

STATES OF JERSEY



DRAFT SEA FISHERIES (TCA - LICENSING OF FISHING BOATS) (AMENDMENT OF LAW AND REGULATIONS (NO. 2) (JERSEY) REGULATIONS 202- (P.115/2022) – COMMENTS

**Presented to the States on 6th February 2023
by the Minister for the Environment**

STATES GREFFE

COMMENTS

I would like to thank the chair and members of the Scrutiny Panel and officers who have dealt with this matter in an extremely expedient way enabling the draft legislation to come back before the Assembly at the sitting of the 7 February. I am grateful and will address each of the Panel's four recommendations in turn.

The first three recommendations are not specifically related to the draft legislation but instead centre on enforcement and compliance. When considering draft fisheries legislation these are recurring themes as there are often concerns as to whether what is being proposed is enforceable. In this regard it may be worth noting that this Assembly, the Courts and industry, both Jersey and French, have over the years commended the work done by Marine Resources officers in enforcing the compliance regime that exists in our Waters and I am confident that this will continue.

RECOMMENDATION 1: *Since it is now a requirement from 1st July 2022 for all French vessels to have V.M.S. tracking fitted, the Minister for the Environment should ensure that there are sufficiently robust mechanisms in place for the Government of Jersey to be able to verify with certainty that all vessels are compliant with the installation and use of this technology. The Minister should report back to the Assembly during the States' debate commencing on 7th February 2023, outlining how this assurance can be provided.*

ACCEPT

The requirement for all French vessel to have a VMS unit fitted by July 2022 is a French regulation. Jersey has for many years required all vessels, French or Jersey, over 12 metres to have an operational VMS system fitted. This is set out in the Sea Fisheries (Vessel Monitoring Systems) (Jersey) Regulations 2014. For the smaller French vessels, it is illegal for those vessels to fish in Jersey Waters by their own legislation. If Marine Resources Officers find non-compliant vessels in Jersey Waters this will be reported to the French Authorities. However, to further strengthen this requirement I will be bringing forward to the Assembly an amendment to the VMS regulations to require all vessels, regardless of size, to have fitted an operational VMS.

RECOMMENDATION 2: *Intelligence-led monitoring using V.M.S. tracking, whilst fully acknowledged as a helpful aid in monitoring fishing activity, should not be relied on in isolation. The Minister should also ensure that this is utilised in conjunction with other methods, including (but not necessarily limited to):*

- 1. Regular sea patrols should be carried out to monitor fishing activity, catch quotas, and monitor any incidents of V.M.S. not being used by French vessels when fishing in Jersey waters. The Panel further requests that the Minister confirms in the upcoming States' debate on 7th February 2023 how regular these patrols are carried out at present.*
- 2. Consideration given to an appropriate reporting mechanism where the Marine Resources team could work in collaboration with the industry to encourage any suspicious fishing activity to be reported by any vessel out at sea and followed*

up by the Government of Jersey. The aim of which would be to combine self-regulation within the industry with other intelligence-led monitoring tools. The Minister should meet with the JFA, and other industry representatives, to explore this further before the end of Q1 2023.

3. *Prioritising Jersey's automatic access to the electronic recording (e-log) system that is utilised by French vessels, so that catch quotas for Jersey's marine 'zone' can be accessed in real time and verified against other intelligence (such as the V.M.S. tracking). This should be actioned before the end of Q2 2023.*

ACCEPT

I am more than comfortable to accept this recommendation as, in general, this already occurs. Officers use a wide variety of methods and tools to monitor and enforce the fishing regulations that are in place. Any remote monitoring system, including VMS, is only one of the tools used. Others include patrols at sea and various intelligence sources. Patrols at sea, either employing the *Norman Le Brocq* or the RIB, occur on a regular basis. The statistics relating to this, and enforcement, are published in the Marine Resources Annual Reports. Patrols are carried out on both an "ad hoc" and intelligence-led basis and, as you would expect from a compliance team, these details are not published prior to the work.

Officers place great store, as do I, on face-to-face interaction with industry and there is already much exchange of information and discussion across a range of matters including enforcement, licensing, landings or export. This leads on to the point concerning the sharing of information on suspicious activity. This is already a regular occurrence and, after the assessment of any intelligence and where appropriate, officers will investigate.

