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17th February 2017

**OPTIONS FOR CHANGING CLASSIFICATION DETERMINATIONS**

**Summary and Purpose**

1. As harvesters will be aware Food Standards Scotland is the competent authority for the determination of harvesting area classifications. This process is currently undertaken on an annual basis with the classification year running from April to March. Provided there are no prolonged and significant changes in year that classification usually remains static for the duration of that period.
2. Classifications which are current are likely therefore to run until 31st March 2017, and work is underway to determine classifications for the 17/18 season. Harvesters should expect to receive a copy of the draft classification document early in 2017.

**Possible changes to classification determination protocols**

1. Following feedback from some sectors we are considering changes to the way in data is brigaded for classification purposes with a view to making the decision making process more transparent and to consider the practicability of moving towards a more responsive ‘live’ system for areas classified under EC Regulation 854/2004 as ‘A’ and seasonal ‘A/B’ areas. A draft protocol which attempts to deliver such an approach is attached at **Annex A.**
2. This protocol outlines a draft ‘real time’ classification process which means that classifications would change in-year based on results received.
3. The purpose of this consultation therefore is to provide an opportunity for shellfish harvesters and other interested parties to consider the practical application of such a system. This could involve the collection of additional samples by the harvester and there are prompts for such action outlined in the protocol itself. **Feedback from this exercise will inform the classification process that will apply in 2018/19**. FSS may consider that it remains appropriate to continue to provide annual classifications and if so will also ensure that those protocols are updated and shared accordingly.

In any case whilst the classification system remains a wholly FSS function, an ‘A’ classification does not guarantee that end product standards will be met on all occasions and on that basis we believe that considerable amounts of *E.coli* testing is undertaken by harvesters already. As such this consultation provides an opportunity for harvesters to consider the ways they might be able to supplement the official control programme with their own samples provided certain conditions are met. These samples can then be used to help FSS make classification determinations irrespective of the system applied.

**Question 1**. Do you agree with the approach to ‘rolling classification’ for ‘A’ and ‘A/B’ areas as outlined in the Annex to this letter? Comments on the draft would be welcome.

**Question 2**. Do you think a rolling classification approach should replace the current system?

**Please explain the rationale for your response to each of these questions.**

1. **Impacts**. Harvesters with a seasonal A/B classification, if moved onto this ‘rolling’ system are likely to be most impacted, whereas areas with consistent year on year A class results or indeed B/C areas would be least affected. Essentially this is because a rolling classification responds immediately to results as they are received and seasonal areas are those which would be most likely to receive variable results at some point in the year. No formal impact assessment has been undertaken because historic results correspond to static classification and sample collection protocols, and no ‘like for like’ comparison can be made between approaches at this stage.
2. In order to inform the impact assessment we would like to invite harvesters to submit samples in accordance with a signed protocol which is available here[[1]](#footnote-1) in line with the process outlined in **Annex A**.

**Please note that consideration will be given to maintaining annual classifications based on the feedback received from this consultation exercise**

1. Your views and responses to the content of this letter would be most welcome. In your response, please describe the capacity in which you are responding e.g. as a shellfish harvester, processor, local authority or laboratory etc.
2. A copy of this letter has been sent to recipients of the weekly FSS shellfish results email. Please see **Annex 2** for further details on how we handle consultation responses. **Annex 3** contains a consultation feedback form and **Annex 4** contains a Public information form, which you will need to fill in if you do not want your details to be made public when responding to this consultation.
3. Please provide the information requested trough the FSS citizen space portal which is available at <https://consult.foodstandards.gov.scot/> or email to FoodEnquiries@fss.scot or directly to me at the address below by 12th May 2017.
4. Thank you on behalf of Food Standards Scotland for your assistance and please do not hesitate to contact me if you have any questions.

