

## **Explanatory Memorandum to the Scallop Fishing (Wales)(no.2) Order 2010.**

This Explanatory Memorandum has been prepared by the Fisheries Policy Branch of the Department for Rural Affairs and is laid before the National Assembly for Wales in accordance with Standing Order 24.1.

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Scallop Fishing (Wales)(no.2) Order 2010. I am satisfied that the benefits outweigh any costs.

*Elin Jones*

08 February 2010

- (i) **Description** - This Statutory Instrument will re-open the scallop fishery in Wales on the 1 March 2010 allowing the “fishing for, taking and killing of scallops” (*Pecten maximus*) in Welsh territorial waters. The Order will revoke the Prohibition of Fishing for Scallops (Wales) Order 2009 which ceases to apply on the 1 March 2010; it will also revoke The Scallop Fishing (Wales) Order 2010 No 203 (W.30).
  
- (ii) **Matters of special interest to the Constitutional Affairs Committee**

The Scallop Fishing (Wales) Order 2010 No 203 (W.30) contained a factual error in the geographical co-ordinates given for the ‘Pen Llyn ar Sarnau’ area listed in the Schedule for the Order. This Instrument is therefore made to revoke the incorrect Regulation and make the correct provisions.
  
- (iii) **Legislative Background**

The Order will be made under sections 5(1), 5A(1), 15(3) and 20(1) of the Sea Fish (Conservation) Act 1967. Functions under those sections have been transferred to the Welsh Ministers by the National Assembly for Wales (Transfer of Functions) Order

1999 (SI 1999/672) and section 162 of and para. 30 of Schedule 11 to the Government of Wales Act 2006).

This SI follows the negative resolution procedure.

(iv) **Purpose and intended effect of the legislation**

A commercial Scallop fishery has been established within Cardigan Bay and other parts of Wales for over 30 years. Most of the best scallop beds are within the Cardigan Bay Special Area of Conservation (SAC) which was designated in 2002 although there are smaller pockets of scallop beds in other areas of the Wales.

There has been a significant increase in the weight of scallops landed (248 tonnes in 2005 to 11537 tonnes in 2008) and the number of vessels (6 Welsh vessels in 2005 to 18 vessels in 2008, plus an increase from 8 to 60 vessels from the rest of the UK during the same period) that prosecute the fishery in Wales. As a result of this increase in fishing effort over the last three years and the Minister for Rural Affairs sought advice from a scallop working group on the future management of the fishery. Entry by new catchers into the fishery is largely unrestricted and any there are concerns that an additional increase in fishing effort will lead to overfishing of the scallop stocks to the extent where they may become severely depleted. There is also the additional consideration that Welsh Ministers may not be meeting their obligations under the EC Habitats Directive (EC Council Directive 92/43/EEC) to protect designated features (flora and fauna) within Welsh Natura 2000 sites. The European Commission (Directorate General Environment) has received two complaints from individuals which allege that Welsh Ministers were not meeting their responsibilities. The Assembly Governments Department for Rural Affairs subsequently consulted on a set of measures to restrict fishing effort in the scallop fishery with the aim of ensuring its longer term sustainability and minimising the extent of damage that is being done to the Welsh marine habitat due to scallop fishing activity. The result of the consultation has been the drafting of the Scallop Fishing (Wales) Order 2010.

The technical measures proposed in the Order have been lodged with the European Commission (under the EC Technical Standards Directive) for the required minimum 'stand still' period of three months. The Minister has also agreed to additional 'non technical' spatial restrictions being introduced in the Order.

The fishing for scallops in Wales was prohibited under the Prohibition of Fishing for Scallops (Wales) Order 2009 which was revoked by Statutory Instrument No 203 (W.30) The Scallop Fishing (Wales) Order 2010 which was laid on the 4 February 2010. However, this Order now needs revoking to allow a

correction to be made to the Schedule. The Order now submitted will correct this error and allow fishing to recommence in Wales on the 1 March 2010.

The Order will affect all British registered fishing vessels and therefore fishermen from all parts of the UK who seasonally fish in Welsh waters.

