

States of Jersey
States Assembly



États de Jersey
Assemblée des États

Economic Affairs Scrutiny Panel



Sea Fisheries Bag Limits

Presented to the States on Friday 16th April 2010

S.R.4/2010

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1. PANEL MEMBERSHIP AND TERMS OF REFERENCE

1.1 The Economic Affairs Scrutiny Panel is comprised of the following members:

Deputy M.R. Higgins, Chairman

Deputy C.F. Labey, Vice-Chairman

Deputy S Pitman

Deputy D.J.A. Wimberley

Deputy J.M. Maçon

1.2 The following Terms of Reference were established for the review:

To review the rationale behind the Sea Fisheries Bag Limits Regulations.

To identify and examine any stakeholder concerns.

To examine any further issues relating to the topic that may arise in the course of the Scrutiny Review and which the Panel considers relevant.

2. VICE - CHAIRMAN'S INTRODUCTION

- 2.1 The Panel began its work on Bag Limits in March 2009, when we identified concerns with the Sea Fisheries (Bag Limits) (Jersey) Regulations 200- and subsequently agreed to undertake a Review. During the course of our Review we were delighted to receive significant input from stakeholders, holding Public Hearings with, amongst others; representatives from the Jersey Recreational Fishing Association, the Chairman of the Jersey Fishermen's Association, a local independent leisure angler, the Minister for Economic Development, the Assistant Minister for Economic Development, the Senior Fisheries Inspector and the Chairman of the Fisheries and Marine Resources Advisory Panel. We also received written submissions from over 20 leisure anglers and additional written submissions from the Jersey Recreational Fishing Association.
- 2.2 It was therefore extremely frustrating when, on 13th July 2009 having called for evidence, conducted Public Hearings, researched the issue at length and in so doing expended officer time working on a draft report, the Assistant Minister withdrew the proposition from debate without any notice to us that such a decision was to be taken. This left us to consider the merits of producing a full Scrutiny report given the time and resources this would entail and the input already from stakeholders, versus the fact that we understood the Bag Limits proposals had been withdrawn indefinitely. We decided that, having heard the views of so many stakeholders and acknowledging the work that they put in to provide their information to us, the Panel did not want to mirror the lack of respect shown to them and ourselves by not completing a full report. We felt that it was imperative that those views should be heard and believe that it is in the interest of any future consideration of Bag Limits to outline all of the key findings and recommendations.
- 2.3 Having had to prioritise work on the Depositor Compensation Scheme Review through the summer to November 2009 and juggle other Review work since, we have set about completing our Bag Limits work and are now in a position to present this report. We are extremely grateful to all those stakeholders who made the effort to engage with us during what was, ultimately, a lengthy Review – our thanks to them.



Deputy C.F Labey
Vice-Chairman
Economic Affairs Scrutiny Panel

3. EXECUTIVE SUMMARY

- 3.1 The commercial fishing industry has called on the Department for Economic Development to introduce legislation which would effectively prevent the sale of “black” fish, which according to industry members contributes to a reduction in the market price. The Panel fully supports the commercial fishing industry, but found the proposed solution to be a disproportionate response to a small number, approximately 20 of the near 1800 leisure anglers in the Island, of known fishermen illegally catching fish in Jersey waters for commercial purposes and that Bag Limits are not the most appropriate way to achieve support for the commercial fishing industry. More work should be undertaken to establish the feasibility of amendments to current legislation that would better target the sale of ‘black’ fish by a few leisure anglers and enable better policing and conviction chances.
- 3.2 The Panel has not received convincing supporting evidence to quantify the impact the black fish market has on the commercial fishing industry, and therefore justify the commercial rationale behind the Bag Limits. Indeed, no economic impact survey has been carried out. The Panel also understands that there may be other more significant contributing factors to the commercial issues within the industry, for instance the importation of farmed and/or non-local fish and the prices charged by ‘part-time’ licensed commercial fishermen.
- 3.3 The Fisheries and Marine Resources Panel played a pivotal role in the development of the current Bag Limits proposals. However, the Panel has serious concerns about the ‘official’ representation of leisure anglers on that Panel, and concludes that it was not reflective of a significant proportion of leisure anglers’ views. The Panel accepts that the Fisheries and Marine Resources Advisory Panel acted in good faith on the representation being provided by the Leisure angling representative, but found that there was no wider consultation with stakeholders undertaken. Had this occurred, the Panel is certain that the strong protests expressed to it by leisure anglers would have been apparent to the Fisheries and Marine Resources Advisory Panel and would have ensured a more inclusive process with all views taken into account. Any future development of such proposals should include a full stakeholder consultation.
- 3.4 The introduction of Bag Limits for well evidenced conservation reasons would be appropriate, is likely to be accepted across the stakeholder groups, and would be in keeping with practice across many countries and regions. However, there are existing measures in place under current legislation that protect Jersey’s ormers from commercial levels of exploitation, and Bag Limits are not required for this purpose.

- 3.5 The authorities are experiencing difficulties in policing the sale of “black” fish and securing convictions under current legislation. It is currently illegal for a non licensed fisherman to fish commercially in Jersey waters, although selling his catch is currently only evidence of a possible illegal act, that of catching those fish. The Panel supports the principle that would, from a policing aspect, put the onus on a restaurant or other commercial outlet to prove that they purchased their fish from a legitimate source, as explained by the Senior Fisheries Officer. However, this is just one small aspect of the necessary policing. The Panel was deeply concerned about the capacity of the Fisheries and Marine Resources Section to police and enforce the Bag Limits as proposed. This is despite reassurances of the possibility of using more voluntary fisheries officers on an occasional basis, and that bag limits are almost self-policing as 90 per cent of boats, at least, go to sea go from the same slipways with everybody seeing what everybody else is landing.
- 3.6 This is no reflection on the abilities of the Fisheries and Marine Resources Section. It was apparent to the Panel that the Section has limited resources and if, as it appears, it is unable to effectively enforce the current legislation which has significantly narrower targeting, how can it feasibly be expected to police and enforce Regulations that effectively target almost 1800 leisure anglers? Again, the Panel would recommend that more work be undertaken to establish amendments to current legislation that would better target the few leisure anglers selling black fish and allow easier policing, for example through placing the onus on restaurants and other commercial outlets to prove legitimate purchase.
- 3.7 The Panel is also concerned about apparent inadequacies in the vessel licensing system in Jersey. The Panel learnt that there are currently about 153 licensed (J registered – i.e. Jersey registered) boats in Jersey, but that this is not a fixed limit in light of the open market for licences throughout the U.K., Jersey and Guernsey. The Panel was concerned by the levels of control over the licence system in the Island, and the detrimental impact this could have on the controls associated with the licensing system. It also raised questions on the Panel about how much of a contributing factor fishing (and sales of those fish) from non Jersey licensed boats is to the commercial problems outlined as the key reason for proposing Bag Limits for lobster and bass.
- 3.8 The Panel regrets the decision of the Assistant Minister for Economic Development to withdraw P58/2009 Sea Fisheries (Bag Limits) (Jersey) Regulations 200- without notice and in advance of the completion of the Panel’s review, although the Panel welcomes the principle of its withdrawal.

4. KEY FINDINGS AND RECOMMENDATIONS

KEY FINDINGS

- 4.1 The Assistant Minister for Economic Development withdrew P58/2009 Sea Fisheries (Bag Limits) (Jersey) Regulations 200- without advance notification to the Panel. This was discourteous not only to the Panel and all of the stakeholders who had contributed to the Panel's ongoing Review, but also undermines the work and role of Scrutiny. **(5.4)**
- 4.2 The Panel could find only limited evidence of any other jurisdiction proposing or introducing Bag Limits for the purpose of supporting a local commercial fishing industry. **(6.12)**
- 4.3 Bag Limits are common place elsewhere for the purpose of well evidenced conservation reasons. Indeed, a well evidenced conservation case for Bag Limits presented for a threatened marine species is likely to be accepted across the stakeholder groups, although it would need to be applied across the commercial and recreational sectors. **(6.13)**
- 4.4 Guernsey makes use of its licensing scheme to control catches, for example to issue licenses to vessels entitled to fish for shellfish, and those that do not have such a licence are only permitted to catch 5 lobsters and 25 crabs per day. **(6.14)**
- 4.5 Stock controls being considered for the recreational sector must in future be accompanied by reasonable controls on the commercial sector. **(6.15)**
- 4.6 There are apparent inadequacies in the vessel licensing system in Jersey. There are currently about 164 licensed (J registered) boats, but this is not a fixed limit because of the open market for licences throughout the U.K., Jersey and Guernsey. **(7.21)**
- 4.7 There are insufficient levels of control over the licence system in the Island. **(7.29)**
- .
- 4.8 The Panel has serious concerns about the 'official' representation of leisure anglers on The Marine Resources Advisory Panel and concludes that it was not reflective of a significant proportion of leisure anglers' views. **(8.15)**
- 4.9 The failure to consult widely led to the Minister proposing defective Regulations. Wider consultation would have ensured a more inclusive process with all views taken into account, and a lot of Scrutiny members and Officers time spent on the matter could have been saved. **(8.19)**

- 4.10 No economic impact study into the effects of black fish sales on the commercial fishing industry has been undertaken. **(9.7)**
- 4.11 The proposed introduction of the Bag Limits, encompassing all leisure anglers, appeared to be a wholly disproportionate response to the problems faced by the authorities in policing and securing convictions under current legislation. **(9.15)**
- 4.12 The Panel supports the principle of Bag Limits for conservation purposes but is concerned that the limit of 20 would be an unnecessary tool to achieve that end in the case of ormers, as there are existing measures in place under current legislation that protect ormers from commercial levels of exploitation. **(9.19)**
- 4.13 The extent to which unlicensed commercial fishing (and sales of those fish) contributes to the commercial problems outlined as the key reason for proposing Bag Limits for lobster and bass, has not been established. **(10.5)**
- 4.14 Despite claims from the Minister for Economic Development that the introduction of Bag Limits would be good for tourism, no evidence was found to support this. Indeed, the Panel understands that there has already been a negative impact on tourism resulting from the proposals for Bag Limits. **(10.16)**
- 4.15 There is a general lack of data around Jersey's marine resources which is a barrier to achieving informed policy development. **(10.17)**
- 4.16 It is currently illegal for a non licensed fisherman to fish commercially in Jersey waters, although selling his catch is currently only evidence of a possible illegal act, that of catching those fish. Clearly, policing the catching of fish is more difficult than policing the sale of those fish. **(11.3)**
- 4.17 Despite reassurances of the possibility of using more voluntary fisheries officers on an occasional basis, and that bag limits are almost self-policing as 90 per cent of boats at least that go to sea go from the same slipways and everybody sees what everybody else is landing, the Panel found that the capacity of the Fisheries and Marine Resources Section to police and enforce the Bag Limits was limited. **(11.12)**

- 4.18 The Fisheries and Marine Resources Section has very limited resources and is unable to effectively enforce the current legislation, which has significantly narrower targeting, and could not be expected to police and enforce the Regulations that targeted almost 1800 leisure anglers. **(11.13)**
- 4.19 There is an issue with some non-licensed fishermen selling their catches, but the Panel found this to be a practice carried out by only a very limited number, approximately 20, of the near 1800 leisure anglers in the Island, particularly on any significant level. Indeed, this was openly accepted across the stakeholder groups, including the Minister for Economic Development. In addition, most of these are known to the authorities. **(11.16)**
- 4.20 From a policing aspect putting the onus on a commercial purchaser to prove that they purchased their fish from a legitimate source would be simpler than the current system of proving illegal sale. However, this is just one small aspect of the necessary policing. **(11.22)**
- 4.21 The tagging of fish initiative adopted by the commercial fishermen was sound in principle. **(11.27)**

RECOMMENDATIONS

- 4.22 The Assistant Minister should fully explain publicly the decision to withdraw P58/2009 Sea Fisheries (Bag Limits) (Jersey) Regulations 200- and confirm any future intention to bring this or a related proposition to the States. **(5.5)**
- 4.23 The responsible Minister should develop conservation policy around spawning and minimum fish sizes. **(6.16)**
- 4.24 The Fisheries and Marine Resources Section should be provided with adequate research resources to provide fuller information on Jersey's marine environment in order to better inform policy development. **(10.18)**
- 4.25 More work should be undertaken to assess the viability of amending current legislation or introducing new legislation, other than Bag Limits, to address the specific issue of the commercial sale of fish by non-licensed fishermen, and to find a solution which reconciles the interests of all fishing sectors and is feasible and effective.

This work should include:

- a) examination of different ways of placing a burden of proof on the commercial purchaser regarding the provenance of their fish, including tagging systems
- b) a review of the licensing system
- c) monitoring and improving the understanding of fish stocks
- d) imported fish (wild and farmed)

Any future development of such proposals should include a full stakeholder consultation. **(11.28)**

5. INTRODUCTION

- 5.1 In late March 2009, the Panel received notification from the Assistant Minister for Economic Development, Connétable Len Norman, of the intention to lodge three pieces of Sea Fisheries legislation: P58/2009 Sea Fisheries (Bag Limits) (Jersey) Regulations 200-; P56/2009 Sea Fisheries (Satellite Monitoring) (Jersey) Regulations 200-; P57/2009 Sea Fisheries (Miscellaneous Provisions) (Amendment No 5) (Jersey) Regulations 200-. Upon consideration of the draft legislation, the Panel identified a number of concerns with the Sea Fisheries (Bag Limits) (Jersey) Regulations 200- and agreed to undertake a Review.
- 5.2 The Panel began its Review in May 2009 and launched an advertising campaign in the Jersey Evening Post and on Channel 103, also targeting specific key stakeholders with written requests to encourage a broad range of submissions. The Panel held Public Hearings with the Minister and Assistant Minister for Economic Development responsible for the Bag Limits, representatives from the Jersey Recreational Fishing Association, the Chairman of the Jersey Fishermen's Association, a local independent leisure angler and the Chairman of the Fisheries and Marine Resources Advisory Panel. The Panel received written submissions from over 20 leisure anglers and additional written submissions from the Jersey Recreational Fishing Association. The Panel was also aware of a number of press articles and letters associated with the Bag Limit proposals. Contact was made with the Guernsey Sea Fisheries Department and a written submission received in relation to relevant sea fisheries legislation and Bag Limits there by way of comparison with the proposal being made in Jersey. The Panel was also provided with additional written information from the Fisheries and Marine Resources Section in Jersey.
- 5.3 The Panel completed its evidence gathering on 29th June 2009 with a public hearing with the Assistant Minister for Economic Development and Senior Fisheries Inspector. The Panel began work on its report that it intended to complete and present to States in time for the scheduled date of debate of P58/2009 Sea Fisheries (Bag Limits) (Jersey) Regulations 200-, 13th July 2009. On 1st July 2009, P58/2009 Sea Fisheries (Bag Limits) (Jersey) Regulations 200- was rescheduled for debate on 20th October 2009. However, on 13th July 2009 the Assistant Minister withdrew the proposition from debate. The Panel was unaware in advance that such a decision was to be taken, and it was disappointing timing, in view of the work that had been undertaken by the Panel and the contributing stakeholders, that Panel had not been given the opportunity to produce its full report which was in the process of being drafted. The Panel believes that this undermines the Scrutiny process and is disrespectful to those stakeholders who have contributed during the course of our Review.

Key Finding:

5.4 The Assistant Minister for Economic Development withdrew P58/2009 Sea Fisheries (Bag Limits) (Jersey) Regulations 200- without advance notification to the Panel. This was discourteous not only to the Panel and all of the stakeholders who had contributed to the Panel's ongoing Review, but also undermines the work and role of Scrutiny.

Recommendation:

5.5 The Assistant Minister should fully explain publicly the decision to withdraw P58/2009 Sea Fisheries (Bag Limits) (Jersey) Regulations 200- and confirm any future intention to bring this or a related proposition to the States.

