

STATES OF JERSEY

Economic Affairs Scrutiny Panel Sea Fisheries Bag Limits

MONDAY, 29th JUNE 2009

Panel:

Deputy M.R. Higgins of St. Helier (Chairman)
Deputy C.F. Labey of Grouville
Deputy S. Pitman of St. Helier
Deputy D.J.A. Wimberley of St. Mary
Deputy J.M. Maçon of St. Saviour
Mr. T. Oldham (Scrutiny Officer)

Witnesses:

Connétable L. Norman of St. Clement (Assistant Minister for Economic Development)
Mr. M. Smith (Senior Fisheries Inspector, Planning and Environment)

Deputy M.R. Higgins of St. Helier (Chairman):

Right. Can I just welcome you both to the hearing. Again, just for the purposes of the tape, and for no other purpose because we all know each other, I am Deputy Mike Higgins, Chairman. On my left ...

Deputy D.J.A. Wimberley of St. Mary:

Deputy Wimberley of St. Mary.

Deputy J.M. Maçon of St. Saviour:

Jeremy Maçon of St. Saviour, Deputy.

Deputy C.F. Labey of Grouville:

Carolyn Labey of Grouville.

Deputy S. Pitman of St. Helier:

Deputy Pitman of St. Helier.

Deputy M.R. Higgins:

Again, if you please identify yourselves for the tape as well.

Connétable L. Norman of St. Clement (Assistant Minister for Economic Development):

Yes, Len Norman, Assistant Minister for Economic Development.

Mr. M. Smith (Senior Fisheries Inspector, Planning and Environment):

Mike Smith, the Senior Fisheries Inspector with the Planning and Environment Department.

Deputy M.R. Higgins:

Right, thank you. Those are all those formalities out of the way. We are going to launch straight in and

try and go through as much as we can because this is our final hearing. As you know we have conducted a number of hearings and heard people from across the spectrum, plus we have had a lot of written evidence as well. I want to start off first of all and look at the existing laws. Obviously this is a new law, it is a new way of tackling a problem. I would like to explore what the existing law is that would prevent people from selling this fish and basically why the department is not pursuing it, why you are going for bag limits as opposed to enforcing existing laws?

Mr. M. Smith:

If I could just explain there, we do not have a law that enables us to make any regulations relating to the sale of fish. When this issue first occurred about 20 years ago we took advice from the Law Officers because that was a route we wished to explore, but the vires of the principles of the Sea Fisheries Law has never been worded in such a way to allow control and sale of fish.

Deputy M.R. Higgins

So, do you have any other means of preventing this small element that you have identified selling their fish to restaurateurs? What I am looking for is to see if there is any alternative way of achieving the same objective.

Mr. M. Smith:

Yes. The Fisheries Licensing Regulations basically only cover the activity of fishing and they only go as far as to say that you need a license unless your fishing is purely for recreational purposes. Now, clearly if you are selling fish that is not a recreational purpose, therefore, by implication if you are selling fish you are fishing without a licence unlawfully.

Deputy M.R. Higgins:

Is there a penalty for that?

Mr. M. Smith:

There is a penalty for that, yes.

Deputy M.R. Higgins:

Has that ever been enforced?

Mr. M. Smith:

We have tried to enforce that on a number of occasions. We have got in some pretty expensive lengthy surveillance operations and quite often intelligence led, but to be brutally honest we have not got anything like the resources to mount a campaign. We have taken advice from people who do that sort of thing and we would need to have a core of at least 3 vehicles and they have about 5 staff to cover this surveillance that would be needed. The problem is that with the wording of our legislation we do have to effectively check that there are no fish in the boat when it leaves; monitor the boat for the entire time it is out at sea; watch what is brought back in; be absolutely sure that the one fish that has been in that boat has not changed hands at all; is still in the hands of the person who caught it and then that money has changed hands for it. We have, on one occasion, lost a case in court where we had a boat which we had seen at sea, we inspected it at sea, he had 3 boxes of mackerel on board - it was a JY boat - we managed to survey the sale of the fish and we had pretty good chain of coverage from the moment the boat came into the harbour until the time the fish was sold. We lost the case on the grounds that we could not prove that the fish were caught in the Jersey territorial sea by that fisherman on that boat.

Deputy S. Pitman:

How will these regulations give you the resources or enable you to be able to police these fishermen who are selling illegally?

Mr. M. Smith:

Well, working on the assumption that the fishermen who are doing this, who may be selling 2 or 3 fish, is something that is going to be quite difficult to stop, but the people we are interested in are those who are doing it in significant quantities. Therefore, they are going to have to have a significant quantity of fish with them at some point. The idea of this would be that we would cut out the complicated surveillance operation which quite often involves watching someone's home, watching their vehicle, watching them on the beach. We would cut all that out and simply if we have intelligence that a vessel was up to no good, we would arrange to be at the port where it comes in and if he had more than the bag limit and we would then have enough evidence to prosecute him.

The Deputy of St. Mary:

Can I get this clear? The law at present, as I understand it, means that selling is illegal if you sell when the boat is unlicensed.

Mr. M. Smith:

No, the law does not mention the word selling.

The Connétable of St. Clement:

It is not the selling that is illegal, it is the actual fishing in Jersey territorial waters for non-recreational purposes. So, the selling can be evidence, but you have also got to have the evidence that those fish were caught by that allegedly recreational fisherman in Jersey waters.

The Deputy of St. Mary:

So, you have got, in effect, an offence that is unpolicable at the present time.

The Connétable of St. Clement:

It is policeable, as Mike described, they can police it; it is getting a conviction, because the evidence has got to be so detailed as to where the fish were acquired; if they were fished in Jersey territorial waters or the fisherman claims that they were caught in Guernsey territorial waters, which we have got no jurisdiction over; whether he was given the fish by somebody else, by licensed fisherman. It is very, very difficult to get a conviction. I do not know, Mike, have you ever managed to get one?

Mr. M. Smith:

We have not managed to get a conviction yet. On, I suppose, 2 occasions, as a result of all the work and the interviews under caution and everything else, people have been persuaded to buy a license but that is because I think they have realised that they are transgressing and they should buy a license.

The Deputy of St. Mary:

So, in fact, at present it is not the selling at all, the crime is fishing within the 12-mile limit?

Mr. M. Smith:

Within the 12-mile territorial sea or the adjacent part of the French territorial sea that forms part of Bay of Granville.

The Deputy of St. Mary:

Right, without a commercial license. Then what is the crime, if you are commercial you have not done a crime? So, I am still hazy as to what is wrong at the moment.

The Connétable of St. Clement:

If you are doing it for recreational purposes it is not a problem but if you are doing it for commercial

purposes then it is illegal to catch those fish.

The Deputy of St. Mary:

But at the moment there is no definition of commercial purposes.

The Connétable of St. Clement:

The evidence would be of selling them. That would be collecting evidence, but the crime would not be the sale at the present time, the fishing would be the crime. The sale would be the evidence.

The Deputy of St. Mary:

So, you do have quite a long chain of evidence to collect under the present situation.

The Connétable of St. Clement:

Well, as Mike explained, it has proved to be almost impossible.

The Deputy of St. Mary:

So, you have a law that is impossible to police.

The Connétable of St. Clement:

Well, it has helped. You always work on the assumption the majority of people are law-abiding, and they are, but we have evidence, which we cannot do anything about, that there are some individuals who are really taking the bread out of the mouths of the commercial fishermen who bought their licenses. Prosecutions are almost impossible.

The Deputy of St. Mary:

We are just exploring the present situation.

The Deputy of Grouville:

How much of what is caught is exported by professional fishermen?

Mr. M. Smith:

It used to be the vast majority. It is still the majority but increasingly it is less of a majority now than it was. It is difficult to say; we do not have figures for that.

The Deputy of Grouville:

Do you have a rough percentage?

Mr. M. Smith:

No, I could not really give you a comment, but last year E.D.D. (Economic Development Department) ran a campaign to encourage local people to buy local lobsters and for sure the percentage of the lobster catch that was sold locally went up quite significantly. In regards to fish, I have spoken to some of the commercial fishermen and I have only got their explanation, but they would argue that bass, the vast majority of it is sold to the local market. It is only when they cannot sell it to the local market and because the local market is saturated for one reason or another that they export it. A very small amount is exported of bass.

The Deputy of Grouville:

So, the professional fishermen - for the want of a better word - or the licensed fishermen sell predominantly to the local market, they do not export?

Mr. M. Smith:

In terms of bass, yes. They land most of their catch on Jersey. Of that the majority is exported to France for shellfish and some of them do land directly into France but that is becoming increasingly difficult with Customs.

Deputy M.R. Higgins:

The evidence that we have had is that most of our Jersey commercial fishermen do not go after bass anyway, they only do it to supplement their income when other things that they are fishing for are reduced. So, it is not quite correct then to say that there is a large number of them doing it or putting their catch into the Island.

Mr. M. Smith:

Well, the question was what did commercial fishermen do with their catch and I was answering in respect of commercial fishermen in general, not just in respect of bass. But I would agree with you that there is only a limited number who specialise in bass and that is only a part of their income but possibly quite an important part of their income.

Deputy M.R. Higgins:

In fact we have received evidence to say that it is a very small number, I am just looking for the figures now, but we are talking about a handful essentially, or maybe no more than 2 handfuls - put it that way - of fishermen engaging in bass fishing.

Mr. M. Smith:

Yes, of the full time commercial fishermen. I do not have the figures at my fingertips, but I do not think we have more than 80 full time commercial fishermen. I would be surprised if we have got that many.

The Deputy of Grouville:

Has there been an economic impact survey done as to what these supposedly illegal fishermen or unlicensed fishermen cost the professional fishermen?

Mr. M. Smith:

No, there has not.

The Deputy of St. Mary:

To go back to the exporting of bass issue, if the price in the U.K.(United Kingdom) is higher than the price in Jersey, which we are told that it is, and if the price was unsatisfactory in Jersey for some reason, what is to stop commercial selling into the U.K.? Is there anything to stop them selling to the U.K.?

Mr. M. Smith:

There is nothing on paper to stop them selling into the U.K. at all, but the reality is that you have to send a reasonable quantity to make it worthwhile, because obviously the transport costs and everything else.

Deputy S. Pitman:

Can I just go back to Deputy Labey's question about the survey? From what I understand there is no actual evidence of the impact financially on the commercial fishermen, is that correct?

Mr. M. Smith:

That is quite correct, yes.

Deputy S. Pitman:

Can I ask then what you have based these regulations on if you do not have that kind of evidence?

Mr. M. Smith:

We have based these regulations on the number of complaints that we receive about unlicensed fishing.

