



Department
for Environment
Food & Rural Affairs

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Consultation on reducing latent capacity in the English 10 metre and under fishing sector Government response

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Introduction

This is the formal government response to the public consultation on reducing latent capacity in the English 10 metre and under (u10m) fishing sector, which ran for 6 weeks from 10 February to 31 March 2015. A summary of responses to the consultation was published on 2 July 2015.

In 2014, following the licence capping exercise which took place in 2009, the Department for Environment, Food and Rural Affairs (Defra) and the Marine Management Organisation (MMO) looked again at the levels of activity in the u10m fishing fleet to determine whether there was an ongoing issue with latent capacity, and if there was, how this should be addressed. The review covered latent capacity with regard to quota species (fin fish and nephrops) and shellfish species covered in the shellfish¹ entitlements.

Defra's vision for the English fishing fleet is for an economically and environmentally sustainable industry, with fishermen able to plan for the future with more certainty, take greater responsibility for their businesses and make the most of marketing, funding, and other growth opportunities.

We want to maximise sustainable fishing opportunities while ensuring that quota is actively managed for the benefit of the fleet as a whole, and reduce the regulatory burden whilst ensuring a high degree of compliance with fisheries management measures. We believe that this will protect the viability of stocks, while safeguarding and enhancing the marine ecosystem.

The consultation asked recipients whether they believed latent capacity was an issue that needed to be addressed and highlighted two possible options for reducing latent capacity:

- Option 1 proposed capping licences for vessels that caught less than 300kg of quota species in each year between 2010 and 2013. In 2009 Defra capped the licences of those vessels that had not caught quota species between 2006 and 2008 at a level of 300kg a year. The proposal would therefore extend this scheme, meaning a further 677 vessel owners could potentially receive a capped licence. In addition Option 1 proposed removing shellfish entitlements from u10m vessel licences where these have not been used to catch any shellfish during the reference period.
- Option 2 proposed placing temporary restrictions on all licences and entitlements that have not been used to catch quota species or shellfish during the 2010-2013 reference period. The same method as Option 1 would be used to identify vessels. This option

¹ 'Shellfish' means lobsters (*Homarus gammarus*), crawfish (*Palinurus* spp.), edible crabs (*Cancer pagurus*), velvet crabs (*Liocarcinus puber*), spider crabs (*Maia squinado*) and green crabs (*Carcinus maenus*); and 'crabs' means the four species of crabs so specified.

would provide greater flexibility than Option 1 for balancing fishing opportunities to capacity, with licence restrictions potentially removed or relaxed where it was shown that stocks were recovering and more fishing opportunities were available.

Opinions were sought from across the fishing industry, in particular from English registered u10m fishing vessel owners, and other stakeholders, on whether they believed that the issue of latent capacity in the u10m finfish and shellfish sectors needed to be tackled, and how they felt Defra should approach this. Defra has also previously discussed the issue of latent capacity with the National Federation of Fishermen's Organisations (NFFO) and the New Under Ten Fishermen's Association (NUTFA) during wider discussions on fisheries matters. To assist with the formulation of responses, 8 questions were posed.

The consultation was conducted by the Department for Environment, Food and Rural Affairs.

Overview of responses

We published the summary of consultation responses in July 2015. We received 20 responses from fisheries organisations and NGOs, 70 individual responses, and a petition from 283 people. The latter two set of responses represented about 13% of the English u10m licence holders and 40% of those who would be affected by the proposed cap. The majority of these were opposed to any cap or the removal of shellfish entitlements. Each question in the consultation received between 30 and 82 responses.

Government response

As a number of the same issues were raised by consultees, and to avoid repetition, we have placed the summary of consultation replies (which appears in the Annex) into the following categories:

- i. Latent capacity should be addressed for all sectors, not just under 10m
- ii. Latent capacity does not need to be addressed; use other measures to deal with overexploitation e.g. quota or catch limits, closed seasons, "no take" zones, pot/gear limits and limiting number of licences
- iii. Government compensation is necessary e.g. decommissioning or buy-back schemes
- iv. Only remove/suspend shellfish entitlements from vessels that have not actively fished (with no record of fishing) for both shellfish and quota species
- v. Importance of flexibility and ability of u10m fishermen to diversify
- vi. Undertake more studies and stock analysis, with greater industry involvement
- vii. A risk assessment for the proposed consultation options should have been undertaken