The measures contained in the Order therefore aim to achieve two primary objectives:

- The introduction of technical, spatial and temporal restrictions which enable fishing activity and the sustainability of the fishery to be better managed, and
- Reduce the impact of scallop dredging activity on sensitive habitats and species in Welsh Natura 2000 sites.

If the measures in the Order are not implemented this could result in fishing exploitation continuing (and possibly increasing) to the extent where the scallop stocks fall to levels where they will not be commercially viable and possibly collapse altogether. The failure to introduce measures to restrict scallop dredging fishing activity in the Welsh SAC's could lead to the Welsh Ministers becoming vulnerable to claims that they have fallen short in their obligations to adequately protect designated European Marine Sites.

(v) **Consultation**

On the 17 July 2009 a ten week consultation was launched to seek the views of all stakeholders on amending and supplementing Welsh scallop fishery management measures. The formal consultation closed on the 25<sup>th</sup> September

The details of the consultation are included in the RIA below.

(VI) **Regulatory Impact Assessment**

A Regulatory Impact Assessment has been undertaken.

(VII) **Options**

The options below would impact equally on UK all fishermen that have a legal right to engage in the fishery.

1. Do Nothing

This option would mean that the level of regulation to be applied to the scallop fishery would be inadequate to achieve the objectives outlined in (iv above). Scallop stocks and Welsh Natura 2000 sites would have only limited protection against the activities of numerous British registered scallop fishing vessels.

Voluntary codes of practice cannot be relied upon to deliver the necessary sustainability of the fishery, environmental protection and compliance objectives that are needed.

Welsh Ministers failure to protect the SAC's against damaging activity by fishing vessels will undoubtedly lead to infraction proceedings by the European Commission.

## 2. Do minimum.

This would take the form of Welsh Ministers taking one of two decisions:

1. Introducing spatial restrictions to protect vulnerable species and habitats
2. Introducing technical restrictions to limit the impacts that dredging vessels could have on Welsh scallop stocks and vulnerable species and habitats

The decision to only protect Welsh Natura 2000 sites would result in Ministers meeting their Habitats Directive obligations. However; there would be a risk that the resulting displacement of scallop dredging activity would lead to vessels fishing in other areas which are equally important to the marine ecosystem of Wales as a whole. It would also bring about a high level of conflict with other Welsh fishermen who use static gear. It would also mean that there would be no introduction of technical measures to restrict fishing activity leading to concentrated levels of fishing in areas where scallop stocks would quickly become depleted and possibly exhausted.

The decision to introduce only technical measures would not afford Welsh Natura 2000 sites the level of protection against scallop dredging that is needed under the Habitats Directive.

## 3. Introduce New Legislation.

New legislation in the form of combined spatial and technical restrictions would be designed to allow Welsh Ministers to regulate scallop dredge fishing activity and control its environmental impacts in Wales.

The measures that would be introduced are:

- a) an upper limit of 221 Kw on fishing vessel engine power,
- b) a shortening of the former 'open season' by one month,
- c) a ban on scallop dredging within 1 nautical mile in all Welsh waters,
- d) restrictions on scallop gear within the 1 to 3, 3 to 6 and 6 to 12 nautical mile zones,
- e) restrictions on the specifications and deployment of scallop dredges in Wales,
- f) set a minimum size of scallop that can be retained aboard vessels
- g) spatial prohibitions on scallop fishing.

This option will provide both a regulatory framework for the protection of Welsh scallop stocks and conditions for the management of a long term sustainable Welsh scallop fishery. It will also afford adequate protection to Natura 2000 sites as required of Welsh Ministers under the Habitats Directive.

#### 4. Continue Closure of the fishery.

Ministers could decide to extend the existing Prohibition of Fishing for Scallops (Wales) Order 2009 until the 1 November 2010.

The existing prohibition on scallop fishing in Wales was introduced to allow time for the introduction of the proposed Order which is in line with Option 3 detailed above. The new regulation has now been drafted and could enter into force on the 1 March 2010. A new Order with the conditions as outlined in Option 3 should avoid Welsh Ministers having to make this choice.

## (VIII) **Costs and Benefits**

Costs and benefits can be calculated against the following options which are available to the Welsh Ministers.