Deputy S. Pitman:

How many complaints have you had?

Mr. M. Smith:

I am sorry I have not got those figures, but normally it is quite a few spurious complaints that one cannot take too seriously and 3 or 4 proper well-founded complaints each year.

Deputy J.M. Maçon:

Are these throughout the year or just at specific points during the year?

Mr. M. Smith:

We have had less lately. It is difficult to say. I would say it is spread over the year.

The Deputy of St. Mary:

Going back to the impact study which is quite important, are there other factors that might depress the price of fish apart from anglers taking fish or recreational fishermen taking fish? Are there any other factors you can think of that would bring the price of bass down?

Mr. M. Smith:

There are other factors I am sure: the availability of farmed bass, the type of bass that restaurants like to serve. We were told by restaurateurs a number of years ago that they would be very opposed to the size of bass going up, for example, because they like to be able to sell a plate-sized portion, which is just sized, and obviously that is good for them commercially. Recently we have been told by chefs that they prefer being able to cut fillets out of bigger bass. So, bigger bass is fetching a premium price. So, the market does fluctuate, yes, you are absolutely right.

The Deputy of Grouville:

Going back to that point, do you believe there are conservation measures that ought to be in place about fishing small bass?

Mr. M. Smith:

There certainly could be more conservation measures in place, whether there is a need for them I am not really qualified to say. What impact they would have I am not really qualified to say. One of the things we do not know very much about is where bass come from, go and how they live. Guernsey did some tagging work a number of years ago and certainly there was evidence that bass from Guernsey had been found as far up as Norfolk and as far round as round the Brittany peninsula, on the west Brittany coast. Now, I think it would be fair to assume that our bass are probably similar, but we do not know that for sure. The Marine Resources Panel has, on many occasions, looked at bass conservation measures. On the last occasion we brought a U.K. bass expert over and that prompted quite a lot of dialogue. At the time bass fisheries were very, very strong. The theory was due to the decline in species such as cod, cod has been displaced out of the English Channel and there were lots of food, therefore, left for species like bass and the bass stocks in the English Channel had really, really increased massively. Since then I think it would be true to say they have probably shown less strength and indeed this year the bass catches are particularly low. The panel is, at its next meeting, looking again - they look almost every 2 years - at increasing the size of bass, and there is a recognition that it would be good to do a bass tagging exercise provided it could be done within the resources we have got.

The Deputy of St. Mary:

If there was a conflict between the chef and the bass stocks whose side would the panel be likely to come down on? Because if the chefs are demanding 36 and 36 is incompatible with bass management who wins?

Mr. M. Smith:

No one wins because the panel is only an advisory body and the panel would make a recommendation to the Minister. The Minister would then make his recommendation to States of Jersey and it would be ...

The Deputy of St. Mary:

But in the overall scheme of things if you have got the chefs, for the sake of argument, and they stick with their bass to fit the plate and bass to fit the plate is inimical to bass management, fisheries management, then there has to be a discussion about that and there has to be a direction in which that is going to go.

Mr. M. Smith:

Yes.

The Deputy of St. Mary:

Any comments?

Mr. M. Smith:

I think it would be an interesting discussion as I am sure you are aware. I do not think any particular side would win. I think it would just be that the facts would be reported to the Minister.

Deputy M.R. Higgins:

Right, I just want to go back because we are drifting over all sorts of things. I just want to look at a number of things. One you mentioned about farmed bass basically sea farming; do you have any idea of the quantities that are being imported into the Island and sold within the Island?

Mr. M. Smith:

No, I do not.

Deputy M.R. Higgins:

So, basically we have got a situation where we have a problem that has been identified that we have had people complaining to you that recreational fishermen are catching fish which they are selling and, therefore, depressing prices, but we have no idea of any loss of income, we have got not figures at all, nor do we know how much bass is coming in from the sea farms, which could also depress the price. So, I am struggling to see why we are bringing this measure in without having any real evidence that there is really this problem.

Mr. M. Smith:

Well, we have seen fish going into restaurants but we have been powerless to act about it so we do know it is happening. I agree we do not have the figures but I suggest that the restaurants that are buying bass knowing full well that it is coming from unlicensed sources are probably the sort of people who are not putting that in their books. So, it would be very difficult to quantify, but it is something that fishermen, without a shade of doubt, complain very vigorously about. They pay a lot of money for their licenses and they are subject to an awful lot of controls, increasing controls, on those licenses. So, the attraction for fishermen is not to have a license.

Deputy M.R. Higgins:

No, I can understand their complaints if they feel that they have been suffering in that way, but for

example when you mentioned the numbers of complaints, are they from the same people every year?

Mr. M. Smith:

No, certainly not.

Deputy M.R. Higgins:

So, would you be able to furnish us with names of people over the years - names and numbers of people - who have complained, not that we would publish them, just so we can see?

Mr. M. Smith:

I would be very reluctant to publish names but I can certainly ...

Deputy M.R. Higgins:

Well, we would not publish the names but we would like to see the evidence.

Mr. M. Smith:

We could certainly give you some record of the complaints we have had, yes.

Deputy M.R. Higgins:

Okay, thank you.

The Deputy of St. Mary:

On bag limits, you are proposing to bring them in as a means of affecting the market and you also make reference to items being brought in elsewhere in your evidence. I wonder whether you can tell us why they were brought in elsewhere in different jurisdictions as part of your case.

Mr. M. Smith:

I think that most jurisdictions now recognise the value of the angling industry to those jurisdictions. Angling is a very, very popular sport. It does involve a lot of money without a shade of doubt. You need to be able to keep a good stock for those anglers. Anglers need to feel they have got a realistic expectation of catching. Australia, for example, has, I believe, got bag limits for virtually every single species now. Since we last came to Scrutiny it has transpired that France has introduced bag limits for the English Channel and the North Sea for - not bass - sole, plaice, whiting and cod of 10 fish per boat per trip, and somewhat more surprisingly have introduced in June 2009 a regulation whereby recreational fishermen have to make a mark on every single fish they catch before it is landed.

Deputy S. Pitman:

Can I just ask? The bag limits you have just spoken of in different countries are they for conservation measures or are they on recreational fishermen?

Deputy J.M. Maçon:

Or to protect the commercial price?

The Deputy of St. Mary:

Or to protect the commercial ...

Mr. M. Smith:

Really anything I could say would be a guess. I would guess in France there is a certain amount of both of those measures because looking at the species they are targeting - the sole, plaice, whiting and cod - they are all species of which the E.U. (European Union) has been mooting the introduction of limits on recreational anglers in any case, so France is possibly wanting to get in first. The commercial fishing

lobby in France is very strong and undoubtedly would have had some impact on the introduction of those bag limits.

Deputy M.R. Higgins:

Certainly some of the fish you have mentioned there are definitely shortages of those fish. So, you can imagine they were for conservation reasons. I know that Australia and all the others that we have looked at are for conservation rather than protecting livelihoods. Do you have a comment on that?

Mr. M. Smith:

Well, what is the point of conserving fish if it is not, I am afraid, to protect someone's livelihood? It is possibly the livelihoods of the shops that are selling the fishing tackle, it might be a commercial fisherman; there are many, many reasons for doing it. It is not just purely the desire to have those fish around for the future. It is the desire to have them round for the future and accessible to anglers or commercial fishermen, or whatever else it is that wants to target them.

The Deputy of St. Mary:

So, can you give us fairly shortly, because the report will have to be written quite soon, evidence of why bag limits were brought in elsewhere, like written statements by governments saying why they are doing it, and also the other measures because we have been informed by other witnesses that it is always part of the package? Again, your comment on that and can you provide evidence of this, because you are using this as an argument for bringing them in here.

Mr. M. Smith:

I am not using it as an argument to bring it in here. We are bringing it here because we feel we need it to conserve the ormer and to improve the value of a license - for the want of a better expression. I think it is Scrutiny that has asked for examples of what other jurisdictions are doing. It is not us that have proposed that as a reason for doing it, although I have to say it does seem to be quite well respected in most fisheries' jurisdictions, the need for bag limits.

The Deputy of Grouville:

So, we are using this law for 2 things really: one, for conservation and (2) to protect the commercial element of the local fishermen.

Mr. M. Smith:

That is correct, yes. I mean the ormer is a conservation measure and also a measure to share out the existing catch between the recreational fishermen who are targeting it. So it is conservation and perhaps fairness of catch. But for the bass and the lobster it is not being introduced as a conservation measure, it is being introduced because we have had complaints of unlicensed fishing, because we have evidence of unlicensed fishing and we feel that it is the easiest, least bureaucratic way to introduce some reliable system of stopping those illegal activities.

Deputy S. Pitman:

I understand that you are proposing volunteers to police this and you only have one at the moment who has come forward. How is it going to be policed if you do not have those volunteers that you are looking for?

Mr. M. Smith:

We have got one volunteer, that is quite correct. We have put ...

Deputy S. Pitman:

How many do you need?

Mr. M. Smith:

One seems to be very adequate. He does one evening and one afternoon on the weekends virtually every week. We ourselves work out of hours as well. It is no different to enforcing the minimum size limits. Most people are very law abiding and would not wish to breach a regulation if it came in. As you have probably seen from most of the correspondence, very few people catch more than that quantity in any case. The only people who are catching it on a regular basis I would suggest are those people who are intending to sell it, certainly with respect to bass. We do not see it as a difficult issue to police. One of the ways we currently police the minimum size is we go around lifting the store pots in the various bays and we open the store pot and measure all the fish inside and put the store pot back in exactly the same way we found it. This is exactly how we would police the bag limit for lobsters. We would very easily be able to cover that. Because of the complaints we get and because people are quite often happy to tell us about what is going on with other fishing boats we would receive quite a lot of intelligence, we would not be concerned with every single person who is going out bass fishing or lobster fishing would be breaching the regulations, but we would be targeting those people we currently would wish to target to make sure that they are not breaching the regulations.

Deputy S. Pitman:

So, one volunteer is the ideal number then, is it, or would you need more? I understand that you are still looking.

Mr. M. Smith:

No, we are not still looking. In fact we have declined 2 volunteers since we took our one volunteer on. We feel it is better to have one well-trained person who is quite dedicated to the job and quite easily managed - for the want of a better expression - than having a number of volunteers. Originally we did take on 4. We spent quite a lot of time training them up; they were all honorary police officers, but, I think for quite justifiable reasons of their own, they felt they would prefer to work for their constable than to work on an Island-wide mandate and so they dropped out. But since taking on our volunteer we have had 3 people who we have asked and would wish to be considered if we decided to take more on.

