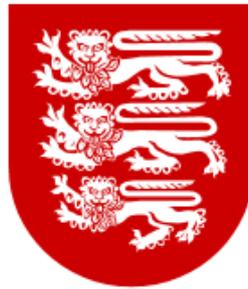


STATES OF JERSEY



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 3rd February 2023
by the Environment, Housing and Infrastructure Scrutiny Panel**

STATES GREFFE

COMMENTS

Background

The Draft Sea Fisheries (TCA - Licensing of Fishing Boats) (Amendment of Law and Regulations (No. 2) (Jersey) Regulations 202- [\[P.115/2022\]](#) (hereafter the “draft Regulations”) was lodged “au Greffe” on 15th December 2022 by the Minister for the Environment. If adopted, the draft Regulations would provide the Minister with greater flexibility when issuing licences to replacement vessels and would allow the Minister to grant an in-principle decision prior to full application for a fishing vessel licence.

The Environment, Housing and Infrastructure Scrutiny Panel (hereafter “the Panel”) was first briefed on the draft Regulations by Government officials on 21st December 2022.

The current [Sea Fisheries \(Jersey\) Law 1994](#) (the 1994 Law) allows the Minister to issue a licence to a replacement vessel (known as a substitute vessel in the 1994 Law) only if the following conditions are met with relation to the vessel’s fishing activity and characteristics:

- uses the same method and gear as the vessel it replaces
- no greater in length, breadth, tonnage and power than the vessel it is replacing.

It was explained during the briefing that these conditions are deemed to be too strict and so adopting the proposed draft Regulations would enable more flexibility for fleets to adapt their vessel size, where deemed appropriate to do so. This is reflected in Regulation 3 Article 7 of the draft Regulations (power to restrict sea fishing):

- (ii) the vessel is a vessel that replaces a TCA vessel (“a substitute vessel”) or replaces another substitute vessel, and
 - (A) which uses the same method and gear as the vessel it replaces and does not exceed any of the following characteristics of the vessel it replaces, as measured in accordance with Regulation (EU) 2017/1130 of the European Parliament and of the Council of 14 June 2017 defining the characteristics for fishing vessels (OJ L 169, 30.6.2017, p.1) –
 - (I) engine power,
 - (II) length overall,
 - (III) breadth,
 - (IV) gross tonnage, or
 - (B) which the Minister decides to accept as a substitute vessel, having regard to the policy published by the Minister from time to time.”.

The Panel notes that in Regulation 3(B) it states, “*which the Minister decides to accept as a substitute vessel, having regard to the policy published by the Minister from time to time*”. This wording would give the Minister for the Environment a large degree of discretion in determining the issuing of a license to a replacement vessel. The conditions under which the Minister can accept or refuse requests will be determined by the

Minister in the Replacement Vessel Policy which will be published to accompany the draft Regulations.

The Panel was informed during the briefing that under the proposed draft Regulations each vessel will have a permit within the new licensing standards where the fishing effort permitted for that vessel is defined. The permit will also define the type of fishing permitted on the vessel, fishing gears permitted, the authorised catch tonnage and days of fishing permitted (some vessels may only be able to fish on a certain number of days per year). These elements will be based on EU vessel fishing activity from 1st February 2017 to 31st January 2020 (known as the ‘reference period’). A further limitation on a vessel’s engine power is also placed on some zone endorsements and licences.

In addition to the initial briefing provided by Government officials, the Panel also met with the Minister for the Environment and officials on 16th January 2023 to discuss concerns that had been raised by the Jersey Fishermen’s Association (JFA) and to discuss the proposed Replacement Vessel Policy, which was latterly provided by the Minister as an addendum to the proposition.