5.6 The Panel understands that the proposed Bag Limits Regulations have been withdrawn indefinitely, although it received no official notification of the reason to withdraw the proposition. This production of a full Scrutiny report and the time and resources this entails is rather undermined by the proposition's withdrawal, but having undertaken the Review and gathered the views of many stakeholders the Panel believes it is in the interest of any future consideration of Bag Limits to outline its key findings and concerns. However, the Assistant Minister should explain the decision to withdraw P58/2009 Sea Fisheries (Bag Limits) (Jersey) Regulations 200- and confirm any future intention to bring this or a related proposition to the States. The Panel also considers that it is imperative that a more holistic approach to the management of the marine resources should be adopted, with due consideration given to the significant recreational sector in the Island.

5.7 The Bag Limits Regulations relating to bass and lobster seek to support the viability of the local commercial fishing fleet by addressing the illegal sale of fish and shellfish by non-licensed fishermen, which contributes to a market price reduction to the detriment of the commercial fishermen. Limiting the number of ormers caught is a conservation measure to protect stocks still recovering after a disease. A person who is guilty of an offence under Article 4 of the Law 'shall be liable to a fine of £20,000.'

5.8 The Panel begins the body of its report in Section 6 by examining whether Jersey is in line with, or potentially moving away from, best practice elsewhere by outlining the international context and how Bag Limits are implemented in other countries, before moving on in Section 7 to set out the current legislative framework governing sea fishing in Jersey. In Section 8 it looks in detail at the Fisheries and Marine Resources Advisory Panel's role in the development of the Bag Limits proposals and examines the consultation process that was undertaken. Indeed, the Panel received submissions from leisure fishermen that questioned how much their point of view had been included during the development of the Regulations.

Section 9 looks explores the rationale and aims of the Bag Limits proposals, before in Section 10 the Panel covers its findings on the economic impacts of introducing, or not, the Regulations, having primarily sought to quantify the current impact of illegal fish sales by non-licensed fishermen on the commercial industry, and the claims contained within the Regulation's report that there would be a positive tourism impact should they be introduced.

5.9 The Panel was also concerned by the matters of targeting, enforcement and proportionality, which raised several key questions. For instance, are the Regulations targeted at the right people to resolve the issues of the black fish market and conservation matters? Are the Regulations, which would encompass in the order of 1800 leisure fishermen, really a proportionate response to the 'black fish' problem perpetrated by a small proportion of leisure fishermen? How will the Bag Limits be policed – can the Fisheries Department with its relatively limited resources be expected to effectively monitor the activity of so many leisure anglers? The Panel seeks to address these questions in Section 11. The Panel will also endeavour to address the alternatives to Bag Limits that have been or could be considered to address the 'black fish' issue and the conversation of ormer stocks.

5.10 All of the evidence that the Panel has gathered and considered, the background information, the public hearing transcripts and written submissions that lead to its findings and conclusions outlined below can be viewed on the Scrutiny website at www.scrutiny.gov.je or by contacting the Scrutiny Office.

6. THE SITUATION ELSEWHERE – THE INTERNATIONAL CONTEXT AND HOW WE COMPARE

6.1 The Panel gathered evidence on the use of Bag Limits in a number of places, including Guernsey, France and the European Union. The Panel found only limited evidence of any other country proposing or introducing Bag Limits for the purpose of supporting a local commercial fishing industry. Bag Limits are common place however for the purpose of well evidenced conservation reasons, but such cases have not been made for the Bag Limits in Jersey for lobster, bass or ormers.

Guernsey

6.2 Of particular note to the Panel was the information received from Guernsey. This outlined that the Bailiwick had no comparable legislation concerning Bag Limits. It makes use of the existing licensing scheme to control catches, for example to issue licenses to vessels entitled to fish for shellfish, and those that do not have such a licence are only permitted to catch 5 lobsters and 25 crabs per day.

6.3 The Panel discussed the situation in Guernsey with Jersey's Senior Fisheries Inspector, and when asked whether that Bailiwick had any sort of limits on catches at all or try to limit recreational anglers he advised that they are very keen not to do so because it helps their case to introduce licensing and a 12-mile territorial sea but if they cannot control catch limits then the U.K. (United Kingdom) may be more minded to give them the authority to license. However, he told the Panel that it is not to say they would not like to do it nor that Jersey would not support them in having that kind of control in place.¹

France

6.4 The Panel heard from the Minister for Economic Development that Jersey is not unique in terms of what is being proposed here in relation to Bag Limits, indeed advising us that the proposed bag limits are significantly lighter than many other jurisdictions around the world including the U.K. and France

6.5 The Senior Fisheries Inspector told the Panel that the French have bag limits for a huge range of species, well in excess of Jersey's fishermen. He explained that for lobsters the French are not allowed anything more than 2 pots set in the sea, whereas our recreational fishermen have a completely unlimited number. So the issue of catching more than a very small number of lobsters does not exist because they simply cannot go out and catch them.

¹ Written submission, Sea Fisheries Department, Guernsey

In terms of ormers, the French have very similar catch limits to those proposed in Jersey, 20 in Normandy and 12 in Brittany. There is no Bag Limit for bass, although it is being considered.²

- 6.6 The French have also recently adopted recreational regulations for the benefit of the commercial sector, although such regulations are not required by European Common Fisheries Policy. The regulations read as follows:

Arrêté 48/2009

Article 1

This legislation applies to fishing from boats, whatever flag they are flying, other than licensed boats.

It applies in French territorial waters from the frontier with Belgium in the north to a line separating the Manche (département) and Ille et Vilaine to the west , joining points stipulated in Article 6 of decree 90-618 of 11 July 1990 concerning recreational fishing.

Article 2

In the area mentioned in Article 1 fishing, retaining on board and the landing of sole (solea solea), of plaice (pleuronectes platessa), of whiting (merlangius merlangus) and of cod (gadus morhua) are limited for each species to ten fish of legal size per boat per outing.

If the number of people on board is more than two the maximum number allowed passes to twelve fish for each of the species.

Article 3

The fish must be kept whole or gutted until they are landed.

Article 4

*Affaires Maritimes La Manche , le Calvados, la Seine Maritime, l'Eure, le Pas de Calais, la Somme, le Nord are responsible for the enforcement of this legislation.*³

- 6.7 The JRFA explained to us that from its point of view:

² Public Hearing, Minister for Economic Development, 18th May 2009

³ Arrêté 48/2009, France

'it would be pointless to try and compare the two economic situations when one involves a handful of commercial fishermen in small boats and the other a multi million pound trawling industry. If you are looking for comparisons look to one of our next closest neighbours, Ireland, who have instead banned commercial bass fishing to support a growing leisure fishing industry. There is a very strong case to suggest Jersey should do the same.'

European Union

6.8 The Common Fisheries Policy (CFP), the fisheries policy of the European Union, sets quotas for Member States regarding the amount of each type of fish that can be caught. The Island has effectively signed up to CFP, and has entered into agreements with other regional fisheries authorities and Member States. Jersey is therefore under obligation to deal with all fisheries matters in a way which complies with CFP rules.

6.9 Under CFP, DEFRA in the UK has set out a Marine Strategy Framework Directive to steer regional fisheries authorities, including Jersey, toward achieving "good environmental status (GES) in Europe's seas by 2020". The key requirements of the directive are basically:

2012: initial assessment of UK seas plus GES targets defined

2014: monitoring programme established

2015: programme of measures designed

2016: measures implemented

2020: GES achieved for UK seas ⁴

6.10 With regard to the European Union controls, the Senior Fisheries Inspector informed the Panel that Jersey is bound to introduce equivalent legislation to the E.U. (European Union) in relation to fisheries, part of the price the Island had to pay for extending our territorial seas 12 miles. Speaking in May 2009, he explained that the E.U. had a set of draft Regulations, called the Control Regulations, which were being proposed at that time. The Regulations had a clause whereby for certain species of fish, anglers were going to have to have a licence and were going to have to make returns on how many of those fish they had caught. Those fish were going to come off the existing quotas that the commercial fishermen are bound by. The species included sole, cod, pollock and mackerel. The Control Regulations subsequently adopted did not go as far as the proposals, with anglers not being required to

⁴ Written Submission, JRFA, 22nd June 2009 and DEFRA, Marine Strategy Framework Directive 2009

have licences or broadly make catch returns, but with regard to the proposals as they stood at the time of speaking to us, he told the Panel:

*'The anglers throughout Europe are absolutely up in arms about this. We have discussed licensing anglers before because the U.K., as part of the introduction of the Marine Bill, was going to make it compulsory for anglers to buy a licence and the licence was going to be quite expensive, I think maybe looking at about £70 or something, and that was intended to pay for policing of measures such as this. The U.K. has rejected that under huge lobbying, so it is not looking to introduce it now. But we would see bag limits as perhaps our protection against the need to introduce such legislation. Dr. Bossy would be prepared to argue to the U.K. that if, for example, mackerel was going to become one of these species, if a 12 year-old boy, was going to have to have a licence and send in a return to the government to say that he had caught 2 mackerel off St. Catherine's breakwater, we would prefer to introduce a bag limit for mackerel, for argument's sake, of whatever was reasonable, I do not know, 20, 50, and use that as leverage to the U.K. and say: "Well, overall that is going to be equivalent to what you are trying to achieve and an awful lot easier", because we really do not want to go down the route.'*⁵

6.11 The JRFA told the Panel that recreational fishermen have always been aware that under CFP, some form of future monitoring or management may be required to protect stocks. However, it assumed that any restrictions imposed would come under the CFP or DEFRA rules and guidelines and would only be imposed for scientifically justified stock protection reasons. The JRFA would support such reasons, but not those given for the introduction of Bag Limits in Jersey to support the commercial viability of the commercial fishermen, which it claims fall outside the EU guidelines.⁶

⁵ Public Hearing, Minister for Economic Development, 18th May 2009

⁶ Written Submission, JRFA, 22nd June 2009

Key Findings:

- 6.12 The Panel could find only limited evidence of any other jurisdiction proposing or introducing Bag Limits for the purpose of supporting a local commercial fishing industry.
- 6.13 Bag Limits are common place elsewhere for the purpose of well evidenced conservation reasons. Indeed, a well evidenced conservation case for Bag Limits presented for a threatened marine species is likely to be accepted across the stakeholder groups, although it would need to be applied across the commercial and recreational sectors.
- 6.14 Guernsey makes use of its licensing scheme to control catches, for example to issue licenses to vessels entitled to fish for shellfish, and those that do not have such a licence are only permitted to catch 5 lobsters and 25 crabs per day.
- 6.15 Stock controls being considered for the recreational sector must in future be accompanied by reasonable controls on the commercial sector.

Recommendation:

- 6.16 The responsible Minister should develop conservation policy around spawning and minimum fish sizes.

7. THE CURRENT LEGISLATION

7.1 Current fisheries legislation and subordinate regulations are provided for by the Sea Fisheries (Jersey) Law 1994, the revised edition 1 January 2007 being inclusive of subsequent revisions. The various legal controls that the Law determines, which encompass fishing for the three species identified for control under the Bag Limits Regulations (lobster, bass and ormers) are broadly summarised below:⁷

Underwater fishing:

7.2 It is forbidden for anyone to take any shellfish, other than crabs, from the sea while totally or partially submerged and breathing with the aid of underwater breathing apparatus, or wearing a face visor, a mask or goggles. (Scallops may be taken by permit only - obtained from the Department). If a vessel is used for illegal diving for shellfish the person in command of the vessel will be deemed to have committed an offence.

Use of nets and lines:

7.3 Set nets: These may only be used in between rocks situated less than 120m apart, below the half tide mark and marked in the same way as ground lines.

7.4 Draw nets: These may only be used in St Ouen's Bay and in the Royal Bay of Grouville between the rocks known as Le Tas du Nord and the seaward end of Gorey Pier, from one hour before until three hours after low water and must have a minimum mesh size of 90mm.

7.5 Seine nets: Seine nets may be drawn ashore only when used for fishing for grey mullet and then only during two hours before and one hour after high water and providing that the net is of a length not less than 90m and is used in conjunction with a boat.

7.6 Trammel nets: Trammel nets and mesh nets may only be used where the depth of the sea is more than 130cm.

7.7 Restrictions on inshore netting: No person may use for the purpose of fishing for sea fish from a boat any passive gear or any equipment attached thereto, including anchors, lines and floats, within 200m of the shoreline between La Coupe Point to La Rocque Harbour and

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<http://www.gov.je/PlanningEnvironment/Environment/Marine+Management/Fisheries+and+Marine+Resources/Fisheries+Regulation/>

thence to St Brelade's Bay Pier at any state of the tide during the hours of daylight during the period beginning on 1 April and ending on 15 October in any year.

7.8 Trawling and dredging: Trawling and dredging from boats is forbidden in the following areas:

1. St Brelade's Bay;
2. St Aubin's Bay, within the area bounded by a straight line drawn from the Pointe du But to the Grosse Chateau Elizabeth;
3. The small roads in St Aubin's Bay;
4. Fliquet Bay;
5. Grouville Bay and St Catherine's Bay, within the area bounded on the seaward side by straight lines drawn from La Rocque breakwater to La Conchiere beacon to the Brett Rocks beacon to Le Cochon buoy to the Horn Rock beacon to Les Arch beacon to Le Fara beacon to the outer end of St Catherine's Breakwater.

7.9 Minimum size of nets: The minimum size of mesh for set nets and seine nets is 90mm. The minimum for all other types of nets, including trawls, now depends on the type of fish being targeted.

7.10 Ground lines: All ground lines must be below the half tide mark and marked at either end and at 10m interval by a buoy of a diameter not less than 10cm which, in the case of the buoy at each end, is indelibly marked with the name and address of the owner. No ground lines are allowed to be used during the period 1 April to 15 October in any year.

7.11 Foul hooking: The use of any hooks or lines which include any devise such as a murderer, fluke bar, strokehaul or snatch calculated to foul hook any fish is prohibited

7.12 Low water fishing: Low water fishermen are asked to return all rock they turn to their original position to conserve the environment beneath them.

Marking of equipment:

7.13 All fishing gear (including storeboxes and storepots) left in or on the sea must be clearly marked with the registered number of the vessel (registered name for those boats not requiring a J or JY number).

Minimum sizes of fish:

7.14 No person shall land, sell, expose or offer for sale, or have in his possession any fish or shellfish that is under the minimum sizes set out below. Any such fish taken on board a boat must be returned to the sea immediately. Licensed commercial fishermen should check their licence conditions as they may contain further restrictions relating to the sizes of fish which may be retained or landed.

7.15 Seafish (minimum size in cm from tip of snout to end of tail fin): **Bass**-36; **Bream**-23; **Brill**-30; **Cod**-35; **Conger Eel**-58; **Dab**- 15; **Flounder**-25; **Haddock**-30; **Hake**- 30; **Herring**-20; **Horse Mackerel**-15; **Lemon Sole**-25; **Mackerel**- 20; **Megrim**- 25; **Mullet**-20; **Plaice**- 27; **Pollack**-30; **Red Mullet**-15; **Red Sea Bream**-25; **Saithe**-35; **Shad**-30; **Sole**-24; **Turbot**-30; **Whiting**-27; **Witch**-28.

7.16 Shellfish (minimum size in cm): **Chancre crabs** (measured across the broadest part of the back)-14; **Lady crabs** (measured across the broadest part of the back)-6.5; **Whelk** (total length)-4.5; **Spider crabs*** (the carapace measured from between the two horns to the rear end of the body shell along the centre line of the body shell)-12; **Lobsters** (the carapace measured from the rear of the eye socket to the rear of the body shell along a line parallel to the centre line of the body shell)- 8.7; **Clams** (measured across the broadest part of the shell)- 4; **Ormers*** (measured across the broadest part of the shell)-9; **Scallops** (measured across the broadest part of the shell)-10.2; **Razor fish** (across the longest part of the shell)-10; **Queen Scallops**-4; **Prawn** (measured from rostrum to tail)-5

* These fisheries are subject to seasonal closures.

