

STATES OF JERSEY



DRAFT AQUATIC RESOURCES (JERSEY) LAW 201- (P.114/2013): COMMENTS

**Presented to the States on 12th February 2014
by the Economic Affairs Scrutiny Panel**

STATES GREFFE

COMMENTS

Note: Although these comments are presented in the name of the Economic Affairs Scrutiny Panel, they are being put forward jointly in conjunction with the Environment Scrutiny Panel.

1. Introduction

- 1.1 This report sets out the work undertaken by the Economic Affairs and Environment Scrutiny Panels on P.114/2013 – *Draft Aquatic Resources (Jersey) Law 201*- undertaken on a cross-Panel basis to reflect the environmental and economic elements underpinning the draft legislation. Indeed, with the Law led politically in recent times by the Deputy of Grouville as an Assistant Minister for Economic Development, in conjunction with her similar role at Environment, Officers from both Departments have engaged jointly with the Panels over the course of the 3 briefings that we have held. We thank the Deputy of Grouville, the Departmental Officers and the Law Draftsman's Office for the constructive manner of their engagement.

2. Background and briefings

- 2.1 Following its lodging on 24th September 2013 and subsequent comments submitted by a stakeholder to the Environment Panel, both Panels discussed possible work on the *Draft Aquatic Resources (Jersey) Law 201*-. It was agreed that a joint briefing should be requested from relevant Officers from the Economic Development and Environment Departments in order to inform the nature of any further scrutiny work, if indeed any was required. On 24th October the Officers provided an opening briefing to the Chairmen and members of both Panels, detailing the background to and purpose of the new legislation, and the timetable for its 'activation' through future Regulations and Orders as and when specific need was identified.
- 2.2 In the context of broader concern at that stage amongst Members, of inadequate consultation, potential over bureaucracy and threats to traditions and culture, it was agreed at the first briefing that several specific points raised would be followed up by the Officers with the Assistant Minister. It is these points, along with the issue of the extent of consultation, that have formed the basis of the Panels' work, and have been the subject of discussion at 2 further briefings held on 18th December 2013 and 15th January 2014 (both of which the Chairman of the Environment Panel was unable to attend).

3. Main issues addressed

3.1 Protection of Historic Rights

3.2 The Panels were concerned about the potential impact of new legislation on existing, historic rights (see also P.114/2013, Human Rights Note) of farmers, the public, the Parishes of St. Brelade, St. Peter and St. Ouen and Seigneurs, relating either directly or indirectly to the collection of loose vraic.

3.3 With the Panels having raised issues at the opening briefing, further investigation by the Officers established that such rights as they related to Seigneurs had effectively been removed (via transfer to the Crown) through the *Seignorial Rights (Abolition) (Jersey) Law 1966*, drawing a line under that concern.

3.4 Regarding the rights of the relevant Parishes as contained in the *Loi (1894) sur la coupe et la pêche des vraics*, it has been confirmed to us that it remains the intention of the Assistant Minister to suitably modernise the legislation to more appropriately reflect the current situation. Such rights as they exist in the 1894 Law are considered obsolete functions (for example the payment of guards, the upkeep of vraic cart tracks and the outdated format of penalties and charges). Whilst acknowledging this may be the case, the Panels note that there was a regrettable omission of consultation with the Comité des Connétables on the matter, and those affected Parishes might still maintain an interest in the development of subsequent relevant Regulations. These historic rights, or potential updated variants, are most appropriately addressed through the details of relevant subsequent Regulations, as opposed to the primary 'framework' Law currently before the States.

3.5 A clear public commitment has also been made by the Minister for Economic Development through his Assistant Minister (see **Appendix**) regarding the ongoing protection of historic collection rights of loose vraic by farmers and the public. Initially, a draft amendment to the Law relating specifically to the protection of such rights had been drafted at the request of the Panels after the first briefing. The Panels were grateful for this; however, further discussions identified possible unintended consequences of such an amendment of the primary Law. After further consideration, it was felt that no change to collection rights in regard to loose vraic should be made by way of amendment (thus not restricting amounts collected), so as not to remove the speed and flexibility on the part of the Minister to react to a relevant commercial exploitation that was not in the Island's best interests. The Panels are, in the majority, satisfied that the legal situation and Minister's intent is appropriately clarified by the attached letter.