Deputy M.R. Higgins:

With what you have just said I must admit I am beginning even to wonder about the enforceability of this law in the sense that if people have storage pots out at sea and if they put all their fish - whether it be lobster or they put in bass - into that and come to the shore and unload, say, 5 fish or whatever, put it in their car, then go back out in their dingy to their little pot and pick up another 5 then it is a separate journey each time, is it not? So, how would you be able to enforce that?

Mr. M. Smith:

It is indeed but the regulation does say in your possession at any one time, so if they had 5 in their car and 5 in their boat and 5 in their store pot ...

Deputy M.R. Higgins:

I think that is stretching it if it is in your car.

The Deputy of St. Mary:

Then you would have 3 officers to watch each of those.

Mr. M. Smith:

Indeed, but what is the most likely scenario is that we would find a store pot with a significant number of lobsters in it, or we would find a boat landing at 8.00 p.m. one evening with a significant number of lobsters.

Deputy M.R. Higgins:

As I say, if the guy is coming ashore, when he steps ashore if he has only got 5 in his possession that is what you are counting, you cannot see what is in his car, so if he goes out 2 or 3 times and does it ...

Mr. M. Smith:

That is precisely what the regulation says. It is in their possession. It is not a bag limit as such. It is a possession limit for that period.

Deputy M.R. Higgins:

I think that gives me concern in terms of the law.

Deputy J.M. Maçon:

Does that not open it up to say if you have bought 5 fish from the market, they are in your possession, can you not be done under this law?

Mr. M. Smith:

There is a defence in the law that you would be able to prove that you bought them from the market, those 5 from the market, and that would be entirely acceptable. This is why we particularly like this bag limit regulation. If we walk into a restaurant where we suspect has been buying unlicensed fish and they have, for argument's sake, 7 bass on the counter, it is for them to prove that they bought them from a licensed fisherman, not for us to prove. It is the opposite way of most burdens of proof. If they have bought them from a commercial licensed fisherman then they do not have an issue, but if they cannot prove that they have bought them from a licensed commercial fisherman then they have a problem.

Deputy M.R. Higgins:

Sorry, is that the law at the moment?

Mr. M. Smith:

That is the proposed bag limit regulation.

The Deputy of St. Mary:

No, no, no. Sorry, you are now talking about selling and receipts - that was not in the bag limit law. I did not see anything about receipts in the bag limit law.

Mr. M. Smith:

No, there is nothing about receipts but if you look at the burden of proof, the extension ... Statutory Defence: "When a person is charged with an offence under Article 4 of the law ..."

The Deputy of St. Mary:

Sorry, which page are you on?

The Connétable of St. Clement:

Eleven.

Mr. M. Smith:

It is the Statutory Defence, Regulation 7.

The Deputy of St. Mary:

Yes, sorry. Carry on.

Mr. M. Smith:

“When a person is charged with an offence under Article 4 of the law, by reason of contravention of a provision of Regulation 5 by any person, it is an defence to prove that the number of fish retained, in excess of a bag limit per dish of that description, was not taken at the contravention issue of Regulation 4.” So, in other words, if the fish has been legitimately taken then you have a defence.

Deputy S. Pitman:

So, why can you not employ an audit trail regulation which would ... sorry, I have lost ...

The Deputy of Grouville:

Where you could put the onus on the restaurant, for example, or the shops in the fish markets to prove where they got their fish from, a receipt.

Deputy S. Pitman:

Would that not be less bureaucratic and ensure ...

Mr. M. Smith:

Well, that is precisely what we are doing.

Deputy S. Pitman:

Would that not ensure though that if somebody is breaking the law that seems to me a much easier way instead of a person can have 5 in their car, 5 in their boat, 5 in their house?

Mr. M. Smith:

I would agree with you. The problem is that the Fisheries Law allows us to regulate what happens to fish when it is taken off the boat, but it does not allow us to regulate the sale of the fish, therefore, what we are regulating here is a bag limit. So, the onus is on the restaurant to prove that those fish were not taken in contravention of a bag limit regulation. Yes, it would be good if we could say they must be bought from a licensed fisherman. Do not forget as the regulations stand at the moment there is nothing to stop an angler, a shore netter, a shore line setter selling fish. They do not need a license for that so there are lots of legitimate sources that restaurants and commercial premises can buy from other than licensed fisherman.

The Deputy of St. Mary:

The shore line setters do not come under this law, as I understand it, is that correct?

Mr. M. Smith:

The Minister will be asked to make an exemption should the regulation come in for commercial fishermen using lines or nets on the shore and for those individuals who have previously earned money doing so. So, we would not be stopping people who are currently doing it, but we would not envisage new people starting.

The Deputy of Grouville:

I still cannot understand why it would not be up to the purchaser to prove that they bought their fish from a licensed person.

Mr. M. Smith:

Yes, that could be done but we would have to amend the Fisheries Law to include regulations relating to the sale of fish.

The Deputy of Grouville:

So, why could you not just do that rather than imposing bag limits on all fishermen, including recreational fishermen?

Mr. M. Smith:

We could do that and indeed the U.K. and the E.U. have a set of regulations called the Buyers and Sellers Regulations which do precisely that, but they are incredibly bureaucratic and Simon obviously, and myself, and indeed the members of the panel, were very keen not to introduce those regulations because invariably they are very, very complicated. At what point do you draw the line between someone being a commercial fish buyer and someone not being a commercial fish buyer?

Deputy J.M. Maçon:

Whether they have got the license or not.

Mr. M. Smith:

No, I am talking about restaurants and commercial premises if you want the burden of proof to be on them.

Deputy M.R. Higgins:

You still do not have that under that law. We have just been looking through it and we cannot see any provision in this law that you could use against a restaurateur.

Mr. M. Smith:

Well, a restaurant is not a person with more than 5 lobsters.

Deputy M.R. Higgins:

The law is designed against people who are out fishing, like recreational fishermen or others who are going out and collecting it, it is not to stop restaurateurs having more than 5 fish in their possession.

Mr. M. Smith:

Well, I am sorry, I must correct you there. Regulation 4 - you are quite correct - relates to the act of fishing but Regulation 5 is all people. Regulation 5: "A person shall not retain in his or her possession ..."

Deputy M.R. Higgins:

Again, I think you are stretching the law here, in the context in which this law is being written it is not meant for restaurateurs. I would oppose it on those grounds alone because it seems to be stretching a Fisheries Law into general legislation in the Island as to who can have what.

Mr. M. Smith:

Well, we briefed to the Law Draftsman precisely that was what we wished to achieve and this is how he has achieved it.

Deputy M.R. Higgins:

Sorry, you wish to achieve what? Can you repeat clearly?

Mr. M. Smith:

We wish to achieve that anybody in possession of fish in excess of a bag limit, whether it was a restaurateur, a fisherman, someone driving a vehicle ...

Deputy M.R. Higgins:

Or anyone with a barbecue, for example, if he has got 5 fish or more than 5 fish you could come along

and say: “Where did you get your fish from?”

Mr. M. Smith:

Exactly, yes.

The Deputy of St. Mary:

What would be the defence?

Mr. M. Smith:

The defence would be ...

The Deputy of St. Mary:

No, the actual defence, not the defence in the law, but how would that defence express itself in reality if somebody is sitting there with 8 fish round a barbecue, what would their defence be in practice?

Mr. M. Smith:

He would say: “I caught 5 today and I took 3 out of my freezer,” or: “I brought 4 today and my colleague over here brought 4 that were in his possession.”

The Deputy of St. Mary:

How verifiable are those statements, those 2 statements you have just said?

Mr. M. Smith:

We really would not be that concerned because if they were at a barbecue we would not be concerned they were being taken for sale from an unlicensed fishing boat. It would quite clearly be some people who have caught their fish and are having a barbecue.

The Deputy of St. Mary:

The target is people selling to businesses, is it not?

Mr. M. Smith:

Yes.

The Connétable of St. Clement:

That is not what we are interested in, is it? We are interested in protecting the commercial fishermen from a small number of people who are absolutely flouting the principles of the regulations. Article 5, it is quite clear; the explanatory note says that it prohibits the retention of fresh fish by a person in excess of the bag limit for the species concerned. “The prohibition applies when the fish kept exceeded the personal bag limit, or the bag limit per vessel.” That is about people putting ...

Deputy M.R. Higgins:

When you back to that explanation ... in fact 2 things by the way, I must make a point the law is inaccurate anyway; you have got a fundamental error there in the law which is contradictory to what is in the initial explanation and that is to do with the fine. On the report at the front you say it is up to a maximum of £20,000, when you look at the law it says: “£20,000” not “up to”.

Mr. M. Smith:

Yes, I have checked that with the Law Draftsmen who colloquially refers to this as the Australian version. You can write a maximum fine either way. It is quite correct, you are liable to a fine of £20,000. That does not mean you will get a fine of £20,000.

The Deputy of St. Mary:

It has led to a lot of misunderstanding out there.

Mr. M. Smith:

Yes, absolutely. As it happens I was at the Economic Development law drafting meeting last Tuesday and apparently a lot of the flawed regulations were worded in a very similar way and it has caused a lot of misunderstanding there, but that is not the fine that will be levied; that is very much the maximum. David Hull(?) is quite happy for you to speak to him on that.

Deputy M.R. Higgins:

It is David Hull, is it? I was going to ask you who the Law Draftsman was.

Deputy S. Pitman:

Can I just ask then? You have got 2 parts of this law. You have got the bag limits which there you will be after people who are over the limits and that person could be over the limit or they could have 5 in their boat, 5 in their car, 5 at home. On top of that you have got Article 5 where somebody is retaining ... that means you could be going to restaurants and looking at where they have got their fish from. Surely that is more bureaucratic than just going on an audit trail? Also, there, my understanding is that you have got a law which you have admitted that you will not be policing.

Mr. M. Smith:

Well, I have not said we will not be policing it but people will be able to come up with explanations that will satisfy us relatively easily.

Deputy S. Pitman:

Yes, but you said you will not be going round people who are having barbecues who have been fishing in excess.

Mr. M. Smith:

No, I do not have powers to enter anyone's private land, so I would not be doing that in exactly the same way as I do not go to people's houses to look for undersized fish ...

Deputy S. Pitman:

So, you will not be policing that part of the law.

Mr. M. Smith:

No.

The Connétable of St. Clement:

Not as far as private individuals ...

Mr. M. Smith:

But as far as commercial premises are concerned ...

The Connétable of St. Clement:

... but as far as commercial premises, which is what the issue is all about, is commercial premises, it is not you and me having a barbecue. It is about these people who are going out in boats bringing in large numbers of bass and lobsters, selling direct to restaurants and suppressing the price. That is what it is all about.

