

# Southend-on-Sea Borough Council

Agenda  
Item No.

Report of Corporate Director,  
Enterprise, Tourism & the Environment

to

Cabinet

on

6<sup>th</sup> November 2012

Report prepared by: Dipti Patel,  
Head of Public Protection

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## Rock Oyster Collection from Southend Foreshore & Coastal Erosion Issues

Executive Councillors: Councillor Lamb, Cox & Jarvis

### *A Part 1 Public Agenda Item*

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#### 1. Purpose of Report

For Cabinet to consider the recommendations of the Economic & Environmental Scrutiny Committee at its meeting on 20<sup>th</sup> September 2012.

#### 2. Recommendations

- 2.1 That the actions taken to date in respect of rock oyster collection on the foreshore are noted and Council officers continue to monitor the position and take any action which is warranted.
- 2.2 In recognition of the urgent concerns about erosion at the foreshore members request the Corporate Director of Enterprise, Tourism & the Environment reports back when new information emerges.

#### 3. Background

- 3.1 On the 20<sup>th</sup> September 2012 the Economic & Environmental Scrutiny Committee considered a report on Rock Oyster Collection on the Southend foreshore and the more general issue of coastal erosion. The report had been prepared in connection with a question from Councillors Terry, Norman and Wexham.

A copy of the report is attached at **Appendix 1**.

- 3.2 The decision of the Committee is recorded in Minute 335, a copy of which is attached at **Appendix 2**.

In terms of the Rock Oyster issue, the Committee asked for Cabinet to consider the report submitted to it (together with any additional information about whether

other Councils have a bye-law relating to Oysters) and consider whether additional steps are required.

In terms of the Coastal erosion issue, the Committee noted the position and asked the Corporate Director of Enterprise, Tourism & the Environment to update Members when new information emerges.

### 3.3 Further Information from Environmental Health

Since the Scrutiny meeting on 20<sup>th</sup> September 2012, Environmental Health has received one complaint regarding the commercial gathering of oysters from Southend seafront. An investigation was undertaken and the product was found to have been dealt with in a legal manner. During this time period Environmental Health have also undertaken surveillance on the foreshore targeting times when harvesting was likely to be undertaken having regard to tides, day light and weather conditions. No gathering/ stock awaiting collection was found during these observations. We are encouraging all sightings to be reported directly to the Council to assist with our investigations.

### 3.4 The possibility of introduction a new bye-law.

At the Economic & Environmental Scrutiny Committee the Head of Legal & Democratic Services explained the position with regard to bye-laws as follows;

- a) Bye-laws can only be made under a specific statutory power.
- b) At present all bye-laws need to be confirmed by the Secretary of State.
- c) The DCLG has produced 7 sets of model bye-laws which set out the appropriate wording for bye-laws on a number of specific subjects: Set Number 6 relates to the Seashore and the model bye-law on fishing is as follows:

*“No person shall fish from the seashore in such a manner as to cause a danger or annoyance to any person using the seashore”.*

This model bye-law does not prevent fishing, but prevents fishing in a manner which is dangerous or causes an annoyance.

Also, the model bye-law is very similar to the Council’s existing bye-law relating to the Foreshore & Promenades made in 1987:

*“No person shall fish from any part of the foreshore or the promenades in such a manner as to cause danger or annoyance to any person”.*

- d) If the Council wanted to introduce a new bye-law regulating the collection of shellfish from the seashore, then it would need to seek the provisional consent of the Secretary of State, as it would not be in the form of a model bye-law. So is the DCLG likely to give such consent?

- (i) The DCLG guidance accompanying the model bye-laws says:

*“2. It will generally not be possible to prohibit any activity for which there is only a power to regulate.”*

Accordingly, a bye-law that sought to completely prohibit collecting shellfish on the seashore would not be acceptable. (In the same way a byelaw to ban fishing in the sea would not be acceptable and indeed there is a common law right to fish in the sea).

(ii) It may be possible to have a new bye-law which restricts collecting shellfish on the foreshore. We have spoken to the DCLG who have said they would consider a provisional application for such a byelaw. However approval is only likely to be given if:

- The byelaw addresses a matter not covered by the model byelaws;
- In accordance with the DCLG guidance referred to above, the byelaw is restrictive, rather than completely banning the activity. (Clearly it would be difficult to draft a restrictive byelaw given the concern is about the activity generally, not the particular area of foreshore or the times of collection and that commercial shell fishing is not to be restricted);
- In accordance with the DCLG guidance and the governing Act, the byelaw would have to be aimed at preventing danger, obstruction or annoyance to persons using the foreshore.; and
- The problem could not be addressed in another way (As shellfish are regulated separately by bye-laws of Kent & Essex Inshore Fishery Conservation Authority (K&EIFCA), who apparently do not consider there is any problem with current activities, this could be very difficult).

e) We have contacted Lancaster City Council to see if they have a by-law restricting the collecting of shellfish following the Morecombe Bay cockling disaster in 2004. They do not. They have substantially the same bye-law as contained in the DCLG model referred to above.

Since the meeting of the Economic and Environmental Scrutiny Committee further investigations have been carried out. We have contacted the DCLG again and they have not been able to identify consent being given for any special bye-law about collecting shell fish. We have also contacted Hartlepool Council who does not have any such bye-law, although the North Eastern IFCA did introduce a bye-law relating to removal of cockles in 2011.

The conclusion therefore is that the Council would find it very difficult to introduce a new bye-law, particularly as the Kent & Essex IFCA can see no need for such a bye-law.

### 3.5 The Possibility of the K&EIFCA making an Order

The Council has been in discussions with the Kent & Essex IFCA (K&EIFCA) regarding the issue of establishing an order similar to that in existence for the

River Roach which was recently published in the local paper and on the K&EIFCA website.

