

GLA10/8.3 Shellfish Gathering Update

26 April 2006

BOARD PAPER REFERENCE – GLA10/8.3 – Shellfish gathering updateIssue

1. To update the Board on progress towards introducing licensing for the shellfish gathering sector.

Recommendations

2. The Board are asked to note the progress for developing the licensing arrangements for the shellfish-gathering sector, in particular the proposed approach for consultation.

Background

3. Licensing for gangmasters operating in the shellfish-gathering sector will start on 1 October 2006. The offences will commence on 6 April 2007. The GLA will consult on the proposed arrangements for introducing licensing to shellfish gathering over the Spring / Summer.

Market Analysis

4. Quantifiable analysis of the market is limited. The GLA has consulted the Sea Fisheries Committees for England and Wales as well as the Scottish Executive and DARDNI on potential numbers. The responses received indicate the numbers of those who will need a licence are likely to be less than for Agriculture and Processing sectors. Based on the available data, the GLA's best estimate for number of licences covering shellfish gathering is likely to be 100 – 200. This figure will be tested during the consultation exercise.

Gangmaster Definitions

5. Where gathering of shellfish is involved, the Gangmasters (Licensing) Act defines acting as a gangmaster as both the supply and the use of workers to gather shellfish. Labour providers who supply workers to gather shellfish will need a licence in the same as those supplying the agricultural and processing sectors. Those using workers to gather shellfish will also need a licence. The GLA proposes the following definition for "using" a worker:
 - Someone ("A") is considered to be "using" a worker if they:
 - Employ the worker under a contract of employment or engage the worker under a contract for services:
 - Regardless of whether the worker is employed or self-employed, someone ("A") is considered to be "using" a worker if they make arrangements with the worker that:
 - Require the worker to follow his/her instructions; or
 - Determine where the worker carries out the work; or

- Determine when the worker carries out the work; or
 - Determine how the worker carries out the work; or
 - Require the worker to sell his/her gathered shellfish to them as the first link in the buying chain.
6. The above applies whether "A" directly makes these arrangements with a worker or indirectly makes arrangements with a worker through another ("B") (e.g. a supervisor, intermediary or agent). "A" would need a licence and "B" would need to be named on A's licence and would not need to be licensed in his/her own right.

Licence Scheme Structure

7. While many of the licence conditions will remain the same for Shellfish Gathering (see section below), the additional conditions are proposed. In order to take account of these additional conditions, a separate assessment will be needed to decide if someone is suitable to be issued with a licence covering operating in the shellfish-gathering sector. The GLA proposes shellfish gathering will be part of the same licensing regime as agriculture and processing, but licences will be granted with different categories:
- Category 1: Agriculture and Processing¹
 - Category 2: Shellfish Gathering
8. Gangmasters will need to apply for each category (Agriculture and Processing or Shellfish Gathering). Those already with a licence covering Agriculture and Processing category that wanted to extend the licence to cover Shellfish Gathering would need to apply again. The annual renewal date for the licence will be taken from when the licence is issued with the first category. If the second category is added to the licence later in the year, it will be valid for the remainder of the year. On the anniversary of the licence, both categories will be renewed.

Licence Conditions

9. The Licensing Standards sets out the conditions gangmasters supplying to the Agricultural and Processing sectors. The vast majority of Standards are relevant to gangmasters who supply and use workers in shellfish gathering. The GLA proposes that gangmasters operating in Shellfish Gathering will be required to comply with the applicable conditions in the Licensing Standards.
10. In addition, the GLA has identified further possible conditions that relate specifically for shellfish gathering:
- Gangmasters will be responsible for ensuring their workers follow the HSE Guidelines for safe working in estuaries and tidal areas. These guidelines (attached at Annex A) were first issued following the Morecambe Bay tragedy and are widely recognised as best practice for the industry.

¹ The term "Agriculture and Processing" covers labour supply to agriculture, horticulture and processing and packaging for food, fish and shellfish.