Deputy S. Pitman:

So, you have got the 2 parts of the law then, why is that less bureaucratic than just controlling these illegal actions by an audit trail?

The Connétable of St. Clement:

Well, at the present time it is not illegal for a restaurant to buy fish from an unlicensed fishermen or a recreational fishermen, it is not illegal, am I right?

Mr. M. Smith:

You are correct. Unless they knew it was illegal ...

The Connétable of St. Clement:

Then you let them prove it. This makes it absolutely clear that the restaurateur, if they have more than 5 in their possession, must be able to show that they have purchased it from a licensed fisherman.

The Deputy of Grouville:

But that could be achieved by amending the law and not introducing the bag limit?

The Connétable of St. Clement:

Well, no, you need a brand new law.

The Deputy of Grouville:

I thought you said before there could be an amendment.

Mr. M. Smith:

We would have to amend the main Fisheries Law or indeed create a new Fisheries Law.

The Deputy of Grouville:

Yes, so you could just amend the law and not introduce bag limits.

Mr. M. Smith:

Yes, and then we would still really be back to the starting point because we could not insist that restaurants only buy from licensed fishermen because there are lots and lots of other legitimate sources of fish that restaurants can buy, other than licensed fishermen.

Deputy M.R. Higgins:

Could I ask, by the way, have you run this by the Law Officers, not the Law Draftsmen, the Law Officers, because I really do believe you are going beyond what was intended in the law. Certainly from the wording of ... even if you look at the beginning of ... the explanation of, I think it is, Article 5 at the front. It is broken down into 2 parts, you have got ... okay, so Regulation 5 prohibits the retention of fresh fish by a person in excess of the bag limit of the species concerned. The prohibition applies whether the fish kept exceed the personal bag limit or the bag limit per vessel. It implies therefore - this is in the report part - that it relates to a vessel for people who are fishing, not restaurateurs. I am pretty certain that you are stretching the law. If you think you are going to achieve ... have something that is going to work against restaurants, I think you are sadly mistaken.

Mr. M. Smith:

I think you will find the reference there is to the fact there are 2 separate schedules, one of which is bag limits per person for fish and the other is bag limits per vessel for fish.

Deputy M.R. Higgins:

Where are you referring?

Mr. M. Smith:

The schedules.

Deputy M.R. Higgins:

The schedules at the back.

Mr. M. Smith:

My advice from the Law Draftsmen on previous occasions has been that the expiratory note in no way forms any part of the Act and regulations?

Deputy M.R. Higgins:

No, I know that, but again even what you have told me today as extended the law far further than I thought it was at first reading and I think there will be an awful lot of people who would be most upset to hear how far you are planning on taking this law.

The Deputy of St. Mary:

If someone was having a barbecue on public land with 8 fish, they would come within the purview of this law?

Mr. M. Smith:

Exactly. In exactly the same way they would come within the minimum size regulations. At the moment a housewife with a mackerel that is one centimetre undersized, that she has bought at the fish market, is liable.

The Deputy of St. Mary:

Maybe, okay. Can I ask in more general terms, have you evaluated the enforceability of this proposed bag limits law with a proposal like Deputy Labey said, or Deputy Pitman, of following the audit trail from the restaurant where you have a different law. How can you evaluate those 2 alternatives formally?

Mr. M. Smith:

I am sorry, I do not quite understand the audit trail concept because, to me, to enforce this I would go to a restaurant, they would have 20 undersized bass that they would declare were farmed and they would have 20 bass that they were obviously not farmed. The 20 bass that were declared as farmed, in accordance with exactly the same procedures that we have got now, they would produce paper work to show where they bought them from, to show that they are farmed bass, and the 20 bass that were not farmed, they would produce a receipt note to show they bought them from a genuine fishermen or one of the fish suppliers in the Island. So I would then be able to follow that audit trail ... I would be following an audit trail, I would ... it would not be something different.

The Deputy of St. Mary:

That is precisely what 3 witnesses have told us at least, that would be more or less what you would do. I just wondered whether you evaluated formally how enforceable that would be versus how enforceable this bag limits alternative would be. Is there any piece of paper that says: "We have looked at this" and then you spell out how you would enforce it and then we can make a judgment, and the public and the States can make a judgment, as to which is more enforceable?

The Connétable of St. Clement:

They are both same. Mike has explained, that is exactly what he will do under this law. If this law is approved that is exactly what the Fisheries officers will do.

Deputy J.M. Maçon:

That is part of it, yes. I think the issue we are having is the idea is to specifically target restaurateurs, those buying black fish. This is a blanket law against everyone, so what we are trying to get at is why not just specifically target those who are buying these black fish as opposed to a blanket law over everyone?

The Connétable of St. Clement:

As opposed to those who are catching them and selling them?

The Deputy of St. Mary:

It seems that you are doing an indirect thing. You are following an audit trail in order to catch somebody who is not ... to make sure they are within the non bag limit people, i.e. commercial. That seems a long way around to people in the street from just saying: "Where did you buy it?" "Not licensed", bingo.

Mr. M. Smith:

I think it has 2 parts. It is to catch the fishermen and to catch the buyer as well, because we would still envisage that we would find fishermen who did exceed the bag limit, who we quite clearly suspected were exceeding it for commercial purposes. Not many people exceed the bag limit, certainly on bass, in our knowledge. We very rarely come across a boat with more than 5 bass on board. That is 5 bass per angler.

The Deputy of St. Mary:

So what makes it really puzzling is that ...

Deputy M.R. Higgins:

Something that I find as well is the fact that you are using a reverse onus on the people concerned. So, in other words, the person who is guilty, if they have the fish in their possession, have to prove their innocence rather than you prove that they are guilty.

The Deputy of Grouville:

If I could just go back to the economic reasoning behind this and the fact that you said that no economic survey has been done on the impact this will have or this has, this illegal selling has, on the commercial fishermen. If I could quote what the Economic Development Minister said at our first meeting. He said: "There are, we believe, something in the order of 1,800 or so people who embark upon social fishing at a different degree and of course they themselves contribute to the economy." Could one of you expand on how they contribute to the economy?

Mr. M. Smith:

Eighteen hundred was the figure reached at in the report, which I think we forwarded to you, that was done by Shelly Hawkins(?). I think that 1,800 figure is 1,800 who regularly fish. I think you will find there are quite a few more people who fish irregularly. But we are looking at a figure of 1,800 people who have a pretty big interest in fishing. The way they have commercial impact in Jersey is by buying equipment from the tackle shops, by having boats with outboard motors that need servicing. It is all those kind of areas that he was referring to, I believe.

The Connétable of St. Clement:

Anybody who participates in any sport in some way is contributing to the economy by the money they spend on their sport.

The Deputy of Grouville:

Has an impact assessment been done on what impact this may have on the tourism industry, the anglers that come over here to fish and ...

Male Speaker:

The events around that.

Mr. M. Smith:

There has been no study as such but we do have Peter Gosland's(?) comments at the panel, which I think I forwarded, where he felt it would be advantageous to tourism. I have subsequently seen comments from Peter Gosland that refute that. So it is difficult to know but anglers who come to Jersey to go fishing ... particularly to go fishing as opposed to coming over here for some other reason, need to be convinced that there is a good regulation in place. That they are likely to catch fish and this sort of thing, they are very well used to in other jurisdictions and I would feel would help, but that is just my personal view. There is no ...

Deputy M.R. Higgins:

But that is a conservation argument, is it not? Making sure that we are maintaining our fish stocks. It is not an economic argument for protecting the livelihood of commercial fishermen, is it?

Mr. M. Smith:

I agree but I touched on it, I think, last time I came. Although I would not view it as a conservation measure for the whole bass species, there can be no doubt that if you have the same number of people fishing in the same finite area where the bass currently are and they are able to take less out then there will be more for more days. So the person who comes along 3 days later will still stand a better chance of catching one.

Deputy M.R. Higgins:

Would it not also be better then to have size limits therefore the smaller fish which people have been catching ... the fish do not spawn, they do not get through a full cycle, would it not be better to have size limits rather than actual numbers of fish?

Mr. M. Smith:

We do have a size limit. The size limit is below the size of maturity, which is not a good thing, but we have already discussed that. We have mesh size limits. There is a long history of mesh size limits which, at one point, were well above what was used elsewhere so that small fish should be able to escape to an extent. We have sizes of hooks that people are allowed to use which should guarantee that they are not catching really small bass. But, yes, there are other measures that could be brought in.

Deputy S. Pitman:

Could I just ask, going back to the tourism, fishing tourism, we have had witnesses who say that it may have had an effect already, the talk of these regulations coming in on that industry. What would you say to that?

Mr. M. Smith:

I do not know what sort of effect they are referring to, positive or negative?

Deputy S. Pitman:

Negative.

Mr. M. Smith:

A negative effect?

The Connétable of St. Clement:

Why would it be negative?

The Deputy of St. Mary:

Like the fishing magazines do not like bag limits basically unless they are introduced for conservation reasons. They certainly do not like them if they are introduced to protect commercial fishermen, and that has an immediate spin off, we are told, on the desirability of Jersey as a destination for this sport. I just wonder whether you have checked that assertion with anybody, the one where you said ... on our first encounter you mentioned that this measure would show the visitors that there is some sort of control of the stocks. Have you checked that with any other source?

Mr. M. Smith:

No, we have not.

Deputy M.R. Higgins:

One of the things that worries me about this proposed law is the fact that we know there is a very small number of people, can you quantify ... you say you know who these people are, how many people are we talking about?

Mr. M. Smith:

It varies. It is not always the same people, it tends to be a sort of pattern. People will come and go, if you know what I mean? It is a very small number but, as I think I said before, it is a very small number of professional bass fishermen. So there could be perhaps ... I would not say there are more than 10 commercial bass fishermen who earn a large part of their living from commercial bass fishing. There is possibly more like 6. So you only need 2 or 3 people who are outside the licence system who are fishing in a similar way and you can imagine the impact that will have on the local landings. But I cannot quantify it, I am afraid.

Deputy M.R. Higgins:

You see what we are coming down to is the thing about proportionality. If we have got 2 or 3 people who are the miscreants who are causing this problem, and you are going to bring in a law that will make it an offence for anyone to have more than 5 fish in their possession, which is what you are saying, then the burden of proof is on you to prove that you got it from somewhere else, we are putting an awful lot of people into an awful lot of problems. In other words, you seem to be using a sledgehammer to crack a nut here.

The Connétable of St. Clement:

Five fish of a certain type. Five fish of a particular type, not 5 fish.

Deputy M.R. Higgins:

No, I accept that. It is 5 of a particular species.