### **1. Do Nothing.**

If Welsh Ministers were to choose to allow a relatively unregulated fishery to develop then the costs and benefits to the UK will be very subjective. Historically scallop fishing in Wales has been of a 'boom and bust' nature with marked peak and trough activity by Welsh and other UK registered fishing vessels.

In Cardigan Bay recorded landings were very low until 1980, when the discovery of dense beds of scallops led to a pulse fishery in the early summer of that year. Around 70 vessels were attracted to these grounds from around the UK, and over 1000

tonnes (live weight) of scallops were landed. The stock density was subsequently reduced to a level where fishing ceased to be viable and landings in subsequent years returned to a low level. Catches remained low, varying from virtually nothing to around 100t, until 2000 when they increased to over 300t. Catches were then maintained at between 100t and 460t until 2007 when they increased dramatically to peak at 3500t in 2008. Thus while Cardigan Bay contributed less than 5% to the total scallop catch for England and Wales in intervening years, this figure rose to over 30% in the boom seasons.

There may be short term benefits from the economic return from the fishery if the historic boom and bust economics are allowed to continue to take their course. The economic value of the fishery for the 2008/2009 season was some £1.26m to Welsh vessels and £5.1m to vessels from elsewhere in the UK. The extent of the boom may be measured against the fishery in 2005 when the fishery was worth £259,000 to Welsh vessels and £215,000 to vessels from other UK ports.

If the fishery is allowed to continue under a 'do nothing' scenario then scallop stocks will almost certainly become overfished and the stock density plunge to the extent where commercial fishing becomes unviable. The fishery would be largely prosecuted by vessels which have little interest in the long term sustainability of Welsh scallop stocks.

Added to the probable over-exploitation of the scallop stock is the fact that by 'doing nothing' Welsh Ministers will have failed in their obligations under the Habitats Directive to protect Welsh Natura 2000 sites throughout Welsh waters.

There would remain ongoing costs for enforcement by both shore and marine based fishery officers of the Welsh Assembly Government and Sea Fishery Committees and surveillance aircraft. Whilst these would be mostly met out of existing contracts and budgets there would be a need to reassess the use of existing human and technical resources and budgets.

## **2. Do minimum**

The minimum measures needed under this option is for Welsh Ministers to either close all scallop dredge fishing activity in Welsh Natura 2000 sites or introduce technical measures to reduce overall fishing effort against scallop stocks in Wales.

Unfortunately, nearly all the best (and therefore almost exclusively fished) scallop grounds are found in Welsh Natura 2000 sites. Notably, in the Cardigan Bay area. The return from the fishery to

the UK fleet in this area was in the region of £6.3m in the 2008/2009 season.

There would be a need for comprehensive enforcement of such a blanket prohibition in Wales and whilst most surveillance requirements would be met under existing budgets. Given the extent of the geographical area that would be involved in a closure of Welsh Natura 2000 sites there would be a need for the Assembly Government to adjust its risk based approach to enforcement policy in order to ensure compliance. It would also have to liaise with the Welsh Sea Fishery Committees on the utilisation and possible sharing of their human, equipment and technical resources.

The net benefit from this option would be that of a generally healthier marine habitat which could in turn support the sustainability of other fisheries.

Introducing solely technical restrictions would achieve a limiting of the impacts that scallop dredging vessels could have on Welsh scallop stocks and vulnerable species and habitats.

The benefits of this option would be a reduction on the fishing effort that has been applied in previous years which in turn would lead to better sustainability of the fishery. However, with no spatial protection of the scallop beds vessels would be allowed to concentrate their activities in areas where the largest catches can be made, i.e. in the Natura 2000 sites.

The compliance costs involved with this option will require a reassessment of the use of existing resources. There will be a need for a greater presence in the ports and at sea to check compliance levels by the industry. It is estimated that there will be minimal extra costs for the inspection of fishing gear at sea and in the ports. However, there will be a need to supplement existing activity by Royal Naval patrol vessels and aerial surveillance with the use of Sea Fishery Committee surface patrol vessels throughout the Welsh area in order to ensure general compliance. This will need extra cost and budgetary commitments.

### **3. Introduce New Legislation**

The introduction of legislation which combines both technical and spatial measures will allow Welsh Ministers to effectively regulate scallop dredge fishing activity and its environmental impacts in Wales. The Scallop Fishing (Wales) Order 2010 is designed to bring in the necessary regulatory framework to achieve the Assembly's sustainability and environmental objectives. The measures to be introduced are outlined in VII (3) above.