Parlour pots:

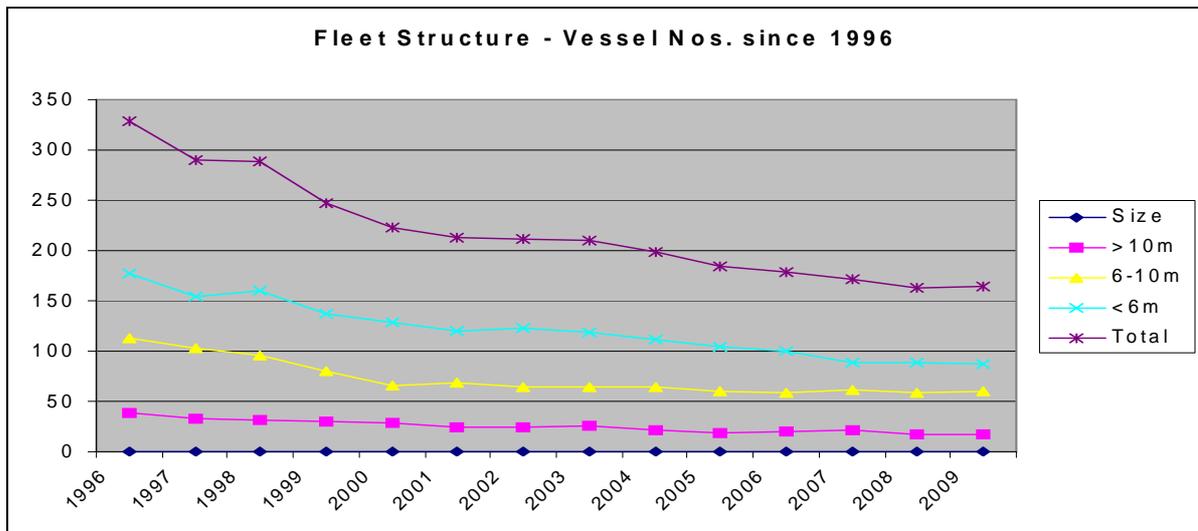
7.17 Parlour pots shall have at least one escape gap of the legally required size in the parlour area. Parlour pots and pots designed to restrict the escape of shellfish are not to be used at Les Minquiers.

Fishing boat licences:

7.18 A total of 611 licences have been issued since licensing started but not all at the same time. There are currently 164 licensed boats, with all but 4 based in Jersey. The tables overleaf set out the current situation: ⁸

⁸ Fisheries and Marine Resources, 25th January 2010

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Size	Nos.													
>10m	38	33	32	30	29	25	24	26	21	19	20	21	17	17
6-10m	113	103	96	80	66	68	65	65	65	60	58	61	58	60
<6m	177	154	160	137	128	120	123	119	112	105	100	89	88	87
Total	328	290	288	247	223	213	212	210	198	184	178	171	163	164



7.19 There is a commonly held view that current legislation deems that any boat used for commercial fishing (where the catch is sold) must hold a valid Jersey licence. However, this isn't necessarily a strict reflection of the legislation. Rather, the exemption from the need for a licence is "fishing by a boat when the fishing is only for the pleasure of persons conveyed on the boat and the boat is used only for the purpose of conveying persons wishing to fish for pleasure". By extension, this covers the sale of the fish and activities, including fishing for bait to be used for commercial purposes but not necessarily sold. Recent legislation does however relate to the need for catch being first landed in Jersey to come from a licensed vessel, but that licence may be issued by any jurisdiction including France, the UK and Jersey.

7.20 The Panel was informed that fishing vessel licensing came in to effect in 1997, and anybody who could prove that they sold fish at that time from a boat was given a fishing licence. The overall number of licences for the United Kingdom, Guernsey and Jersey was capped, so that no more licences could be created. This has created an open market place whereby licences can be of considerable value, with prices depending on a number of factors such as boat size.

Key Finding:

7.21 There are apparent inadequacies in the vessel licensing system in Jersey. There are currently about 164 licensed (J registered) boats, but this is not a fixed limit because of the open market for licences throughout the U.K., Jersey and Guernsey.

7.22 Those licences control the commercial fishermen in a number of significant ways. For example, if a commercial fisherman wishes to fish for lobsters, crawfish or crabs without being subject to catch restrictions, he must ensure that he holds (with associated purchase cost) a licence that is endorsed to permit unrestricted shell fishing. If not the licensee is subject to catch restrictions of 15 lobsters or crawfish and 25 crabs per day.⁹ Additionally, there are extra minimum size limits applied to commercial fishermen for species such as sole and skate and ray.¹⁰

7.23 Another example of a restriction on commercial fishermen is that relating to quota species, which include the following fish:

- anglerfish
- cod
- haddock
- hake
- herring
- mackerel
- megrim
- nephrops
- plaice
- pollock
- saithe
- sole
- sprats
- whiting

7.24 Vessels under 10 metres, with Class B Jersey licences, are not normally subject to quota restrictions unless a fishery is closed or specific quota imposed on the under 10 metre fleet. However, vessels over 10 metres, Class A Jersey licences, need a 'restricted stock

⁹ www.gov.je/Industry/FarmingFishing/Fishing/Pages/FishingBoatLicensing.aspx

¹⁰ Fisheries and Marine Resources, 26th March 2010

authorisation' to fish for quota species (restricted stocks). As indicated above this includes sole, for which a limit of 25 kilos a month is set for commercial fishermen. This effectively is about 3 fish a day, whereas a recreational (non-licensed fisherman) has no such restriction.

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7.25 The Panel heard from the Chairman of the Jersey Fishermen's Association about the current licence system. He explained that within the different tiers of licensing, most professionals hold a licence that covers both wet fish or fin fish and shell fish, such as in lobster, a licence that would attract a high price. Cheaper licenses are available, for instance a fisherman who likes to go occasionally to catch just for his own consumption and for sport, but might also like to do a little extra to make a small top up income, could buy a wet fish licence for a boat for as little as £1,500 or £2,000.

7.26 The Panel was concerned, and somewhat puzzled, by the levels of control over the licence system in the Island, and the detrimental impact this could have. It also raised questions on the Panel about how much of a contributing factor fishing (and sales of those fish) from non Jersey licensed boats is to the commercial problems outlined as the key reason for proposing Bag Limits for lobster and bass, as outlined below:

'The Deputy of St. Mary:

I know why I am puzzled. So you have 153 (j) registered and then you ... I fancy to start, you know, which I do not at all but I fancy it so I want to get a licence. Now I knock on all these doors and nobody seems to want to sell me their licence, thank you very much. So what do I do? I can go to England and buy a licence and then come back and get a boat and fish?

Mr. D. Thompson:

You can certainly walk out of this room and pick up a telephone number for a licensed trader in the U.K. and buy a licence tomorrow.

Deputy M.R. Higgins:

They have a right to fish within the 3 miles of Jersey?

Mr. D. Thompson:

Almost unfortunately, yes. I mean, you know, if you like we have brought in effort limitations. For instance the number of lobster pots are strictly controlled because we did it, you know, of our accord but we are now

¹¹ Public Hearing, Minister for Economic Development, 18th May 2009

severely restricted in how much gear we can work, but Daniel can go and buy a licence, put it on a boat and bring another 300 or 400 pots into the system’.

7.27 Mr Thompson further advised the Panel that the licensing system is not working in favour of the commercial fishermen:

‘it is close to reaching a point where commercial fishermen would be much better off if we just scrapped the licensing scheme and fished like everybody else does. Because we do not want to give the impression that we are so forward-thinking that, for instance, on lobster we are still the only ones in Europe to have introduced escape gaps to let undersized lobsters go back out of the pots instead of being hauled to the surface. We are still the only ones in Europe who do that. We have set a maximum number of pots which effectively is effort control for our fishermen. If you do not have a licence, you are not bound to have to abide by this effort control method; it is a licensed condition, if you like. It came from the fishermen, as did the escape gaps. There are quite a lot in the Les Minquiers Reef. We have completely banned all of the efficient gear and parlour pots, anything with a restrictive neck. Again, that does not exist anywhere else in Europe. Fishermen are subject to quotas, quotas are again a part of the licensing system. We cannot fish within 3 miles of Guernsey, in the Bailiwick of Sark or Alderney with a (j) registration on there, but if you take that off you can fish in there.’

7.28 The Chairman of the Jersey Fishermen’s Association elaborated to the Panel about the support amongst the commercial fishermen for an additional permit system:

‘... professional fishermen in Jersey are proposing - the department does not particularly like the idea - that on top of licensing there should be a permit system that we could regulate so that when there is, for instance, a problem with lobster stocks instead of imposing a quota which is quite difficult to regulate, that we would only issue or that there would only be a certain number of permits issued so you would still have your licence to fish but only a given number would be able to fish on a particular stock that was threatened, so in that case there would be ... but at the moment there is no limited number at all.’¹²

¹² Public Hearing, Chairman Jersey Fishermen’s Association, 11th June 2009

Key Finding:

7.29 There are insufficient levels of control over the licence system in the Island.

Fishing for ormers:

7.30 Fishing for ormers may only take place from 1 October to 30 April. During that period fishing may only take place on the first day of each new or full moon and the three following days. If a full moon falls, for example, on 29 April fishing still cannot take place after 30 April.

Possession of ormers:

7.31 It is an offence to possess or export fresh ormers at any time other than between 1 October and 30 April. During that period fresh ormers may only be possessed on the first day of each new or full moon and the three following days if possessed on the boat and the five following days if possessed on land. Fresh ormers may only be exported on the first day of each new and full moon and the three following days; it is never permitted to export ormers that are not fresh. However, the term 'fresh' does not include frozen, cured or otherwise preserved ormers, meaning that low-water fishermen wishing to freeze down ormers to be eaten out of season may still do so.¹³

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<http://www.gov.je/PlanningEnvironment/Environment/Marine+Management/Fisheries+and+Marine+Resources/Fisheries+Regulation/>

8. THE BACKGROUND TO THE BAG LIMITS

- 8.1 The Fisheries and Marine Resources Advisory Panel, originally the Sea Fisheries Panel, consisting of representatives from a wide range marine and fisheries stakeholders, played a pivotal role in the development of the current Bag Limits proposals.
- 8.2 The Senior Fisheries Inspector highlighted to us that the Panel does not change frequently in its basic make up. Other people can be invited to attend to provide knowledge or make representations, but these are invitees and not members of the Panel. For example, if there is a particular matter to be raised regarding use of the harbour area, the JFA representatives who attend are likely to be chosen by the JFA to contribute because of their knowledge or interest in that topic being discussed.
- 8.3 It has at least one political representative, currently Connétable Mike Jackson of St Brelade. The Director of the Environment attends as does the Chairman of Jersey Fishermen's Association accompanied by two members of his Association. There is a representative of the Jersey Aquaculture Association, a representative of the Jersey Inshore Fishermen's Association and a representative of the boat owners on the north coast, who also tends to represent the low water fishermen. Jersey exporters are represented as are the anglers. There is a representative from Jersey Harbours and Dr. Bossy, the Senior Fisheries Inspector, the Department's scientist and a minute taker. In the last few meetings there has a representative of the marine section of the Société Jersiaise.¹⁴
- 8.4 The Chairman of the Fisheries and Marine Resources Advisory Panel explained the significant role it had played in the development of the Bag Limits proposals, which had started with trying to deal with the collapse in ormer stocks as a result of disease. He told us:

'...it was 2002 because the virus struck in 1999 and I think the closure was 2000 to 2002.... the ormers was reopened and that is when the idea of bag limits was first spoken about. Then after that, every year there was diving studies done to try and identify how the stocks were recovering and also to get data on what the catches had been like. It became clear that although around the coast of Jersey the stocks had somewhat recovered, around Les Minquiers they had not at all. It was very, very ... still very bad news about Les Minquiers. So, again, we then spoke about bag limits and initially it was just for ormers to try and look after the stocks of ormers...in the autumn of

¹⁴ Public Hearing, Minister for Economic Development, 18th May 2009

2003 the panel decided to go to what was then known as the E.D.C. (Economic Development Committee) to see if they would agree the principle of bag limits. In September 2003 the principle of bag limits was agreed by the then E.D.C.

- 8.5 The move to looking at introducing Bag Limits for lobsters on commercial grounds came subsequent to the former decision, as the Chairman of the Fisheries and Marine Resources Advisory Panel explained:

'...going on from 2004 when the panel agreed the principle of 20 ormers per person, we then ... as you know, law drafting takes a long time and it is a tortuous trail and it was working its way through the system when in 2005 the Fishermen's Association noted ... and this has been a bane of contention for as long as I can remember... a number of people, and there have been for decades, who have well-paid jobs ashore, often people who are working shift work, like maybe prison warders or policemen or milkmen, people that often finish work early, start early and finish early...who have not just got a few pots for a feed, they have maybe 100 pots, or 150 pots. Now, in 2005 it came to light that there was a number of these people who were unlicensed and they were clearly supplementing their income, not paying any tax, and catching lobsters that the professionals were trying to make a living from. So the panel decided, you know, if somebody wanted to have a few pots and go fishing for a feed of lobsters, that was fine. Nobody had any objection to that at all. But this idea of having a well-paid job ashore and then trying to supplement your income really had to go. You know, enough was enough. Professional fishermen do have a tough time making a living. It is their only source of making a living. They have nothing else to rely on. So the panel agreed that it was reasonable. In fact, it brings me to another point, really. All professional fishermen are licensed but there are licences within licences, so just a few years ago a shellfish licence was introduced. So if a fisherman was a professional fisherman trawling and if he had not been shell fishing for the previous 2 years, he was not given a shellfish licence. So even a professional fisherman fishing for wet fish, for trawling, was not allowed to catch lobsters to sell them. ... So the panel then decided that over here the limit should be 15 a day. So you have a professional fisherman who is making his living from the sea, but he has not been catching lobsters, he does not have a track record of catching lobsters, and even he can only catch 15

lobsters a day. So in light of that, we thought these guys ... there might not be many of them but it is really the principle behind it. These guys that have their secure jobs ashore who are putting 100 or 150 pots out and then selling the lobsters, that really it was time it should be outlawed. But we were very mindful of anybody that wants to go and put a few pots out and enjoy catching a few lobsters should, of course, be able to do so. So that was when the idea of limiting the amount of lobsters was.... in 2005 that we spoke about lobsters and decided to put lobsters on the bag limit legislation.'

- 8.6 The move to look at introducing Bag Limits for bass on commercial grounds came subsequent to the former decision, as the Chairman of the Fisheries and Marine Resources Advisory Panel set out to us:

'And then in 2006, in the summer of 2006, what often happens at this time of the year in May and June is that the price of lobster collapses, and it is because there are boats fishing for lobster all around the U.K. (United Kingdom) and Ireland and the lobster price is very dependent on supply and demand. Nearly all the lobsters go into Europe, mostly into France, some into Spain and Portugal, but always at this time of the year ... and at the moment is a very good example. The price of lobster at the moment is about the same as it was 20 or 30 years ago. However, in the spring they get very good money for their lobsters. So, often in June and July the lobster price has collapsed and if the fishing is not very good on top of that, there are a number of professional fishermen who stop fishing for lobsters and go fishing for bass, especially in the gutters to the southeast of the Island. I think what brought this about the bass to a head was that it was over one or 2 weekends in May or June that 2 or 3 professionals who had decided to try and make a living out of bass fishing rather than lobster fishing had reasonable catches of bass and went into the central market on a Monday with them and were told: "No, we are full up with bass, our freezers are full up of bass. We have had people coming in all weekend with bass." They were saying that they felt these were being caught and sold by people that were unlicensed. So we then spoke about, well, perhaps we should add bass to the bag limit legislation, and again, you know, we talked around it on the panel a great deal. We asked everybody. We said: "What is a fair catch? If anybody wanted to go fishing on a little boat from La Rocque, what would be a fair

*catch?" The thinking was that hardly ever did anybody catch more than 5 bass in a day and that that should be entirely reasonable.'*¹⁵

8.7 The Chairman of the Jersey Fishermen's Association, Mr D. Thompson, told us that he had been involved in the debate on Bag Limits from day one and that the issue came fully in the open on the Advisory Panel in 2000 and that the minutes of the Panel are available to the public and all stakeholders. Indeed, he explained that the Jersey Fishermen's Association has been at the forefront of trying to ensure that:

*'it does not turn into a commercial fishermen's and Fisheries Department little club and that it is quite wide so that the quality of advice and recommendations that come out of it are quite well thought through and they are quite balanced.'*¹⁶

8.8 However, we heard serious concerns about the 'official' representation of leisure anglers on the Fisheries and Marine Resources Advisory Panel, and received evidence that it was not reflective of a significant proportion of leisure anglers' views. The JRFA told us that its first representative on this matter was called in at very short notice to provide an angling presence while the legislation was proposed. They told the Panel that at this time they were not made aware of the depth or the range of what was proposed, only that the commercial fishermen were complaining that they were not making enough money and that they were laying the blame at the foot of the angling fraternity who they allegedly thought were selling a large quantity of fish through the back door. The legislation was primarily at that time aimed to cease that problem.