Latent capacity should be addressed for all sectors, not just under 10m

Although a licence capping exercise took place in 2009, in response to continuing industry concerns about latent capacity in the u10m sector, we decided to update our assessment of the situation. This was done by considering the number of vessels in the sector, how active they were, and whether a significant number of inactive / low activity vessels in this sector remained an issue. This exercise concluded that there was still an issue, which the current consultation exercise aimed to address. It covered both the shellfish sector as well as the quota sector, as records from 2014 for the shellfish u10m sector showed that over one in ten u10m vessels with shellfish entitlements had not used these to fish for shellfish since 2010 or earlier.

The high level of unpredictability in the amount of potential activity, particularly in the u10m sector, is at odds with our vision for the English fishing fleet of an economically and environmentally sustainable sector. Tackling latent capacity across the u10m sector will provide greater certainty for those actively exploiting shellfish stocks and for those seeking to manage and maintain sustainable national stocks. It will also help to maintain a viable and sustainable industry for future generations.

In addition, the active u10m sector already affects the amount of total fishing pressure on shellfish stocks significantly. Hence we consider it important to ensure that the currently inactive licences in the u10m shellfish sector do not become active at some future point without reference to the status of stocks, which would result in an additional and potentially unsustainable pressure on future stocks.

Latent capacity does not need to be addressed; use other measures to deal with overexploitation e.g.; quota or catch limits, closed seasons, “no take” zones, pot/gear limits and limiting number of licences

The government remains of the view that latent capacity does need to be addressed, and will use a combination of measures to do this. For example, following the Judicial Review on the reallocation of Fixed Quota Allocation units (FQAs) the under 10m fleet has benefitted from additional transfers of quota from Producer Organisations in each year since 2012 (720t of quota in 2014). We are in the final stages of making permanent the realignment of under-used FQAs from Producer Organisations to the u10m fleet. If we do not address latent capacity, these or any future quota uplifts for the U10m sector are at risk of being dissipated to the point at which any benefits would be negligible, or even reversed.

Under the reformed CFP we have a legal commitment to fish sustainably – we must manage stocks at Maximum Sustainable Yield (MSY) by 2015 where possible and by 2020 in all cases. There has been good progress towards more sustainable fishing, with 32 stocks at MSY in 2015 compared to just 26 in 2014. However, more work is needed if we are to meet our MSY commitment in full by 2020.

In relation to our commitment to ensure MSY for our main national shellfish stocks by 2020, over the next few years we will be looking at any necessary additional management controls, policies or strategies that would be of likely benefit to the sustainability of stocks. Government is also committed to regulate only where necessary and not to place unreasonable burdens on those regulated. Shellfish stocks under the jurisdiction of local Inshore Fisheries & Conservation Authorities (IFCAs) are already subject to local management measures that aim to ensure they are fished sustainably.

For English edible crab and lobster fisheries, we are currently taking forward a management approach with delivery partners, the Devolved Administrations and industry helps address overexploitation risks at the stock or regional level, and helps ensure that fishermen achieve optimum, long term benefits from these fisheries. As part of this, the potential effectiveness of different types of management measures will be considered. We are grateful to those who have put forward suggestions and will include them as part of our ongoing considerations.

Government compensation is necessary e.g. decommissioning or buy-back schemes

Past experience has shown that decommissioning is an inefficient way of dealing with latent capacity. We also believe that during a time of pressure on all public funds it would not be good value for the taxpayer to compensate holders of vessel licences who did not actively fish either for quota species or for shellfish between 2010 and 2013 and so did not generate any corresponding income from those species over this period.

We have previously stated that we would be willing to work with industry on any suggestions or proposals for an industry-funded decommissioning scheme.

Only remove/suspend shellfish entitlements and/or cap quota from vessels that have not actively fished (with no record of fishing) for both shellfish and quota species

We do not consider that this suggested proposal to deal with latent capacity in the u10m fleet is as effective as our proposals. Such an approach would not address the risk of vessels which did not actively catch quota species between 2010 and 2013 returning to active fishing, or switching to shellfish, or vice versa at any time in the future. Therefore the suggested proposal would also not reduce the number of shellfish entitlements by as much as our consultation proposals. Hence the overall result would be less effective in controlling future potential fishing pressure on quota species and shellfish stocks, and less effective in providing greater certainty for both active fishermen and for stock managers.