Yours sincerely

Jennifer Howie

Regulatory Policy Branch

Food Standards Scotland

**Annex A**

**Draft classification decision tree.**

**Initial assessment –**

In January 2018 an assessment of the 2017 classification data will be made for each area. **At this stage areas will either move either into a rolling A system or a B or C annual award. The usual process will be available for those wishing to appeal the draft classification.**

*ROLLING A CLASS*

**Step 1** The area is ‘A’ class on an ongoing basis, subject to routine monitoring results remaining compliant with new A class criteria which applied on 1st January 2017[[2]](#footnote-2). Flow chart 1 sets this requirement out in more detail:

**Flow chart 1 – decision tree**

80% of samples collected ≤ 230 E. coli per 100 g of flesh and intravalvular liquid . The remaining 20% of samples ≤700 E. coli/100 g minimum of 30 samples, usually over 3 years

No

Yes – A class

 FSS will consider a rolling 10 result dataset or one year of data whichever is greater. 80% of samples collected ≤ 230 E. coli per 100 g of flesh and intravalvular liquid . The remaining 20% of samples ≤ 700 E. coli/100 g of flesh and intravalvular liquid.

No – SEE STEP 2

Yes – A class

**Step 2** If any results in the review period are greater than 700 E. coli per 100 g or >80% non-compliant with codex criteria, then a decision to maintain classification levels or down grade will be made quickly.

If failure to comply with codex criteria is due to breach of the following:

***Scenario 1*** *intermittent results within the past 10 results >230 E.coli per 100g shellfish resulting in a breach of the 80% codex compliance requirement (rather than a single ‘spike’)*

This may be indicative of a potential recurring problem that requires investigation in order to identify the issue. In such cases, the area would be immediately downgraded. A further 5 results ≤ 230 required to move back into A class status, a minimum of 48 hrs apart and within a 2 week period. Harvester to submit samples in accordance with agreed protocol, otherwise only monthly OC results will be considered.

***Scenario 2*** *A single high result (>700) within the past 10 results (all otherwise ≤230) and result not deemed anomalous*

In such cases FSS will take a single follow up sample within 1 week of the >700 result. If that result is ≤ 230 then classification can be maintained at A class.

However if a further result > 230 is found within any suite of 5 consecutive results (which includes the original ‘spike’ result, and normally taken 1 month apart) the area should be immediately downgraded. A further 5 results ≤ 230 required to move back into A class status, a minimum of 48 hrs apart and within a 2 week period. Harvester to submit samples in accordance with agreed protocol, otherwise only monthly OC results will be considered.

**Any result, at any time can be considered ‘anomalous’ if certain criteria are met:**

* any failure of the sewerage or sewage treatment system that has been rectified and where the authority responsible for controlling pollution identified such a failure is not expected to recur.
* Any failure in animal housing or fencing leading to a local pollution event and where the authority or FBO responsible for controlling the animals can confirm that such a failure is not expected to recur
* If any information is received which confirms that any > 5 year rain fall event has occurred.

All results deemed anomalous will not be considered for classification purposes and will therefore be excluded from the dataset. and local action groups or FBOs should provide evidence in support of the event which FSS will ratify where it can. **This is no different to current approaches.**

Part year classifications may also be considered. A part year classification could be awarded for areas where harvest is likely to be targeted at certain times of the year.

Any harvester seeking a part year classification should contact FSS Shellfish Team.

The annual classification process will continue to be administered each year for those areas that are B or C class (including those on rolling A which have moved to a B during December in any year as that is when the annual draft classifications begin to be drafted). All other areas will continue to sit on a rolling A classification.

Appeals to be made in the usual way, including cases to move from B to rolling A. Also consideration will be given following appeal for a part year or seasonal classification as appropriate. A seasonal classification will only be awarded if on statistical analysis there is evidence to support the award as at present.

**This is a DRAFT classification protocol for A class areas. We will consider whether such a system is practicable for all parties during the course of 2017.**

**Annex 2. How we handle consultation responses.**

We need to know how to handle your response and in particular, whether you are happy for it to be made public.  The attached Respondent Information Form at **Annex 4** will ensure that we treat your response appropriately. If you ask for your response not to be published we treat it as confidential.