8.9 The JRFA went on to explain the particular issue that they had with the representation given on their behalf by their representative through most of this process. The main concerns were two fold; the representatives own personal views on Bag Limits not aligning with the Association's and the feedback that he received from the Panel and gave to the Association that the Bag Limits were a 'fait accompli'. The JRFA spokesman, Mr C Isaacs, explained the background to his Association and its representation on the Panel:

'...as I say, it all gets a little bit complicated because approximately 2 to 2 and a half years ago the first time that the subject of this bag limit was brought up, a group of recreational anglers, about 200, all gathered in the Société

¹⁵ Public Hearing, Chairman Fisheries and Marine Resources Advisory Panel, 18th June 2009

¹⁶ Public Hearing, Chairman Jersey Fishermen's Association, 11th June 2009

Jersiaise meeting room and we all had a big meeting chaired by Andrew Syvret....after that meeting...a small core group got together under the banner of the Recreational Association in an informal way, as we are now, basically to advise a representative to sit on the panel to put our views forward...I was in that small core group, one of about 4 or 5 people who was basically advising (the representative) on the views to, to put forward to the panel. That all went a bit wrong...

8.10 He then went on to explain to us the problems that had arisen with the representation of the recreational fishermen:

I was there ... he attended possibly 2, maybe 3, panel meetings and I was there sort of in his small core group every time after every meeting. Everything that (the representative) was saying, everything we were saying and what he was saying on our behalf was based on the assumption that we had absolutely no say whatsoever in this, that it was a foregone conclusion, we had been specifically told by numerous parties involved in this, including - and we cannot prove this - at one of the public meetings by Mike Smith, that it is a foregone conclusion, bag limits will come in. We can either object to them and achieve nothing or we can support them and try get something out of it. So (the representative) did sit on the panel for those number of meetings on that basis, that we fully believed that we had no option to object whatsoever to it, we just had to go along with it and try and basically sort of grovel to the commercial fisherman: "Please make some concessions on your side just to demonstrate you are not trying to stamp on us."...

8.11 Mr Isaacs continued:

'..this is where it get slightly complicated because (the representative) has also got his own personal ... had his own very strong personal ideas about this in that he, unlike the majority of recreational anglers, wanted bag limits anyway, no matter what. He is a so-called elite catch and release fisherman. Every bass he catches goes back alive and that is what ...He did not seem to be totally against them because he was quite happy with them coming in anyway because anybody who puts any fish back is of benefit as far as he is concerned, to him and to everybody else.....they could then claim unanimous support for this because even the recreational guy, as in (the representative),

was saying he supports the bag limit proposal, then I think that was enough for the panel then to move forward.’¹⁷

8.12 The Panel was taken through the angling representation as he had seen it on the Fisheries and Marine Resources Panel by its Chairman, who did indeed outline to us how he believed the Panel was operating with unanimous support on Bag Limits:

‘...I have the letter here; I do not know if you have seen it. I have copies for you if you have not. It is from the then representative of the Angling Committee and it was sent to us on the panel on the agenda in 2007. It says: “One, the bass bag limit. The aforementioned Association has given their full support to a 5-fish limit.”...Yes, (the representative) sent this letter on behalf of the Angling Committee to committee in April 2007. So you can understand ... well, perhaps you cannot, but from my position as chairman of the panel, having him on panel and having this letter in front of us, it seemed to us that everybody was entirely happy. There was no dissent at all. Nobody around the table ... we all thought it was an entirely ... we were astonished when this firestorm broke in the last couple of months, to be honest.

8.13 The Senior Fisheries Inspector told the Panel about the efforts that had been made to ensure the recreational anglers’ views had been taken into account, saying:

‘Unfortunately, it is quite difficult to find a representative for the angling community in Jersey because the angling community, like a lot of recreational bodies, is very diverse and anglers tend to be loners. They do not tend to come together until there is a problem but those panel meetings always had an angling representative present, although we did go through a period where the representative elected not to turn up. We made considerable efforts: Dr. Bossy phoned him, visited his home, visited his brother at work. We had a couple of meetings where he did not attend but I have gone through the panel minutes and found that at all the key ones we had angling representatives present. Indeed, I have got an email from that very representative who was in support of the bass bag limit of 5 because they were not all brought in at the same time. They first of all started looking at ormers and then ormers and lobsters, and then bass was added on later into the programme. What I

¹⁷ Public Hearing, Jersey Recreational Fishing Association, 18th June 2009

should also say is if people do not turn up at the meeting, obviously they still get the minutes and the agendas so they would have had the full plan.’¹⁸

8.14 A former member of the Advisory Panel, Mr A Syvret, gave an insight into how the Panel works, and summed up his experience of the Panel as follows:

‘Deputy M.R. Higgins:

How did you find it when you joined the panel, then?

Mr. A. Syvret:

Fascinating. I came wearing a caretaker anglers’ representative hat and it was slightly amusing in some respects, that I had finally got on to the panel in a roundabout way and was able to speak my mind. As I said, I wrote an email to Mike Taylor at the end of my tenure there and said I had thoroughly enjoyed it, because it is a fertile discussion group and the panel does do good work and it is identified ... it is recognised in fisheries management that that is the format that works. But I think it needs to be constituted on a more solid basis and there needs to be some very, very clear reporting lines and protocols established.

Deputy M.R. Higgins:

When you say “constitute” what do you mean by that exactly?

Mr. A. Syvret:

I am aware that sometimes what happens is if a representative cannot make the meeting then a representative is sent in his place. Now that representative sometimes is plucked out of thin air, might have no connection to the issues that they are supposed to be representing, and on occasion I have been in a debate where a number of advocates of a certain proposal are wheeled in to support the proposal and then wheeled back out. In terms of protocol and standard format for meetings I do not and did not think that was democratic.

Deputy M.R. Higgins:

Right. Did you feel that that influenced the decisions?

¹⁸ Public Hearing, Minister for Economic Development, 18th May 2009

Mr. A. Syvret:

Yes.

Deputy M.R. Higgins:

It did?

Mr. A. Syvret:

Absolutely. That is why it was done.

Deputy M.R. Higgins:

Can you give an example of anything in particular on that that came that way?

Mr. A. Syvret:

*Yes, absolutely. There was a classic example when ... I mean it is a fine line between drawing people in with expertise to inform the meeting, because fishing is a very specialised subject and certain people fish certain coves using certain techniques and you need them to inform the dialogue, especially if their day-to-day living is going to be affected. But on certain occasions when the recreational sector makes a proposal for increased conservation measures, the minimum landing size for bass, for example, a small selection of fishermen who make a living from bass are brought into the meeting and in some cases bang the table and there is your representation. Whether that is fair or not is open to interpretation.'*¹⁹

Key Finding:

8.15 The Panel has serious concerns about the 'official' representation of leisure anglers on The Marine Resources Advisory Panel and concludes that it was not reflective of a significant proportion of leisure anglers' views.

Consultation:

8.16 The Panel addressed the issue of any wider consultation outside of the Marine Fisheries and Resources Panel. The Panel asked whether, in view of anglers being such a diverse group, was a public consultation exercise carried out? For instance, was a consultation paper put out to stakeholders setting out what was being proposed and undertaking advertising? In response the Senior Fisheries Inspector explained that specific public

¹⁹ Public Hearing, Mr A. Syvret, 5th February 2010

consultation had not been undertaken, however the Department had canvassed anglers. He explained:

*'at the time that the panel approved the principles of it, Senator Ozouf had quite a big media sort of campaign on it. The hope was that people would bring forward views but really until the last couple of weeks, I think, we have not received sort of negative views on it and, indeed, even in the last few weeks we have not received negative views in writing or anything like that.'*²⁰

8.17 Former Advisory Panel member Mr A Syvret outlined what he had seen of the consultation process:

*'Arguably consultation took place on the panel and anglers were represented, albeit in a fragmented way, and I organised and convened 2 public meetings to try and get this issue on to the agenda, but I do not think as a community of recreational fishers Jersey has discussed this adequately. I think there should have been more consultation. When we consult on so many other things it is a little bit of a puzzle as to why this very emotive subject did not receive a longer lead-in and greater discussion. Which brings me back to my suggestion perhaps that bag limit law drafting was considered to be a low priority, but may have come back to the surface very, very quickly and rather unexpectedly with a very short lead-in time, no one wanting to waste law draftsmen's time nor wanting to waste States time that this proposal was brought in rather hurriedly I think.'*²¹

8.18 The Chairman of the Fisheries and Marine Resources Panel conceded that in hindsight it could have undertaken wider consultation, however;

'...sitting around the table I had people from Jersey Aquaculture, people from the Jersey merchants, people from the inshore fishermen angling representatives, boat owners representatives, people like Chris Newton, Mike Smith, people that know and enjoy amateur fishing, and there was no dissent. You know, a very good example is Chris Newton who has a boat at La Rocque and enjoys bass fishing. He had no problem with it whatsoever. Possibly, you know, if somebody had started saying: "We are not entirely

²⁰ Public Hearing, Minister for Economic Development, 18th May 2009

²¹ Public Hearing, Mr A. Syvret, 5th February 2010

happy with this” we should have done, but when something seems as unanimous as it did seem at the time, how far does one go?’²²

Key Finding:

8.19 The failure to consult widely led to the Minister proposing defective Regulations. Wider consultation would have ensured a more inclusive process with all views taken into account, and a lot of Scrutiny members and Officers time spent on the matter could have been saved.

²² Public Hearing, Chairman Fisheries and Marine Resources Advisory Panel, 18th June 2009

9. AIMS OF THE PROPOSED LEGISLATION

9.1 The proposed Bag Limits Regulations have been developed to address two main areas; ensuring the viability of the commercial fishing industry and, to a lesser degree, conservation.

Commercial

9.2 The proposals to introduce Bag Limits to limit the landing of lobster and bass to five per person per day (and in the case of lobster to five per vessel per day) aim to target the illegal sale of fish and shellfish by non-licensed fishermen. The fishing industry has called on the Department for Economic Development to introduce legislation which would effectively prevent the sale of “black” fish, which the Panel heard contributes to a reduction in the market price.

9.3 The Minister outlined the case for the introduction of the Bag Limits to the Panel:

‘The idea behind these regulations is to create fairness and greater equality, if you like, taking into consideration the importance of the commercial fishing market in Jersey. Fishermen do not, we should always remember, get any form of grant or aid in terms of supporting their particular industry. We have to take into consideration the need to protect them from the social ... I accept, of course, the importance of the social aspect of fishing. It is an important hobby for many people. 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, but it is the commercial fishermen that the regulations are designed to provide some degree of protection from those very small percentages who seek to capture socially, from their pastime, fish, and then sell them commercially and compete against the commercial fishermen who, of course, have to have licences and are fully regulated.’²³

9.4 The Chairman of the Fisheries and Marine Resources Advisory Panel also outlined reasons behind the decision to propose Bag Limits for commercial reasons, advising that the real issue is that a lot of these commercial fishermen, and indeed other members of society, are complaining that people who do not have licences are fishing for high value species such as

²³ Public Hearing, Minister for Economic Development, 18th May 2009

lobster and bass, with bass in particular landed straight to restaurants. He told us that Jersey has no legislation in place at the moment that makes that illegal, without an awful lot of proof and intrusion in people's lives to prove it. They can also afford to sell at quite a low price. He outlined a scenario to us to illustrate what may happen:

*'So if a couple of recreational fishermen out in a boat catch 400 bass, which is not impossible by any means If you get a good hit with a net that is the sort of quantities you are talking about. They flood the local marketplace which, obviously, on a Friday afternoon can only stand so much bass. Then the commercial fisherman, who has been out fishing all day, comes in with his fish and he has no market for them. So, it is a sort of double whammy. These people are able to fish without a licence and they are also able to sell at a cheaper price.'*²⁴

- 9.5 The Chairman of the Jersey Fishermen's Association explained to the Panel the impact on his colleagues. He re-iterated that the key important driver was that bass and lobster were being caught and quite openly sold on the black market. Asked how much of a problem this is Mr Thompson told the Panel:

*'I can put my hand on my heart and say that we know this to be a very serious problem. The reason it impacts on professional fishermen so much is because professional fishermen in Jersey sell for the best price that they can negotiate direct to a merchant generally. Elsewhere, there is the auction market in the U.K. (United Kingdom) or what they call the criée in France where bidders bid and obviously the normal bidding process, the highest bidder gets the product, and that is a question of supply and demand. If there is a lot of fish on the market it will not attract such a good price.'*²⁵

- 9.6 The Panel fully supports the commercial fishing industry and efforts to support its viability, however it has not received convincing supporting evidence to quantify the impact the 'black fish' market on the commercial fishing industry, and therefore justify the commercial rationale behind the Bag Limits (See Section 10). Indeed, no economic impact survey has been carried out, as was highlighted by the Senior Fisheries Inspector, who in response to the Panel's question about whether there been an economic impact survey done as to what

²⁴ Public Hearing, Chairman Fisheries and Marine Resources Advisory Panel, 18th June 2009

²⁵ Public Hearing, Jersey Recreational Fishing Association, 18th June 2009

these supposedly illegal fishermen or unlicensed fishermen cost the professional fishermen, replied:

'No, there has not.

Deputy S. Pitman:

...From what I understand there is no actual evidence of the impact financially on the commercial fishermen, is that correct?

Senior Fisheries Inspector:

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?

Senior Fisheries Inspector:

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?

Senior Fisheries Inspector:

....normally it is quite a few spurious complaints that one cannot take too seriously and 3 or 4 proper well-founded complaints each year.²⁶

Key Finding:

9.7 No economic impact study into the effects of black fish sales on the commercial fishing industry has been undertaken.

9.8 The Panel also understands that there may be other more significant contributing factors to the commercial issues within the industry, for instance the importation of farmed and/or non-local fish and the prices charged by 'part-time' licensed commercial fishermen.

9.9 The JFRA told the Panel for example that there has recently been an increase in the importation of farmed bass and other fish, and that any supermarkets import their fish and

²⁶ Public Hearing, Assistant Minister for Economic Development, 29th June 2009

bypass the local system. This has a major impact on the local market. Some fishermen will undoubtedly struggle as long as people continue to buy these fish, a conflict which is by their admission very difficult to resolve. The JFRA also told the Panel that if just one commercial boat has a good day and lands hundreds of bass, this can affect the high end of the market.

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9.10 The Panel addressed some of the other impacting factors with the Senior Fisheries Inspector who agreed that there are other such factors, including the availability of farmed bass, the type of bass that restaurants like to serve. By way of example of the market fluctuating, he had been 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 good for them commercially. Recently however his Officers had been told by chefs that they prefer being able to cut fillets out of bigger bass. So, bigger bass is fetching a premium price.²⁸

9.11 The JRFA does not dispute that there are occasions when some recreational catches affect commercial fishermen, however they maintain that there is no evidence to suggest this is a regular or widespread problem, but is limited to an unscrupulous few who sell commercially without a licence to do so. The broad targeting of so many people within the Bag Limits proposals would not, it claims, be an answer to that problem.²⁹

9.12 Mr K de la Haye, a recreational fisherman, told the Panel that it is not the average fisherman causing this commercial problem to the professional fishermen and that it is unfair to 'persecute' the majority for the actions of a known minority, an argument also out forward in a number of public written submissions received by the Panel. Reacting to claims that the majority of recreational fishermen would support the introduction of bag limits, he explained;

'It is not true. Not in the circles I move in certainly. All my friends say it is ridiculous. Ridiculous. Why are we being persecuted because a bloke sells 20 bass to the Dolphin Hotel or wherever? It implies that fishermen catching bass from the shore have a great impact on the sales of black fish; I do not think that is true either. It is boat fishermen that catch the big amounts if there are big amounts. It cannot be done easily from the shore. They might catch 10 one day but they will not catch 10 for another 3 months, you know. That is the exception rather than the rule in my experience.'

