given the variability of the marine environment generally. The plan also acknowledged that it is a legitimate business plan to rely on seed mussel from the</p>

<p>The application process should not require applicants to set out how they will operate in a safe manner as this is outside the remit of the Authority.</p>	<p>Wash and that there is a generally little seed available to restock lays.</p> <p>It is considered appropriate that application for a lay should include a plan for how the lay for the reasons set out above. However, it is acknowledged that this represents additional burdens than has been the case under the Order. The FMP has been amended to include additional time to develop this measure further to ensure that it will be effected and to take into account the views of industry.</p>
<p>Lease reviews and re-issuing Reviewing leases every 5 years, with the potential to not have the lease renewed does not provide the security of tenure required to justify investment in the lay and does not provide the stability needed on which to base a business model.</p> <p>Removal of a lease due to non-use is disproportionate and does not take into account that there have been a general lack of mussel seed to restock lays.</p> <p>Reviews to inform lay allocation should be conducted two years prior to the review so as to avoid lay holders relaying shellfish which would be lost to them if the lay was not re-issued.</p> <p>It is not within the purview of the Authority to take into account the source of seed shellfish when considering if a lay should be renewed.</p> <p>Reviewing leases every five years is unwarranted and inappropriate.</p>	<p>Version 4 of the FMP included measures to review leases every five years to seek to address the fouling and effective abandonment of lays. It is recognised that, in some cases, lays issued under the WFO have been unused due to a lack of available mussel seed, particularly in relation to Wash-based seed mussel fisheries of which only 2 have been opened in the last 10 years.</p> <p>There is a moratorium in place on issuing new lay areas under the WFO. This remains in place and is part of the mitigation against potential impacts on food availability (phytoplankton) in The Wash as identified in the review of consents. In addition, there is a waiting list of 11 persons who have applied for a lay (most more than ten years ago) and there is likely to be further interest as the Authority also decided to not accept further applications during the moratorium. Given that the Authority is providing fishing opportunities under the Several Order, it is incumbent on the Authority to ensure that access to the fishing opportunity is managed in a fair and equitable way. To that end, it is considered appropriate that a mechanism is in place which seeks to identify where lays are not being used effectively and if they are not, to make them available to other persons. This would include where associated fees are not paid, non-compliance with the lease conditions (noting that effective use of lays is already a conditions of WFO leases) or bad practice.</p> <p>Under the WFO, leases are issued annually, with either party able to end the lease with no less than 3 months' notice. The 5-year review as proposed in version 4 of the FMP is intended to set the reasons the Authority may terminate a lease as above to provide additional clarity and</p>

	<p>transparency. The intention is to achieve a balance between security of tenure and a system which does not permit maintaining a lay which is not being used at the expense of others who would benefit from the opportunity.</p> <p>Where a lay is not to be reviewed, it is envisioned that sufficient notice would be given to the lay holder to remove stock (as per the WFO lease conditions i.e. 3 months).</p> <p>So as to ensure the right balance is achieved, the FMP has been amended to allow for additional time to engage in dialogue with industry. The plan sets out the aspirations of the Authority in terms of managing the allocation and re-issuing of lays, but identifies the benefit in this being informed through additional dialogue with lay holders over a longer period of time.</p>
<p>Fees It is disproportionate to place the cost of environmental assessments on the applicant.</p>	<p>The Authority effectively undertakes the assessments (including Habitat Regulations Assessments) on behalf of lay holders in addition to monitoring food availability in The Wash, a critical mitigation which is required to support any aquaculture activity in The Wash.</p> <p>It is considered appropriate that the Several Order has a mechanism to recover these costs.</p>
<p>Settlement of wild shellfish on private lays It is disproportionate to remove a lay from a lay holder where the area becomes set with wild shellfish.</p> <p>Much of The Wash could support wild settlement of shellfish and lays are situated in areas where this is the case as the same areas support aquaculture.</p> <p>The Authority is not suitably qualified to determine if shellfish in an area are 'wild' or there as a result of aquaculture.</p> <p>The Authority should allow lays in areas where wild stocks occur but are not fished.</p>	<p>The WFO includes a provision which restricts lays being allocated in areas of wild shellfish stocks. The Authority has interpreted this to mean 'commercially viable' stocks, rather than, for example, low density cockles which could not realistically support a fishery. This is because lays are not intended to provide exclusive rights to wild stocks, but to areas for the purpose of cultivation.</p> <p>Where a shellfish lay becomes routinely set with wild shellfish, it is important that the area should be reconsidered as an appropriate area for a lay as it may not be able to function for the purposes of cultivating seed as is intended. It is anticipated that where this becomes the case, relocating a lay may be an appropriate course of action.</p> <p>It is noteworthy that fishing industry have previously reported to officers that this is a concern to those operating in the public cockle fishery in particular.</p>