The Connétable of St. Clement:

It is 5 bass, 5 lobster or 20 ormer and nothing else.

Deputy M.R. Higgins:

But it does seem to be that the way we are going about this that the law is not proportionate to the particular problem. In fact, what I want to do - before I forget, and I will forget otherwise - I will deal with it now, the proposed law will give the Minister the power to bring in bag limits on other species.

The Deputy of St. Mary:

Check that is true.

Deputy M.R. Higgins:

It is. It is.

Mr. M. Smith:

That is not correct, no. I think the reference there is that once the framework is in place it will be easier to add other species to it but those other species could only be added by amendment to the regulations. So it could not be added by the Minister, by himself or by a ministerial decision.

The Deputy of St. Mary:

How would that work? Can you explain exactly how that would work?

The Connétable of St. Clement:

Proposition to the States.

Mr. M. Smith:

It would have to go the States.

The Deputy of St. Mary:

So you would make a similar order to this one?

The Connétable of St. Clement:

It would not be an order, it would be a regulation to the States.

The Deputy of St. Mary:

Introducing another species to the ...

The Connétable of St. Clement:

Yes, it would be a ... if it were to happen it would be that the Minister would bring a proposition to amend the schedule.

Deputy M.R. Higgins:

It says here, for example - maybe I have got the wrong end of the stick, and perhaps you will explain to me where I am going wrong - this is Article 3, it says: "Exemptions: the Minister may, by notice published in the *Jersey Gazette*, specify (a) a class of persons who shall be eligible for an exemption under paragraph 2; (b) a period during which application for such an exemption may be lodged." Then it goes on to say: "On the application in writing of a person of a class to whom paragraph 1 refers, the Minister may in writing grant the person an exemption for the requirements of Regulations 4 and 5(1) so far as those requirements relate to the fish that are taken from the seashore for commercial purposes. The Minister may limit the exemption by specifying in it a description of the fish to which it applies, the number of fish to which it applies, the period to which it applies, method of fishing and the area of the seashore." Can you explain that particular article to us then, exactly what is happening here?

Mr. M. Smith:

Yes, absolutely. This was added after the original drafting began and just prior to the regulations being recommended by the panel. It was realised that the regulations would apply to everyone full stop and there is an element of people who go down the beach. In the winter it tends to be fishermen with commercial fishing boats who, if it blows for 6 weeks - as has happened sometimes - need to earn some

money so they will take some nets down to Greve du Lecq or Seymour Tower or somewhere and they will set the nets, catch the fish and sell them. There is also another element of people, not very many, but there are one or 2 in the Island, who have nothing to do with fishing boats but go down the beach, set nets, set hooks, set lines, and fish commercially and sell those fish. In the same way as when we brought in the fishing boat licensing regulations in, it was felt it was unacceptable to penalise those people who are earning an income from that fishing activity and therefore the Minister should be able to exempt them from the bag limit.

Deputy M.R. Higgins:

So, in other words then, you do not have to be a commercial fisherman with a boat or a license but you can be a commercial fishermen going out with nets. How do you define a commercial fisherman in that sense?

Mr. M. Smith:

It would be someone who had sold catch from that activity.

Deputy M.R. Higgins:

As of when? A particular date or can it be anybody? Can I get some nets and go out and try and catch fish?

Mr. M. Smith:

It would be someone who had done it before the regulations came into effect.

Deputy S. Pitman:

But that does not apply to exports from the U.K.? Do you get exports of bass from the U.K.?

Mr. M. Smith:

Bass is brought in from the U.K., yes.

The Connétable of St. Clement:

Bit like the grandfather clause, Mike, what we are talking about there. People who have been conducting that activity would not be penalised but no new people would be allowed to come in and do it.

Deputy M.R. Higgins:

But, again, that has not been specified. For example, when you consulted on this, let us move on to consultation for a moment here ...

The Deputy of St. Mary:

Let us not.

Deputy S. Pitman:

I just wanted to ask one question. I wanted to know what the impact on these commercial fisherman ... well, firstly a farming fisherman who farms fish, are they considered commercial?

Mr. M. Smith:

No, they are exempt from this under an exemption under the Fisheries Law for mariculture.

Deputy S. Pitman:

Do you know then how much exports of bass and farming ... fishermen who farm, how much of the market they take up in Jersey?

Mr. M. Smith:

Sorry, are we talking about fish coming into Jersey or fish going out?

Deputy S. Pitman:

We talking about how much of the market ... fishermen who farm and those who bring the bass into the Island, how much of the commercial market do they impact on?

Mr. M. Smith:

I think bass is quite significant but I do not have any figures.

Deputy S. Pitman:

What I am trying to find out is how much impact they have on the commercial fishermen compared to the illegal sellers?

Mr. M. Smith:

I do not know but there is a lot of farm fish imported into the Island. I know that from when I checked the fish market myself. A lot of the restaurants will not serve farm bass, they only like freshly caught bass.

Deputy S. Pitman:

Some of them do specify that.

Deputy M.R. Higgins:

Can I just ask, sorry, where is the evidence to support that statement?

Mr. M. Smith:

Sorry, which statement?

Deputy M.R. Higgins:

The chefs, for example, do not want farmed fish rather than ...

Mr. M. Smith:

The evidence comes from the fact that the fishermen ... I do not know, I think you have spoken Dan Thomson but the fishermen, the Jersey Fishermen's Association some time ago decided to introduce a tag for fresh caught local professionally caught bass. Indeed, it was another way of trying to tackle the unlicensed fish issue. One that the fishermen introduced themselves. The idea was that bass that was caught by local fishermen and was fresh would have a special tag attached to it that would follow that fish through to the plate. It was incredibly popular but the scheme failed really because some of the fish merchants found it was too restrictive. When there was no local bass available it stopped them selling other bass which they were importing into the Island. There is certainly a desire for locally fresh caught bass.

The Deputy of Grouville:

So could that not be pursued? That scheme not be pursued if it was welcomed by the industry?

Mr. M. Smith:

It was welcomed by the industry. I have to say it was not welcomed universally by the fish merchants.

The Deputy of Grouville:

Who were possibly buying fish from unlicensed fishermen.

Mr. M. Smith:

No, I think, to be fair, it was more the impact of fish that was caught by trawlers that had landed in the U.K. or France and shipped to the Island. It may well have been some unlicensed but I think the real impact was that it meant that they could not sell fish which was not, you know, really fresh fish any more.

The Deputy of Grouville:

Genuine Jersey.

Mr. M. Smith:

We did introduce looking at a 2-tier label. The prime label would be for the hand caught and net caught bass and then there would be local fresh caught bass that is caught in other ways.

The Deputy of Grouville:

Is that not what your department is supporting now, Buy Local?

Mr. M. Smith:

It is, yes.

The Deputy of Grouville:

So what would be the problem in introducing that scheme again?

Mr. M. Smith:

Bass is very ... someone in this room could tell you more than I can, but bass at the moment, for example, is very, very scarce. There is just not enough to supply the local restaurants. The restaurants like to serve bass and there just is not enough being landed at the moment.

The Deputy of Grouville:

No, but if there are 6 local or 6 caught in other waters to choose from then why not show that ... why not offer the difference so people can choose to buy the local ones?

Mr. M. Smith:

Yes.

Deputy S. Pitman:

I may sound a bit ignorant here, but can you not limit exports that come into the Island?

Deputy M.R. Higgins:

Imports.

Deputy S. Pitman:

Imports.

Mr. M. Smith:

No, I think that is probably a bit beyond what we do.

The Connétable of St. Clement:

A bit beyond the Fisheries Law, I think.

Mr. M. Smith:

We did effectively ...

Deputy M.R. Higgins:

It seems to be throwing everything else in so ...

Mr. M. Smith:

We did try to restrict the import of farm bass by applying the size limit to farm bass because it was being sold in the market - in some cases, many years ago - in a way that might have made people think it was local bass and this was causing quite a problem, especially as it was undersized. But, in fact, the Law Officers are insisting that we exempt farmed fish because you are interfering with free trade if we did not.

The Deputy of St. Mary:

Can I start on a new tack, political, loosely called political. There is a number of questions here. The first one would be, do you accept that imposing bag limits in the way that would be done by these regulations has an effect on the lives of a lot of people, almost like a way of life, and the self reliance of the community in the sense of this is what we do? Would you like to comment on how you view that concern?

The Connétable of St. Clement:

I think it is more a perception than a reality because it does not stop one person fishing, angling or whatever, it just restricts the amount of a particular species - or 3 particular species - that one can go after on any particular day.

The Deputy of St. Mary:

But what we have been told is that I go fishing and I get one and get none and then I get one, then I have a good day and get 7 or 8 and suddenly I am not allowed to keep them.

The Connétable of St. Clement:

That is absolutely true. It is extremely rare, extremely rare, that any angler will pick up more than 5 bass in one day. Mike, you know more about that than I.

The Deputy of Grouville:

Five bass but not 5 lobster.

Mr. M. Smith:

Lobsters at the moment are prolific, we are seeing record catches of lobster.

The Deputy of Grouville:

Yes, so if you happen to catch 6 you are liable for a £20,000 fine?

Mr. M. Smith:

No, not if you catch 6, if you keep 6.

The Deputy of Grouville:

If you keep 6.

Mr. M. Smith:

If you keep 6, yes, you are.

The Deputy of Grouville:

So you have got to chuck one back?

Mr. M. Smith:

You have got to chuck one back, yes.

The Deputy of Grouville:

Or land the 5 and go back again ...

Mr. M. Smith:

But you can go out the next day and catch another 5 and you can freeze them down or at the moment you cook them those are no longer fresh fish so they are not subject to the bag limits. Any form of processing at all, it is no longer a fresh fish. So, yes, I would agree that on a day-to-day basis you are restricted to 5 lobsters, but you can store them up. You can freeze them in your freezer.

The Deputy of Grouville:

But you have to land them and then go back and catch some more.

Mr. M. Smith:

You would have to catch some more the next day, yes.

Deputy J.M. Maçon:

Just to clarify, does this law apply to lobster pots or not?

Mr. M. Smith:

It does not apply to pots.

Deputy J.M. Maçon:

Does not apply.

Mr. M. Smith:

The French, for example, do have a 2 pot per fisherman regulation.

The Deputy of St. Mary:

I do not think my original question was answered. It was not about ... the defence is not: "Well, the perception out there is wrong." The question is, taking 1,800 people and having a law that they feel targets them, when they feel that you have got 100 restaurants and outlets, for the sake of argument - or more like 150-200 - that are the problem, it is the business of selling to them and them buying that is the issue, these 1,800 people feel that they are being ...

