

STATES OF JERSEY

Environment Panel Fisheries Review

TUESDAY, 24th JUNE 2008

Panel:

Deputy R.C. Duhamel of St. Saviour (Chairman)
Connétable K.A. Le Brun of St. Mary
Deputy C.J. Scott Warren of St. Saviour

Witnesses:

Connétable M.K. Jackson of St. Brelade

Deputy R.C. Duhamel of St. Saviour (Chairman):

Okay, right, are we ready to start. “It is important that you fully understand the conditions under which you are appearing at this hearing. The panel’s proceedings are covered by parliamentary privilege through Article 34 of the States of Jersey Law 2005 and the States of Jersey (Powers, Privileges and Immunities) (Scrutiny Panels, P.A.C. and P.P.C.) (Jersey) Regulations 2006. Witnesses are protected from being sued or prosecuted for anything said during this hearing, unless they say something they know to be untrue. This protection is given to witnesses to ensure that they can speak freely and openly to the panel when giving evidence without fear of legal action although the immunity should obviously not be abused by making unsubstantiated statements about third parties who have no right of reply. The panel would like you to bear this in mind when answering questions. The proceedings are being recorded and transcriptions will be made available on the Scrutiny website.” All right, welcome, Mr. Jackson. To start could you just go over briefly your particular interest in this piece of legislation that is being brought to the House on 1st July.

Connétable M.K. Jackson of St. Brelade:

Well, to begin with it might be best to indicate to the panel that I am a member of the Sea Fisheries Panel and as such take an interest in all matters to do with the fishing industry. This specific legislation particularly, probably as part of my parochial role, was stimulated by activities which have been taking place within the parish, particularly within the Belcroute Bay area. It could be said that it is a sledgehammer to crack a nut but it is was a bit of legislation which was targeted at a particular problem and I do not think there were any ancillary matters considered when it was brought. Effectively, my understanding of the legislation and the terminologies are that it is designed to prevent nets being neaped and ghost fishing occurring. I am sure the panel will be aware of what ghost fishing is, but if I can elaborate in my terms what I conceive it to be. It is the situation whereby a net will be set on a neaping tide and in effect the fact that a tide is neaping will prevent the fisherman from retrieving the net in the normal way, which will tend to mean it can remain set for up to 10 days and fishing, catching fish, which inevitably will be killed before it can be properly retrieved on the successive spring tide. Now, the legislation period of 96 hours, being the amount of time that a set net could remain in place was designed really to enable fishermen to set nets over a spring tide. If you refer to the tide tables I have given you, the spring tides - the peaks if you like - will occur over a 96 hour period. This, in effect, is what stimulated the legislation and I think probably there may have been a misconstruction in the reasoning for which it was set but it was set to prevent this sort of poor professionalism which has taken place on occasions.

Deputy R.C. Duhamel:

To what extent do you think the law could be promoted in a different way by having a licensing system or some kind of educational system that is promoted by the department to those persons who are not professional fishermen in setting their nets at a wrong place on the beach?

The Connétable of St. Brelade:

I think there is room for further education within the community, there is no question about that. I think effectively the professional fishermen who are registered at present do not pose a problem at all in that they have been fishing for years, it is their livelihood, and they would not utilise nets in this sort of manner. It just would not be considered appropriate or beneficial because apart from catching fish unnecessarily the nets also tend to end up getting damaged and, of course, it ends up causing them more expense in repairs. So I think the individuals who are a problem tend to be the part-timers who perhaps fall through - dare I say it - the net of legislation and consequently do not perceive the problems that do occur. I think it is probably lack of education and lack of appreciation of the local situation. Communication is an issue I think the department are certainly trying to address and, in fact, they put out guidelines in published form to obviously licensed people and also to the various Parish Halls for individuals to pick up. In conjunction with that clearly the Fisheries officers do make the rounds. In the last 2 years the Honorary Police have been brought into that policing network and there are 2 or 3 individuals within the honorary system who are aware of the fishing legislation and do form part of the policing role.

Deputy R.C. Duhamel:

We have heard from the Fisheries officers at the moment that any checking that will take place will be spot checking done on some kind of random statistical basis or by members of the public ringing up the department to notify them that perhaps a net has continued to fish in a way that is not suitable. How then do you think Regulation 3(2) will be able to be policed? Regulation 3(2) suggests that a person will be breaking the law if they were using a beach set net for more than 96 hours in one position within that 96 hour period. But if there is no requirement under the law for permissions to be sought prior to the placing of the nets in a particular position or recording system to indicate when the net has been set, it strikes us that there is no mechanism at the moment to ensure that that particular clause is complied with.

