

GOVERNMENT OF GIBRALTAR

IN CONJUNCTION WITH THE GIBRALTAR SPORTS & LEISURE AUTHORITY

CONSULTATION PAPER: “REGULATING CERTAIN ASPECTS OF FISHING AND DIVING IN GIBRALTAR”

20th July 2010



1. INTRODUCTION

Gibraltar enjoys an interesting coastline and waters from all of environmental, heritage, commercial and sport and leisure stand points. There is an increasingly widely held view, which the Government accepts, that an element of regulation of some of the non commercial activities that take place would be of benefit to aid environmental protection, ensure safety and to ensure fair and proper access to the amenities by all who wish to use them.

This Consultation Paper contains the Government's proposal to regulate certain sport and leisure activities in our waters, including diving, spear fishing and certain aspects of fishing and boating. The Paper also sets out the Government's proposals for an improvement in the infrastructure and amenities relating to Marine Sports and Leisure.

This Paper is not intended to deal, and does not deal with commercial activities such as shipping, bunkering, cruising, commercial and underwater communications and other underwater cables. All of these activities are required to take place in Gibraltar in accordance with applicable EU and other international law.

The Government will not resile from the Fishing Agreement informally concluded in 1999. However that Agreement will also be subject to compliance with the EU legislation relating to prohibited fishing methods, even if those EU provisions are not legally binding on Gibraltar because we are not part of the EU Common Fisheries Policy. In other words, fishing methods which are prohibited in the rest of the EU will not be permitted in Gibraltar either.

The Government's intention is to bring to parliament a Bill for a Marine Sports & Leisure Act, which will be Gibraltar's first ever Act dealing comprehensively with the regulation of marine sport and leisure activities in our waters.

The objectives of the Act will be: to ensure respect for others and fairness in the use of our marine sports and leisure facilities; to contribute to the protection and regeneration of our marine life and habitats; to preserve our underwater heritage; and to promote safety.

The legislation will be administered by the Sports & Leisure Authority, which will be the competent authority in relation to the Act's provisions.

In this Consultation Paper the Government seeks the views of any and all interested entities or persons in relation to these issues. In making its judgements and decisions about what is in the interests of Gibraltar as a whole, including its fishing and diving practitioners, and its environment and heritage, the Government, as in all matters, will give consideration to views expressed by all interested entities and persons. But Government does not accept or submit to “Demands” or “Red Lines” sought to be imposed on it by anybody, and will not accept proposals or views which it does not believe to be in the public interest of Gibraltar.

2. FISHING

2.1 Shore Fishing

- (1) The Government proposes to introduce the requirement for a licence to engage in shore fishing from public land and public places. The licence will be available free or at nominal cost. It will be issued by the Sports & Leisure Authority from any of its staffed venues at all times that they are open. It is proposed that a licence will be valid for 3 years, unless revoked by the Authority for non compliance.

By means of this licensing, and the ability to revoke licences for breach of the conditions of issue, it will be possible to control and police many unsatisfactory practices that presently occur, including the use of multiple rods and the monopolisation of shore fishing stretches of coast.

It is proposed that persons under the age of 16 should be exempt from the need for a licence provided that they are accompanied by and under the supervision of an adult who is a licence holder, and complying with all the requirements and conditions applicable to the adult’s licence. A person under 16 may never the less obtain a licence.

It is also proposed that the requirement for a licence shall not apply to members and their guests of a local club with waterfront premises who fish from those premises.

In order to enable fishing by very young children, it is proposed that the Authority should be empowered to designate areas (which would be of no interest to more serious fishermen) from where they could fish with adult supervision without the need for a licence.

It is proposed that the issue of a licence will require proof of identity and provision of residential postal address and telephone number.

The principle of reciprocity will be applied in the issue of licences to non residents. It is thus proposed that licences are available to be issued to residents of all countries who either do not require a licence to enable residents of Gibraltar to undertake leisure fishing in their waters, or who place no legal or practical impediment to the issue of such a licence to residents of Gibraltar.