²⁷ Written submission, Jersey Recreational Fishing Association

²⁸ Public Hearing, Assistant Minister for Economic Development, 29th June 2009

²⁹ Written submission, Jersey Recreational Fishing Association

9.13 He outlined a scenario to outline his sense that it was unreasonable to target all recreational anglers in this way;

'I just ask you to remember my analogy about ... my 6 lobsters for the barbecue. I mean 6 people at a barbecue is not many, is it, and if they want to have fresh lobster I am not allowed to do that in the future if this comes in, because I am only allowed to keep 5. I am only allowed 5 in my possession. That article of the law says you are only allowed 5 fresh lobsters in your possession. If I had a key pot and there were 7 in there, £20,000 as the law stands drafted at the moment....'

9.14 Again, along with a number of written public submissions, Mr de la Haye raised objection to the loss of a part of Island heritage:

*'..this is a minor point compared to the rest I think anyway, you know, the liberty of the Islander whose heritage is fishing and always has been. These limits are nothing to do with conservation. It is the whim of these people whose nose has been put out by a few people making a few quid selling a few bass at the back door of a restaurant. That is all it is about. The rest of us have to suffer because of it.'*³⁰

Key Finding:

9.15 The proposed introduction of the Bag Limits, encompassing all leisure anglers, appeared to be a wholly disproportionate response to the problems faced by the authorities in policing and securing convictions under current legislation.

Conservation

9.16 The proposals to limit ormer catches to 20 per day per person are presented as a conservation measure for stocks still recovering from serious disease, which affected located stocks several years ago. This was explained to us by both the Chairman of the Fisheries and Marine Resources Advisory Panel and the Senior Fisheries Inspector. The Senior Fisheries Inspector advised the Panel that the ormer Bag Limit was about the stock and about sharing that stock out in an equitable way. He continued:

'There was a very severe disease of ormers a number of years ago and ourselves and the French had to close the ormer fishery and all the stocks

³⁰ Public Hearing, Mr K de la Haye, 11th June 2009

*dropped by something like 80 per cent to really very, very low levels. The fishery was closed for 2 or 3 years and then it was opened and immediately people went out and caught 100, 120 ormers. The numbers now are coming up, even at the Minquiers they have seemed to come up. We are seeing people catching catches at the Minquiers approaching 20. Certainly on Jersey we have seen people catching in excess of 20, but occasionally rather than regularly. The measure of 20 would help the stock growth to continue to recover. It would also ensure that an individual going down the beach one day would not take all the ormers out of the area so someone going down the next day would be able to take some. So the ormers is really about stock.'*³¹

9.17 Mr K de la Haye agreed with the disease impact on ormer stocks but also said that and in the past he had known about divers who have gone several years ago to the Minquiers and taken out 5,000 ormers throughout a range of spring tides. That, he said, was one reason why the ormer stocks are depleted.

9.18 He also argued that as far as ormer conservation is concerned, the ormer already has regulated fishing seasons; very short windows that coincide with the spring tide where the shore-gatherer can catch it. The regulations prohibit diving, and furthermore the gathering is also controlled by the tides.³²

Key Finding:

9.19 The Panel supports the principle of Bag Limits for conservation purposes but is concerned that the limit of 20 would be an unnecessary tool to achieve that end in the case of ormers, as there are existing measures in place under current legislation that protect ormers from commercial levels of exploitation.

³¹ Public Hearing, Minister for Economic Development, 18th May 2009

³² Public Hearing, Mr K de la Haye, 11th June 2009

10. ECONOMIC IMPACTS

Commercial Fishing Industry

10.1 As outlined earlier in the report, the Panel heard that the key aim for introducing Bag Limits on bass and lobster was to help protect the commercial viability of the professional, licensed fishermen from the actions of the non-licensed fishermen illegally selling fish thus shrinking the market available to the commercial fishermen and driving prices down. As a Panel, we sought to gather the evidence that the Department and Minister for Economic Development were using to demonstrate the level of impact the illegal activity was having on the commercial fishermen. The Panel asked the Senior Fisheries Inspector about the information used to establish how much money is being lost because of that to the industry:

'...I am not looking at the paperwork as I go, but I think we would argue there is something like 9 professional fishermen who target bass on a regular basis, the coast inshore. So, if you have got even 3 or 4 recreational people who are circumventing the legislation that is going to have an impact but bass is perhaps not ... I could look at the annual report but I have not got the figures at the tip of my tongue. It is not a major part of our industry. I suppose the important thing to realise is for those fishermen who target it it is a percentage of their income and in the current sort of economic climate, if it is 20 per cent of their income it is 20 per cent they cannot afford to be without really.

Deputy S. Pitman:

Ormers and lobsters I imagine, do you know how much has been lost?

Senior Fisheries Inspector:

Ormers, there really is no impact on. There is no commercial fishery. Occasionally you see them in the fish market but it really is not a commercial fishery. Lobsters, in my view it is less of a problem than bass...

Senator A.J.H. Maclean:

I think to perhaps put it into perspective, the fishing industry, as I understand it, amounts to around about £6 million or grosses around £6 million a year in terms of fish and shellfish. I think on the margins Mike was referring to are probably 10 or 20 of the more serious offenders who are recreational fishers who are selling their catch but if you assume, based on research in 2001 by Shelley Hawkins, that the recreational fishing industry is about 1,700, 1,800

*people and about 5 per cent of those are exceeding these proposed bag limits, that gives you the sort of quantum of the potential numbers who could be causing a problem.'*³³

10.2 The Panel addressed the level of impact of recreational fishermen selling catches on the livelihood of the professional fishermen, by driving down prices or denying you access to the market, with the Chairman of the Jersey Fishermen's Association. He was asked to what extent did he think it is a problem and to quantify it. He responded:

'I think the first thing it is not entirely correct what you say that they are only affecting professionals. Those that go out to deliberately catch fish and sell them illegitimately are not only depriving professionals of their livelihood, they are also depriving genuine recreational fishermen of a good day out. Because if we are talking about bass again, bass are quite unique in that a certain number of bass will cover a certain area and it is a case that they will be there for 2 or 3 months if they are left there. Whatever is taken out of that, that is gone and there is not a continuous stream coming in. Perhaps through the winter after a storm you will get another lot of fish come in. For someone that goes out and deliberately catches just to sell them through the back door of a restaurant deprives leisure fishermen just as much as he does deprive ...

Deputy M.R. Higgins:

But what impact is it having on your income levels, let us say?

Mr. D. Thompson:

Well, currently, as will have been claimed, there are not a huge number of professionals that fish for bass for a living. However, we are something of a cottage industry here. For instance, yesterday, the price of lobster dropped below what is effectively viable to go out there and fish for them. It dropped below £10 down to £9. To make a living from lobster at £9 you have to work awfully hard. I would have had to have left at 4.00 a.m. this morning and still be out there at 5.00 p.m. tonight to make enough from lobster to make it viable. So what a fisherman does is he moves on to netting for ray, or line fishing for bass, or he goes on to a different species. Our licensing system does allow fishermen to move around quite freely and that is a good system. But the problem is that when bass prices also are so low, it is genuinely in the

³³ Public Hearing, Minister for Economic Development, 18th May 2009

summer when there are more of these people that fish and sell for profit, probably half of our fishermen would be fishing for bass at the moment. Stocks are not that bad; there are fish out there available, but it is just another possibility taken out. There are probably only a dozen fishermen at the moment managing to make a living from fishing bass whereas it would probably be half the fleet (if prices were not being affected by black fish sales).'³⁴

10.3 When the Panel spoke to the Chairman of the Fisheries and Marine Resources Advisory Panel, the possibility was raised that rather than being a means of addressing a quantitative loss of income to commercial fishermen, the proposal of the Bag Limits was more an issue of principle. He explained:

'I do not know if there was a loss of income. It is really the principle of the idea that sometimes professional fishermen are struggling to make a living and they see guys out of, shall we say, Grève de Lecq or somewhere, who they know have just finished work at 10.00 a.m. in the morning, going out on the boat and doing pots and selling their lobsters without a licence. In fact, they may have been given a licence when licensing was introduced 10 or 15 years ago. Everybody that could show they were selling their catch was entitled to a licence whether you were a professional or not. So, these guys that might have had 150 pots who were selling their lobsters when licensing was introduced were given the opportunity of having a licence given to them. Now, some of them were given a licence and then sold their licence but continued fishing, and that is what really upset the professionals.'³⁵

10.4 When Mr K de la Haye spoke to the Panel, he raised concerns about the anecdotal nature of the evidence being presented to make the case for the impact on commercial fishermen:

'Mr. Thompson said I listened very carefully to what he said and to all your questions. He has not made the case for bag limits in my opinion. There were a lot of red herrings, a lot of exaggeration in my view, a lot of prevarication in my view and not much substance about the actual law that is proposed. I do not think that is disputable. He makes claims there is very serious evidence that this is happening and that is happening but nothing to

³⁴ Public Hearing, Chairman Jersey Fishermen's Association, 11th June 2009

³⁵ Public Hearing, Chairman Fisheries and Marine Resources Advisory Panel, 18th June 2009

*back it up..... where are the prosecutions? Where is the evidence? It is all anecdotal. I have not seen anybody prosecuted for selling fish at the back door, have you? Have I missed it in the paper?'*³⁶

Key Finding:

10.5 The extent to which unlicensed commercial fishing (and sales of those fish) contributes to the commercial problems outlined as the key reason for proposing Bag Limits for lobster and bass, has not been established.

Leisure Fishing Industry

10.6 The Panel sought to establish the economic contribution of the recreational fishing industry to the Island. In 2003, Shelly Hawkins produced the report *An assessment of the Environmental, Social, Economic and Policy Aspects of Jersey's Recreational Fishery*. That report revealed the following;

- The quantity of people recreationally fishing

It was found from the street survey that 1740 people potentially fish as a recreation in Jersey waters. 40% of respondents from the questionnaire believe that angling has become more popular over the years.

- The frequency of participation in fishing activities and hotspot areas.

The majority of people (68%) fish 1-2 times a week, with 15% of people going 3-4 day per week.

Low –water fishing survey results: Page 8-9

Quantity of fish kept:

Whist fishing respondents (54%) generally caught between 1-4 fish per session however, 14% of respondents claimed they do not catch much but just enjoy the social aspect of fishing. At the other end of the scale 5% of people catch between 10-20 fish and 3% catch 20 + per session. When asked how many of these fish they kept 50% said a few and 16% the majority, people were keen to say that they always replaced undersized fish. This shows that recreational fishermen are aware of regulations already enforced.

³⁶ Public Hearing, Mr K de la Haye, 11th June 2009

Economics

The economics of recreational fishing to the Island are currently not realised. The interest in the economic benefits of angling is increasing and it has been quoted many times that:

“ a fish is worth more in the sea (to a recreational fisherman) than on the slab (to commercial fishermen)”.

This quotation gathers credibility when considering sales in tackle shops, transport costs, hotels, restaurants, pubs, tourist attractions and money spent by those accompanying the visiting anglers.

An average of £600-1000 is thought to be spent per angler per trip, which on a large scale amounts to high revenue with substantial benefits to Jersey's economy. Places such as Ireland and America have a thriving recreational fishery in terms of economic gain for which they make millions of Euros or Dollars respectively. There is no reason to doubt that Jersey could not benefit in the same way, although consideration has to be given to the size of Jersey.

An estimate for the value of the local recreational fishing activity was achieved by calculating the average amount of money spent by the respondents of the questionnaire - £506.5 per recreational fishermen per year. This figure was then multiplied by the number of people recreationally fishing on the Island (discovered by the street survey) 1740. It has been estimated that local recreational fishermen spent in excess of £88,1310 per year.

There are already some good initiatives in Jersey but many more could be produced if communication levels between all parties involved were increased. If recreational fishing continues to develop than it will be essential to protect the species important to it success.

With regards to the economics of recreational fishing on Jersey, an in-depth economic analysis needs to be conducted. Which would involve the collection of data on the total annual expenditure, estimated economic output and estimated full-time employment associated with recreational fishing on an annual basis for local and tourist users. This assessment would then enable the viable amount of advertisement, time and money to be put into promoting recreational fishing to both tourists and local people.

³⁷ An assessment of the Environmental, Social, Economic and Policy Aspects of Jersey's Recreational Fishery, Shelley Hawkins, 2003

10.7 Aside from that now seven year old information, there appears to be little by way of official data on the recreational industry, with the Panel receiving somewhat speculative and anecdotal figures rather than a robustly researched approach.

10.8 The JRFA did attempt to quantify the scale of the sector, advising us that:

'We have based our assumptions on demographic surveys in the U.K. (United Kingdom) and in the U.S. (United States) on personal communities which would indicate that 10 per cent at minimum of a population, but usually between 10 and 15 per cent of a population in its entirety, not just males, is involved in some sort of recreational fishing activity, which would indicate about 12,000 recreational fishermen in Jersey, not 1,200. The economic activity of that group can be gauged by the fact that in the 1990s in the U.K., it was accepted that you needed 250,000 population to support one tackle shop. In Jersey, there have traditionally been 3 major and 2 minor tackle shops so the economic activity through the tackle shops exceeded then over £500,000, based purely on the amount of profit that they could generate to keep their staff and to keep operating.

Deputy M.R. Higgins:

Can I just interrupt you for a second? How do you know that, I mean obviously the figure you have just come out with?

Recreational Fishing Association Representative:

*I was a tackle dealer and I was privy to a lot of information through the companies. This information is freely available through people like Dunn and Bradstreet where the companies are registered and we used comparable surveys of economic activity to guide ourselves in our purchasing. It is no use purchasing for 250,000 people if you have only got 80,000. So the economic activity in Jersey is far superior to those in other areas because Jersey is a small, closed community with access mainly to local-based businesses. At the same time, the imported business, particularly from America, was considerable and equal to another tackle shop.'*³⁸

³⁸ Public Hearing, Jersey Recreational Fishing Association, 5th February 2009

Tourism Industry

10.9 The Bag Limits proposals were presented with the argument in the accompanying report that introducing Bag Limits would encourage angling tourism. We heard from the Senior Fisheries Inspector the rationale behind that claim, essentially that tourist anglers would be attracted by Jersey's fisheries stock management policy:

*'We have at least 2 fulltime charter angling boats that work right through the year. We also have things like the Jersey Bass Festival which people come from all over the U.K. to fish for bass. So yes, it is important. The view from the representative at the time at the panel was that the tourist anglers would welcome the bag limits because it would show them that there is some sort of control of the stocks and that they are used to that in other parts of the world. We find that the charter angling boats like us inspecting them at sea because it improves their business because they are conscious, for want of a better expression, to see that the fishery is being managed. Obviously, if they are going to pay good money to come to the Island and go fishing they would rather that.'*³⁹

10.10 The Minister for Economic Development outlined to us that the typical spend of a tourist angler is:

*'about £1,000 per angler who visits, that is what the typical spend is, and I think a recreational fisherman will spend about £500 to £600 a year on their sport.'*⁴⁰

10.11 Marine biologist Mr. A. Syvret explained that the drive for catch restrictions by the recreational sector was in the interest of putting more fish in the sea. In turn:

'...there are socio-economic multipliers as far as recreational tourism angling is concerned. There are some very convincing arguments from elsewhere in the world that a fish swimming is worth a lot more than a fish on the slab.'