- Where shellfish gathering is taking place in an area subject to a permit or licence scheme for fishing, the gangmaster should ensure that their workers have all necessary permits / licences. For example, if operating on the Solway, a gangmaster would need to ensure the workers had the required licence to fish in the area.
- If a gangmaster transports workers by boat to a shellfish bed, legislation enforced by the Maritime and Coastguard Agency will apply.

Proportionality and Risk

11. As for Agriculture and Processing, the GLA proposes that all Shellfish Gathering applications will be subject to an Application Inspection (AI) until sufficient evidence is gathered to allow a risk based approach to be introduced. The Board is invited to discuss this matter further under item 7.1.
12. The GLA will charge for AIs conducted for Shellfish Gathering applications except where an AI has already occurred for licences issued for those operating in Agriculture and Processing. The GLA will not charge an applicant twice for an AI.
13. For the consultation, the additional conditions set out above will be designated a proportionality score for inspection purposes. It is likely most of the Health and Safety elements will be attributed with a Critical classification, with lesser scores for the other additional conditions.

Licence Fee

14. For 2006-07, there will be one licence fee regime covering applications for Shellfish Gathering and Agriculture and Processing. The 2006-07 licence fee levels for Shellfish Gathering applications that are not already covered by a licence will be the same as for Agriculture and Processing. This will give parity across the different sectors that are subject to licensing. Therefore, the fee levels are proposed to be:

| Annual turnover of applicant | Fee band | Fee level |
|-------------------------------------|-----------------|------------------|
| More than £10 million | A | £4,000 |
| £5 – 10 million | B | £2,000 |
| £1 – 5 million | C | £750 |
| Less than £1 million | D | £250 |

15. For 2006-07, the GLA proposes there will be only one licence fee charge – the GLA will not charge any additional costs for those with a licence with one category who then apply for the other category. The GLA estimates that only a very small number will seek to have both categories for their licence.

16. The charges for AIs will also remain the same:

| Annual turnover of applicant | Fee band | AI Charge |
|-------------------------------------|-----------------|------------------|
| More than £10 million | A | £2,500 |
| £5 – 10 million | B | £2,100 |

| | | |
|----------------------|---|--------|
| £1 – 5 million | C | £1,850 |
| Less than £1 million | D | £1,600 |

17. As stated at paragraph 13, those who have already paid for an AI will not be required to pay an additional charge if they apply for a second category.

Next Steps

18. The GLA is drafting a consultation document setting out in greater detail the proposals for introducing licensing to the shellfish gathering sector. This will be issued in late Spring / early Summer. As this is a second consultation, as well as the time pressures involved in finalising the licensing arrangements before 1 October, the consultation period will last 6 weeks. Once published, Board members will be invited to respond to the consultation.

Annex A

HSE Guidelines for safe working in estuaries and tidal areas when harvesting produce such as cockles, mussels and shrimps

Introduction

These guidelines were first introduced following the deaths in February 2004 of 21 Chinese cockle pickers in Morecambe Bay. They were revised during the winter of 2004.

Before you go

Before going out to gather shellfish you must carefully plan and prepare for your intended work. To do this you must have information so that you can assess the risks and make informed decisions and when you go out onto the fishery you must have suitable equipment and sensible transport arrangements.

Information

As a minimum you should have:

- Local tide tables and an accurate watch. Annual tide table booklets can be bought from most local booksellers and many newsagents, or a 7-day table for Heysham can be found on the Internet at <http://www.pol.ac.uk/ntslf/tides/?port=0050>.
- Knowledge of current and forecast weather conditions, eg fog/flooding.
- Knowledge of local conditions, eg quicksands, shifting gullies, rivers in flood, the nature and speed of the tide.

Equipment

You should have with you:

- A suitable communications device - either a VHF marine band radio or a mobile telephone according to reception. Batteries should be fully charged and the devices should be kept dry.
- A location device, preferably a Global Positioning Unit (GPS) and/or compass so that you can retrace your way back to land in adverse conditions.
- High-visibility clothing which is both warm and weatherproof.
- Emergency equipment - whistles in case of fog/mist, and flares.