The Connétable of St. Clement:

I do not know, Daniel. I do not know how 1,800 people feel because I have not spoken to 1,800 people. I have spoken to a number of anglers and one who claimed to speak for another angler spoke to me shortly after the regulations were lodged. I offered to meet with him and his colleagues and he said he would get back to me and they never did. So I cannot tell you how they feel. What I do know is that we have a Sea Fisheries and Marine Advisory Group on which there are ... you have spoken about this at previous hearings I am sure, who advise the department, advise the Minister and we take a significant amount of note of what they say because they are the guys very much at the front line and they were the ones who were 100 per cent in favour of this legislation, which is why this was brought forward. If they had not been supportive of it then it would not have got this far. You know, it was quite some time ago.

The Deputy of St. Mary:

Could we come on to that later because we are going to cover the panel and stuff. There is another suggestion that has been made to us that this is the thin end of the wedge. I just wondered if you would like to comment on that, which wedge and how thin it is and where it could go?

The Connétable of St. Clement:

I have not heard that comment. Can you expand on that?

The Deputy of St. Mary:

We were given that comment because I think the fear is that there will be one species after another that is added.

The Connétable of St. Clement:

But why should that be?

The Deputy of St. Mary:

Well, why should this ... that is the suggestion, I am just asking for your comment on that.

The Connétable of St. Clement:

All I can say there is specific ...

The Deputy of St. Mary:

If you are saying there is no reason to make that comment then fine.

The Connétable of St. Clement:

There is specific reasons why these 3 species have been brought into these regulations.

Deputy J.M. Maçon:

At the moment.

The Connétable of St. Clement:

Of course at the moment otherwise we would not be bringing them at the moment.

Deputy J.M. Maçon:

Well, these specific 3, that does not mean that there are not others where the same reasons might apply.

The Connétable of St. Clement:

Conservation for the ormers and protection of the prices for the commercial fishermen. That is the only reasons. There are, as far as I am aware - and on the best advice I have had so far - no other species to which that would apply. Am I right, Michael?

Mr. M. Smith:

You are right. The only sort of caveat I would put that, and I think I covered it at the last meeting, is the E.U. is beginning to take a real active interest in the catches of recreational anglers and is beginning to take a view that they should come out of quotas. When I last addressed the Scrutiny Hearing, the word was that for certain species like mackerel and pollock - which are quite important here, and others that are less important here - they were going to bring in regulations that meant that every angler who was catching those species from a boat was going to have to have a licence and that every angler who was catching those species from the shore or anywhere was going to have to start putting in returns to say how much they had caught and those species were going to come off the commercial fishermen's quotas. Since I came to you, and I think I have sent an email about it, one of the senior E.U. officials who is running those regulations has said that is not what is meant, what is meant is that where it is

species like cod where there are, somewhat ironically, unlicensed boats going out and catching them and selling them, then those are the people they are targeting. They are not targeting the average angler. But Dr Bossy's view was that if we had that sort of draconian legislature forced our way as part of our U.K. management agreement then we would argue that if we brought in, for argument's sake, for example, a bag limit for mackerel that would be a lot more palpable perhaps to Jersey people to have a bag limit of mackerel that was realistic than have to send in a return to the department every time they caught or their 12 year-old son caught a mackerel. We do not quite know where the E.U. is going but at the moment it would appear that the anglers' worst fears are not going to be realised. But our argument would have then been that we would use the bag limits as a way of reducing bureaucracy and reducing control on anglers rather than increasing them.

Deputy M.R. Higgins:

I do not think you would have any problem if you were doing for conservation reasons. I do not think anybody would object to that. If the fish stocks are depleted and we are doing it to preserve fish stocks and perpetuate them, effectively let them rejuvenate, then there would be no problem. I think where there is a problem is, again going back to the figures that we mentioned earlier, a few people who are going out and catching fish and selling them and affecting a small number of commercial fishermen as well. It is just balance and proportionality that gives me the biggest problem I must admit.

The Deputy of Grouville:

Especially when there are no figures to back up what ...

The Connétable of St. Clement:

Very difficult to get.

The Deputy of Grouville:

... how it affects the professional fishermen.

The Deputy of St. Mary:

Can I put the phrase "dead or alive", just sticking with this perception thing and how the public are seeing this. That phrase is in the law, through them in dead or alive. That has aroused some comment. It appears to me, and I would like you comment, that the way the law is set up, these regulations are set up, means you are more or less driven to this dead or alive clause because otherwise people are going to get around it by wiggling. So would you like to comment on how people from outside see a law that says: "Throw the fish back in, dead or alive."

Mr. M. Smith:

I would hope they read the entire regulation and they will see at 4(3) that: "A fish that must be returned to the sea under this regulation shall be so returned as nearly as practical in the same condition as that in which it was taken." It then goes on to say it is immaterial whether the fish is dead or alive. But the principle is that you give it the best chance of surviving. But regardless, if it is dead then if you have caught your bag limit it has to go back. That is the way of fisheries management. It is hugely emotive but at the moment if a trawler chucks his trawl out the back and catches 20 tonnes of haddock, which is possible, and he has exceeded his haddock quota, it all has to go back absolutely dead. It is a policy that is not good ...

The Deputy of St. Mary:

Do we have to follow the worst aspects of policy elsewhere?

Mr. M. Smith:

No, but I do not know how else we could word the bag limit regulations in a way that did not encourage

people to keep the best fish until last, if you know what I mean.

The Deputy of St. Mary:

That is the whole point, you cannot word a bag limit ...

The Deputy of Grouville:

Going back to this dead or alive, so if the sixth fish has been caught in Guernsey waters, that is okay?

Mr. M. Smith:

No, not if the guy comes into Jersey waters because he would have more than 5 in his possession. He could keep it while he is in Guernsey but the moment he crossed the median line one of them would have to go back.

The Deputy of St. Mary:

Dead or alive.

Mr. M. Smith:

We have the same ... we do not spell it out as “dead or alive” but we have exactly the same if a low water fisherman goes down and sticks a hook under a rock and rips out a lobster that is ripped to shreds, clearly dead, if it is undersized it is undersized, he cannot possess it, it has to go back. Because otherwise people will use the excuse ... what David Hull was particularly scared about was the ... I know it sounds incredible but we do see this on commercial fishing boats, people will kill things just so they can keep them. That is what we are trying to discourage.

The Deputy of St. Mary:

But you do accept that it looks pretty funny?

Mr. M. Smith:

Absolutely, it looks very ...

The Connétable of St. Clement:

Absolutely.

Deputy M.R. Higgins:

Okay, Jeremy, have you got anything else?

Deputy J.M. Maçon:

Did you want to move on to the consultation?

Deputy M.R. Higgins:

Okay, let us have a look at the consultation for a moment then. You have mentioned already you have got the Marine Resources Panel and obviously we have had evidence that you have had a representative, one person who is supposed to be representing recreational anglers. That person, we have heard in evidence, one, did not attend throughout because it seems he had been ... Dr Bossy was going out trying to chase down someone to get them to come to panel meetings. Secondly, we have also heard evidence that the person concerned had a particular view about bag limits and about fishing and was not necessarily representing the view of recreational anglers. Now, because this is a very large group of people who go fishing, why did you not engage in a public consultation exercise, publicise in the paper, on the radio, and get people to come and give their views rather than rely on just one person?

Mr. M. Smith:

Because we had had no negative comments about bag limits, and there was nothing to indicate until ... really until the regulations were lodged, that there was going to be this kind of reaction. We had dialogue that suggest that the bag limits ... we had quite a lengthy dialogue about setting the bag limits. A figure of 2 for bass is preferred by some groups of anglers, they are the catch and release anglers, and we really have been quite surprised at the reaction.

The Deputy of St. Mary:

Have you done any desk research into how this might be perceived within the angling community in the U.K. who, of course, are the source of the tourism anglers?

Mr. M. Smith:

No, we have not.

Deputy M.R. Higgins:

With hindsight, with obviously the things you have been seeing in the paper and comments being made, and obviously our questions, because we are speaking to people as well, do you not think it would have been better to have a public consultation exercise?

Deputy J.M. Maçon:

Given what has now come to light.

Mr. M. Smith:

I do not know, because I still feel the people who would have come to that consultation exercise would have been the people who were radically opposed to bag limits.

Deputy M.R. Higgins:

I am thinking in terms of other areas when we are consulting. Do you have for example, whether it be at the town library or at Cyril Le Marquand House, they can pick up a questionnaire where they can fill in the questions, and you get that sort of information to build up a picture of what attitudes are and so on as opposed to people coming to you. Or even having people write to you and express their view.

Mr. M. Smith:

It was published on our website, I believe, so ... all I can say is that the panel, not just the angling representative on the panel but the other people at the panel go angling themselves, it is not just one angler there. We had no indication that there would be this kind of reaction at all. We genuinely felt we had support from the angling fraternity. We have got emails to show that we have that support. We thought they were representing the people they said they represented. Indeed, we have been to quite a few of the meetings at the Société where those bodies have been formed so we had no reason to doubt what they were telling us.

Deputy M.R. Higgins:

How many meetings did you have at the Société? We have heard of one.

Mr. M. Smith:

I certainly went to 2.

Deputy M.R. Higgins:

Okay. The other thing that we heard was that it was put out that it was a foregone conclusion that bag limits were coming in and basically a lot of people felt that there was no use arguing this, but it was put over quite forcibly that bag limits were coming in. Is that correct?

Mr. M. Smith:

I do not know how they got that impression but, you know, we are saying: “Should States approve the regulations” we never presume they are going to be introduced.

The Connétable of St. Clement:

Could I ask, was there any political representative at that meeting with the Société?

Mr. M. Smith:

I do not think so, no. The meeting was not about bag limits, it was about the anglers trying to form a representative body so that they could discuss things and bag limits may well have been discussed as were a range of other things.

Deputy M.R. Higgins:

Because one of the things we have been told was it was more a damage limitation thing in a sense, it was a foregone conclusion. They had no choice, it was going to be there. In fact, I believe there was a political person involved at one stage who did make a statement.

The Deputy of St. Mary:

To the panel not to the Société.

Deputy M.R. Higgins:

To the panel, that they were coming in, come what may, and it was basically accepted.

The Connétable of St. Clement:

I think most people know you cannot bring in regulations without the approval of the States.

The Deputy of St. Mary:

Can you take us back to the meetings at the Société and describe how many people and whether they were ... how they got there?

Mr. M. Smith:

We were not involved in organising these meetings, we went as observers. So it was in the members’ room and there was certainly ... the 2 I went to were ... crowded perhaps would be the wrong expression, but you certainly got the feeling the room was full. I am sure you are aware of the size of the room. There must have been 80-100 people, perhaps.