Importance of flexibility and ability of u10m fishermen to diversify

Whilst appreciating that many u10m fishermen want the flexibility to be able to diversify into different species, we believe it is currently more important to address sustainability

concerns to safeguard the long-term viability of the u10m sector and to provide greater certainty for those in this sector who are actively fishing for quota species and shellfish. We also recognise greater certainty is important for those seeking to manage and maintain sustainable national stocks.

Undertake more studies and stock analysis, with greater industry involvement

We agree that fishermen and industry can play a key role in strengthening our evidence base and are keen to work with them in future to help determine stock levels for all species, particularly when the new landing obligations begin to take effect. We are working with the Centre for Environment, Fisheries and Aquaculture Science (Cefas) to improve our biological understanding of stocks and to improve data collection methods, which should particularly help improve the robustness of stock assessments for key shellfish species. Cefas has also been involving industry in its research and monitoring, as well as the MMO. The local IFCA's also perform their own research and evidence gathering. The work undertaken by all three organisations has proved very beneficial and we hope to build upon this collaborative effort. We will look to ways to further rationalise our research and evidence gathering to improve its effectiveness and efficiency.

A risk assessment for the proposed options should have been undertaken

We note this point. However, we believe that the impact of the proposed options in the consultation were clear and easy to understand: either removing or putting a temporary restriction on all u10m licences and shellfish entitlements from u10m licences which have not been used to catch fin fish quota species or shellfish between 2010 and 2013. Consultation recipients also had the opportunity to contact us during the consultation if they wanted further information or clarity on the proposals. In this instance we do not accept that an additional risk assessment would have provided consultation recipients with any greater understanding of the proposals and how they might be affected.

Next steps

Following consideration of all the responses received, and some alternative options and measures, we will proceed with **temporary restrictions on licences for quota species and a temporary suspension of shellfish entitlements**, as follows:

- Licences whose quota track record was less than 300kg in every year of the 2010 to 2013 reference period will be capped at 350kg of quota species per annum, putting in place a buffer to better cope with the impacts of the landing obligation;
- Shellfish entitlements to be suspended for vessels which have not fished for the applicable 6 shellfish species during the 2010 to 2013 reference period.

Vessels with temporary restrictions on licences for quota species would still be able to fish for non-quota species.

Vessels with temporary suspended shellfish² entitlements would still be able to fish for species which can be caught without a shellfish entitlement, including:

- a) Up to 5 lobsters or crawfish per day, caught with pots or nets; and
- b) Up to 25 crabs per day, caught with pots or nets; or
- c) Any shellfish, excluding green crabs, taken as a permitted bycatch when fishing for species using towed gear, up to a maximum limit of 10% by weight of the total catch.

The temporary cap for quota species and temporary suspension for shellfish entitlements would be subject to periodic review and can be adjusted or removed at any time.

In taking this decision, for quota species we believe the 50kg buffer provides additional flexibility for fishermen and mitigate some of the concerns expressed during the consultation on the effects of the landing obligation.

To provide consistency, those licences capped at 300kg in 2009 will be amended to a 350kg cap. This will provide the same buffer to those previously capped licences in order to better manage the impacts of the landing obligation. The periodic review that will be put in place provides the flexibility to increase or remove the cap from licences in future, for example to align with the recovery in stocks of quota species, or increases in the UK quotas from the EU.

We believe this approach would provide greater certainty for active quota fishermen and fisheries managers, by preventing currently inactive fishermen from taking a share of discard-related or other quota uplift, and reduce the risk of more vessels switching to shellfish.

With regard to shellfish we believe this temporary suspension measure, together with other work to ensure the effective management of active shellfish vessels, will help safeguard shellfish stocks and the viability of the sector. It will also provide greater certainty for those actively exploiting shellfish stocks and for those seeking to manage and maintain sustainable national shellfish stocks. Whilst it is true that those in the u10m sector not currently exercising their shellfish entitlement are not currently depleting stocks, should they become active in future without reference to the status of stocks, this would result in an additional and potentially unsustainable pressure on future stocks.

² 'Shellfish' means lobsters (*Homarus gammarus*), crawfish (*Palinurus* spp.), edible crabs (*Cancer pagurus*), velvet crabs (*Liocarcinus puber*), spider crabs (*Maia squinado*) and green crabs (*Carcinus maenus*); and 'crabs' means the four species of crabs so specified.

