

CABINET 6 September 2001

ENFORCEMENT OF FOOD SAFETY (FISHERY PRODUCTS AND LIVE SHELLFISH) (HYGIENE) REGULATIONS 1998 – AUTHORISATION OF OFFICERS NOT EMPLOYED BY NEW FOREST DISTRICT COUNCIL

1. INTRODUCTION

- 1.1 This report considers the difficulties the Council has in enforcing their statutory responsibilities under the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998; in particular, preventing the illegal harvesting of shellfish from areas that have been temporarily closed in order to protect public health.
- 1.2 These closures are likely to become more frequent with the increased monitoring for the presence of algal toxins and unless more effective means of enforcement are found, there is a real danger of the problem becoming exacerbated, leading to public health being put at risk and the Solent oyster industry blighted as a consequence.

2. BACKGROUND

- 2.1 Shellfish commonly occur in estuaries and coastal waters - areas often subject to sewage pollution. They feed by filtering large quantities of seawater over their gills and, along with the micro-organisms naturally present, they inadvertently ingest faecal bacteria and viruses from the sewage. The degree of pollution present in the shellfish determines the appropriate level of treatment needed (as prescribed in the Regulations) to ensure they will not present a risk to health when placed on the market.
- 2.2 The Solent and surrounding waters contain the largest wild native oyster (*Ostrea edulis*) fishery in Europe and is a valuable economic resource to the local economy. Whilst the majority of oysters landed are exported to France and Spain, the Solent is also an important source of stock for further on-growing and fattening by English shellfish farmers.
- 2.3 Much of the New Forest District Council's coastal waters fall within the control of Southampton Port Health Authority. However, the coastal waters inshore of a line drawn from Hurst Castle to the seaward end of Tanner's Lane, just east of Lymington, fall within the control of this Council, as do the Keyhaven, Lymington, and Beaulieu rivers.
- 2.4 Under the provisions of the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998, which implement the E.U. Shellfish Hygiene Directive (91/492 EEC), local and port health authorities have a range of responsibilities aimed at ensuring that shellfish sold for human consumption are safe to eat. For the purposes of this report the term

'shellfish' refers to bivalve molluscan shellfish i.e. mussels, cockles, clams and oysters.

2.5 The Regulations impose a raft of public health measures controlling all stages from harvesting and production through to placing on the market.

Under these Regulations local and port health authorities duties include:

- (i) regular sampling of shellfish beds to establish their bacteriological status and, in addition, monitoring of shellfish and shellfish waters for the presence of algal toxins;
- (ii) notification of the results to central government agencies, which maintain and publish a list of classified shellfish harvesting areas;
- (iii) ensuring that shellfish are only harvested or produced from areas that have been classified i.e. 'shellfish production areas';
- (iv) issue of movement documents to fishermen as part of a documentation system to enable consignments to be traced all the way back to the original harvesting area;
- (iv) temporary closure of shellfish production areas, and the prevention of harvesting of shellfish from these areas as and when necessary to safeguard public health;
- (v) approval of purification centres and dispatch centres.

3. THE PROBLEM

3.1 Local authorities around the Solent expend a considerable amount of resources fulfilling the above functions. From time to time, they are required to close shellfish harvesting areas to fishing e.g. due to the presence of unacceptable levels of algal toxins, or sewage spills; increasingly, it is the former that necessitates such closures. Regrettably though, amongst the fishing industry, there is an irresponsible element that show complete disregard for the safety of the public, by deliberately harvesting and selling shellfish from prohibited areas. Their activities not only undermine the whole **shellfish** monitoring programme, but also risk causing illness and the very real possibility of jeopardising the whole of the Solent oyster industry.

3.2 In the past local authorities have experienced great difficulties preventing these illegal activities and in taking legal action against offenders. Local authorities do not have the necessary resources in terms of boats, equipment, manpower, experience etc. to effect a presence at sea to deter and catch offenders. For various practical and legal reasons, the

quality of evidence obtained through shore based surveillance of illegal fishing activities would stand little chance of realistically securing a conviction in Court. Therefore, the co-operation of the industry is a vital factor in the success or otherwise of trying to police the Regulations and considerable effort by authorities goes into maintaining close liaison with the industry. The apparent inability on the part of food authorities to take effective action quite understandably causes great annoyance to the rest of the industry, and generates bad feeling towards local authorities. Likewise, the officers themselves are frustrated by the fact that they are powerless to act to protect public health. These concerns have been discussed with the Food Standards Agency.

4. PROPOSAL

- 4.1 Two organisations that do have the necessary resources and are well placed to assist authorities are Southern Sea Fisheries District and the Hampshire Constabulary Marine Unit. The Food Safety Act 1990 makes provision for any person (whether or not an officer of the authority) to be authorised by an Authority in writing, either generally or specially, to act in matters arising under the Act and regulations and orders made under it. Authorities would need to ensure any officer so authorised satisfied any relevant requirements to the duties to be undertaken.
- 4.2 Both these organisations have confirmed their willingness to assist and for their officers to be duly authorised. Under normal circumstances, authorities will not incur any charges. However, they have emphasised the fact that any assistance given would have to be a secondary function to their own statutory duties, and that the responsibility for the prosecution of any offence would rest with the local authority.
- 4.3 Such authorisation would prove to be of great benefit to local and port health authorities, demonstrating to the shellfish industry that effective cooperation exists between the various statutory bodies, and that there is a positive commitment to enforcing the Regulations. Importantly, quite often illegal harvesting activities transgress both public health and fisheries protection legislation; there is therefore a mutual benefit in curtailing these activities.

5. FINANCIAL IMPLICATIONS

- 5.1 None in the normal course of events. Should the Council wish to take first call upon the services of the Southern Sea Fisheries District facilities, the level of charges would be £50 per hour for each officer (minimum of two officers required) and £100 per hour for a patrol vessel. However, their limited resources and statutory commitments leave little opportunity for being available for such charters and, therefore, the situation is unlikely to arise very often.

- 5.2 More effective enforcement ability may result in an increase in legal action against offenders, which the Council would have to undertake.

6. CRIME AND DISORDER

- 6.1 Acceptance of the recommendation in this report will improve the Council's ability to execute their statutory enforcement responsibilities under these Regulations.

7. ENVIRONMENTAL IMPLICATIONS

- 7.1 There are no direct environmental implications arising from this report however increased enforcement activities will benefit the quality of shellfish available for consumption by the public.

8. CONCLUSION

- 8.1 The Council's ability to effectively carry out their statutory duties under the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998 and to safeguard public health is severely compromised without the necessary resources to enforce the Regulations at sea.
- 8.2 The authorisation of officers of the Southern Sea Fisheries District and the Hampshire Constabulary Marine Unit would considerably enhance the Council's enforcement capability in this respect.

9. RECOMMENDATION

- 9.1 That the officers named in 9.2 and 9.3 below of Southern Sea Fisheries District and the Hampshire Constabulary Marine Unit be duly authorised under the Food Safety Act 1990 for the purposes of enforcing the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998 for the purposes of those matters that are Executive functions on behalf of New Forest District Council.

9.2

Southern Sea Fisheries Committee Unit

Ian Carrier
Roger Hayler
Peter Hill
Geoffrey Parsons
Phillip Pepper
Brian Poore

9.3

Hampshire Constabulary Marine

PC 2067 William Bates

PC 1758 John Ellis

PC 1632 Robert Clowes

PC 623 Andrew Williams

PC 213 Mike Hannam

PC 1981 John Gledhill

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Background Papers:

None.