It is proposed that the Sports & Leisure Authority be empowered to issue a general licence in respect of international fishing competitions held in Gibraltar under the auspices of the Authority or of a recognised Gibraltar Governing Body or Fishing Club.

(2) Licences will be issued subject to the condition (for breach of which it may be revoked) that the applicable provisions of the Act are complied with. It is proposed that these provisions should include the following:

- Licences will be issued to natural persons only and will not be transferable;
- Licence holders will only be permitted to use two 'fishing rigs' at any given time. These could be rods or hand lines in any combination.
- The number of traces used in the terminal tackle per fishing rig (whether leading to hooks, lures or other fish hooking devices) shall be limited to 6.
- Any area used for fishing must be kept and left clean and tidy, and free from fish, bait, bait residues and other rubbish.
- Fishing will not be permitted in certain designated areas (which will be known as Areas of Special Interest) on the grounds of habitat and marine life protection and/or regeneration (see later) and/or health and safety.
- Different species will be subject to Minimum Fish sizes which may be caught (see later).
- There will be protected species which cannot be fished or adversely interfered with during certain times of the year (see later).

(3) The Government will assess some of the available shore fishing sites with a view to improving facilities and amenities:

- The North Mole will continue to be made available to the greatest possible extent consistent with international cruising security rules. It is the Government's policy that these rules be operated as flexibly as they permit to maximise the availability of the North Mole for fishing. The Government will take steps to ensure that access to the Mole is properly allowed without discrimination. The Sport & Leisure Authority will give public notice of permitted fishing times.
- The South Mole is under the control of the MOD and/or Gibdocks who will have understandable security and health and safety issues. Since the Government does not occupy or control this site the Government is unable to grant access to anglers. However the Government will use its good offices with MOD and Gibdocks to explore the possibilities that may exist for such access.
- Access facilities to the Detached Mole will be improved. However, for safety reasons access to the Detached Mole for fishing will be by prior arrangement with the Sport & Leisure Authority. It is not the policy of the Government to install toilets on the Detached Mole (except temporary facilities during approved international competition).
- By prior arrangement with the Sports & Leisure Authority, Shore Fishing Sites may be reserved exclusively for use by local Fishing Clubs or the Gibraltar Governing Body for competitions or club days.

2.2 Boat Fishing

- (1) The Government does not propose to introduce at this time a licensing requirement for boat fishing, since the environmental objectives can be achieved by other means and there is no problem of unfair use of limited fishing points as occurs ashore.
- (2) However, all boat fishing will be required to comply with EU wide regulations relating to prohibited fishing methods, net sizes and fish sizes.
- (3) The fishing prohibition in designated Areas of Special Interest will apply to boat fishing.
- (4) Minimum fish size and protected species provisions (see later) will apply to boat fishing.
- (5) Limited commercial/cottage industry fishing takes place by local residents. This will remain lawful and will not require a licence, but must be carried in compliance with (2), (3) and (4) above, and other local environmental protection rules.

2.3 Spear fishing & similar methods

- (1) It is proposed that the Act will establish a licensing regime to cover all spear fishing catching methods, harpoon, harpoon gun, gaff, trident, Hawaiian spear or any other device. The licensing requirement will apply to the whole of Gibraltar territorial waters.
- (2) The reciprocity principle proposed to be applied to non residents in the case of shore angling will also apply to spear fishing.
- (3) Views are sought specifically on the question whether an insurance requirement should be introduced for spear fishing.
- (4) Views are sought specifically on the question whether a minimum age for spear fishing and similar methods should be introduced given the potential dangers. If there should be a minimum age, should it be 16, or a different age? If there should be a minimum age, should it be lower if the person is

accompanied by a responsible adult? If so, lowered to what age?
13?

- (5) Views are sought on the specific question whether spear fishing and similar methods should be prohibited during the bathing season on and off all beaches and other official swimming areas, as a matter of public safety.
- (6) It is proposed, as a matter of health and safety that there should be regulation and restriction for persons under 18 of depth and breath holding and hyperventilation techniques.
- (7) Minimum fish size, Protected Species and fishing prohibition areas (see later) will apply to spear fishing.
- (8) All EU restrictions on spear fishing will apply. Safety Regulations will also seek to protect spear fishermen from other users of the waters, especially motor boaters.
- (9) All competitions will require the prior approval of the Authority.