I am not convinced that formalising this will lead to a better system of reporting possible infractions (anonymity tends to be the preferred route) but I am happy to listen and consider suggestions from the industry on this.

I am fully supportive of the importance the Panel has placed on securing access to e-logs and officers have been in discussion with the UK authorities to achieve this. All vessels need to provide information on catches by way of logbook submissions but I agree e-log access is important.

RECOMMENDATION 3: During the States' sitting commencing 7th February 2023, the Minister for the Environment should provide the States Assembly with further detail of the intended penalties for cases where French vessels are non-compliant with permit conditions, particularly where catch quotas are found to exceed permit limitations.

ACCEPT

Penalties for breach of licence conditions are clearly set out in the legislation. If found guilty, the master, owner (and charterer, if applicable) are liable to a fine (up to standard scale 3), disqualification from holding a licence for a period of time and the forfeiture

of fish, net or gear (other than vessel) used in committing the offence. The Panel is obviously aware that the actual penalties for each case brought to the courts are a matter for that court and not the Minister.

RECOMMENDATION 4: *The Minister for the Environment should ensure that a more detailed Replacement Vessel Policy framework is published which considers and explains:*

1. How tonnage and kW (total power) units can be sold transferred, moved or otherwise aggregated between vessels.

REJECT

The mechanism by which global tonnage and engine power may be transferred between a donor vessel and its nominated replacement are outlined in the proposed replacement vessel policy. Any transfer of global tonnage and engine power must be in accordance with the policy and adhere to the restrictions and limitations this contains. It should be noted that there is no mechanism for the buying/selling of global tonnage or engine power within the proposed replacement vessel policy. Arrangements concerning the buying, selling and retirement of French vessels are the concern of the French authorities and over which Jersey has no input. The converse is true for Jersey vessels licenced to fish in French waters.

Under the replacement vessel policy that I have published, a vessel may decrease its global tonnage and/or engine power to create capacity within the fixed pools that exist for both parameters. Spare capacity may be taken up by other replacement vessels which wish to increase either or both parameters. However, any such increase(s) will be limited by three factors: (1) the availability of capacity within the global ceilings for global tonnage and engine power; (2) the parameters of the original licenced vessel; and (3) whether the vessel's length overall is greater or less than 12 metres. A fourth factor concerns a small pool of vessels whose replacement was demonstrably commissioned prior to 31 December 2020. Before a licence can be issued for a replacement vessel, the Minister must be assured that the conditions outlined in the replacement vessel policy have been met.

2. How the length of fishing vessels and gross tonnage is calculated, where individual vessel information for power (KW) is derived and the methodology of how it is calculated.

In respect of replacement vessels, the vessels' parameters used in relation to the policy will have been provided by the competent authority in France and the EU. A vessel's length overall, global tonnage and engine power is not measured/calculated by Marine Resources. For French vessels this information is provided by the EU authorities via the Single Issuing Authority (SIA) which is part of the Marine Management Organisation in the UK. These parameters are detailed in the vessel's Certificate of Registry and all this information is available on the EU fleet registry that is published online.

The methodologies for calculating all these parameters are set out in international conventions and various legal instruments. The specifics for the formulas used are not held by Marine Resources but they should be obtainable from the Ships' Registry at Ports of Jersey.

3. How movement of licenses can be managed by having different size/type vessel categories (up to 7m, 8m, 10m and 12m) incorporated into the current framework, as a further safeguard to ensuring there is not a trend over time towards fewer but larger, more powerful French vessels and that licences cannot migrate from smaller vessels under 12m to larger vessels over 12m.

The replacement vessel policy makes provision for a limited level of global tonnage and engine power to move from vessels with a length under 12 metres whose parameters decrease to replacement vessels that are above 12 metres that wish to increase these parameters. However, a vessel that is under 12 metres in length may not have a replacement whose length is above 12 metres; nor may its engine power rise above 221 kW. This creates a fixed number of vessels within the two length classes. As of 31 January 2020, the under 12 metre class has 108 vessels; the over 12 metre class has 28 vessels.