You should be aware that Food Standards Scotland is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and must consider any request made to it under the Act for information relating to responses made to this consultation exercise.

***What happens next?***

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach a decision on this issue.  We aim to issue a report summarising the outcome of this consultation by the end of June which will then inform any subsequent guidance or instrument considered necessary.

If you have given permission for your response to be made public and after we have checked that it contains no potentially defamatory material, your response will be made available to the public in the Food Standards Scotland website

web pages shortly thereafter.

**Annex 3**

**OPTIONS FOR CHANGING CLASSIFICATION DETERMINATIONS**

Consultation Feedback Questionnaire

We would be interested in what you thought of this consultation package. We would be grateful if you could spend a few minutes to complete the following questionnaire and return it even if you do not intend to respond to the consultation itself. Please return the questionnaire no later than 12th May 2017to:

**Karen McCallum-Smith**

**Food Standards Scotland**

**Head of Private Office**

**Pilgrim House, Old Ford Road, Aberdeen, AB11 5RL**

**01224 285133**

**07866 796697**

**openness@fss.scot**

 **1. How did you become aware of this consultation exercise?**

Our consultation list included your/your organisation’s name……… [ ]

 Other publication (please specify title)…………………………………… [ ]

Other means (please specify)……………………………………………… [ ]

**2. If you / your organisation are / is not responding to the consultation, is it because:**

You are not working on this subject area…………………………………… [ ]

 The consultation topic is not relevant to you……….……………………… [ ]

You do not have the time / resources to reply.…………………………… [ ]

Other reason (please specify) ……………………………………………… [ ]

 **3. Do you feel you were given enough time to respond to the issues / proposals in the consultation?**

 YES [ ]

 NO [ ]

 **4. Were the issues / proposals clearly set out and easy to understand?**

YES [ ]

 NO [ ]

 **5. Do you have any suggestions on how the consultation package could have been improved?**

 **6. Do you have any other comments about this consultation exercise?** (Please continue overleaf if required)

 **7. If you received this consultation direct, were the contact and address details correct?** If not please kindly provide the correct contact details for us to use in the future.

**8. Do you still wish to remain on our consultation list?**

YES [ ]

 NO [ ]

**9. Are there any other subject areas on which you would be interested in receiving future consultations?**

**In order to ensure that we can remove you from our lists or change our details please provide your contact details below:**

**Name**:………………………………………….

**Organisation**:…………………………………

**Emai**l……………………………………………

………………………………………………….

**Date**:……………………………………………

**THANK YOU FOR TAKING THE TIME TO COMPLETE AND RETURN THIS FEEDBACK QUESTIONNAIRE**

Annex 4

 **Publication of Personal Data**

Please note that Food Standards Scotland may publish details that you supply in legitimate pursuit of the functions of the organisation.

As the publication of responses in full may include personal data (such as your full name and contact address details), would you please let us know if you object to us using this information.

Please tick the box below, complete the relevant details and return this form (together with your response) to indicate your objection.

|  |  |
| --- | --- |
|  |  I **do not** agree to the publication of my personal details.  |

**\* If no objection is received we will assume that you consent to full disclosure of your personal details and these may be published.**

|  |  |
| --- | --- |
| Full Name |  |
|  |  |
| Full postal address and email |  |

To comply with the *Data Protection Act 1998*, it is essential that we keep our records up to date. Would you therefore please inform us if your personal details change in any way.

|  |  |
| --- | --- |
| This form has been issued by: | Food Standards Scotland |
|  |  |
| If you have any queries, please contact: | openness@fss.scotPrivate office, Pilgrim House, Old Ford Road, Aberdeen, AB11 5RL |

*General information about the most recent Data Protection Act can be viewed at* <https://www.gov.uk/data-protection>

1. Please contact our Shellfish Delivery team for details: shellfish@fss.scot [↑](#footnote-ref-1)
2. <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R2285&from=EN> [↑](#footnote-ref-2)