Planning

When planning your work you must:

- Recognise that it is vital to leave enough time to get people and vehicles ashore safely. You must allow extra time for possible problems, for example a vehicle breakdown or a vehicle becoming stuck in the sand, when planning the time of your return to the shore.

- Be able to identify and cope with emergencies such as fog and quicksands.
- Recognise that working at night creates additional risks and requires appropriate and special precautions.
- Avoid lone working where possible.
- Ensure that each group has a recognised and competent leader.
- Let someone responsible know when you are going out/coming back and where you plan to work. The Coastguard Agency is happy to receive this information on a daily basis. (For the Morecambe Bay area phone the Liverpool Coastguard on 0151 931 3341.) You may also wish to leave a notice in the window of vehicles left on shore listing the person leading the group, a contact number and the names of others working with you.
- Make sure that the group is not too large. The leader must be able to adequately supervise all members of the group.

Getting to the work area

- Vehicles used to access the fishery must be suitable for the work area, eg tractors, ATVs or similar.
- Tractors must be fitted with approved cabs or rollover protection.
- Where ATVs are used, the drivers should be competent and specifically trained in their use. In some situations it will be necessary to wear safety helmets. Further guidance can be found in the free Agricultural Information Sheet AIS33 (www.hse.gov.uk/pubns/ais33.pdf).
- All vehicles should be roadworthy and properly maintained and should carry enough fuel for emergencies.
- Tyres should be inflated to the correct pressure.
- Old cars and vans are not suitable.

Where trailers pulled by tractors are used to carry passengers, they must be fitted with headboards, tailboards and suitable side protection to prevent passengers falling off. Passengers should not be carried in tractor cabs (unless the manufacturer has provided a second seat), on tractor steps or on the drawbar. Further information can be found in the free Agricultural Information Sheet AIS36 (www.hse.gov.uk/pubns/ais33.pdf.)

Normally ATVs should not be used to carry more passengers than specified in the manufacturer's handbook.

Other issues

Other issues you will need to consider include:

- Manual handling.
- First aid.

Lifejackets and liferafts

If you follow the precautions in this guidance and plan sensibly you should not need to use lifejackets or liferafts. You may however wish to carry these with you. If you do, lifejackets should, as a minimum, be manufactured to British Standard EN 394:1994 and have buoyancy of not less than 100 Newtons. Lifejackets to this standard can currently be bought for just over £50.00. Liferafts should meet the standard laid down in SOLAS regulation III/4 (see MSN 1734). Contact the Maritime and Coastguard Agency (MCA) if you require further information.

Users of lifejackets and liferafts must be properly trained and instructed in their use. They must be able to operate them in an emergency. The devices must also be routinely checked (daily, weekly and monthly) and maintained in accordance with the supplier's instructions.

Remember that these devices are for emergencies only and you should not extend your working time because they are carried. Even allowing for contingencies you should always plan to be safely on shore before there is any possibility of being cut off by the tide when the need for a lifejacket or liferaft for your personal safety might arise.

Don't forget that in an emergency it may take the rescue services 30 minutes or more (longer in winter) to reach you and every emergency also puts the lives of emergency service workers at risk.

Emergencies

Be prepared and equipped for emergencies and build in time so that you can recover the situation and return to shore before being cut off by the tide. The typical dangers are:

- The onset of adverse weather conditions, including fog.
- Vehicles or people getting stuck in mud or sand.
- Getting cut off by the tide because of poor planning.

If in difficulties telephone 999 to contact HM Coastguard or use Marine Band Radio channel 16 – the emergency frequency. Give your position as precisely as you can.

Access to the fishery by boat

Should you use a fishing vessel, boat or inflatable craft to access the fishery, legislation enforced by the MCA will apply and require the specific provision of lifejackets and/or liferafts. Further detailed advice may be obtained by contacting the MCA Advice Line on 0870 6006505 or through their website at mcga.gov.uk.