	<p>Eastern IFCA have conducted annual cockle surveys since the early 2000s and has conducted successful biotope surveys to inform previous lay applications. Where there is uncertainty as to whether a lay is hosting wild or cultivated shellfish, this will be factored into decision making in nay case.</p> <p>It is considered important to have in place a system which can address this issue in a manner which acknowledges the issues raised in the consultation. The FMP has been amended to provide additional time to address the concerns raised and develop an appropriate and effective system through phase 2 of the FMP.</p>
<p>Reallocating lays which are not reissued initially Reallocation of lays which are not granted under tranche 1 (now 'phase 2') should be considered as soon as possible. A five year wait for lays to be allocated is not fair or equitable.</p>	<p>The FMP has been amended to provide a transitional period to further develop proposals on further phases of lay allocation and this will be considered as part of that dialogue.</p>
<p>10 ha limit A limit of 10ha per applicant / business will reduce the competitiveness of the businesses in relation to other areas in the UK.</p> <p>A 10ha limit on lay holding is unwarranted and inappropriate.</p>	<p>The WFO restricts the total lay holding to 10ha per person without the consent of the Minister. This is intended to prevent monopolisation of the Several fishery. It is noteworthy that several lay holdings are in excess of 10ha.</p> <p>Version 4 of the FMP acknowledged the potential benefits of larger lay holdings and noted that the most successful lays issued under the WFO appear to be those larger than 10ha.</p> <p>It is considered of benefit to the wider Wash fishing industry that opportunity is provided to as wider group of people as possible but that this also needs to be balanced with the benefits of having larger lay holdings. The FMP has been amended to include additional time to address this issue during the transitional phase (phase 1) to achieve the right balance.</p>
<p>Wider benefits of issuing lays It is outside the remit of the Authority to consider the wider benefits of issuing lays and it should not be factored into decisions on lay allocation.</p>	<p>As with the WFO, the opportunity provided by the Several Order would potentially reduce the burden and reliance on other Wash-based fisheries. This forms an important part of the rationale and justification of the Authority applying to become grantees of a Several Order i.e. that public money and resource is spent effectively facilitating a</p>

	private venture because it can have wider benefits to fisheries in the District.
Placement of structures in lays Consent should not be required to place structures within a lay	Version 4 of the FMP includes a requirement to get consent the Authority to build structures within lays. This is included in part to mitigate impacts on the MPA designations within The Wash and because such is considered to require consent from the MMO (as a marine licensing issue). This is also the case under the provisions of the WFO leases and will be carried forward during phase 1 of version 6 of the FMP.
Historical lay use Lays have not historically been under utilised but more recently, poor seed availability has reduced usage.	This is acknowledged and clarified in version 6 of the FMP.
Inaccurate information about lay use during recent relaying fisheries The FMP states that on WFO lays were stocked from the 2018/19 relaying mussels fisheries. This is not the case. This inaccurate information underpinned the assertion that lays are not being utilised.	Version 4 of the FMP included reference to none of the lays issued under the WFO being stocked by mussels from the last two mussel relaying fisheries. A respondent has reported that they did in fact relay some mussels from this fishery into their lay. In addition, it is further reported that lay holders did not consider the mussel available to be of sufficient quality to relay onto their lays. It should be noted that a counter view has been provided to officers previously, although not as part of this consultation. Version 6 of the FMP includes reference to this.
Restricting the areas of lays to those currently issued It is not clear in the FMP why the lay areas are restricted to those currently used.	The FMP sets out that the current limit on lay areas is in place to mitigate impacts on the MPAs, in particular, in relation to food availability issues. The HRA cannot rule out adverse effects of additional lays.
Scallops are not a viable aquaculture species Scallops cannot be laid directly onto the ground as is the case for other species to which the Several order relates. Operations to cultivate scallops are likely to require structures in location which would interfere with other fishing activities.	Scallops are included in the WFO and the intention was to maintain the status quo with regards to what species could be cultivated so far as was permissible (taking into account the HRA and biosecurity risks associated with invasive and non-native species). If application is made for scallop cultivation, impacts on other sea users (including fishing activity) would be taken into account as part of the application process to avoid such impacts.
Inaccurate information set out in background section	Where respondents have a counter view to the history and background of fishing activity in The