Over the next few years we will continue with work to progress our commitment to ensure harvested finfish and shellfish species are exploited at MSY by 2020. We therefore expect to review this measure by the end of 2020 in light of stock status information and consider whether it would be appropriate to revise the temporary suspension of shellfish entitlements.

Fishers who meet the criteria for a temporary cap and/or a temporary suspension will be notified in spring 2016. An appeals process will be available; the basis, procedures and timetable of this process will be communicated in spring 2016.

Annex: Summary of replies to consultation questions

(https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/440687/latent-capacity-consult-sum-resp-20150702.pdf)

Q1. Do you agree that the issue of latent capacity in the u10m finfish fleet needs to be addressed?

There were mixed views on whether latent capacity should, or should not, be addressed in the u10m finfish fleet. Those who believed there were no issues with latent capacity focused on the need for the u10m fleet to be flexible and able to diversify to protect livelihoods and coastal communities. The lack of available finfish quota for the u10m sector in general was also a consistent theme (i.e. how quota is allocated; and the impact of the new landing obligations).

A number of individual fishermen and stakeholder organisations did support the removal of latent capacity as a means to improving the long-term security of fishing options and opportunities, with the u10m sector playing a resource stewardship and conservation role.

Q2: Do you agree that the issue of latent capacity in the under 10m (u10m) shellfish fleet needs to be addressed?

A minority of respondents were in favour of addressing latent capacity in the u10m shellfish fleet. Mainly from stakeholder organisations, these respondents saw the proposals as a means to support conservation efforts, improve long-term security of fishing options and help achieve Good Environmental Status as required under the Marine Strategy Framework Directive (MSFD) by attaining MSY for key commercial stocks.

Some expressed views that latent capacity either did not need addressing, or that it should be addressed in all sectors rather than in the u10m shellfish fleet; or that some had invested in multi-purpose licences to allow the flexibility to change certain target species. Another suggestion was for a form of government compensation, such as an optional licence buy-back scheme, to compensate for any loss of vessel licence and consequent future earnings.

One common suggestion was for effective core fishery management measures to be put in place, such as shellfish quotas, closed seasons, “no take” zones, pot limitations and gear limits.

Q3. Do you agree that imposing an annual cap of 300kg for quota species on licences for vessels that have caught less than 300kg in quota species in each year between 2010 and 2013 is the best way to tackle the issue of latent capacity in the u10m pool?

A significant level of response, with the majority (from individual fishermen and some stakeholder organisations) against a cap being introduced, believing latent capacity to be a positive and necessary part of the u10m fleet (allows for diversification and fishermen responding to seasonal trends in finfish trade). Some believed that latent capacity was not an issue at all. There was also some concern regarding an uncompensated loss for something believed to hold a commercial value and therefore de-valued if capped.

Some respondents agreed that latent capacity should be addressed, with a few specifically agreeing with one of the options proposed.

Q4. If you do not agree that a capping policy would be the best way of tackling latent capacity in the u10m pool, what other measures do you believe could be taken?

A significant level of response, with a number of temporal and spatial solutions presented from across a broad spectrum of respondents, including buy-back and decommissioning schemes; Government purchasing licences and re-issuing to new entrants; redistribution of quota and roll-over of unused quota to working boats; gear limitations and incentives for those using more selective gear and/or low impact fishing methods.

Q5. Do you agree that removing or putting a temporary restriction on shellfish entitlements from u10m licences which have not been used to catch shellfish between 2010 and 2013 is the most effective way of tackling latent capacity in the shellfish catching sector of the u10m fleet?

A minority of respondents supported the proposal to remove or temporarily restrict shellfish entitlements from u10m licences.

There were suggestions for:

- i. removing entitlements from vessels that had not actively fished for both shellfish and quota species, or from those without record of either fin fish or shellfish catches, and
- ii. providing compensation for inactive holders.

A majority of respondents did not agree with the proposals, saying this was because of:

- i. a lack of management controls, policies or strategies that would benefit the sustainability of stocks,
- ii. the importance of flexibility and the ability of u10m fishermen to diversify, and

- iii. further restrictions possibly leading to excessive fishing effort in other fisheries merely to establish or defend a track record.