Owing to the concerns raised by the JFA, and the need to explore these in further detail, following the adoption of the Principles of the proposition on 18th January 2023, the Panel had the draft Regulations referred to Scrutiny for further review. Key evidence that has been considered as part of this short review is listed below:

- [Written Submission – Jersey Fishermen’s Association – 2nd January 2023](#)
- [Written Submission – Jersey Fishermen’s Association – 24th January 2023](#)
- [Transcript – Public Review Hearing with the Jersey Fishermen’s Association – 25th January 2023](#)
- [Transcript – Public Review Hearing with the Minister for the Environment – 25th January 2023](#)
- [Hansard – States’ debate \[P.115/2022\] – 18th January 2023](#)

Replacement Vessel Policy: key concerns and recommendations

The concerns raised are set out fully in the aforementioned submission documents made by the JFA and in the transcript from the public review hearing. Given the short timescale for review, the purpose of this comments paper is not to provide an extensive commentary on all the issues raised. Instead, this paper will draw out the key findings from the evidence where the Panel feels pertinent recommendations can be made to the Minister for the Environment.

Issues with monitoring and enforcing catch quotas

A key concern of the JFA is that allowing French vessels the flexibility to increase in size will, in turn, lead to an increase in fishing effort. The Minister has argued that this will not be the case as there will be restrictions and caps on catch limits placed on permits that will prevent this from happening. The JFA contend that this does not provide reassurance to the local fleet who believe there is not sufficient ability for the Government of Jersey to adequately monitor and enforce catch quotas:

Deputy S.G. Luce:

Just to be clear, the point you are trying to make is, even with the best technology and a huge amount of time and effort put in trying to work out what sort of tonnage spider crab was being taken out of the fishery, when the actual data came back from the French side it was considerably more than we thought it was?

President, Jersey Fishermen's Association:

It was certainly at odds. That creates 2 problems because, first, the Minister or the department will have to work out for the sake of T.C.A. what the previous catch was so that we can maintain or allow the French to maintain that level of catch. There will definitely be a dispute over what data there is to show how much that catch was. Then when we set that figure, if we ever do, we have to be able to control the fleet somehow, when we do not have any means of monitoring at the point where it is landed.¹

During the public hearing with the Minister, the Panel put this same concern to him and officers:

The Connétable of St. Brelade:

One of the issues we gleaned from the president of the J.F.A. (Jersey Fishermen's Association) was the lack of confidence our fishermen have that French nationals fishing will adhere to the quotas that are prescribed, and that is evidenced by we are told that significant catches in excess of the quotas are regularly landed. Can we get any information from the Criée in Granville or Cherbourg as to what the landing figures are? Can we understand what their process for prosecution is? I do not know in legal terms whether Matthew has got any contribution to make on that. Do we understand what the French process is for sanctions against excess landings?

Head of Marine Resources:

I will deal with the first bit, if that is okay with you. It is possible to get landing information from the Criée. That said, as with these things, it has to be by request. We do not get automatic access to it and by and large those requests are only made in relation to prosecutions. If we are trying to work out what a particular vessel caught in a particular day, we can request it. It is not routine. What we are hoping to have set up is automatic access to what they call the e-log system, which is an electronic recording system that the French vessels have to fill in as they go along, and it now includes these particular zones for Jersey and Guernsey. Going forwards, for the vessels that are equipped with it, we should get that in real time. But in terms of the landing, no, that has to be through request.

Senior Legal Adviser, Law Officers' Department:

Just to come to the second point there, and I think it comes back to a point that Paul was rightly making a moment ago, which is that of course under the Granville Bay system and prior to the introduction of the new permit framework, there have not been controls on daily catch limits and effort