Should all 28 vessels in the over 12 metre class take up their maximum permitted increase of 20% global tonnage and 10% engine power, this would result in a transfer of 12% of the fleet's global tonnage and 3.5% of the fleet's engine power. As such, the 12-metre threshold works in conjunction with the 20% and 10% increase limitations to ensure that vessels within the over 12 metre class cannot increase their global tonnage or engine power in an unlimited fashion. Instead, it allows only limited increases for each individual vessel.

Furthermore, all potential increases are measured against the original licensed vessel. This prevents incremental accumulations of global tonnage and engine power across successive replacements. This is a key safeguard against any one vessel becoming excessively large and against an accumulation of global tonnage and/or engine power over time.

It is unclear how adding additional length classes into this framework would offer additional safeguards above those already within the policy, especially if decreases in global tonnage and engine power in one class may be taken up by vessels in other classes as this is how the current proposed policy operates.

If, however, the intention is to prevent vessels within a class from being able to export decreases in global tonnage and engine power into other classes then this risks creating a similar effect to the current replacement vessel policy whereby a replacement vessel may not be licensed should it have an increase across any one of four parameters. The TCA's need to maintain access at reference period levels is the driver behind the proposed amendment to Jersey's current replacement policy.

In summary, if it is the intention of this recommendation to create a greater number of size classes for under 12 metre vessels across which global tonnage and engine power may be transferred then this will offer no additional safeguards above those provided by the current 12 metre threshold. If, however, it is the intention of this recommendation to create a greater number of size classes for under 12 metre vessels between which no global tonnage and engine power may be transferred then this may not be compatible with the TCA's need to maintain access at an historic level. In addition, it creates an unnecessarily restrictive policy for no material gain in terms of management of fishing effort, and would also move our replacement vessel policy significantly out of line with those of the UK and Guernsey.

4. An additional characteristic of 'displacement' should be considered in conjunction with engine power, length overall, breadth and gross tonnage in the published policy as a means to limit the carrying capacity of the vessel and, in turn, assist in preventing the ability of French vessels to exceed daily catch quotas. Should the draft Regulations be adopted, the revised Replacement Vessel Policy should be brought to the States Assembly for approval before the end of Q2 2023.

Vessel displacement is not a parameter that is used within Jersey's current replacement vessel regulation. Nor is it a figure that is included in the information provided to Jersey by the EU authorities via the Single Issuing Authority. Currently, the Jersey authorities do not have access to displacement information for EU (nor Jersey) vessels and it is not clear from this recommendation what restrictions/limitations (if any) should apply for the licencing of replacement vessels that have an increase in one or more of these parameters. It may be that, as with recommendation 4(3), the addition of length overall, breadth and displacement as parameters to the replacement vessel policy could create a situation where Jersey cannot fulfil its requirement to maintain access at an historic level under the TCA.

The practical effect of using displacement to control fishing activity is unclear in that the daily catch quotas are measures associated with the fishing permits. A vessel holding a fishing permit with a daily catch quota is entitled to retain a catch weight up to this limitation. As such, it is the fishing permit that manages the daily quota and not the vessel's displacement, length or other parameters.

If vessel parameters such as length, displacement, engine power, etc., are to be used as a means of managing fishing activity then these should be included as restrictions on fishing permits. Additionally, the daily catch weights apply only to a select number of species (whelks, scallops, praire and other clams) whereas restrictions on displacement through the replacement vessel policy will apply to all replacement vessels regardless of their metier.

It is also unclear how a restriction on displacement would offer a safeguard against a vessel exceeding daily quotas given that it is only replacement vessels (not currently licensed vessels) that will be subject to the restriction.

The use of displacement and other parameters as a means of managing specific areas of fishing activity would need to be implemented through the TCA's extent and nature requirement, not the replacement vessel framework. This would require a return to discussions around extent and nature with the UK, EU and France.

Comment under Standing Order 37A

This comment was submitted after the formal deadline for comments to be submitted as the Scrutiny comments, incorporating its recommendations, were only presented at midday on Friday. Given the importance of P115/2022, there was a desire for the Minister's response to the Scrutiny recommendations to be published in advance of the debate, rather than being addressed solely in the debate. We hope this comment will assist Members and that they will understand the reasons why it is being presented now.