3.6 Scale and format of proposed Law, Regulations and Orders

3.7 The Panels sought further explanation regarding the format of the proposed legislation, the question having been raised in the first briefing as to why, to achieve the outlined aims, new legislation of this scope and scale was required as opposed to updating existing, albeit old, legislation? The Panels have been advised that the proposed format represents the professionally advised approach of the Law Draftsman's Office, and is 'tried and tested', indeed mirroring the existing *Sea Fisheries (Jersey) Law 1994* (including significant

copied text with modification only to reflect the relevant species). The Law as drafted enables flexibility to legislate quickly and in a targeted manner as and when (or even if) future need arises, even around as yet unidentified activity through States' approval of relevant Regulations or Orders – the status quo effectively remaining until such a point.

- 3.8 The broad 'aquatic' Law also reflects the need to cover a range of aquatic resources (see Maerl by way of example) and not solely the cutting of seaweed, to address known existing and potential commercial exploitation, as well as future-proofing against those that are as yet unidentified. It also represents a modern legislative framework to help ensure adherence to relevant Treaties and Agreements. It is unlikely that an update of the existing *Loi (1894) sur la coupe et la pêche des vraics* would satisfactorily achieve any of the above.
- 3.9 In response to questions from the Members, it was also suggested by the Officers that to approach the Law from the other way round (i.e. to ban the commercial exploitation of all aquatic resources, and exempt from that starting point), whilst logical, would not be as effective in achieving the required aims, being potentially more heavy-handed than required/justified and potentially administratively burdensome. This is broadly accepted by the Panels, although it is the case that some reservations remain.
- 3.10 The Panels also requested a written update outlining the timetable for any planned Regulations, given their importance in effectively activating any change from the status quo. We are advised that the 2014 Fisheries and Marine Resources section delivery plan sets out to produce law drafting instructions for Regulations for management of the seaweed resources by the end of 2014. Law drafting time has yet to be bid for. There are no plans to draft any other subordinate Regulations at this stage, although the primary Law would enable flexibility to adapt to changing situations.
- 3.11 Environmental impact assessment
- 3.12 Members will be aware of P.114/2013 Amd. – *Draft Aquatic Resources (Jersey) Law 201- (P.114/2013): amendment*. The Panels welcome and support the amendment lodged by the Minister for Economic Development, which implements the vital precautionary principle of environmental policy by giving power to require an environmental impact assessment of any commercial application. At the first briefing in October 2013, the Panels raised the prospect of the insertion of a statutory requirement on the part of the Minister for Planning and Environment to undertake environmental impact assessment(s), as a check/balance against the associated economic and commercial drivers. This was agreed to by the Assistant Minister and an amendment duly drafted.
- 3.13 After being forwarded the first draft amendment for consideration and discussion at the subsequent briefings, the Panels requested the inclusion of an 'appropriate scale' principle for the assessments to ensure that the information requested is proportionate to the scale of the activity requiring a licence, and to recognise that the combined impact of current uses or multiple applications for licences will be greater and will need to be taken into account. This was accepted by the Assistant Minister, as is reflected in the lodged amendment.

3.14 Conclusion

- 3.15 Within the context of the above Comments, the Panels are able to confirm their majority support of the *Draft Aquatic Resources (Jersey) Law 201-*. Nevertheless, certain reservations remain (see for example 3.9), and it will be important that due consideration is given to subsequent Regulations (and Orders) as they are progressed, as the details contained will be significant, including the rules of requiring environmental impact assessments. There will be a clear role for Scrutiny, but also for stakeholders.
- 3.16 Some of the issues above might have been addressed sooner had wider consultation beyond the Marine Resources Panel been undertaken, and if there is particular criticism from the Panels of the Minister and Assistant Minister for Economic Development regarding the law then it is in this area. This should be taken into consideration as and when relevant Regulations (and Orders) are progressed.

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5th February 2014

Deputy S Luce
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Dear Chairman,

Firstly may I take this opportunity to thank you, your Panel and the Environment Scrutiny Panel for the constructive dialogue in relation to the draft Aquatic Resources (Jersey) Law 201-

I fully understand the discussions that have occurred in meetings concerning the traditional use of the seaweed resource as it is one I have raised with Departmental Officers. I can give both Panels complete assurance that I would not be proposing legislation that impacts on time honoured traditional uses of this natural resource.

It is my intention that regulations under the Law will not put in place any impediment or licensing schemes in relation to the collection of the loose vraic by domestic householders for use in private gardens. Nor will it hamper in any way the use of loose vraic by the local agricultural community to add seaweed to the fields around the Island.

However, I feel it is important that the legal framework retains the ability for the States to regulate any commercial activities that could potentially impact negatively on these traditional uses, a sentiment I'm sure you agree with.

I look forward to working closely together with both the Economic Development and Environment Scrutiny Panels in developing regulations under this legislation in due course.

Yours faithfully

A handwritten signature in black ink, appearing to read "Carolyn Labey".

Deputy Carolyn Labey
Assistant Minister