¹ [Transcript – Public Review Hearing with the Jersey Fishermen's Association – 25th January 2023 p.10](#)

limitations which are applied on the Jersey licences and permits. We have, to some degree, been relying upon the French enforcing their own limits on their own permits. That changes with the Trade Co-operation Agreement because Jersey is now the licensing authority and it is issuing permits with effort limits and limits on the amount of gear for static gear vessels and limits on the number of days at sea for mobile gear vessels and catch limits. The approach to monitoring and enforcing those limits, the limits need to be set based on a quantification of the effort that took place during the reference period, so that is the process that we have been going through to make sure that those permits are set in the right way. But inevitably because those have not been in force yet, the process to monitoring and enforcement needs to evolve. What Paul is saying is that the team has been bolstered with additional staff and capacity to be able to handle the data. There has already been data coming in - and Paul can perhaps say a bit more about that - but data coming in on catches from French fishers because that is a condition of their licence that they have been granted temporarily while this is all being introduced. I think we need to continue to work with the E.U. (European Union) and French authorities to make sure we are getting the data and that we have effective methods of enforcing these limits. To the extent that we cannot sort of say today this is exactly how this will all be done going forward; that is something that still needs to be continued to be worked on but there is a lot of work that will be going on.²

The Panel was keen to further explore what scope there is for ensuring more robust methods for monitoring and enforcing catch quotas to ensure they are compliant with permits when landed. The question was first put to the President of the JFA:

The Connétable of St. Brelade:

You mentioned the evidence of the Criée just now. There seems to be concern among the fleet that the French may be able to land more than their quota, shall we say, on their permit without any challenge. How do you feel that can best be policed or how can we have the certain knowledge that their landings are compliant?

President, Jersey Fishermen's Association:

It is an important point because the Minister's case for the replacement vessel scheme, as it stands, very much rests on, look, it does not really matter what happens about the tonnage and kilowatts, whether it moves from the latent part of the fleet into the active part or whatever, it is all about managing the catch on a day-to-day basis. We think that that is the weakest part of his argument. Because to be able to say that I can sit in an office and monitor through V.M.S. (Vessel Monitoring System) what fishing vessels are catching is a pretty broad statement. I will just give you an example of one of the big fisheries in our waters, it sort of spans French/Jersey waters, is south-east of the Minks [Les Minquiers], what we call the Coq Passage. You go down through there on the Condor. It is a phenomenal fishery but the French fleet are so powerful that they start off catching 3 or 4 tonne of scallops a day. When the season opens they fish there. Just phenomenal catches. God knows how they restrict the landings to 1.3 tonnes because they genuinely catch that much in a couple of

² [Transcript – Public Review Hearing with the Minister for the Environment – 25th January 2023 p.9-10](#)

hours down there. By the end of about 2 to 3 weeks that catch has gone from phenomenal right down on the floor because it is just a confined area, it is shallow water, it is easy to fish. The daily catch rate just over a very short period of time goes from tonnes down to a few kilos, and then the fishery is finished for another year and they move to other areas. So this kind of notion that it does not really matter about the replacement vessel scheme. We will just manage fishing effort where it is or where it was before Brexit is a ... I just have to say, it almost borders on naivety.³

The same question was posed to the Minister for the Environment and officers in the public hearing that followed. The Head of Marine Resources explained that intelligence-led monitoring using satellite tracking was the method that would be used to gauge catch quotas:

Deputy S.G. Luce:

We might come back to that but I am just trying to come back to the issues raised by the president. One of the things he said was that it is fine having technical data to try to assimilate how much a French boat is taking and it may well be that an electronic log will say we had 1.3 tonnes. The president claimed that French boats are landing - how shall I put this delicately - more than they should be. How do we monitor that or is there any way that we can monitor that other than the returns? If I a boat, for example, has a licence to land 1.3 tonnes and lands 2 tonnes, what can we do about that?