³⁹ Public Hearing, Minister for Economic Development, 18th May 2009

⁴⁰ Public Hearing, Minister for Economic Development, 18th May 2009

10.12 He continued:

*'Well I mean I have used the U.S. (United States) east coast striped bass fishery as an analogous situation to our own one here on many occasions with the panel and in open discussion with the public and the multiplier effect, the simple fact that an angler, and they have done studies on the west coast of Ireland... if someone brings a family to stay in a guesthouse and father fishes maybe 2 or 3 mornings a week and visits the tackle shop or a group of 12 anglers come to Jersey and charter a boat for a week, there is a very, very strong economic argument to be made for a better use of the resource on that front.'*⁴¹

10.13 The Panel tried to establish what precise evidence was being used to assess the level of tourism activity associated with recreational fishing. The Panel asked whether an impact assessment had been done on what impact Bag Limits may have on the tourism industry, to which the Senior Fisheries Inspector answered:

*'There has been no study as such but we do have Peter Gosselin'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 Gosselin 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'*⁴²

10.14 The JRFA outlined its understanding of what a significant economic contribution the angling tourism can make to Jersey.

'If you look at some of the tourism demographic surveys, and I can only quote anecdotally on these because I never kept any details when they were published in particular angling or fishing publications. Ten per cent of all angling holidays were reckoned to be booked with the fact that fishing was available, not taken up, but available. In other words, it was a male-dominated choice for 10 per cent. If our tourism industry is 500,000 then that

⁴¹ Public Hearing, Mr A. Syvret, 5th February 2010

⁴² Public Hearing, Minister for Economic Development, 29th June 2009

is 50,000 holidays are booked with the possibility - not the take-up, the possibility - of there being some fishing available.

Jersey Spearfishing Club Representative:

Let me just give you an example: the Jersey Spearfishing Club almost annually - sometimes we miss a year - holds in conjunction with the British Spearfishing Association a national championship over here and it is usually open, as well. I have got some information with me now. We get some of the top French divers coming over and from other places in the world: New Zealand, South Africa. As I say, this has all been written up as an official article on one of our competitions a few years back. The numbers are not, in the whole big picture, particularly high; we are only talking about possibly 30 sometimes 40 divers who have come over, but the point is these are some of the top guys from the U.K. and from France and they bring across with them, in a lot of cases, families who stay for a week and sometimes 2. Also, the point is, being in the position they are in, they are almost ambassadors for that sport in their areas so it is not just any old individuals coming over for these competitions. Obviously they all support the infrastructure of hotels, restaurants, anything to do with the tourism industry that is associated with people staying over here, basically.’⁴³

- 10.15 However, rather than having apposite impact on angling tourism, the JFRA told the Panel that it was concerned that the Bag Limits as proposed purely on the recreational fishing sector would have a negative impact:

‘The very hint of this kind of legislation, protection for the commercial fishermen, automatically puts the red flag up to a lot of people who would come here to fish....It has had a quantifiable effect. From a personal point of view one assistant editor of an angling magazine, one group editor of a group of leisure magazines and one recently retired official of the French National Federation of Recreational Anglers, if you like, have failed to turn up. These were planned trips that will not be taking place.

Deputy M.R. Higgins:

Do you think it is directly linked to this legislation?

⁴³ Public Hearing, Jersey Recreational Fishing Association, 18th June 2009

Mr. P. Gosselin:

I cannot prove it. You cannot prove something that has not happened.

Mr. C. Issacs:

There are things that can be sort of “proven”. Just to give you an example, regardless of what you think of spearfishing as a sport or whatever, we organise national spearfishing competitions over here where we get the U.K. national team come over and we get a one or 2 day event. They always come over, they really enjoy, they stay with us. If anybody (added for clarification - local) had ever come to any of these competitions they would never have seen anybody come out with more than 5 bass because it is almost impossible as spear fisherman from the shore to come out more than 5 bass, okay? That is the first point. But the point I am trying to make is we have had some serious reservations from the British Spearfishing Association and affiliated parties about this local situation, about the bag limits and they have even suggested them boycotting any events over here would be a demonstration of their feelings about this unfair proposal being imposed on us.’⁴⁴

Key Findings:

- 10.16 Despite claims from the Minister for Economic Development that the introduction of Bag Limits would be good for tourism, no evidence was found to support this. Indeed, the Panel understands that there has already been a negative impact on tourism resulting from the proposals for Bag Limits.
- 10.17 There is a general lack of data around Jersey’s marine resources which is a barrier to achieving informed policy development.

Recommendation:

- 10.18 The Fisheries and Marine Resources Section should be provided with adequate research resources to provide fuller information on Jersey’s marine environment in order to better inform policy development.

⁴⁴ Public Hearing, Jersey Recreational Fishing Association, 5th February 2009

11. ENFORCING THE BAG LIMITS

11.1 The Panel heard from the Fisheries and Marine Resources Section that one its main problems with the current legislation, is that it is very difficult to police and to secure convictions. Currently, the exemption from the need for a licence is "fishing by a boat when the fishing is only for the pleasure of persons conveyed on the boat and the boat is used only for the purpose of conveying persons wishing to fish for pleasure". It is not illegal in itself to **sell** fish without a licence, the onus of the current legislation is on the **act of fishing commercially**, for which proof of the sale of a catch is but possible evidence for proving the commercial activity. Recent legislation does relate to the need for a catch being first landed in Jersey to come from a licensed vessel, although that licence may be issued by any jurisdiction, for example France, the UK and Jersey. Since 1999 there have been 20 complaints by 12 complainants about more than 24 individuals alleged to be commercially fishing without a licence. However, there have been no convictions.⁴⁵

11.2 The Chairman of the Fisheries and Marine Resources Advisory Panel outlined the problems faced trying to enforce the current legislation:

'I know from being up at the department for a very long time that it is incredibly hard to prosecute somebody for selling fish illegally. One of the reasons for that is that if somebody comes ashore who does not have a licence and they have bass or lobsters or whatever it is, they only have to say: "I caught them off Sark" or: "I caught them off Guernsey." If they caught them outside of Jersey's territorial waters, they can sell them legally. So you have virtually got to go out, shadow the person on the boat, identify what he has caught in Jersey territorial waters, follow him back in, follow him to a restaurant and see the money changing hands. It is almost impossible to get a prosecution. Whereas the bag limits, it is very easy just to ... people are checking undersized fish and they are going ... it is far less intrusive. The inspectors go down the slip, they are looking at minimum sizes, they say: "How many fish do you have there?" It is much easier policed.'

Deputy M.R. Higgins:

That is interesting from the policing point of view because we were wondering at one point how they were going to police this, were we going to have boats out at sea and all the rest of it, but it is the landing is the key ...

⁴⁵ Fisheries and Marine Resources, 25th January 2010

Mr. M. Taylor:

*Yes, and it is much easier to land and it is much less intrusive. In just the same way as on occasions the inspector will go along to St. Catherine's Breakwater just checking people to see that what they are landing is the legal size, they will just say: "How many fish have you got there?" Talking to various people that do angling, it seems very unusual for them to catch more than 5 bass. I have not actually met anybody yet who has admitted to catching more than 5 bass on a rod in a day. And we tried to make it like that. We tried to make it so that it would not penalise anybody.'*⁴⁶

Key Finding:

11.3 It is currently illegal for a non licensed fisherman to fish commercially in Jersey waters, although selling his catch is currently only evidence of a possible illegal act, that of catching those fish. Clearly, policing the catching of fish is more difficult than policing the sale of those fish.

Policing Bag Limits

11.4 Concerns about how the Department would be able to police legislation that would seem to bring so many more people within its scope than the current legislation, and the suggestion by the Minister and Senior Fisheries Inspector that volunteers would play an important role in policing the Bag Limits Regulations, were raised with both the Chairman of the Advisory Panel and the Chairman of the Jersey Fishermen's Association. In response the Chairman of the Advisory Panel explained that:

'Well, we have got I think one volunteer at the moment and he does quite a good job. And I think also that I think Honorary Police are entitled to ... I think they have powers to look for minimum sizes. But it would be no different, I do not see ... I do not think there would be any extra policing activity, it is just that when officers are looking to see if your catches are all legally sized, they will also just be looking to make sure that you do not have more than your quota. They will not be deliberately scouring the Island for people that have more than 5 fish. I see it as part and parcel of the same policing, and if they go ... if they board a vessel at sea now, they are checking for minimum sizes, so they

⁴⁶ Public Hearing, Chairman Fisheries and Marine Resources Advisory Panel, 18th June 2009

*will just have a look round and see if they have more than 5 lobsters. So I do not think there would be any extra policing, actually. I do not see it myself.'*⁴⁷

11.5 The Chairman of the Jersey Fishermen's Association was also not concerned by how the Bag Limits would be policed:

*'Without a doubt, the honorary or voluntary police officers would be the ones that would be in the front line, if you like. But, again, we are looking at bag limits as some sort of a difficulty. I think you will find that if you speak personally to genuine rod anglers, leisure anglers, who fish from the shore, very few of them catch 5 bass in a day anyway, so they would not be directly affected. Boat anglers, to the contrary, can in a single day catch far in excess of that. So you are not looking at having to police it on everybody, you are simply looking at one particular sector and that is boat anglers that do have access to greater quantities of fish.'*⁴⁸

11.6 The Chairman of the Jersey Fishermen's Association also explained to the Panel how the Bag Limits regulations would allow a much easier method of policing than the current legislation. Asked if introducing Bag Limits was not simply swapping one set of policing for another, he replied

*'One of the reasons that we went down the route of bag limits is that it is almost self-policing and 90 per cent of boats at least that go to sea, go from the same slipways. There are not unlimited places to launch a boat around this Island and everybody comes back at the same point and so everybody sees what everybody else is landing. It is certainly not difficult for a Fisheries' officer to turn up once every couple of weeks or a month even and just stop boats as they come in and just have a look. I was not born in this Island but I do come from a background where bag limits were established probably as long as I can remember, 40-odd years, and they tend to work with very little policing, so we know that they do work.'*⁴⁹

⁴⁷ Public Hearing, Chairman Fisheries and Marine Resources Advisory Panel, 18th June 2009

⁴⁸ Public Hearing, Chairman Jersey Fishermen's Association, 11th June 2009

⁴⁹ Public Hearing, Chairman Jersey Fishermen's Association, 11th June 2009

11.7 The Senior Fisheries Officer emphasised the difficulty of policing and enforcing the current legislation. He explained how resources are very limited;

*'We have got a large patrol boat which carries a small dinghy. We also have a small dinghy which we use inshore locally but the most effective way for minimum size and bag limits and unlicensed fishing is to check what is coming ashore. The thrust of this legislation would be that it would be for the restaurant to prove that they got their fish from a legitimate source. So, if we went to a restaurant and they had 10 lobsters, the burden of proof is on them to prove that they bought them from someone who was entitled to have them, which is slightly unusual perhaps but would help us tremendously and reduce the amount of policing. We expected bag limits to be introduced earlier than it has been. We have had delays getting it through the U.K. approval process but in anticipation of that we were looking to appoint a number of voluntary fishery officers. We have got one, who is an ex-Centenier from St. Martin, who spends a couple of hours of an evening every week and sort of one weekend day and he does checks. We also do checks ourselves. But yes, you are right, we cannot check all the time but we would anticipate that we would have it sufficiently covered that it would have an impact, plus most fishermen, like most individuals, are law abiding and there is only going to be the odd one who breaks legislation. We get a lot of complaints about the ones who are already breaking the licensing regulations. It is just that it is very difficult to prove it.'*⁵⁰

11.8 Whilst the Panel heard that resources are limited and current legislation is very difficult to enforce, it was put to the Panel by Mr K de la Haye that Bag Limits would make the situation even worse:

'Well, if you are going to police a law that encompasses all those people you are wasting your time introducing a law if you do not police it. It is nonsense, is it not? You must agree. If the current practices of the Fisheries Department are anything to go by they will need more staff.'

⁵⁰ Public Hearing, Minister for Economic Development, 18th May 2009

11.9 He also told the Panel that the current legislation could be better policed and enforced;

'...the laws are there already to combat that. There are laws there. Perhaps the penalties need overhauling, you know, perhaps the wording might ... but the laws are there. It is against the law for an unlicensed fisherman to sell his catch. That is the law that exists now....It is all working at the moment. What is not working?'

11.10 He continued;

'...it is not being policed properly. The miscreants, or the unscrupulous as it says in the report which I find quite amusing, the unscrupulous are not being targeted and they are not going to court.... where is the evidence? Where are the court cases if all these people are doing all of these things? I think a more considered use of their manpower should be adopted and this is what you were coming to about the black fish thing. The department using existing laws to cover black fish as well as other law enforcements rather than what seems random boarding and examinations of shore catchers. If these are the targets for what this law is being introduced for, why do they not use tested policing methods, testing law enforcement methods.'

11.11 He outlined what this might entail;

'...I will come to intelligence. Firstly, publicity: all the restaurants in the Island should be circulated saying that it is an offence to buy from unregistered fishermen. They should be able to show receipts for the appropriate merchant or fishermen that their stock is bona fide; an audit trail, a paper trail. If you buy lobsters at the back door, Joe Bloggs is not going to give you a receipt saying Battrick's or, you know, where the legitimate stuff is going and the merchants as well should be told as well - it is against the law and the penalties ... at the moment they are draconian but I mean point out the penalties....Well, you make them record what they have brought. It is not difficult; it is not rocket science. If you have fish in the deep freeze and you are selling fish, the Department of Fisheries should be able to say: "Where did you get these? "Where did you buy your bass from?" Simple.

Deputy M.R. Higgins:

They just look in their ledger.

Mr. K. de la Haye:

*That is right. You just look at their ledger and say: "I brought it from Battrick's." But to go on from there that is not, you know, an insurmountable problem. That is easily, easily rectified. Most people want to be law abiding. I mean the restaurateurs are just as much to blame as the fishermen, you know. He gets it a couple of quid a pound cheaper. Now as Deputy Wimberley said intelligence and research. In customs, that is how they operate. They could not operate otherwise without intelligence. They are catching young drug runners without intelligence. That is what it is based on. It is not difficult either. It means a slightly different working method but ... and then this guy knows who they are. This guy here knows who they are. Target the miscreants. You watch them, you know, covert observation; not difficult. Every other law enforcement agency does it. In Customs we used to do covert observations on far more important things than 5 fish, 20 ormers and a few lobsters. Risk assessment as well. The little boat at 18 foot 6 is not going to impact on the stock, the price or any other bloody thing. It is minutiae. It is the big people they should be looking at. You know, all these things together is how that law enforcement part of Agriculture and Fisheries should be operating. They do not do that now in my experience. It is what appears to me and many others to be random, casual and a very costly approach that they adopt at the moment.'*⁵¹

Key Findings:

- 11.12 Despite reassurances of the possibility of using more voluntary fisheries officers on an occasional basis, and that bag limits are almost self-policing as 90 per cent of boats at least that go to sea go from the same slipways and everybody sees what everybody else is landing, the Panel found that the capacity of the Fisheries and Marine Resources Section to police and enforce the Bag Limits was limited
- 11.13 The Fisheries and Marine Resources Section has very limited resources and is unable to effectively enforce the current legislation, which has significantly narrower targeting, and could not be expected to police and enforce the Regulations that targeted almost 1800 leisure anglers.

⁵¹ Public Hearing, Mr K de la Haye, 11th June 2009

Unlicensed Sellers – small in number and identifiable

11.14 The Panel heard from a number of stakeholders, including individual recreational fishermen, the JRFA (see Section 9.11) and the Minister for Economic Development (see Section 10.1) about how it was known that only a small number of people are selling fish without a licence. Indeed the identity of most of those people was widely known. This was confirmed by the Senior Fisheries Inspector:

Deputy M.R. Higgins:

This is the point. In one sense you say there are people who are definitely over-fishing and who are selling them commercially. Most of them are probably known to you, are they not?

Senior Fisheries Inspector:

Yes, I think that is true to say.

Deputy M.R. Higgins:

So how many individuals are we talking about?

Senior Fisheries Inspector:

I would think, on a big scale, we are looking at probably between 10 and 20.'

⁵²

11.15 The same point was addressed by the Chairman of the Jersey Fishermen's Association.

Deputy M.R. Higgins:

Yes, that is useful. We obviously have this problem where people are selling direct to the restaurateurs and so on. It is such a small community, you must know who these people are ... by and large.