The Connétable of St. Brelade:

It is my view that that in fact it is self regulating. It is once again back to the window of tide over which the net can be set, because effectively that enables fishermen to move their net around over the 96 hour period bearing in mind we have got 2 tides a day, so there are 2 shots every day during that 96 hour period to fish certain areas, and if they find that the first area in which it has been set just does not work the likelihood is they will try another area. But after the 96 hour period expires, if you like -- I can understand your point, it is not going to lead into another 96 hour period because you will then be into a neap scenario on the beach. So they would not then be able to pick it up for probably about another week.

Deputy R.C. Duhamel:

In that case it sounds as if you think that the law was specifically for fishing situations around a neap tide although that is not specifically referred to within the regulations.

The Connétable of St. Brelade:

It is.

Deputy R.C. Duhamel:

Is that an omission.

The Connétable of St. Brelade:

Conceivably. I suppose it could -- maybe one could indicate within the law some sort of tidal height restriction, but the practicality of it is that no fisherman sensibly is going to want to let their net neap because it will just fill up with weed.

Deputy R.C. Duhamel:

That is right, but we have heard that there is a broad difference between a responsible commercial fisherman and those who perhaps are using their fishing gear indiscriminately.

The Connétable of St. Brelade:

Absolutely right.

Deputy R.C. Duhamel:

The second point is that under 3(3)(iii) it could be argued as a way of getting out of the breaking of the law that if the beach set net has been moved to another location then in effect it has been moved in the 96 hour period, providing it is done at the right time. But it does state that the net is deemed to have been moved to another location only if each part of the beach set is located in a different place to where it was immediately prior to the move. So theoretically a net could be moved 6 inches or whatever to the left or right or upward on the beach in order to comply with that part of the regulation within the law. The thing that worries us at the moment is that if there is no licensing system which stipulates or records the fact that a net has been set in a particular place at a particular time and the location is not written down either we are wondering how the Fisheries officers will be able to determine whether or not the net has been moved if somebody claims that it has been and it has not.

The Connétable of St. Brelade:

I do not think once again that it is an issue in that effectively no one is going to move the net to be within a foot of where it was before. The only reason they would want to move it is because it is not fishing or working catching fish. So effectively you might find that it will be moved from one gully area to another, which may not be too far

away, but certainly in an open beach situation it just would not occur because the necessity would not be there and it would be a pointless exercise. I think probably what is missing in the law, if I can contribute to that, is a lack of analysis of the present situation which leads to a misunderstanding which you have probably got at the moment.

Deputy R.C. Duhamel:

Do you think there should be a further emphasis on the clearing of the contents of the net rather than, in essence, concentrating on the 2 provisions within the regulation that is set out --

The Connétable of St. Brelade:

Possibly. The downside of that is that there would be a requirement of conceivably more resource from the Fisheries Department who clearly have not got it. So the more self policing there can be with any of these laws the better. I think the situation at the moment where a lot are reported by members of the public is probably the ideal scenario because they are acting as policemen and in fact point the Fisheries officers in the right direction to save them just unnecessarily walking up and down beaches.

Deputy R.C. Duhamel:

Right, so in your view then, potentially how many times a year could a person be caught who is not a professional fisherman in being able to place nets in the wrong place?

The Connétable of St. Brelade:

On a neaping situation, once a fortnight. The tide runs in fortnightly cycles and, once again, looking at the tide tables you can see, at the moment we are at the 24th, the tides are just starting to cut back, they will be up to their maximum spring on 5th July and then the cycle will run through until about 22nd. So in broad terms it is a fortnightly cycle. Week of springs, week of neaps. So the fishermen will be working on the higher springs now. The other point is that the nets will not tend to be set during the summer period where regulation dictates they cannot be anyway, they will be set during the autumn periods, during the Equinox when the tides are higher and lower. It will be of no interest to fishermen to be putting a net down at this time of year generally because the tides do not go down low enough. Effectively, I would imagine they would be looking at -- certainly they might catch -- during the good tide the first week of July - I say quite good in relative terms - 4th, 5th July. There is a couple of days there they could conceivably fish were there no regulation. The bigger tides, the far better ones, are into September, certainly early September, the autumn Equinox, 1st September and possibly then 16th and 17th. So this little thing (Tide Table) is an all persuading factor and dictates really how a fisherman lives.

Deputy R.C. Duhamel:

As a Sea Fisheries panel member, have you been made aware of the number of times that nets have been caught over the last 5 or 10 years?