Q6. If you do not agree that removing or restricting shellfish entitlements from inactive licences would be the best way of tackling latent capacity in the u10m shellfish catching sector what other measures do you believe could be taken?

We received many possible measures and options for consideration. The main focus was on controlling or restricting the active fleet, which respondents considered put greater pressure on stocks when compared with the impact of latent capacity.

Suggested measures were:

- i. a national management plan, with the emphasis on quota and pot limitation measures;
- ii. Government taking control of shellfish stock and putting emphasis on conservation measures i.e. limiting number of licences, pot/gear limits, length of fishing season, number of fishing days, quota and catch limits;
- iii. undertaking more studies and stock analyses, with greater industry involvement;
- iv. decommissioning and government licence buy-back scheme to then be used for new entrants;
- v. targeting over 10m vessels rather than the u10m sector.

Q7. Do you think that tackling latent capacity in the u10m shellfish sector would have any impact on improving stock status for these species?

A minority of respondents believed that tackling shellfish latent capacity in the u10m sector would have a positive impact on improving shellfish stocks.

Some examples given of the expected positive impacts arising from tackling latent capacity in the u10m sector were:

- improved stock assessments by Inshore Fisheries & Conservation Authorities (IFCAs) and other government bodies; and
- more certainty, which would help to create positive incentives for investment, allowing fishermen can operate in a more business-like manner with greater stewardship over stocks, leading to more responsible and sustainable fishing practices.

A significant number of respondents, mainly fishermen and stakeholder organisations, said that some type of action to control the pressure on stocks from the active fleet would be beneficial. Such action included the need for increased and improved studies and stock assessments, along with management measures such as pot or gear limits.

The majority of respondents believed that tackling latent capacity in the u10m shellfish sector would not have any impact on improving stock status for shellfish. This was because they believed stocks would continue to remain uncaught by those choosing not to exercise their shellfish entitlement.

Q8. Do you think that there are any issues that we have not identified in this consultation document?

We received the following suggestions and recommendations for further consideration:

- i. management and policy planning based on quota and pot limitation system for shellfish;
- ii. lack of quota for u10m sector and over-regulation by government bodies;
- iii. the effect of Marine Protected Areas on fisheries;
- iv. a decommissioning scheme;
- v. addressing latent capacity in both under and over 10m sectors;
- vi. the ability by future generations to enter the industry and the fishing opportunities available to them;
- vii. a risk assessment of the options proposed should have been undertaken, providing consultation recipients with a greater understanding of the issues and the options and measures being proposed.

Glossary

Closed seasons	A period of time that fishermen cannot fish.
Crabs	With respect to this consultation means edible crabs, velvet crabs, spider crabs and green crabs.
Decommissioning	The use of public funds to remove fishermen, fishing vessels and fishing licences from being able to undertake fishing.
Fin fish	A term used industrially to denote ordinary fish, rather than shellfish, flatfish, eels and other seafood.
Fixed Quota Allocation (FQA) units	FQA units are the main means by which fishing quota is allocated amongst the UK fishing industry. EU countries receive a share of the Total Allowable Catch for each quota fish stock, and within the UK these are largely distributed into what are known as FQA holdings. Each FQA gives the holder access to a share of the quota for particular fish stocks.
Judicial Review	A procedure by which a court can review an administrative action by a public body.
Latent capacity	Fishing licenses that are not being used.
Maximum Sustainable Yield (MSY)	The maximum level at which a natural resource can be routinely exploited without long-term depletion.
Nephrops	A species of lobster also known as Norway lobster.
NGOs	Non-governmental organisations.
No take zones	An area where no fishing activity can take place.
Overexploitation	Over fishing of fish and shellfish species.
Pot / gear	Fishing equipment i.e. fishing pots and nets.

Quota / catch limits	The amount of fish / shellfish that a fisherman is allowed to catch.
Shellfish	With respect to this consultation, means lobsters, crawfish, edible crabs, velvet crabs, spider crabs and green crabs.
Shellfish Entitlement	Shellfish entitlements are attached to the license and permit unrestricted fishing for shellfish (as specified in this consultation).
Stakeholders	Individuals, groups or organisations that are affected by the proposals to address latent capacity. In this instance primarily the fishing industry.
U10m	Fishing vessels with an overall length of 10 metres and under.