2.4 Minimum Fish Sizes & Protected Species

- (1) Even though Gibraltar is not obliged to comply with EU fishing legislation, it is proposed to apply its provisions relating to Minimum Fish Sizes that may be caught;
- (2) In addition to EU rules, local rules may be introduced protecting local species when not covered by EU rules, especially within 200 meters from the shore. Local consultation with environmental and fishing groups will take place to determine any such local species protection scheme;
- (3) Prohibited or protected species accidentally caught must be returned to the sea alive immediately after landing the same;
- (4) A consolidated list with names and images of EU, internationally and locally protected species, and minimum fish sizes will be published and provided to licensees and others interested;
- (5) Sport fishing clubs will be encouraged to implement 'Catch & Release' protocols, especially during competitions.
- (6) Minimum fish size and protected species provisions will apply to shore angling, boat fishing and spear fishing.

2.5 Establishment of Areas of Special Interest

- (1) It is proposed that the Act provides for the establishment within Gibraltar territorial waters of Areas of Special Interest (ASIS) to provide special protection to marine life, specie regeneration and habitat or for the control and preservation of, and access to underwater heritage.
- (2) Within ASIS no fishing whatsoever would be allowed and the removal of underwater artefacts would be prohibited.
- (3) ASIS would be clearly demarcated by buoys.

3. BOATING

3.1 Licensing.

All existing Gibraltar legislation and rules relating to the use of pleasure craft will be updated, consolidated and brought under the proposed new Act. All pleasure craft that presently may not require registration will become registrable.

3.2 Insurance.

The views are specifically sought on the question whether all pleasure craft should require mandatory third party insurance.

3.3 Age Limit

It is proposed that the minimum age for the use of powered craft is kept at 16. Views are sought as to whether this age should be reduced for holders of recognised seamanship accreditation schemes or where the young person is under proper and approved supervised training.

The Government does not propose to introduce mandatory seamanship qualifications for adult boat users.

3.4 Safety

The Government is proposing a number of safety measures, as follows:

- More widespread and better enforcement of speed limits
- Provisions of training courses in use of VHF Radio

- Compulsory carriage on board of specified safety equipment, subject to inspection
- Users of Jet skis and speed boats may be subjected to a competency/ licensing requirement

4. SCUBA DIVING

The Government believes that Scuba Diving has a much greater potential for touristic economic exploitation in Gibraltar than has hitherto been the case. In order to achieve this, safely and in a way which is respectful of the environment and of our marine heritage, the Government proposes to regulate scuba diving and to provide infrastructure to promote and support it as both a leisure activity for locals and a touristic/commercial activity for visitors.

The views of Diving Clubs, Dive Centres and interested individuals are sought on the following proposals.

4.1 Three pronged approach:

- (1) Legislation and Regulation
- (2) Infrastructure and Services
- (3) Marketing

4.2 Registration and Licensing

- It is proposed that all Recreational Diving Service Providers should be both licensed by and registered with the Authority. Providers would fall into two possible categories, namely
 - Locally registered, not for profit diving clubs
 - Commercial providers of recreational dive services (dive shops).
- It is proposed that commercial providers be defined as any person or entity who/which for gain or reward (and not being a local registered dive club) as part of a business, trade, profession or employment , offers and/or provides all or any of the following services to any person:
 - Conveying or escorting by land (save by Gibraltar taxis or other Public Service Vehicle) or sea, to any land or sea

location in Gibraltar or within Gibraltar territorial waters for the purpose of recreational scuba diving and/or spear fishing;

- Training and/or education in scuba diving and/or spear fishing;
- Renting, supplying or providing and scuba diving or spear fishing equipment;
- Testing, evaluating or examining scuba diving or spear fishing activities or equipment;
- Organising , managing or conducting dives or spear fishing;
- Supplying breathing gases