The Connétable of St. Brelade:

No, I have not, but in practical terms I am aware of regular contraventions in the Belcroute area. I would say probably to the extent of 4 or 5 times over the last 5 years, possibly more because prior to that I was not on the Fisheries Panel so I had no need to record it.

Deputy R.C. Duhamel:

We had some evidence given by the Sea Fisheries officers that of the instances that have been reported to them, or they have managed to sort out or find themselves, they indicated that it was of the order of around, in the last year, 7 times but on average perhaps no more than 2 or 3 times. I think the activity last year was as a result of a, shall we say, new entrant to the market and I understand that they are aware of the culprit but that, of course, can have the effect of tipping the figure somewhat but my feeling is that was probably the case.

Deputy R.C. Duhamel:

Does it make sense, in your view, to be bringing forward a specific recommendation for changes within the regulations in order to bring the law into effect in getting one or 2 individuals to desist from poor practice?

The Connétable of St. Brelade:

Well, I think it is probably focused on the need for legislation because it is not until these instances occur that it is realised that there is not any legislation to stop it and I think from an environmental point of view we would all agree that the last thing we want to be seeing is dead fish on the beach. So I suppose really, apart from the practical and professional point of view, there is a public perception angle which we need to consider.

Deputy C.J. Scott Warren of St. Saviour:

It is the power to be able to stop it that this legislation would provide?

The Connétable of St. Brelade:

Exactly, yes. It is a very finite piece of legislation for a finite fishing area.

Deputy R.C. Duhamel:

In environmental terms, we have got another piece of legislation coming to us and that is the Integrated Coastal Zone Management Strategy which kind of places fishing into a broader environmental context in terms of fishing sustainability and trying to ensure, among other things, that areas round our coastline and the fishing stocks are well managed and not over-fished. Do you have any evidence at the moment to suggest that particular gullies in which these beach set nets are placed are over-fishing the areas?

The Connétable of St. Brelade:

I have got no evidence to indicate that whatsoever.

Deputy R.C. Duhamel:

Those persons or person who have caused the problems recently, have they been fishing for commercial purposes in order to place the fish on to the market or have they been fishing for their own requirements?

The Connétable of St. Brelade:

I think they are fishing for commercial purposes.

Deputy R.C. Duhamel:

If they are fishing for commercial requirements, as you have indicated, can you perhaps tell us something about whether or not you think it would be in the best interests of that particular fisherman, under those circumstances, to be leaving their nets in a position where the fish which are caught will be eaten by crabs or other fish and therefore be in a position not to be marketable in a whole fashion which would bring about the greatest economic return?

The Connétable of St. Brelade:

It seems quite pointless in them setting nets in such a way. I can only think it is due to either a lack of knowledge or lack of professionalism or lack of commercial need, but it does seem curious, I must admit.

Deputy R.C. Duhamel:

We have had evidence from the officers that although it has been stated at the front of the report that there are no financial or manpower implications because of the spot checking that takes place or the public ringing in to say that nets are over-fishing when they are discovered - we have been told there will not necessarily be a new beach patrol in order to look out for these nets - do you think perhaps a better way forward would be to go for some form of licensing system, as happens in other areas of commercial fishing, so that at least the department were notified of the positioning of these nets? If indeed new entrants to the market were proposing to locate these nets in gullies at wrong periods of the tide which potentially could have a negative effect in over-fishing or gross fishing if they were caught out, so to speak, then perhaps the department would be in a greater position of giving the information to those persons as to wiser use of their fishing gear in order to minimise the problem, rather than coming at it from a legislative point of view, which is perhaps not able to be policed fully, without having those requirements in place at the outset.

The Connétable of St. Brelade:

I think there is a risk that it could all be over burdened with bureaucracy. I can see a need for people having to register. In fact, as I referred to before, the professional fishermen are registered and it has been their tendency to fish nets during bad weather periods or during spring tides, the reason being that the principal activity of theirs is lobster potting or crab potting and that can take place during reasonable weather conditions and better during neap tides. The reason they cannot do it during spring tides is you get strong current runs which makes it very difficult to get the pots up, so you will find they do not tend to work then. So the netting activity lies quite well with that sort of operation. Now, the part-timers, of course, can pop down at any stage and there are in place bag limits. I am not sure if it has come to law yet. The bag limit legislation indicated that there would be a larger allowance for the professional fishermen than for the part-timers. So I suppose really that could run in parallel with some sort of licensing regime for netting. I do not think it would be practical for people to advise the department on each occasion they were setting a net, I think that would be over bureaucratic, but I see nothing wrong with the individual being licensed and the net being marked so that any miscreants can be tracked down more easily by the department if it was found to be in contravention of the law.