The Deputy of St. Mary:

These various bodies: Sinkers Sea Fishing Club; Club Apnea; Jersey Specimen Hunters Group - I was surprised there was so many - the Jersey Spearfishing Club; the Jersey Bass Festival Committee; Organisers of the Jersey Shore Angling Festival, did you at any time write to these different bodies and ask for them to talk to their members and come back with some sort of a view?

Mr. M. Smith:

No, because we thought that the guy that was representing all those bodies at the panel was representing them. We did not realise that he may not have been.

The Deputy of St. Mary:

A note for your diary.

Deputy M.R. Higgins:

What was the point you were going to make?

Deputy J.M. Maçon:

Just going back to the issue about things cannot be approved until they are at the States. We have been given evidence to suggest that the impression that it has already received Privy Council ...

The Deputy of St. Mary:

Yes, it had already gone to the Minister on the other side and the Privy Council.

Deputy J.M. Maçon:

Which had received approval which has led to this perception of it had been approved, it was coming in. Again, because people do have this perception of if it has gone to England it is ...

The Connétable of St. Clement:

I know where you are coming from now. I do not think it has been Privy Council, it is most unlikely it would have done before it had been approved. There are some laws and regulations which go there ... well, the regulations do not have to go to the Privy Council anyway. No, regulations do not have to go to Privy Council anyway. But under the management agreement for the Bay of Granville agreement, any regulations relating to our fisheries have to be approved by Defra?

Mr. M. Smith:

There is 2 agreements. There is the Granville Bay agreement between the British Government and the French Government, to which Jersey is a party. Under that any regulations we bring in above E.U. have to be approved by France. But perhaps more importantly, our Fisheries Law and our U.K. Fisheries Management Agreement say that we have to have any regulations, other than licensing regulations and one or 2 ... but certainly this kind of thing has to be approved by the U.K. Secretary of State.

Deputy J.M. Maçon:

Indeed, so this goes back to the notion of those perceptions that it was already a fait accompli.

Mr. M. Smith:

Yes, approval of the Secretary of State is purely to make sure it is not jeopardising the interests of U.K. fishermen or ...

Deputy J.M. Maçon:

I do not challenge that, but the point I am trying to make is that that would explain the perception of the local angling community, having the perception that bag limits were coming in and there was nothing they could do about it.

Deputy M.R. Higgins:

Just commenting on this, the actual background to the report says: "Drafting work commenced on these regulations in 2006 and in April 2007 the Minister approved that they be sent to the U.K. for the Secretary of State's approval. Under the terms of the Jersey U.K. Fisheries Management Agreement and in compliance of the Sea Fisheries (Jersey) Law 1994, it is necessary for the Island to obtain such approval before introducing most fisheries regulations." So, again, that is where the thing is coming from. There is certainly the impression that it has already been done and dusted and I think they ... what we have been told in evidence is that it is only recently that they suddenly realised it was not the case that they had to come in and this is why they are speaking up and coming to us now.

Mr. M. Smith:

I still find that slightly at odds with our experience of the anglers who came to the panel. I have got an email here from Keith White on 27 September, who is commenting on a letter that was put forward at

panel and he has quite plainly been consulted and he is coming back: “We favour a 5 bag bass limit.”

Deputy M.R. Higgins:

What I would say is we have also heard evidence that he, as a particularly representative, was not necessarily representing the views of other anglers. In fact he was representing his own position because, again, he is one of these anglers - so we have been told - who prefers to throw his fish back rather than to land them. He just likes catching them and then putting them back into the sea alive, and he is quite content with that.

The Deputy of Grouville:

Also I think they felt that it was coming in, it was a fait accompli so they were there just to argue about the quantity.

Deputy J.M. Maçon:

How best they could negotiate what it was rather than being able to oppose it.

The Connétable of St. Clement:

I do agree, the only good representative is one whose views absolutely coincide with your own, no question about that.

Deputy S. Pitman:

Can I just say on consultation and these groups, you say that you believed you had good representation, bearing in mind that a few weeks ago it was quoted to us in one of our hearings by Mike Smith. He said ...

Deputy M.R. Higgins:

This is Mike Smith.

Deputy S. Pitman:

“We would most certainly make sure that all organisations know about this, they all have been attending the panel in any case.” He says there: “We would most certainly make sure that all organisations know about this.”

Deputy M.R. Higgins:

This is Mr. Smith, by the way.

Deputy S. Pitman:

Can I just ask and repeat the question of Deputy Higgins **[Laughter]** would you now, given what has been said - and you have obviously learnt a bit more about things you did not know before - go back and do this consultation to support these regulations?

The Connétable of St. Clement:

I think if you made such a recommendation it is something we would give proper consideration to.

Mr. M. Smith:

I think my comment there as well was in response to a question on who would we make sure that people knew about the regulations once they had been adopted by the States because there was only 7 days before they came in. I do not think I was referring to the process before that. I think that was a question from Deputy Maçon.

Deputy S. Pitman:

But still one of your colleagues says: “We would certainly make sure all organisations knew about this” when clearly from evidence, maybe through no fault of your own, we have gathered this has not been done. Would you go back and still consider doing it before you bring these regulations?

Mr. M. Smith:

I am not quite understanding what you are trying to say.

Deputy J.M. Maçon:

No, because I think what was said was in the context of we will inform people when they are brought in. Whereas what I think you are asking about is the consultation period about the whole thing of whether we should have it or not.

Deputy S. Pitman:

Yes, would you go back now and do that before you bring in the regulations in this session?

The Connétable of St. Clement:

If you made such a recommendation, I, the department and the Minister are bound to give it consideration. Soon after these regulations were lodged I had a phone call from a couple of representatives of ... I know one was definitely a representative of a certain angling organisation, I offered to meet with them, he was going to come back to me, never did. If that is ... as I say, if you make such a recommendation we will give that consideration. But you are quite right, when I was reading the report of Mike’s presentation last time someone did raise the fact that the regulations would come into force 7 days after they were agreed by the States and the department agreed that they would make sure that everyone knew about them coming in.

The Deputy of St. Mary:

On a more general point about the make up of the panel, one of our witnesses pointed out ... well, would you comment that it was representative in terms of the numbers of people affected and the balance of the people on the panel? There is an issue there, would you think?

Mr. M. Smith:

I do not think there is, no.

The Deputy of St. Mary:

If you have got one “representative” of 1,800 anglers and you have one representative of, I think, 65 active commercial fishermen plus a number who are less active, and then you also have the inshore fishermen who I think are also professionals and they have a separate representative, it has been put to us that that might be seen as unbalanced particularly when Defra are saying you must bring in all stakeholders into fisheries discussions.

Mr. M. Smith:

Yes, I think we have ... if you are going to have 2 anglers, how would you select 2?

The Deputy of St. Mary:

You would allow them to spearfish each other until the best 2 arrived at the table alive.

Mr. M. Smith:

The reason behind the commercial fishermen having 3 places at the panel is that the commercial fishing industry is quite diverse. We have, for example, commercial scallop divers, we have commercial scallop dredges, we have a fleet that fishes in the U.K. waters, so you tend to have the chairman of the association and he brings the 2 people who are most likely to be concerned by the items at the panel.

That is the reason why there are 3. So they are almost representing their own specialist areas.

The Deputy of St. Mary:

So would you now, in retrospect, think it might have been better if we had had a similar arrangement for the recreational people who, as I have pointed out with that list, are not all of the same blood?

Mr. M. Smith:

No, but we do have, off the top of my head, 3 recreational fishermen there.

The Deputy of St. Mary:

The fact that Chris Newton happens to go out in a boat sometimes is not ... really he is not there because he goes out in a boat, he is there because he is director of ...

Mr. M. Smith:

Ian Svyret, who represents Jersey Inshore Fishermen's Association ...

The Deputy of St. Mary:

Sorry?

Mr. M. Smith:

Ian Svyret, who represents Jersey Inshore Fishermen's Association, who represents recreational and part timers as I understand it, is not just purely commercial fishermen; we have the angling representative; we have Chris De Bocier(?), who represents the North Coast Boat Owners and who again represents recreational, so we do have 3 direct representatives of recreational fishermen there. We have widened it now by having a Société but there is a danger the panel ... if you have too many people it gets quite cumbersome to reach any kind of recommendations. We feel that the balance is right.

Deputy S. Pitman:

Did you have any public meetings at all?

Mr. M. Smith:

No. No, we did not.

Deputy M.R. Higgins:

I think we have exhausted most of the areas we wanted to look at.

Deputy J.M. Maçon:

There is something I did want to ask, it is on to the issue of conservation. We met with Mike Taylor and he has given us evidence and he has explained how it came about, primarily it was based on ormers, and the representation they have had is people seem okay with the idea when it is regarding issues of conservation but there does seem to be a bit of confusion in that with ormers there is a desire to for conservation reasons whereas with bass and lobster there is mixing in the commercial aspects. Do you think it is best to mix a conservation law with a commercial law?

Mr. M. Smith:

Bag limits are bag limits, and whether it is for commercial purposes for the bass and lobsters or whether it is for the conservation reasons for the ormers, there is no reason to separate it. I do not think we are really ... the reason we are not saying that the bass and lobster measures are conservation measures are because there are lots of other facts to consider, like the fact we do not really know where the bass go, they are subject to fisheries further off shore, they migrate. Perhaps it is a conservation measure but the reasons we are introducing it is not as a conservation measure. So it may have an element of

conservation but that is not the primary reason. So, yes, I accept we have mixed them up but they are separate species, they are separate bag limits. It just happens to fit in the same regulation.

Deputy J.M. Maçon:

Are there not other laws which would better suit the conservation of ormers than necessarily putting them in bag limits?

Mr. M. Smith:

We have got a reasonable minimum size, we have got regulations relating to any you go for which have been considerable tightened up in recent years. Bag limit was the next logical step and it was what people were asking for. In fact it was, you know, retrospectively ...

Deputy J.M. Maçon:

Which people, sorry?

Mr. M. Smith:

People at the panel. A lot of people felt that the panel should have recommended an introduction of bag limits for ormers immediately the fishery was opened after the disease about 7 or 8 years ago. My personal opinion would have been, yes, it would have been better to introduce that bag limit then. Unfortunately after 3 or 4 years of no fishing, we opened in a completely unrestricted way and people took large numbers out and it really knocked the fishery back again. Now we are seeing the levels creep back up so we do not want to make the same mistake twice and we would now think it is the appropriate time to introduce the bag limit of 20.

Deputy J.M. Maçon:

So just to clarify then, the ormers stocks are going up with no restrictions apart from size limit and season, but they are increasing?