4.3 Licensing criteria and requirements

The legislation would specify the requirements for licensing as a commercial Recreational Diving Service Provider. These would include:

- Accident Reports and Reporting
- Alternate air sources
- Breathing gases, their quality and testing
- Buddy diving requirement
- Customer Care/training policy
- Customer records
- Dive Centre Directors
- Dive Centre Records
- Dive Instructors
- Dive Leaders
- Dive Logs
- Dive Managers
- Emergency & First Aid Equipment & procedures
- H&S at work requirements
- Insurance levels (compulsory)
- Maintenance of premises
- Maximum O2 Partial pressures
- Medicals and self assessments for clients
- Medicals for staff
- Minimum and maximum diving ages
- O2 availability for all dives
- Permitted organised dive numbers & criteria
- Personnel qualifications

- Rentals criteria
- Risk assessments in place
- Diving equipment – condition, maintenance ,testing & certification
- Try dives
- Training Schemes followed (BSAC, PADI etc)

4.4 Control and Conduct of Diving

- The Act will provide that only Gibraltar registered diving clubs and Gibraltar licensed commercial Recreational Diving Service Providers may operate in Gibraltar and its territorial waters.
- It is proposed that ASIS be created comprising Gibraltar's principal dive sites (see below). To ensure safety in recreational diving and also to protect the environment and under water heritage, it is proposed that all diving within an ASIS must be organised, managed, guided and conducted under the auspices of either a locally registered dive club or a locally licensed commercial Recreational Diving Services Provider.
- It is proposed that the Act will permit qualified divers to dive 'freelance' outside an ASIS in Gibraltar territorial waters.
- It is not proposed at this time to require the individual licensing of every individual diver. This appears not to be the practice anywhere.

4.5 Creating Areas of Special Interest

It is proposed that the first ASIS will encapsulate the sea area starting immediately north of Seven Sisters rock outcrop (at the southern end of the South Mole) and ending at the midway point of the South promenade in Camp Bay, extending out to sea to a depth contour of 35 metres, as shown in Fig. 1. This area is easily accessible from the shore, and contains artificial reefs, mainly composed of wrecks.