Head of Marine Resources:

I think it goes back to the intelligence-led monitoring. This happens already so this is not something that is about to come in; it is something we do already, which is if you have boats and they are satellite-tracked and you are aware of the permits that those boats have because remember that all fishing activity and fishing effort going forwards for T.C.A. licensed vessels is controlled by fishing permits. Those permits have a limit, as you say. A lot of the mobile gear ones do have a daily catch limit, 1.3 tonnes of scallops, that kind of thing. If you know roughly what the hourly take for scallops is for a scallop dredger - I have a feeling I would need to confirm this afterwards - I think it is 60-something kilos an hour on average. You can work out when you look at the activity of these things roughly how much they are taking. If it starts to look suspicious, if people are fishing very long hours and in a pattern that looks unusual, at that point we go in and say: "Right, we need to board this boat, we need to check." That 1.3 tonnes is the catch in Jersey waters obviously. When it goes into French waters and it is a restriction on landing, we do not have any control over what happens there. What we are interested in is to make sure they are sticking within the limits on the Jersey side of things.⁴

In addition to the concerns raised that V.M.S. satellite tracking, whilst helpful, was not an absolute safeguard for monitoring catch quotas, the concern was also raised that despite it being a requirement to have V.M.S. fitted from 1st July 2022, it was alleged that not all French vessels had fitted the technology:

³ [Transcript – Public Review Hearing with the Jersey Fishermen’s Association – 25th January 2023 p.7-8](#)

⁴ [Transcript – Public Review Hearing with the Minister for the Environment – 25th January 2023 p.7-8](#)

President, Jersey Fishermen’s Association:

I have some reservations but I would have to give credit to some pretty intelligent thinking within the officers in the department. We are now in a new era where there is vessel monitoring and it is part of the issue. I do not want to digress from the question but it is part of the issue that of the 136 vessels that have been licensed there are quite a large number that have not even fitted that equipment.

Deputy S.G. Luce:

I was going to ask this question because we have been assured that every vessel that has a licence has had the equipment fitted but you are saying that is not the case.

President, Jersey Fishermen’s Association:

That certainly was not at Christmas time so there have been a lot of vessels that have been fitted. What I think you want to be careful of is that all the vessels that have been fishing in our waters, or almost all, have been supplying log data, which is great. That is fantastic. Unfortunately you can write anything you want on a piece of paper and take a photograph and send it to the department. Certainly at Christmas time it was a fact that there was a large percentage of vessels that received a licence that had not fished here, they could not fish here because they did not have the kit fitted. If they have fitted it in the meantime, that is a very different matter, but that is a lot of boats to fit the equipment.⁵

The Panel followed up this point in the public hearing with the Minister for the Environment and the Head of Marine Resources advised that he could not confirm conclusively whether every vessel had fitted the V.M.S. technology:

Head of Marine Resources:

I cannot answer that one conclusively in the sense that I just do not have the information that is available here. As far as I am aware, or what we have been told, is that the vessels entering our waters do have V.M.S. fitted. There are a number of vessels, and again I cannot give you a number because I do not know it, where the vessels do not have the units fitted but they are not fishing in our waters currently. They have been informed by their own authorities that they will need to get it fitted if they want to come into our waters.⁶

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.

⁵ [Transcript – Public Review Hearing with the Jersey Fishermen’s Association – 25th January 2023 p.12](#)

⁶ [Transcript – Public Review Hearing with the Minister for the Environment – 25th January 2023 p.4](#)

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.

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.

The need for a more detailed and carefully designed policy framework

Looking towards possible solutions to the concerns raised in relation to the Replacement Vessel Policy, the Panel asked the President of the JFA what he felt was needed:

The Connétable of St. Brelade:

Clearly there is an enthusiasm to get this replacement vessel policy through; what should the Minister be doing to enable that to happen? What do you need him to do?

President, Jersey Fishermen's Association:

Quite genuinely, if he already envisages a framework that will stop, say, latent effort or effort from the capacity from lower down, gradually moving about and if he has a very defined framework for how licences can be moved because they will, they will have to move - boats are being changed all the time - if he has that he needs to make everybody aware of it and needs to make us aware of it, Scrutiny aware of it and in fact everybody in the States Assembly that will vote need that information on what are the safeguards? This thing that will just control the catch, I think, is just ... I am sorry, if the Minister was sat right beside me I would say it is a weak argument, there is a certain amount of naivety in there.⁷

⁷ [Transcript – Public Review Hearing with the Jersey Fishermen's Association – 25th January 2023 p.24-25](#)

...