Mr. M. Smith:

They are increasing but I think perhaps they are increasing incredibly slowly. We have just done the ormer research dive, 2 dives in Jersey at St. Catherine and St. Brelade, and the figures indicate that there is a slight increase but not a huge significant increase over last year. We have not done the Minkies site at the moment, we unfortunately do not have the resources to do it. But part of the recovery has been the fact there have been so few there, particularly at the Minquiers, it has not been worth people going. Those numbers are now coming up, people are going. We would rather introduce a bag limit before we see them taken out again.

The Deputy of St. Mary:

Is diving illegal?

Mr. M. Smith:

Diving is entirely illegal, yes.

The Deputy of St. Mary:

Where do the ormers hang out in Jersey waters?

Mr. M. Smith:

Around most of the Island, and it used to be at the Minquiers but there are not so many there now.

The Deputy of St. Mary:

Would you like to comment on what we have been told that ormers, most of them, are below low water

so what people can get at is the ones that are above low water. If diving is illegal, why do you need a bag limit?

Mr. M. Smith:

Because the numbers ... we check the stock by diving in the area that should be unexploited, and we believe is unexploited, and those stocks suffered just as much as the stocks above. The indication is the recovery, even in those areas where no one can exploit them is very, very slow. Therefore it is still important ... I accept that perhaps the majority of ormers cannot be caught. One of the things we have seen this year that I could not begin to explain, is that the ormers that have been caught, particularly in Jersey, are very large which indicates that they have been around for quite a number of years and equally quite small ormers. There does not seem to be anything in the middle. Now, why that should be we do not know. It could be something to do with the cold winter. But it indicates that those ormers from the deep do sometimes come up and it would still be better to restrict the catch.

Deputy J.M. Maçon:

But if you are saying that the ormers below the low water tide are still recovering slowly, how is bringing in this conservation issue going to make any difference to their recovery rates, because the majority of them are below water level and of those they are still recovering but at a slow rate which people should not have access to.

Mr. M. Smith:

Yes, I agree. But it would be very difficult to say what percentage is below the water and what percentage is above. Clearly these big ones must have been below last winter because they were not caught and they are now above. Whatever the percentage is that cannot be caught, we are doing what we can to increase the chance of a stock recovery by restricting further those that can be caught.

The Deputy of St. Mary:

Have you done any research then into how many are below and how many are above, because you could do that on a sample basis without too much resource?

Mr. M. Smith:

I think previous research does exist, yes.

The Deputy of St. Mary:

Not previous, I mean after the disease crash and now we are in the recovery phase, have you done spot ... you know, let us look at this bit above and below and this bit above and below and see what really is the situation?

Mr. M. Smith:

The resources we have just really do not simply allow for that kind of research to be undertaken.

The Deputy of St. Mary:

But you have done some research.

Mr. M. Smith:

We did research on ormer growing and that was fish farming, and since the ormer disease we do basically a dive at 3 sites: one at St. Catherine, one at St. Brelade Bay and one at Les Minquiers. Although we have changed that site because we were not entirely convinced the results we were getting were representative of the population there. But it is really a ... you are looking perhaps a day's work a year to do that and that is about all we can, I am afraid, afford.

Deputy M.R. Higgins:

Can I just go back to consultation for a moment. It is the consultation on the exemptions. I know, Len, you mentioned grandfathering and so on, but I have not seen anything in writing on any of this. What consultation has been done about the exemptions or the possibility of exemptions?

Mr. M. Smith:

Again, we had 2 or 3 panel meetings where at certainly one of those panel meetings it was the major issue at that panel meeting. But exemptions have not yet been approved. If the regulations are adopted by the States then the Minister would be making a ministerial decision on what those exemptions would be.

Deputy M.R. Higgins:

You would hope that there would be a wider consultation.

Mr. M. Smith:

Sorry?

Deputy M.R. Higgins:

You would hope there would be a much wider consultation than has been ...

The Connétable of St. Clement:

It would be on application, I assume.

Deputy M.R. Higgins:

But, again, if you are thinking about doing it you want to see what the ...

The Connétable of St. Clement:

The exemption would apply to a named individual not to a group.

Mr. M. Smith:

They would have to be advertised, as well, in the *Gazette* so people would be invited to apply for exemptions and those exemptions will be considered by the Minister against, presumably, criteria he would have set as to what he would grant them by. There is a proper appeal process as well. It is human rights compliant.

Deputy M.R. Higgins:

I am not sure about the proportionality of the rest of it on human rights grounds but, anyway. Carolyn, have you got anything else you want to ask?

The Deputy of Grouville:

Just a general one, it is this policing versus the amendment ... well, it is a few things. It is the policing element of these bag limits that worry me. It seems to me that if bag limits are introduced there is going to be a huge opportunity for policing of every beach, slipway, harbour to properly enforce this law. Surely there must be an easier way, for example, as I said before, this amendment to the existing law and an audit trail is surely easier than trying to police people who are landing 6 lobsters to put on their barbecue?

Mr. M. Smith:

We really would not target our effort at the 6 lobsters on the barbecue, there would still be ...

Deputy J.M. Maçon:

But do you accept once the law is there, a law is there and ...

Mr. M. Smith:

Indeed. But perhaps I could give you the example that we quite often come across of a father with his 2 3 year-olds coming up the beach with a bucket with undersized shanker(?) crabs in it. Until recently there was an unlimited fine for that. I do not think I have ever done anything more than try and educate the children into why they should not take those shanker crabs. We would fully accept that we are not going to police every situation, we would not intend to do that. We would still be intending to police it based on intelligence we would receive and we would be targeting particular individuals and particular establishments.

Deputy S. Pitman:

Bearing in mind what you have just said, then what you are doing is penalising people who do ... for the bigger illegal sellers, that is what you will be doing.

Mr. M. Smith:

We would be penalising ... not penalising, we would be regulating people who are doing it in such a way that it was to the detriment of the real issue rather than inadvertent mistakes.

Deputy S. Pitman:

But that is the law. When you put that law on you are penalising the majority who live within the law.

The Connétable of St. Clement:

The only people who will be penalised will be those who are caught, taken to court and found guilty. That is where they will get their penalty.

Deputy S. Pitman:

Yes, but you are still limiting people because it is law. You are still limiting people's catches.

Mr. M. Smith:

Yes, you are absolutely right.

The Connétable of St. Clement:

Yes, that is right. That is what the bag limit regulation is all about. That is the purpose of it.

The Deputy of Grouville:

But is it not the case that there are a few people that are breaking this law and most people that we have spoken to tend to know who those are. Would it not be better just to target these people, give them the £20,000 fine ...

The Connétable of St. Clement:

Yes, we want to do that but we need a law to enable us to do it.

The Deputy of Grouville:

But not necessarily the bag limit law.

The Connétable of St. Clement:

Well, not necessarily but it is the only one at the moment on offer.

The Deputy of St. Mary:

Can I go up a level, is it easier - because I cannot get my head around this - to try and catch people on

boats on the sea coming ashore anytime in any place or is it easier to go to known premises that do not move, find the fish on the slab or in the cool box and demand to see a piece of paper? Because in my simple mind I know which sounds easier.

Mr. M. Smith:

I agree, it certainly sounds easier to check the establishments ashore but there are all sorts of ways ... a small boat, and we are talking about small boats, we are talking about a 16 or 18 foot boat coming ashore with a whack of bass on board, that is what we are really talking about. There are not many places they can hide it. They are tide dependent. They can be watched without really the need to watch premises or anything else. It is relatively easy to catch them in those circumstances. Yes, it is also relatively easy to find a restaurant but there will be all sorts of barriers they can put in place to make it very difficult for us. Most restaurants have quite big kitchens. They do not keep all the fish in one particular place. They can start filleting fish as soon as they receive them. Yes, it could be easier but there will still be problems associated with premises.

The Connétable of St. Clement:

This law, these regulations, would give us the option to do both of course.

Deputy J.M. Maçon:

Yes, you are doing both so although you are saying there is problems with going to an establishment, et cetera, this law lets you do that anyway.

Mr. M. Smith:

Yes.

Deputy M.R. Higgins:

Can I just chase you on something for a moment, have you seen the amendment to the law that has been proposed by Deputy Green?

Mr. M. Smith:

Yes, we have.

The Connétable of St. Clement:

I think it is a standalone proposition.

Deputy M.R. Higgins:

Yes, it is a proposition but, again, it is as a result of this proposal that you are bringing forward. Could I just get your comments on it?

The Connétable of St. Clement:

Grateful for Deputy Green's interest, slightly disappointed, as I am sure anyone would be, that he has not consulted with the department, the panel or myself. It would have been probably helpful for both of us if he had done that. The first thing to say, I think, is it is much more draconian than the bag limits regulations.

Deputy M.R. Higgins:

The sale of fish without a commercial fishing licence should be prohibited?

Mr. M. Smith:

Yes, the bag limits is not proposing that. The bag limits are proposing the sale of more than 5 bass or 5 lobsters without a fishing licence effectively.

Deputy J.M. Maçon:

On that point, just to clarify my understanding, you do not need a licence or anything to be able to sell fish in Jersey, is that correct?

Mr. M. Smith:

At the moment that is correct, yes.

Deputy J.M. Maçon:

Surely there are hygiene, health implications? When you are selling any other form of produce you need a licence, you need to be regulated in some way. Would one way of cracking this, as well as doing other necessary bits, be to bring in a licence regarding the sale of fish because I understand the current legislation is about catching fish which we have problems policing but we have nothing about the sale of fish? Would it not be ... I do not know if an easier way but would it not be more practical with the other aspects behind it to have a law regarding the sale of fish?

Deputy M.R. Higgins:

Or, the second part of his thing again, that the purchase of fish by any commercial business from unlicensed sources should be prohibited. What is wrong with that one?

Mr. M. Smith:

There is nothing wrong with that but when we were first looking at this regulation one of the problems is we do not have a law that allows for option one or 2. We do not have a law on the Island that allows for those options as far as I am aware, certainly on advice from the Law Officers. Therefore we would have to have the Fisheries Law amended. To get the Fisheries Law amended is not just a question of Secretary of State's approval, it has to go through Privy Council. We would be looking at quite a significant amount of time to do that. We then have to bring in a regulation subordinate to it and that is going to be quite a lengthy period. As it turns out, the bag limit regulations are taking quite a lengthy period to bring in but it was a much more cumbersome option to do it. Yes, fine the sale of fish without a commercial fishing licence but then you are stopping all those people who have not got commercial fishing licences from selling fish. There are people who can legitimately do that at the moment ...