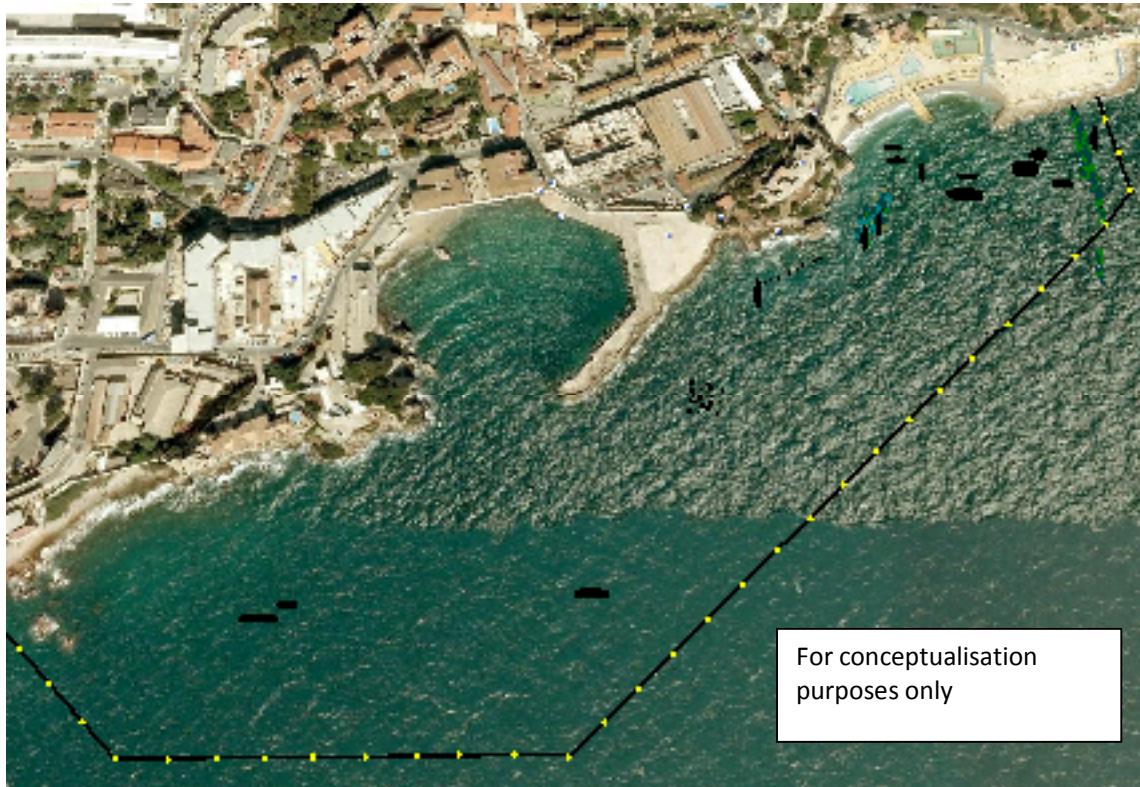


Fig. 1

The SS Excellent Site to the West of Detached Mole is another possible site for designation as an ASIS.

Views are specifically invited about other sites that should be considered for designation as ASIS, e.g. the area off Europa Point.

4.6 Operating within an ASIS

- As has already been stated the principal, proposed operational feature of an ASIS is that all diving within it has to be carried out through a Gibraltar registered diving club or a Gibraltar licensed commercial Recreational Diving Service Provider.

- It is proposed that dives would have to be 'guided' in the water and not just 'supplied' and equipped while leaving the client to dive by himself.
- All non dive boating in the ASIS would be prohibited.
- All forms of fishing would be prohibited.
- The abstraction of any sea life, flora or fauna or the moving or removal of any artefact would be prohibited.

4.7 Infrastructure Support

- In order to maximise the exploitation of Gibraltar's potential in the diving industry, the Government proposes to invest in the establishment of a 'Diving Hub', where Clubs as well as Commercial recreational diving service providers can establish dive shops and facilities and attract clientele to a coordinated industry hub. At present the site under consideration is the building near the Yacht fuelling berth, shown on Fig 2



Fig. 2

- This facility will include dive boat mooring, lecture rooms, air compressors and other sharable facilities that support the activity.
- This Dive Centre Hub will be supported by other waterfront facilities at the Rosia Bay
- Views are specifically sought about the suitability of the proposed sites
- To support both the Dive industry and marine habitat development, the Government will, in consultation with relevant NGOs establish new artificial reefs and wreck dive sites within the parameters of the Barcelona Convention.
- Establishment and operation under GHA of a Recompression Chamber available on a 24/7 basis.
- In conjunction with the Clubs, the industry and the Tourism Board, the Government proposes the marketing and promotion of Gibraltar as a recreational diving destination.

5. OTHER MARINE SPORT & LEISURE INFRASTRUCTURE

- (1) Fishing and Diving Clubs will be offered separate Club meeting and office premises at the recently refurbished Retrenchment Block or other suitable location. In the case of Diving Clubs this could be at the proposed new Diving Hub site.
- (2) In addition, the Government will provide waterfront facilities, but not permanent boat mooring facilities, at Rosia Bay for diving.
- (3) The Government has a Manifesto Commitment to provide a further 150 more small boat berths. The Government remains committed to this, and proposals are currently under consideration.

- (4) Government also intends to provide slipway facilities to enable the day launch of small craft stored ashore elsewhere in Gibraltar.

6. PUBLIC CONSULTATION

- (1) This document is issued by way of public consultation. The Government welcomes and seeks the views of all interested Organisations and individual on all of the issues covered in this Paper, on the Government's proposals and on any related issues, whether or not referred to in this Paper.
- (2) All responses should be in writing addressed to the Chief Executive Officer of the Gibraltar Sports & Leisure Authority, Bayside, Gibraltar or by email to joe.hernandez@gsla.gi and must be submitted by the 15th September 2010.
- (3) This document is available on the Government's website: www.gibraltar.gov.gi