President, Jersey Fishermen's Association:

Again, we just have to look at that thing, I am 110 per cent confident that fishing effort and capacity of the fleet are 2 inextricably linked items. When you take a vessel like that, and you look at the running costs of a vessel like that, they definitely do not survive on 1.3 tonnes of fish a day. They need a lot more than that so we have to look at when we start to allow the bigger boats to grow even bigger, about their environmental impact, about the economics of a big vessel, and our ability to do what the Minister claims is just restrict them to this figure, which we do not ... we hope, we know, from previously, and we hope we will be able to monitor and enforce in the future. I think there is a lot of weakness in the whole thing there. What we are saying is, the solution here is to look at a framework that deals very carefully with what can happen with that tonnage. So, fine, the donor vessel and the replacement vessel have to be similar, albeit it can be 20 per cent bigger in tonnage, which is quite a lot actually. But if we build a framework that says, firstly, tonnage from an under-7-metre vessel that is used for potting cannot be used, split up and then put on to one in the next category up and have several categories, there is no reason in the world that we cannot do that. Just build a very tight framework about how ... I mean we asked and I think Scrutiny asked for more policy behind the proposal and there still is not any policy that shows what does the French fisherman do when he retires. Does he sell the licence to his friend or does it come back to Jersey? What happens when 2 fishermen decide: "Look, let us combine forces and put our 2 licences together and make one bigger boat" because under this you could ...

Deputy S.G. Luce:

I understand what you are saying. Given that there are restrictions on 10 per cent on power and 20 per cent on tonnage for the over-12 metres, what you are saying is the ability could be to move licences from small vessels under 12 into the over-12 fleet and, given that there is this percentage increase limit, that every boat in the over-12 fleet could increase by 10 per cent power and 20 per cent tonnage, you could literally take all your under-12-metre boats and chuck all that licence into the over-12 and you end up with a much bigger fleet. That is your worry and you would seek, potentially, to keep the under-12 licences in the under-12.

President, Jersey Fishermen's Association:

I would go a bit further and create a band up to 7 metres, 7 to 10, 10 to 12, et cetera. That really brings it down to a nutshell. Is what myself and my colleagues are saying is without a really strong framework you just end up with less smaller low-impact boats. You end up with fewer but bigger boats at the top end where the impact, where the fishing effort is greater, then more need to introduce new measures to control what they do.⁸

The Panel explored the possibility of a more detailed framework with different levels of licensing with the Minister in the public hearing, however it was the Minister's view that this could be properly managed within the current framework:

⁸ [Transcript – Public Review Hearing with the Jersey Fishermen's Association – 25th January 2023 p.16-17](#)

The Connétable of St. Brelade:

It will if they get bigger and that is really the point. I think what we are trying to ensure is that the fishermen at the Jersey fleet have the confidence that this is going to be properly managed and it is not abundantly clear. There is a suggestion just to move away from that, that there would be different levels of licensing, shall we say up to 7 metres, up to 9 metres and up to 10, 12 and so on. Have you considered that in any way so that we can manage this technology creep-in or this tendency to move to bigger boats?

The Minister for the Environment:

I think it is managed within the current framework that we have, which is that under 12 metres, vessels cannot get bigger than 12 metres and they cannot migrate between the 12 metre and the over-12 metre.

...

Head of Marine Resources:

... for, let us say, an under-12-metre vessel shrinks by whatever it happens to be, 10 per cent or something like that, can that be then used by an over-12-metre vessel? Theoretically, yes, that is absolutely true but bear in mind for over-12-metre vessels there is a 10 per cent and 20 per cent limit on the amount of engine power and tonnage that it can increase. That is set against the original licensed vessel, so it is not something that can increase every time the vessel gets replaced.

...

Head of Marine Resources:

But that limits the size that any vessel can reach.

