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Scrutiny Panel

TECA review_JFA submission 17-01-2021

submitted by Don Thompson

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Focus of the submission; In view of the fact that many fishermen who will have responded to the invitation to submit evidence to the Panel, will have commented on the extreme negative impact on their business, due to excessive foreign fishing effort within Jersey's territorial seas, the focus of this submission is more on the legal text of the TCA.

I make no apology for suggesting that, while the brexit negotiations were long and protracted, the final text is quite shabby and appears as something of a last minute fix. It contains many legal contradictions. The JFA is not convinced that Jersey's law officers will have had sufficient time to analyze the text, prior to the states assembly and vote of the 27th December

1).**Overview of the TCA;**It is important to note firstly that, with Jersey's fleet effectively pinned to just 3 nautical miles, rather than the minimum of 6 nm and more standard 12 nm around the rest of UK & Europe, it is certain, that our fleet will continue to diminish as it has done since the Granville Bay Accord became effective in 2002. Of the total area of Jersey's territorial seas Jersey has exclusivity over a little over 600 square miles, while the rest in the 3-12 nm zone(1422 sq miles) is covered by the new TCA. Jersey's fishermen find it extremely difficult to compete with the very modern, much larger and far more powerful French vessels in the 3-12 nm zone. Further, Jersey's total annual catch from our territorial seas has diminished massively in the past 2 decades to around just £4/5 million GBP (first sale value) while latest estimates of the French catch from our waters is circa £20 million.

Unfortunately though lack of data from the French fleet, a precise comparison is difficult.

The JFA had prior to the agreement held high hopes of a deal that would offer our fleet, at least a fair share of the fish in our waters. We have a consultant contracted to the JFAS who has been working on the JFA plans to build a modern fisheries hub in the island, capable of making better use of our domestic markets and moving away from volatile continental markets to new markets abroad. The TCA, in terms of fisheries and the future of the fleet practically destroys all hope of success of such a vision.

2).**Incorrect delineation of fisheries limits baselines;** Of the technical/legal points within the TCA text that require scrutiny overview, the most pertinent one is the incorrect recognition of Jersey's sovereignty of the offshore reefs and islets and the contradiction of international maritime law, in terms of the delineation of fisheries limits base lines.

The TCA requires that areas granted for access (by foreign vessels) to Jersey's waters/fisheries limits ect, must be compliant with UNCLOS. Inferring that lowest drying rocks form the baselines

JFA has written to all states members, clarifying the situation and anomalies. In response; External relations have written to the JFA stating that LOD would give a "legal" summary. We have communicated with the LOD but not received the explanation on why the 3 nm limits have been incorrectly drawn. This has reduced the area of our exclusive 3nm by circa 50%.The JFA has written a paper (with independent legal assistance), on the point and the document is available for the panel.

3). **IUU and SMEFF regulations;** There is considerable emphasis in the TCA on the need for new

arrangements under the TCA to comply with international *Illegal, uncontrolled and unreported* (IUU) fishing regs. Furthermore, permits issued by Jersey to foreign vessels are by necessity, written under the terms of SMEFF (sustainable management of European Fishing fleets in external waters). The initial temporary permits which have been issued neither meet the conditions of IUU nor do they comply with SMEFF. The permanent permits, to be issued from April must have a number of conditions applied in order to meet IUU catch recording requirements, if they are to be compliant. (we do not know if that will be the case) In short Jersey's fishery is effectively now of “un-managed & unsustainable status, due to the lack of catch reporting and reception of data from foreign vessels.

4). Discriminaton; The TCA also places considerable emphasis on new arrangements needing to be introduced on a non-discriminatory basis. There are a considerable number of “conditions” placed on Jersey fishermen's licences, including the prohibition on registering or use of a vessel over 12 meters in length into the Jersey fleet. The major part of the 57 foreign vessels so far issued with permits by Jersey are of between 12 and 22 meters length. This single example alone, constitutes extreme and unacceptable “discrimination” though in this case against our own fishermen

5). SMEFF regs; In terms of SMEFF regulations, it is clearly stated within the SMEFF text that foreign (EU) fishing effort in external waters must not exceed sustainable levels. Further effort should not be at levels which will have negative impact on the livelihoods of indigenous fishers. (This passage reflects need to counter the decimation and starvation of fishing communities on the west African coast due to overfishing by foreign fleets). In the context of the TCA and Jersey's fishery, the TCA requires “that the nature and extent of prior fishing levels in Jersey's waters, will be reflected in new arrangements. Effectively the levels of french fishing activity permitted by the GBA in Jersey's waters must continue under the TCA.

However, the 70 page GBA review document produced by Paul Chambers, very much points to fishing effort being unsustainable. Jersey's Marine Resources annual report indicates a massive decline in primary stocks in our waters in the past 3 years (the track record period for a foreign vessel to qualify for a permit. Hence there exists a major legal contradiction if the TCA is to be applied according to its text. Certainly our fishery will continue to decline and more of our fleet will be forced out of business.

6) Free access for foreign vessels v costs for Jersey fishermen; To return to the non-discriminatory element of the TCA text and the need for new arrangements to meet the requirement, the JFA have grave concerns over the issue of permits to foreign vessels “Free of Charge”. There is a major recruitment problem within our fleet at present due to the spiraling cost of access through licences. Current costs are circa £450/kw (kw of engine power). The latest vessel to join our fleet had to borrow quarter of a million GBP for a licence. We have a small number of fishermen who are aspiring to become owner skippers but who are prevented through high costs. This does raise the question of discrimination. Jersey Government effectively set the precedent for the application of fees for access, by agreeing with Guernsey and the UK that initial applications plus bi-annual renewal of permits for Jersey vessels to fish in Guernsey waters. The current figure is a recurring uncapped £500. It is worth noting that French fishermen pay considerable sums (up to 4000 Euros) to their own organisations for permits, fees dependant on the metier and area of access. Normandie effectively levy charges on French fishermen to fish in Jersey's waters!

7) the Moral argument

Even if a legal argument could be presented to qualify permits issued FOC by Jersey to foreign vessels, there is still practically zero scope for new entrants into our local fleet. By way of explanation:

we see that on top of the 57 permits issued to date to French vessels, there are a worrying number of “pending” applications. The 57 french vessels licenced to date by Jersey, being larger and more powerful, constitute circa treble the tonnage and over quadruple the engine power (fishing capacity) of Jersey's fleet. Putting the cost of access disparity to one side, we still have a major problem, whereby our existing fishermen are being forced from their own grounds and young local fishermen, even if they could afford the cost of access, are unable to make a business case for a loan, due to being unable to compete in their own waters. If not a legal issue this is certainly a moral issue that must be addressed at all costs.