Deputy R.C. Duhamel:

So how will the department ascertain whether or not a net has been set for more than 96 hours?

The Connétable of St. Brelade:

It will be neaped because once the tides start to neap, if they see a presence of a net which can be easily identified by its floats, I am sure the public will be very quick to point it out. I think the added policemen on this are the leisure boating fraternity because quite clearly nets set in these sort of areas tend to be used by the boating fraternity using vessels of all different sizes and they will be very quick to point out,

believe you me, if they start to get nets entangled round their propellers and causing safety issues which will inevitably follow.

Connétable K.A. Le Brun of St. Mary:

Could I just ask there. The complaints that would have come through on this particular person, would it have come through, as you say, the leisure people, the ordinary person who is going along the beach, or would it be the responsible professionals who would do it?

The Connétable of St. Brelade:

I would say both, probably. The leisure people and the people walking on the beach: I think my attention has been drawn to it by people walking on the beach, possibly with a dog, and saying: "There is a net down there full of dead fish. What are you going to do about it?" Then in turn these nets very often get hauled up, dumped on the quay, still full of dead fish, and you are led to them by your nose very often. The public are remarkably perceptive when it comes to this sort of thing.

The Connétable of St. Mary:

Then if it is like the difference between neap and the spring tides, are you saying therefore that if they were left there over the neap when they are being spotted it is then on a spring tide so they would have been left for quite a considerable time?

The Connétable of St. Brelade:

I think that on a neap tide they will still be visible because they have got their floats, you see, the row of floats, and if people spot the row of floats on neap tides they are very quick to pick it up.

The Connétable of St. Mary:

But the person who had laid it would not be able to walk out to it and get it?

The Connétable of St. Brelade:

No.

Deputy C.J. Scott Warren:

Do you know if this law, this legislation, is generally supported by the people that it will police? Have you got any feedback from the general people that you ...

The Connétable of St. Brelade:

Yes. I spoke to one of the regular Belcroute fishermen only a couple of days ago. I think any fisherman is always quick to blame the other chap, I do not think there is any doubt about that, but he was very supportive of the concept and, once again, could not see any reason why anyone would want to leave a net for more than 96 hours anyway.

Deputy R.C. Duhamel:

There was some suggestion from the department officers that perhaps when the Coastal Zone Management Strategy is implemented this particular regulation might be seen as a stopgap in terms of a move towards kind of sustainable fishing practices across the board. Would you have any comments in that regard?

The Connétable of St. Brelade:

I think I would support that entirely, no question about it.

Deputy R.C. Duhamel:

All right. One final question: in that respect do you think that perhaps an alternative focus might have been placed on requiring fishermen, whether they be commercial or part-time, to be encouraged as far as possible to be clearing their nets responsibly in as small a timeframe as possible rather than to be leaving their nets for up to 4 days unattended?

The Connétable of St. Brelade:

I do not think any fisherman is going to leave a net for 4 days unattended. He will be down there on every opportunity when the tide leaves because if he does not the seagulls will help themselves to the catch. So if a net is put down and found to be working well - by that I mean catching fish - he will be removing the fish on the subsequent falling tide and he may leave it there up to his allowed 96 hours, or really the time dictated by the tide in that particular area, before he removes it. Now, if he found it just to be filling with vraic he is going to take that net away straightaway because it is obviously not going to work and it will be causing him a lot of extra work to clean it. So I do not think it needs reducing because once again, as I have said before, it is self-policing.

Deputy R.C. Duhamel:

I was thinking mainly in terms of is it economically viable or reasonable for dead fish to be removed up to 4 days later from a net and still be of a marketable condition?

The Connétable of St. Brelade:

No. So in practice, you see, no fisherman is going to do that because he will be left with a load of dead fish. On the 96 hours, if it were to be left up to 96 hours, he will be down there, what, 8 times during that period.

Deputy R.C. Duhamel:

Okay. I do not have any further questions. Anybody else? Is there anything further you would like to add?

The Connétable of St. Brelade:

I do not think so, albeit only to emphasise that the professional fishermen operating from the harbour historically do not make a fortune and it is a fairly tenuous sort of operation. As I indicated before, the shell fishing industry, which is predominant in the Island, is probably 80 per cent of their business and this is probably something like 20 per cent but it certainly helps to fill in the slack times. I would support any legislation which perhaps controls the sort of detrimental fishing to the environmental area that we are getting from part-timers.

Deputy R.C. Duhamel:

Okay. Thanks very much.