Deputy S.G. Luce:

But you also will accept that given that vessels below 12 metres are quite light, they have considerably lower horsepower potentially, it is not impossible, given that we have a 20 per cent increase in tonnage, 10 per cent increase in power, within the future all the French boats under 12 metres could disappear in favour of larger vessels over 12 metres, which are slightly longer and slightly more powerful and we could end up with a French fleet which is a lot smaller but the same horsepower and the same tonnage, as we have agreed in the T.C.A., theoretically.

Head of Marine Resources:

Theoretically, the boats above 12 metres could all expand by 10 per cent and 20 per cent but that will not affect their efficiency in terms of fishing effort and things.

...

Yes, but fishing effort and what we are talking about here, which is the capacity of the vessel, are entirely separate under the T.C.A. What we are talking about is making provision for vessels to be able to be replaced there. The permits that they are given are what dictate the level of fishing effort they can have. You could have a boat that will get bigger but if it is on the same permit that it was when it was smaller it will not be able to fish any more.⁹

⁹ [Transcript – Public Review Hearing with the Minister for the Environment – 25th January 2023 p.19-20](#)

Whilst the Panel recognises that the Replacement Vessel Policy (attached as an [addendum](#) to the proposition) outlines a degree of helpful information and data, it is not sufficiently detailed to provide robust safeguards against any potential unintended consequences that could arise.

The Panel therefore makes the following recommendation with the aim of ensuring that there is scope for the Replacement Vessel Policy to suitably control how vessels are able to increase in size and power and to safeguard against a potential unintended consequence where latent effort¹⁰ evolves into more active fishing effort across the French fleet. The concern being that without such safeguards, the policy might encourage a trend over time towards fewer, but larger, French vessels.

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.
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.
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.
4. An additional characteristic of ‘displacement’¹¹ 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.

Potential consequences of not passing the draft Regulations

During the States’ debate on the Principles of the draft Regulations, the Minister outlined the main driver of the proposed changes as based on the risk that Jersey would be in breach of the TCA if flexibility was not provided as part of the Replacement Vessel Policy:

Deputy J. Renouf (The Minister for the Environment):

...The T.C.A requires Jersey to maintain access to its waters by French vessels at a level fixed against that historical track record period that I mentioned

¹⁰ Fishing capacity that is authorised for use but not currently being used.

¹¹ ‘Displacement’ is the volume of water the vessel displaces and is based on the Archimedes principle that every floating body displaces its own weight of the liquid in which it floats.

earlier. To achieve this will require some flexibility to be considered as part of any R.V. scheme. This is down to practical realities. Consider this example: if you require a R.V. to be no greater in 4 different characteristics, length, breadth, tonnage and power, the practical reality is that it is impossible to buy a new boat that hits all 4 characteristics exactly. You are just not going to find one off the peg that fits those 4 things exactly. Since no characteristic can exceed that of the old vessel, the reality is that some of those characteristics of the new R.V. will be lower. That means that cumulatively over time the size and power of the French fleet would reduce. That risks breaching the terms of the T.C.A., where we have to allow the French to maintain access with the same characteristics as they had during the reference period.¹²

In response, it was the President of the JFA's view that it was not difficult to replace any vessel with one of similar tonnage and power:

Jersey Fishermen's Association:

There was also an additional point made by the minister, during his speech, to qualify the need to allow tonnage and engine power to increase in individual vessels (in order supposedly to allow the Foreign fleet to maintain a given TCA compliant capacity), which we believe may have been factually incorrect, albeit unintentionally. That was to say that under the current licensing regime, foreign vessel owners building or buying new vessels would be required to "not" exceed any parameter i.e. length, breadth, depth and engine power, of the old "donor vessel". That is not the case, as the first three items are all combined and with an additional equation, all factor into an overall tonnage figure, so that it is not particularly difficult to replace any vessel with one of similar tonnage and power even if one or two parameters have altered.¹³

The Panel remains unconvinced by the Minister's argument that it would be impossible to purchase a replacement vessel that fits all four characteristics and would result in the cumulative reduction over time of the size and power of the French fleet.