Mr. D. Thompson:

I would certainly know who some of them are, yes, without a doubt. We know who some of them are but there are an awful lot of restaurants around this Island and the recreational fishing industry is growing at a huge rate; it is really, really big. I would also say that the total catch in each sector from the

⁵² Public Hearing, Minister for Economic Development, 18th May 2009

commercials and from the recreational sector is at least on a par ... could be greater in the recreational.

Deputy M.R. Higgins:

So, are there some people, though, who are big players in this who are going out essentially almost like professional fishermen, but are not licensed professional fishermen?

Mr. D. Thompson:

We certainly know some of them. The professionals know some of them and for all of the comment that I am aware of, and I am not a party to everything that you would have seen that has gone to the Fisheries Department, but everybody recognises or everybody is saying: "Yes, we know this goes on. We know individuals that do this."'⁵³

Key Finding:

11.16 There is an issue with some non-licensed fishermen selling their catches, but the Panel found this to be a practice carried out by only a very limited number, approximately 20, of the near 1800 leisure anglers in the Island, particularly on any significant level. Indeed, this was openly accepted across the stakeholder groups, including the Minister for Economic Development. In addition, most of these are known to the authorities.

⁵³ Public Hearing, Chairman Jersey Fishermen's Association, 11th June 2009

Alternatives to the Bag Limits

11.17 In her 2003 report, Shelley Hawkins outlined some of the regulatory tools available to address concerns with recreational fishing, including Bag Limits;

There are various types of legal tools, which can be applied as solutions to recreational fishery problems. Formulating a policy framework is one such tool available to the Fisheries Department. However, it is vital to establish clear objectives within this framework before implementing the regulations to control recreational activity.

In Jersey's case a few of objectives include:

1. Maintain the recreational fishery (species population numbers) to ensure sustainable for the benefit of future generations.
2. Ensure that heavily targeted species have additional protection.
3. Preserve/ enhance the quality of angling/ low water fishing experienced today.
4. Ensure that a management framework using the most appropriate tools available, including legal tools but also voluntary approaches protects the recreational fishery.
5. Make certain of adequate protection of the wider environment from impacts of angling and low-water fishing through education and voluntary approaches.
6. Improve available biological and scientific data to enable appropriate management framework to develop.

There is a range of regulatory tools available to fisheries managers, including:

1. Bag limits – reducing the amount of fish taken per recreational fisherman.
2. Licensing – Apply a licensing scheme similar to the Scallop to heavily targeted fish.
3. Marking/tagging – Mainly of commercially important species would be a useful tool in preventing the illegal catch and selling of fish.

Regulation is expensive and should not that place of other methods such as voluntary and educational approaches. At the present time an increase in the later would probably be sufficient to ensure sustainable use of the recreational fishery.

54

11.18 The Panel heard a number of examples suggested as alternatives to the Bag Limits. The option of targeting the merchants and restaurants ie commercial purchasers and demanding proof of purchase was presented to the Panel by the JRFA:

'You bring in legislation that says that anybody who purchases bass on a commercial scale - how you establish that at this stage I am not sure - must be registered as a sort of commercial bass purchaser. They could be subject to checks from Sea Fisheries or whichever authority, for any bass on their premises, to check where those bass have come from. If they open the

⁵⁴ An assessment of the Environmental, Social, Economic and Policy Aspects of Jersey's Recreational Fishery, Shelley Hawkins, 2003

*freezer and they have got 20 bass there, to say: "Right, where did those 20 come from?" and they can produce a receipt to say: "They came from this, this, this" whatever his name is, licence number or whatever. Now that is perfectly feasible, perfectly enforceable and would not require a relentless amount of resources because the deterrent value on that for these - assuming the penalties are high enough - purchasers would be more than enough to say: "Look, I am sorry, I am not going to risk buying them off you because if Fisheries happen to come around tomorrow and say: 'Where did you get those bass from?' I am stuffed."*⁵⁵

11.19 This alternative was put to the Assistant Minister and Senior Fisheries Inspector who told the Panel:

'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?

⁵⁵ Public Hearing, Jersey Recreational Fishing Association, 18th June 2009

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.

Senior Fisheries Inspector:

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.'⁵⁶

11.20 The Panel sought to find out what the Jersey Fishermen's Association thought about the onus being placed on the commercial purchasers. The Chairman of the Association replied that:

'I think the first thing is that to try to control this situation of the sale of illegal fish through policing, particularly on the restaurateurs, is known to be next to

⁵⁶ Public Hearing, Assistant Minister for Economic Development, 29th June 2009

*impossible. The level of enforcement and manpower there would be astronomical and it would probably never be achieved. You have a secondary problem that it is not illegal to catch a fish from the shore and sell it to a restaurateur or into a fish market. So anyone trying to enforce that would have a very serious problem in proving that the fish that is in the chillers of a restaurant came from a legitimate source or a non-legitimate source.'*⁵⁷

11.21 The difficulty of policing this system was also raised with the Panel by the Chairman of the Advisory Panel;

'Deputy J.M. Maçon:

Was the idea put forward by the panel about looking at putting perhaps the burden of proof on retailers as a way of solving this and did the panel discuss that idea?

Mr. M. Taylor:

*Yes, we did discuss it, but the thinking was that it would require a lot of legislation. It would be very hard to police. We did, indeed, talk about that, but my understanding is it would need very careful legislation and, again, it would be difficult to police.'*⁵⁸

Key Finding:

11.22 From a policing aspect putting the onus on a commercial purchaser to prove that they purchased their fish from a legitimate source would be simpler than the current system of proving illegal sale. However, this is just one small aspect of the necessary policing.

Tagging

11.23 The Panel heard how the Jersey Fishermen's Association had actively sought to address the issue of the black fish through a tagging system. As context to this system, it should perhaps be noted that it is not against the law *per se* for an unlicensed fisherman to sell his catch. Shore fishermen can still sell their catch and, until recently, unlicensed boat fishermen could also sell their catch if they had been caught outside the territorial sea. However, the Association's Chairman explained how its tagging system had evolved:

⁵⁷ Public Hearing, Chairman Jersey Fishermen's Association, 11th June 2009

⁵⁸ Public Hearing, Chairman Fisheries and Marine Resources Advisory Panel, 18th June 2009

'We, as an association, have tried to address this problem ourselves and we put a lot of effort and a lot of money into trying to identify what was a fish that had come from a sustainable source. So we did not issue these to trawlers, we issued them simply to those who fish by line so that there is a mark of sustainability there. It says: "It is a wild line-caught sea bass that has been caught by a member of the Jersey Fishermen's Association." The public were hugely supportive of this. In fact, it is why we put so much work into it because we were asked so much: "How do we support the fishing industry?" Sorry, if it sounds as if we are trying to steer this one way but the traders, the merchants, tore them off the fish which was absolutely just inconceivable. We approached them and asked them if they were happy with the way the scheme was going before it ever started. The simple fact was that even the merchants who could buy fish from non-professional fishermen at lower prices were keen. When somebody came into the market and demanded that they had bought a local fish that was caught by a professional, the market traders would say: "No, well, we have fish here, it is local, it is sustainably caught, and it is fresh. Here it is, it has not got a tag on." The problem is that there is fish coming from so many different sources that we could not control the situation. For all the work - and believe me, it is a little tag but there is a lot of work that goes into setting that up - the whole lot collapsed and we were extremely disappointed. We felt that that would add to the ...'

11.24 The Panel heard however from the Chairman of the Association how that system had not worked, and had even led to questions being raised about scrapping the licence system if such initiatives were going to fail:

'This was 2 years ago; this was set up in conjunction with Genuine Jersey. You will see the Genuine Jersey logo on there.

The Deputy of Grouville:

Would you envisage that there is a better way of policing the licensing system? You have come up with that which has fallen by the wayside, unfortunately, by the sound of it, so what would be your idea of policing the licensing system?

Mr. D. Thompson:

Well, the problem is the fish that is at the heart of the problem comes from unlicensed boats anyway. The licensing system is set up so that fisheries' managers can regulate what professional fishermen do.

The Deputy of Grouville:

Is this not happening properly?

Mr. D. Thompson:

Well, it is not and it is close to reaching a point where commercial fishermen would be much better off if we just scrapped the licensing scheme and fished like everybody else does. Because we do not want to give the impression that we are so forward-thinking that, for instance, on lobster we are still the only ones in Europe to have introduced escape gaps to let undersized lobsters go back out of the pots instead of being hauled to the surface. We are still the only ones in Europe who do that. We have set a maximum number of pots which effectively is effort control for our fishermen. If you do not have a licence, you are not bound to have to abide by this effort control method; it is a licensed condition, if you like. It came from the fishermen, as did the escape gaps. There are quite a lot in the Les Minquiers Reef. We have completely banned all of the efficient gear and parlour pots, anything with a restrictive neck. Again, that does not exist anywhere else in Europe. Fishermen are subject to quotas, quotas are again a part of the licensing system. We cannot fish within 3 miles of Guernsey, in the Bailiwick of Sark or Alderney with a (j) registration on there, but if you take that off you can fish in there.

Deputy S. Pitman:

But getting rid of the licence, is that something that you have put to the panel as well? Is that something that is ...?

Mr. D. Thompson:

*I would hate to go down that route. We are quite proud of what we have but the point is that management of local stocks has built up over quite a long period of time.'*⁵⁹

⁵⁹ Public Hearing, Chairman Jersey Fishermen's Association, 11th June 2009

11.25 Tagging was also discussed with the Chairman of the Advisory Panel, who told us;

'Because the other idea that we did have was that bass would be tagged. The professionals that caught bass would be able to tag the fish and that the market traders would only buy tagged fish. That was one idea we had. We did, in fact, introduce that on a voluntary basis, but then as I understand it the market did not adhere to it. In France, in fact, I just have it here, June 2009 - so that is this month - this is in France, legislation that is just being introduced, and it says: "To introduce tagging for all fish caught by recreational fishermen." That is all fish by recreational fishermen, so this is obviously with exactly the same view, trying to stop black fish. This is right up to date. This is just last week or something.

Deputy S. Pitman:

How would that work, then?

Mr. M. Taylor:

Well, I think what happens there is that professional fishermen would be given ... so this would be introducing a tagged fish ... yes, so it would mean that anybody fishing for pleasure, bringing fish ashore, would have to attach a tag to it and probably that tag would mean that it could not be sold...what we considered was that professional fishermen would be given tags to tag the bass they had caught and so if people went to the market without tagged fish the purchasers, the traders, would know that what was being offered for sale was from an unlicensed fisherman.

Deputy S. Pitman:

But why should they mind?

Mr. M. Taylor:

Well, no, they do not mind because there is no legislation and that is why it has not worked. You would have to bring in legislation to make it illegal for a market trader to buy fish that is untagged.

Deputy S. Pitman:

So at the moment when you have the tagging system in before, there was no ... there was no real incentive for the traders to buy the fish whether they were tagged or not?

Mr. M. Taylor:

No, there was not, but we were just trying to put the onus, we were just trying to make them aware of ... but it did not work.

Deputy M.R. Higgins:

They basically ignored it anyway is what you are saying? Did they ignore it?

Mr. M. Taylor:

Yes.

Deputy S. Pitman:

What incentive did they have?

Deputy M.R. Higgins:

There was no incentive or penalty?

Mr. M. Taylor:

There was no penalty, no.

The Deputy of St. Mary:

There was no legal penalty but there was an incentive.

Deputy J.M. Maçon:

But of those who did take part voluntarily, how did the process and the system work for them? Did it all go smoothly or were there any problems in that way?

Mr. M. Taylor:

As far as I know it went okay. I do not know how long the experiment went on for, but as I understand it I think the tags were like Jersey Fresh tags, yes, or Genuine Jersey. That is right, Genuine Jersey tags.

The Deputy of St. Mary:

My memory is that one of our other witnesses did say that there was consumer recognition of this tag and that consumers ... consumers, you know, who are they? Is it all consumers or is it some consumers? But they did recognise the tags as meaning something: "Oh, I am supporting commercial fishermen in the right way." So there was ... it did have significance. I think somebody told us that.

Mr. M. Taylor:

Yes, it could well be, yes.

Deputy S. Pitman:

So had there been a penalty, it would have ... would it have worked and would that have been an alternative to what is being suggested now and would ...?

Mr. M. Taylor:

It is difficult to know, is it not, because ...

Deputy S. Pitman:

Would it have been easier to police than these regulations?

Mr. M. Taylor:

Well, my understanding is that this is by far the easiest way of policing and it is less intrusive on everybody and it is just a much easier way of trying to control the amount of black fish.’⁶⁰

11.26 The JRFA also spoke to the Panel about the tagging option;

‘There is a possibility that each commercial fisherman is given tags which are then attached to the fin of each fish. Once those tags are attached they can be numbered, the fish traceable from the commercial fisherman through to the point of sale. The whole thing of selling fish ... to my mind asking us about it is a bit of a no no, because anybody who sells fish is a commercial fisherman, regardless of how they do it and the professional fishermen or the commercial fishermen’s association should be on top of policing their own

⁶⁰ Public Hearing, Chairman Fisheries and Marine Resources Advisory Panel, 18th June 2009

industry. What they are doing is sidelining their faults and putting them on to the recreational fishermen saying it is our fault there are faults in their system.’⁶¹

Key Finding:

11.27 The tagging of fish initiative adopted by the commercial fishermen was sound in principle.

Recommendation:

11.28 More work should be undertaken to assess the viability of amending current legislation or introducing new legislation, other than Bag Limits, to address the specific issue of the commercial sale of fish by non-licensed fishermen, and to find a solution which reconciles the interests of all fishing sectors and is feasible and effective.

This work should include:

- a) examination of different ways of placing a burden of proof on the commercial purchaser regarding the provenance of their fish, including tagging systems
- b) a review of the licensing system
- c) monitoring and improving the understanding of fish stocks
- d) imported fish (wild and farmed)

Any future development of such proposals should include a full stakeholder consultation.

The Penalty

11.29 The draft Regulations state that a person who is guilty of an offence under Article 4 of the Law, by reason of a contravention of a provision of Regulation 4 or Regulation 5, shall be liable to a fine of £20,000.

11.30 The Panel was concerned that the application of this wording would mean the automatic imposition of a £20,000 fine for any body breaking the Regulations, without provision for flexibility. On the face of it, such a level of fine appears wholly disproportionate to the ‘crime’, particularly as one might expect the Regulations to be broken to different levels. Would, for example, a first time offence 6th bass or lobster caught and landed result in the same punishment as a multiple offender landing commercial quantities?

⁶¹ Public Hearing, Jersey Recreational Fishing Association, 18th June 2009

The concern was highlighted by Mr K de la Haye:

*'In any event a maximum fine of £20,000. Obviously, no comparisons appear to have been made with other penalties for other transgressions of other laws. That seems to me, you know, a hammer to crack a nut. A bloody big hammer too. The upper limit is grossly disproportionate...'*⁶²

11.31 The Panel raised the matter of the penalty with the Assistant Minister for Economic Development and the Senior Fisheries Inspector, who told us that;

'Our original fines were unlimited. When this was sort of discussed with the French, the French were very keen that we had a first offence maximum of £20,000 for most fines and that seemed quite a sensible level and so that was agreed. That is now creeping into all our legislation. Because it can apply to French people, then we accept their view that £20,000 should be a maximum for a first offence.'

Deputy M.R. Higgins:

Although they have not brought it in yet.

Senior Fisheries Inspector:

Well, no, the £20,000 does apply for other fisheries regulations.

The Deputy of St. Mary:

When you see that as a max, what does that actually mean? Like driving offences, for instance, are quite calibrated, are they not? Are you looking at calibrating? If so, why is it not in here, because £20,000 max is ... it sounded to me quite draconian and I just wondered whether there was a scale?