The senior Officer J Wiggins at K&EIFCA has formally written to the Council on the 24<sup>th</sup> October 2012, detailing their advice and position regarding establishing an order specifically for Southend Foreshore and is quoted below:

**“Potential for establishment of private shellfish layings on Southend foreshore for the purpose of developing the sustainable farming of C. gigas oysters”**

*Further to our discussion today I confirm that my understanding of the situation referred to above is as follows.*

*Theoretically an application could be made by Southend-on-Sea Borough Council or Kent and Essex IFCA for a Several Order to cover Southend foreshore which would be similar to that which is currently subject to an application to cover parts of the River Roach.*

**River Roach Fishery**

*The area of the River Roach to which this application applies is an historic oyster fishery which is currently in operation. The current Several Order covering this part of the River Roach expires at the end of this year and the new Order will replace the old Order and will run for a further period of 10 years. In this fishery existing stocks of Native Oysters will be improved and non-native C. gigas oysters will also be cultivated. The aim of the Order is to lease beds to fishermen for them to cultivate native and C.gigas oysters. Natural England has agreed to this plan as it is consistent with its current use. The area is designated as a Special Area of Conservation but it is considered that the proposed use does not conflict with the SAC conservation objectives. The area is not easily accessible by the general public and the area of the Order only covers the seabed below mean low water springs which means that most of the area cannot be accessed for hand gathering as it is covered by water at all times.*

**Southend Foreshore**

*This is intertidal and is designated as SPA and SSSI. It is my understanding that it is extremely unlikely that Natural England would agree to the granting of a Several Order for the purpose of allocating private plots for fishermen to cultivate non-native C.gigas oysters and establish a sustainable commercial fishery for this species within the area. I consider that if this did proceed there would be huge problems in trying to prevent the general public from going onto the private beds and gathering shellfish. I suggest that this may also conflict with important leisure use and open access to the foreshore.*

*For these reasons I advise that it, in my opinion, there is not a realistic chance that an application for a Several Order, as described above, would be successful.”*

This advice clearly highlights the constraints in establishing an order and highlights the cost and resources likely to be necessary to enforce it, should it

be granted. Any order would need DEFRA agreement before submission to the Secretary of State for final approval.

### 3.6 Details of staffing of the foreshore team.

The staffing numbers of Foreshore during the summer season from Easter to October is approximately five Resort Assistants patrolling the beaches on any one day. This includes everywhere from Leigh to Shoeburyness. There are three supervisors usually based at the pier office who have responsibility for moorings and other duties, but are available if required on the foreshore. Other enforcement officers include the ECO team (12 officers) that have diverse range of responsibility covering the entire town from highways, environmental and street based issues thorough to fly tipping and licensing matters. These officers support the foreshore team particularly over the summer on specific enforcement issues relating to the foreshore.

### 3.7 Coastal Erosion

Since the meeting of the Economic & Environmental Scrutiny Committee on 20<sup>th</sup> September officers have continued to meet representatives of the Environment Agency. The Environment Agency has advised the Council that it is commissioning a detailed study to try and ascertain the causes of the current erosion and to advise on how this might be addressed. Council officers have also met with Halcrow who will be providing specialist advice to the Council. The Environment Agency is working jointly with Natural England and the Council to carry forward their investigations. It is recommended that the Corporate Director of Enterprise, Tourism & the Environment report back when new information emerges.

## 4. **Other Options**

Other options are considered in the report and appendices.

## 5. **Reasons for Recommendations**

To endorse and recognise the limitation of the Council's remit in relation to the harvesting of Pacific Rock Oysters from Southend coastline.

## 6. **Corporate Implications**

### 6.1 **Contribution to Council's Vision & Corporate Priorities**

Contributes to Council's Vision & Critical Priorities of Becoming safe and clean.

### 6.2 **Financial Implications**

None specifically but this work is resourced from existing budgets which has been prioritised in light of the growing problem despite the Council having a limited enforcement remit.

### 6.3 **Legal Implications**

These are detailed in the report.

### 6.4 **People Implications**

No people implications

## 6.5 **Property Implications**

No property implications

## 6.6 **Consultation**

Officers have engaged with a number of statutory agencies on these issues to seek a collective resolution as detailed within the report. These agencies include the Kent & Essex IFCA, The London Port Health Authority, The Food Standards Agency, Natural England and the Environment Agency.

## 6.7 **Equalities and Diversity Implications**

Specific E&D issues have been considered in the generic Regulatory Service action plan and will continue to be monitored to ensure relevance.

## 6.8 **Risk Assessment**

Not applicable

## 6.9 **Value for Money**

Not applicable

## 6.10 **Community Safety Implications**

A number of Agencies have been involved with a view to ensure no illegal activity is being undertaken. The Police are aware of the harvesting from Southend coastline and will assist should it be required.

## 6.11 **Environmental Impact**

The report highlights any environmental impact according to the relevant statutory agencies particularly from an ecological position. The level of these non-native oysters if left un-harvested may adversely impact on the future existence of native species. There is limited evidence to date from Natural England to substantiate whether the alleged commercial harvesting has adversely impacted on SSSI and erosion of the Southend Coastline.

Members will be aware that this year has seen a significant loss of mudflats along the north bank of the Estuary which can be seen in Leigh, Chalkwell and Thorpe Bay. This matter is subject to a separate investigation involving the Environment Agency, Kent & Essex IFCA, DP World London Gateway and the Council.

## 7. **Background Papers**

There are no additional background papers with this report.

## 8. **Appendices**

**Appendix 1** Report on Rock Oyster Collection & Coastal Erosion

**Appendix 2** Minute 335 from the Economic & Environmental Scrutiny Committee meeting on 20<sup>th</sup> September 2012