The main costs incurred by the fishing industry will be the loss of earnings from the reduced effort they can exert as a result of engine power, gear restrictions and the access to areas they had previously fished. In addition to these will be the need to buy new and adapt existing fishing gear.

The benefits to be gained from the restrictions is the protection of scallop stocks from 'boom and bust' driven economics. By reducing catching capacity the scallop fishery can be developed and managed to avoid over-exploitation as part of a sustainable policy thus ensuring longer term gains. By developing the fishery as a sustainable resource and therefore future income for fishermen Welsh Ministers aim to achieve a longer term 'buy in' by the industry at the cost of short term gains that benefit only a few. Such sustainability objectives will also secure the fishery as part of a healthy marine ecosystem

By bringing in spatial protection for sensitive marine areas Welsh Ministers will also be meeting their Natura 2000 objectives to protect and enhance the marine environment. The benefit from this option would be that of a generally more robust marine habitat which could in turn support the sustainability of other fisheries.

The compliance costs concerned with introducing a technical and spatial regulation will require a reassessment of the use of existing resources. There will be a combined need for a greater presence in the ports and at sea to check compliance levels by the industry. Central to ensuring compliance by the industry will be the enhanced surveillance at sea where the present Service Level Agreements will need to be supplemented by additional commitments by Welsh Assembly Enforcement officers. The extra commitments will need to be primarily met through the use of Sea Fishery Committee personnel, equipment and technical resources.

#### **4. Continue Closure of the fishery.**

The present closure of the scallop fishery in Wales was introduced to enable time for the proposed new Order to be lodged for the three month stand still with the European Commission. Ministers could decide to extend the existing Prohibition of Fishing for Scallops (Wales) Order 2009 until the 1 November 2010.

The continued closure of the fishery until 1 November 2010 would result in no earnings for the commercial fishermen from the

fishery for the winter 2009/2010 season. With the technical and spatial restrictions drafted and ready to be put in place there is no immediate need for this option to be taken. However, an indirect benefit of a continued closure would be that scallop stocks in Wales would be remain unexploited for a further 4 months.

Compliance costs for this option would be met under existing Service Agreements and budgetary commitments.

#### (IX) **Consultation**

A formal consultation on the future management of scallop fisheries was launched in July 2009. The consultation period ended on the 25 September 2009.

The full range of marine stakeholders were included in the consultation. These included all registered fishermen in Wales and their representative bodies, UK fisheries and environmental NGO's, the Countryside Council for Wales and Natural England, UK scientific agencies, all UK fisheries administrations plus the Isle of Man and Ireland and relevant Welsh local authorities. The consultation document was also provided on the WAG website.

The consultation document detailed proposals that were agreed at the Welsh Scallop Working Group. The consultation exercise sought to alert stakeholders to the proposals and also capture the maximum response from those who had views on the changes to scallop management measures in Wales.

The consultation lasted 10 weeks.

#### (X) **Competition Assessment**

The regulation is likely to have a low risk of a detrimental effect on competition. It will apply equally to all scallop fishers across the UK industry. No European Vessel has historic rights to fish for scallops within Welsh Waters. There will be no negative competitive impact arising from this Order. It does not restrict the ability of firms to choose a price, quality, range or location of their products, nor will it lead to a differentiation in costs between new and existing fishermen. The Order is unlikely to affect the market structure. No company has more than a 10% share of the Welsh Market.

See **Appendix A** for completed Competition Filter.

## (XI) Post Implementation Review

The effects of the Order will be monitored and reviewed by the Rural Affairs Fisheries Unit at the end of May 2010.

### Appendix A – Competition Filter Assessment

The competition filter test	
Question	Answer yes or no
<b>Q1:</b> In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
<b>Q2:</b> In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
<b>Q3:</b> In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
<b>Q4:</b> Would the costs of the regulation affect some firms substantially more than others?	No
<b>Q5:</b> Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
<b>Q6:</b> Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q7:</b> Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q8:</b> Is the sector characterised by rapid technological change?	No
<b>Q9:</b> Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No