Senior Fisheries Inspector:

It is not really for us to set the fines but what I can tell you is that certainly the magistrates in the time of Ian Le Marquand and Ian Christmas, and I believe it has been continued, ran a very, very careful system. For the first time in our sort of fisheries history they kept a log of all the different types of offences and the levels of fines they had set. They went to great lengths to make sure that fines were sort of proportionate to the offence. I think the most serious fine we have ever had (for this type of offence) was something like £2,000 for

⁶² Public Hearing, Mr K de la Haye, 11th June 2009

*3 undersized crabs and that was a French offender, it was about his 6th offence and he had taken to meet at France as well. The scale is generally kept quite low down. We have a system in the department that has been approved by the Attorney General where, if we come across a minor offence that is noteworthy, as opposed to not really worth worrying about, we send a written letter of warning to the individual. On the next occasion they go to the parish hall and on the next occasion they go to court but obviously if we found someone landing 500 kilos of bass without a licence we would go straight to court and it would be for the magistrate to set the fine.'*⁶³

⁶³ Public Hearing, Assistant Minister for Economic Development, 29th June 2009

12. CONCLUSION

12.1 The Panel found the proposition to be a disproportionate response to a small number of known fishermen illegally catching fish in Jersey waters for commercial purposes and that Bag Limits may not be the most appropriate way to achieve support for the commercial fishing industry. It is for these reasons that the Panel welcomed the decision of the Assistant Minister to withdraw P58.

12.2 However, the introduction of Bag Limits for well evidenced conservation reasons would be appropriate. More work should be undertaken to establish the feasibility of amendments to current legislation that would better target the sale of black fish by a few leisure anglers and enable better policing and conviction chances.

13. APPENDIX 1 – EVIDENCE CONSIDERED

13.1 The following documents are available to read on the Scrutiny website (www.scrutiny.gov.je) unless received under confidential agreement.

Background Documents:

- P58-2009 - Draft Sea Fisheries (Bag Limits) (Jersey) Regulations 200
- P56-2009 - Draft Sea Fisheries (Satellite Monitoring) (Jersey) Regulations 200
- P57-2009 - Draft Sea Fisheries (Misc Provisions) (Amd No 5) (Jersey) Regs 200
- Fisheries and Marine Resources Advisory Panel Minutes (Bag Limits)
- Sea Fisheries Law 1994 Revised Edition 1 January 2007
- An Assessment of Jersey's Recreational Fishery – S. Hawkins, 2003
- P106/2009 Sea Fisheries: Sale of Fish Without Licence and Licensing of ormer fishing
- Hansard – 13th July 2009
- Fisheries Annual Report 2008
- Arrêté 48/2009 – French Legislation
- Conservation proposals aimed at the preservation of wet fish stocks in Jersey Waters
- Defra – Charting a New Course
- Defra – Fisheries 2027

Written Submissions:

Jersey Recreational Fishing Association

Sea Fisheries, Guernsey

Mr Dwyer

Mr Wilkins

Mr Dumosch

Mr Ward

Mr Garrett

Mr Carter

Mr Cornick

Mr L'Enfant

Mr English

Mr Burst

Mr McWally

Mr Carr

Mr Maletroit
Mr Payn
Mr Le Tissier
Mr O'Donoghue
Mr D Perrier
Mr I Perrier
Mr Le Gresley
Mr Buesnel
Mr Double

Public Hearings:

Minister for Economic Development and Senior Fisheries Officer	27th April 2009
Mr D. Thompson Chairman, Jersey Fishermen's Association	11th June 2009
Mr K. de la Haye	11th June 2009
Mr. C. Isaacs and Mr. P. Gosselin, Jersey Recreational Fishing Group	18th June 2009
Mr. M. Taylor, Chairman, Fisheries and Marine Resources Advisory Panel)	18th June 2009
Assistant Minister, Economic Development and Senior Fisheries Officer	29th June 2009

Additional Hearings held by the Panel Chairman:

Mr. C. Isaacs and Mr. P. Gosselin, Jersey Recreational Fishing Group	5th February 2010
Mr. A. Syvret	5th February 2010
Mr. K. White	9th February 2010
Mr. I. Syvret, Jersey Inshore Fishermen's Association	9th February 2010

**14. APPENDIX 2 – P58-2009 - DRAFT SEA FISHERIES (BAG LIMITS)
(JERSEY) REGULATIONS 200-**

STATES OF JERSEY



**DRAFT SEA FISHERIES (BAG LIMITS)
(JERSEY) REGULATIONS 200-**

Lodged au Greffe on 14th April 2009

by the Minister for Economic Development

STATES GREFFE

DRAFT SEA FISHERIES (BAG LIMITS) (JERSEY) REGULATIONS 200-

REPORT

Background

Drafting work commenced on these Regulations in 2006, and in April 2007 the Minister approved that they be sent to the UK for the Secretary of State's approval. Under the terms of the Jersey/UK Fisheries Management Agreement and in compliance with the Sea Fisheries (Jersey) Law 1994, it is necessary for the Island to obtain such approval before introducing most fisheries Regulations.

Further amendments were subsequently made to the Draft Regulations to include a provision for exemptions, and to take into account comments made by the UK. Following a Ministerial Decision made in July 2008, the present draft was again submitted for the Secretary of State's approval. That approval has now been obtained.

Impact on Jersey fisheries

The benefit of Regulations setting restrictions on the number of fish or shellfish that may be caught by recreational fishermen – “bag limits” – has long been recognised, both locally and elsewhere. Local recreational scallop divers have been restricted in the number of scallops they may take, since such activity became legal over 10 years ago. In Brittany and Normandy, low water fishermen have been restricted in the number of ormers they may take for many years.

Whilst it is recognised that limiting the number of ormers caught is a conservation measure to protect stocks which are still recovering after a disease, limiting numbers of lobster and bass targets the illegal sale of fish and shellfish by non-licensed fishermen. The fishing industry has called on the Department to introduce legislation which would effectively prevent the sale of “black” fish which results in a reduction in the market price. The Sea Fisheries and Marine Resources Advisory Panel, which has on it leading members from commercial fishing, leisure fishing, angling and fish farming, is unanimous in its support of this measure.

Jersey's fish populations may be exploited by 2 main groups of people: the professional fishermen who have purchased a fishing licence, and the amateur or leisure fishermen. Leisure fishermen are not permitted to sell their catch caught in local waters from a vessel that does not have a fishing licence; however, because certain species attract a high value if sold (in particular lobster and bass), some unscrupulous individuals that do not have a fishing licence for their vessel are tempted to catch more than they need for themselves and sell the surplus catch.

At present, professional fishermen have either a shellfish qualified licence which allows them unlimited catches of shellfish, or are only allowed to fish for 15 lobsters and 25 crabs per day. No such restriction exists for leisure fishermen, and this legislation would rectify the disparity. The bag limits in the proposed legislation make generous allowance for leisure fishermen fishing for their own consumption.

This legislation serves to limit retention of the named species of fish and shellfish by non-licensed fishermen to a reasonable amount; 20 ormers per person per day, 5 bass per person per day and 5 lobsters per person or boat per day (whilst an individual fisherman may retain up to 5 lobsters, 3 fishermen on one boat would be restricted to a total of 5 lobsters).

Although the majority of recreational fishermen would support the introduction of bag limits, some objections may be raised to this legislation by those who see the measure as a denial of a source of income. Fishermen catching bass from the shore using rod and line, set nets and longlines may currently sell an unlimited number of bass as there is no requirement for them to hold a fishing licence. Whilst some such individuals may see a reduction in income derived from this source, the Regulations allow the Minister to exempt some fishermen who can demonstrate a genuine record of commercial activity (a separate Ministerial Decision will be taken in relation to any such exemptions). It is likely, however, that the principal objectors will be those anglers working from unlicensed fishing boats who will no longer be able to sell significant quantities of bass, and indeed it is the aim of this legislation to deny them that illegal income.

The existence of bag limits for bass would contribute to the increase in angling tourism as it would underline the importance to the Island of efficient management of the fishery.

The legislation denies no-one the right to fish. Fish caught in excess of the bag limit can be put back into the sea or, if fishermen wish to sell their catch and legalise their activity, licences are available for them to buy.

Financial/manpower implications

There are no additional financial or manpower implications for the States arising from the adoption of these Draft Regulations.

Explanatory Note

These Regulations will impose bag limits – per person and per vessel – on the taking of various kinds of sea fish. They will also impose requirements to return fish taken in excess of bag limits to the water.

Initially, the Regulations will only apply to bass, lobsters and ormers.

Regulation 1 defines expressions that are used in the Regulations.

In the calculation of a bag limit, undersized fish may be disregarded. (Such fish must themselves be returned to the water in any event.)

Regulation 2 contains exceptions to the restrictions.

They will not apply to British and French fishing boats that are authorized to fish commercially in Jersey waters.

They will not apply to operations that are carried out, under the authority of the Minister for Economic Development, for the purposes of scientific investigations or to transplant fish from one fishing ground to another.

Regulation 3 allows the Minister, on application, to exempt from the requirements of Regulations 4 and 5(1) – so far as they relate to the taking of fish from the sea-shore – commercial fishermen of any class specified by the Minister in a notice in the Gazette.

In doing so, the Minister may limit the exemption by specifying in the notice the species and number of fish to which it applies, and the periods, methods of fishing and areas of the sea-shore in respect of which it applies.

Regulation 4 requires a person who takes a personal bag limit of fish of a particular description from the water on one day to return forthwith to the sea any other fish of the same description that he or she subsequently takes on that same day.

If a vessel takes a bag limit of fish on a particular day, the Regulation also requires a person who subsequently takes a fish of the same description on the vessel on that day to return it promptly to the sea.

Fish must be returned to the water in the same condition, as nearly as practicable, as that in which they are taken. It is immaterial whether they are dead or alive.

If Regulation 4 is contravened in respect of a fishing boat, then by reason of Article 3 of the Sea Fisheries (Jersey) Law 1994 the master, owner and charterer of the vessel are each guilty of an offence under Article 4 of the Law. Any person who actually contravenes the Regulation also commits an offence under that Article of the Law.

Regulation 5 prohibits the retention of fresh fish by a person in excess of the bag limit for the species concerned. The prohibition applies whether the fish kept exceed the personal bag limit or the bag limit per vessel.

A person also contravenes Regulation 5 if he or she causes or knowingly permits fresh fish exceeding the bag limit per vessel for that species to be retained on a vessel.

If the Regulation is contravened in respect of a fishing boat, the master, owner and charterer are by reason of Article 3 of the Law each guilty of an offence under Article 4 of the Law. A person actually contravening the Regulation is also guilty of an offence under that Article of the Law.

Regulation 6 imposes a maximum fine of £20,000 on a person who commits an offence under Article 4 of the Law.

Regulation 7 provides a statutory defence for any person who is charged with an offence of contravening Regulation 5, if he or she proves that the number of fish retained in excess of a bag limit were not taken in contravention of Regulation 4.

Regulation 8 specifies how the Regulations may be cited.

It also provides that they will come into force 7 days after being made by the States.

Schedule 1 stipulates bag limits for persons. The limit for bass and lobsters will be 5, and for ormers 20.

Schedule 2 specifies bag limits for vessels. For lobsters, it will be 5.

**DRAFT SEA FISHERIES (BAG LIMITS) (JERSEY)
REGULATIONS 200-**

Arrangement

Regulation

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SCHEDULE 1 12

BAG LIMITS PER PERSON FOR FISH 12

SCHEDULE 2 13

BAG LIMITS PER VESSEL FOR FISH 13

DRAFT SEA FISHERIES (BAG LIMITS) (JERSEY) REGULATIONS 200-

Made [date to be inserted]

Coming into force [date to be inserted]

THE STATES, in pursuance of Articles 2 and 29 of the Sea Fisheries (Jersey) Law 1994¹, and having consulted with and obtained the concurrence of the Secretary of State, have made the following Regulations –

1 Interpretation

In these Regulations –

“bag limit” means a bag limit per person and also means a bag limit per vessel;

“bag limit per person” means, in respect of a description of fish specified in Column 1 of Schedule 1, the number of those fish that are specified in Column 2 of that Schedule;

“bag limit per vessel” means, in respect of a description of fish specified in Column 1 of Schedule 2, the number of those fish that are specified in Column 2 of that Schedule;

“fish” means sea fish, not being of a smaller size than that prescribed for the purposes of Article 6 of the Law in relation to sea fish of that description;

“Law” means the Sea Fisheries (Jersey) Law 1994².

2 Limit of application of Regulations

(1) These Regulations do not apply to the taking of fish by –

- (a) a British fishing boat; or
- (b) a French fishing boat,

in any part of the territorial sea in which it is authorized to fish under the Sea Fisheries (Licensing of Fishing Boats) (Jersey) Regulations 2003³.

(2) These Regulations do not apply to the retention of any fish to which paragraph (1) refers.

(3) These Regulations do not apply to operations that are conducted, under the authority of the Minister –

- (a) for the purpose of scientific investigation; or
- (b) for the transplanting of fish from one fishing ground to another.

3 Exemptions

(1) 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);
and

- (b) a period during which applications for such an exemption may be lodged.

- (2) 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 from the requirements of Regulations 4 and 5(1), so far as those requirements relate to fish that are taken from the sea-shore for commercial purposes.
- (3) The Minister may limit the exemption by specifying in it –
 - (a) a description of fish to which it applies;
 - (b) the number of fish to which it applies;
 - (c) a period during which it applies;
 - (d) a method of fishing to which it applies; and
 - (e) an area of the sea-shore to which it applies.
- (4) An exemption under paragraph (2) shall be subject to the following conditions –
 - (a) that the person to whom the exemption is granted shall carry it at all times while he or she is acting under the exemption;
 - (b) that, if requested by a fishery officer to do so, the person to whom the exemption is granted shall produce it to the fishery officer for inspection;
 - (c) that the person to whom it is granted shall attach to the fishing gear that he or she uses under the exemption a tag approved by the Minister;
 - (d) that the person to whom it is granted shall keep such records as are specified in the exemption of fish taken or retained under the exemption;
 - (e) that the person to whom it is granted shall deliver to the Minister, at such times as are specified in the exemption, such returns and reports as are specified in the exemption of fish taken or retained under the exemption;
 - (f) that the person to whom the exemption is granted shall inform the Minister, within 14 days, of any change in the person's change of residential address or occupation.
- (5) An exemption under paragraph (2) shall cease to have effect if the person to whom it is granted contravenes a condition of the exemption.

4 Catch not to exceed bag limits

- (1) A person who on any day takes the bag limit per person of any description of fish shall return to the sea forthwith any other fish of that description that he or she subsequently takes on that day.
- (2) If the bag limit per vessel of a description of fish is on any day taken by a vessel, a person who subsequently takes any other fish of that description on that day on that vessel shall return it to the sea forthwith.
- (3) A fish that must be returned to the sea under this Regulation shall be so returned, as nearly as practicable, in the same condition as that in which it was taken. It is immaterial whether the fish is dead or alive.

5 Restrictions on retention of fresh fish in excess of bag limits

- (1) A person shall not retain in his or her possession any fresh fish exceeding in number a bag limit for that description of fish.
- (2) A person shall not cause or knowingly permit to be retained on a vessel any fresh fish exceeding in number the bag limit per vessel for that description of fish.

6 Penalty

A person who is guilty of an offence under Article 4 of the Law, by reason of a contravention of a provision of Regulation 4 or Regulation 5, shall be liable to a fine of £20,000.

7 Statutory defence

Where a person is charged with an offence under Article 4 of the Law, by reason of a contravention of a provision of Regulation 5 by any person, it is a defence to prove that the number of fish retained in excess of a bag limit for fish of that description was not taken in contravention of Regulation 4.

8 Citation and commencement

These Regulations may be cited as the Sea Fisheries (Bag Limits) (Jersey) Regulations 200- and shall come into force 7 days after they are made.

SCHEDULE 1

(Regulation 1)

BAG LIMITS PER PERSON FOR FISH Column 1

Column 2

Description of fish	Number of fish
1. Bass (<i>Dicentrarchus labrax</i>)	5 per person
2. Lobster (<i>Homarus gammarus</i>)	5 per person
3. Ormer (<i>Haliotis tuberculata</i>)	20 per person

SCHEDULE 2

(Regulation 1)

BAG LIMITS PER VESSEL FOR FISH Column 1

Column 2

Description of fish	Number of fish
1. Lobster (<i>Homarus gammarus</i>)	5 per vessel