	Wash this has been removed subject to further consideration.
<p>Eligibility for lays People other than Wash cockle and mussel permit holders (under the Wash Cockle and Mussel Byelaw 2021) should be eligible for a lay.</p>	Version 4 of the FMP included this provision as a means of ensuring that active wash-based fishermen were prioritised for access to lays. It is intended that this is given further consideration in phase 2 of the FMP subsequent to further dialogue with industry.
<p>Food availability measures The measures set out in relation to food availability in The Wash are disproportionate and need revision.</p>	<p>Cultivated mussel remove resource from the Wash which would otherwise be utilised by wild shellfish and the wider Wash ecosystem. The matter was considered in detail as part of the 2012 ‘review of consents’ and the associated HRA could not rule out adverse effects on the site as a result.</p> <p>Mitigation was developed which requires monthly monitoring which the Authority undertake.</p> <p>Where certain thresholds are met (in levels of a proxy for phytoplankton abundance and ‘meat yields’ of mussels), the Authority may require lay holders to reduce stock density on lays to reduce the risk of impacting the wider Wash ecosystem. This is considered a critical mitigation measure required for the continuation of shellfish aquaculture in The Wash as has been flagged in the recent advice from Natural England in relation to the HRA associated with this application. These measures are currently in place under the WFO lease conditions and the FMP sets out that the condition would be required under a New Several Order.</p> <p>Where thresholds are met, the potential for impacts on Lay holders is acknowledge. It is noteworthy that the restrictions have not come into effect since introduced as thresholds have not been reached, however as lays become more productive over time, the potential for this would increase.</p> <p>It is also acknowledged that other factors, including less organic matter in the water and significant populations of razor clams are also likely to contribute to food availability issue sin The Wash. However, the lays must be considered in combination with these factors.</p> <p>The mitigation is necessary to ensure no adverse effect on the Wash MPAs and without them, the Wash cannot support aquaculture activity.</p>

<p>Conservation targets for birds The conservation targets in relation to bird numbers within The Wash SPA are incorrect and do not reflect current advice from Natural England.</p> <p>Where actual bird numbers exceed the current conservation objective, this should be the target considered in an assessment.</p>	<p>Version 4 of the FMP contained some erroneous figures for conservation targets the Special Protection Areas (SPAs) in The Wash and these have been amended.</p> <p>HRA's will consider impacts against the conservation targets set out by Natural England and any further advice they provide on the matter. Overall, impacts on SPA features are considered negligible and this is supported by Natural England advice.</p>
<p>Further detail should be provided Further detail should be provided on the following:</p> <ul style="list-style-type: none"> • How the most up-to-date data for bird species has been taken into account in the HRA • The loss of habitat and impact on SPA features is considered where additional lays are considered • Natural England advice on the activity • The consideration of mitigation against disturbance caused (to birds) during low water activities 	<p>The HRA has used the most recently available data in undertaking the associated HRA (the low tide survey for 2019/20).</p> <p>Any consideration of additional lay areas (including the relocation of existing lays) would require assessment against the conservation objectives of the Wash MPAs. This would include loss of habitat and impact of SPA features.</p> <p>Natural England advice is appended to version 6 of the FMP for reference.</p> <p>Bird disturbance as a result of aquaculture activities is not considered to adversely impact the conservation objectives of the Wash SPAs and as such, no mitigation is required. Changes to the conservation advice in that regard would give cause to consider mitigation measures.</p>

Thank you for your engagement with this work so far. You can find out more about the Several Order 2022, the development of the Fisheries Management Plan and future consultation work for other ongoing management work in our district, on our website: www.eastern-ifca.gov.uk