In order for the Panel, and ultimately the States Assembly, to form a balanced perspective of the risks associated with not passing the draft Regulations, in the public hearing with the Minister, the Panel further explored what the potential consequences might be, should the States Assembly not pass the draft Regulations:

The Connétable of St. Brelade:

Just the last one from me really is: what is the effect of the States not passing this legislation?

The Minister for the Environment:

Matt, you can probably deal with it but I mean I think it would be quite serious in the sense that there has been a long delay for this policy from the European side. They have been asking for this for a considerable period of time because they have at least, I think, half a dozen vessels we are aware of at the moment that they are ready to get new ones and, as I say, they do not just fish here, they

¹² [Hansard – P.115/2022 States' Debate – 18th January 2023](#)

¹³ [Written Submission – Jersey Fishermen's Association – 24th January 2023](#)

fish elsewhere as well. We have fended off the replacement vessel policy because we were not prepared to accept a replacement vessel policy without the caps, without knowing how much effort we would be allowing through the permit system. The European side will now quite reasonably be able to say as of 1st February: "You have got your limits on catches and métier and all the other things, is it not time now that you put in place your replacement vessel policy under the terms of the T.C.A.?" I cannot say exactly what it will be but we are negotiating with the European Union and separately with France, as the Minister for External Relations and Financial Services has made clear, on a number of different issues. You cannot think that it is going to help, can you?

...

Head of Marine Resources:

...You asked about the effect of it. If it is not reciprocated then we have a Jersey vessel with a French fishing licence that fishes in France regularly that is larger than the vessel it replaced and it is fishing on a temporary permit at the moment. If we ditch this and the reaction on the E.U. side is to adopt whatever policy we have in place here for Jersey boats, that would prevent that boat from being able to fish there. In terms of Jersey boats fishing in French waters, we have, as I recall, I think it is 8 at the moment, is it not, Jersey vessels which are licensed for French waters? Again, because it was an evidence-based process, they had to demonstrate that they had fished for 11 days during one of these 3 12-month periods and those were the vessels that could do so. They are the ones that have got ...

...

Senior Legal Adviser, Law Officers' Department:

No, and just to add on to what Paul said, I think it is right to say as well that, essentially, the permit framework that we are introducing for the E.U. vessels in Jersey waters will be a very similar permit framework to that which is adopted for Jersey vessels in E.U. waters. These are all designed on the basis for reciprocity and I do not believe there are any Jersey vessels which have not been granted licences which applied.¹⁴

Conclusion

Whilst the Panel is supportive of the draft Regulations and agrees this to be an important first step in implementing extent and nature licensing conditions under the TCA; it does consider that the JFA has raised valid concerns with the Replacement Vessel Policy which will accompany these draft Regulations. Concerns that perhaps could be negated with a more detailed policy framework in place to provide greater assurance and safeguards. It is also evident that the JFA do not feel they have been afforded the opportunity to have these concerns fully heard by Government which is regretful, particularly given the considerable pressure and uncertainty the industry has been faced with in the last few years.

Whilst the Panel views the introduction of V.M.S. technology as a useful aid for monitoring the movement of EU vessels, it agrees that this, by itself, is not an absolute safeguard when it comes to monitoring and enforcing catch limits. This is of fundamental importance if setting caps on catch quotas is considered the means by which fishing effort will be restricted, irrespective of vessel size and power. This

¹⁴ [Transcript – Public Review Hearing with the Minister for the Environment – 25th January 2023 p.34-35](#)

safeguard becomes even further compromised if the Government of Jersey cannot say with absolute certainty that every French vessel has the technology fitted.

We wish to thank the Minister, government officials and the President of the Jersey Fishermen's Association for providing evidence to inform this comments paper. We hope the recommendations made will be accepted and followed up by the Minister and we would request that the Minister responds to confirm this in his speech at the States' sitting commencing on 7th February 2023.