

Explanatory Memorandum to The Cockle Fishing Management and Permitting (Specified Area) (Wales) Order 2024

This Explanatory Memorandum has been prepared by Fisheries Division and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Cabinet Secretary's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Cockle Fishing Management and Permitting (Specified Area) (Wales) Order 2024. I am satisfied that the benefits justify the likely costs.

Huw Irranca-Davies MS
Cabinet Secretary for Climate Change and Rural Affairs.

26 June 2024

PART 1

1. Description

- 1.1 The Cockle Fishing Management and Permitting (Specified Area) (Wales) Order 2024 (“the Order”) makes provision for the management of cockle beds within the specified area and a new cockle fishing permitting regime.
- 1.2 The Order also makes provision to amend or revoke and replace Byelaws of the former North Western and North Wales Sea Fisheries Committee and the former South Wales Sea Fisheries Committee and the Cockles and Mussels (Specified Area) (Wales) Order 2011 insofar as they regulate cockle fishing.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

- 2.1 In accordance with section 11A(4) of the Statutory Instruments Act 1946, the Llywydd has been informed that the 2024 Regulations will come into force less than 21 days after the instrument has been laid.
- 2.2 This will ensure the 2024 Order will come into force on the 10 July 2024, ensuring cockle gatherers are given sufficient time to obtain their permits and absorb their new permit conditions before the first cockle fishery opens on 17 July 2024. Avoiding delay in the opening of the Three Rivers Fishery will ensure cockle gatherers do not lose out on valuable income. Any delay in opening the fishery on 17 July would penalise those cockle gatherers who rely on this income alone and could lead to cockle ‘die off’ as summer temperatures increase.

3. Legislative background

- 3.1 Prior to 1 April 2010, cockle fishing around the coast of Wales was managed by the North Wales and North Western Sea Fisheries Committee and the South Wales Sea Fisheries Committee.
- 3.2 The Sea Fisheries Committees were abolished in relation to Wales on 1 April 2010 when the Fisheries Regulation Act 1966 was repealed by section 187 of the Marine and Coastal Access Act 2009 (“the MCAA”).
- 3.2 The Byelaws of the former North Wales and North Western Sea Fisheries Committee and South Wales Sea Fisheries Committee have had effect since 1 April 2010 as if made by the Welsh Ministers in a statutory instrument by virtue of article 13(1) and (3) of and Schedule 4 to the Marine and Coastal Access Act 2009 (Commencement No. 1, Consequential, Transitional and Savings Provisions) (England and Wales) Order 2010.

- 3.3 Byelaw 5 of the North Wales and North Western Sea Fisheries Committee was revoked and replaced by the Cockles and Mussels (Specified Area) (Wales) Order 2011.
- 3.4 The Order revokes and replaces or amends a number of the Byelaws and the Cockles and Mussels (Specified Area)(Wales) Order 2011.
- 3.5 The Welsh Ministers have powers to make the Order in section 189(1) and 316(1) of the MCAA.
- 3.6 Section 189(1) provides powers to make any provision in an Order in relation to Wales, that an Inshore Fisheries Authority can make under section 155 of that Act including provision to manage the exploitation of inshore fisheries in relation to Wales.
- 3.7 Section 316(1) provides additional powers to make different provision for different cases and to make incidental, consequential, supplemental or transitional or savings provisions.
- 3.8 The Order is made by statutory instrument and is subject to the negative procedure.

4. Purpose and intended effect of the legislation

- 4.1 The Order will introduce a series of measures to provide robust, consistent, and flexible management of cockle beds within the specified area, in Wales. The specified areas in this Order are areas where cockles are classified as fit for human consumption and exploited for commercial purposes. Maps of the individual fisheries will be provided in the permit conditions and posted online. A programme of work is underway to produce a map of the whole of the specified area, including all fisheries and once completed will also be provided to stakeholders and online.
- 4.2 The specified areas in this Order comprises large cockle beds which are exploited for commercial purposes. The cockle beds within the specified area are currently classified areas from which cockles may be collected for direct human consumption in accordance with Articles 53-55 Commission Implementing Regulation (EU) 2019/627 of 15 March 2019 laying down practical arrangements for the performance of official controls on products of animal origin intended for human consumption in accordance with Regulation (EU) 2017/625 of the European Parliament and of the Council and amending Commission Regulation (EC) No 2074/2005 as regards official controls
- 4.3 Maps of the specified area will be provided to permit holders when permits are issued to permit holders under the Order.

- 4.4 A programme of work is underway to produce new mapping of the whole of the specified area. The updated mapping will be made available on www.GOV.WALES when the Order comes into force.
- 4.5 The inherited and historic nature of the legislation used to manage cockle fisheries until now created a wide range of inconsistencies across Wales. With limitations in the legislation, the management of Welsh cockle fishing represented one of the greatest challenges for fisheries management and enforcement in Wales. The management of cockle fishing has been highly labour intensive and has been the source of frequent complaints from both the public and other public bodies.
- 4.6 Cockles abundance is highly variable, they are harvested by hand gathering which is environmentally sustainable if well-managed.
- 4.7 When managing the harvesting of cockle beds, the long term sustainability of cockle beds and environmental factors are key considerations. Intertidal cockle beds are situated around the coastline of Wales within or adjacent to Sites of Special Scientific Interest (SSSI) and European Marine Sites (EMS) designated for intertidal features. These features include wading birds which feed on cockle and other invertebrates. The restoration of other features such as 'sea grass' beds and saltmarsh habitats form part of the Programme for Government and Net Zero Wales commitments.
- 4.8 The Order provides the ability to adapt the management of the specified area in response to changes in stock levels in the cockle beds and the environment and will enable Welsh Government to ensure the sustainability of the specified area and a source of employment for future generations.
- 4.9 Cockle gathering is also potentially hazardous work. The Order will introduce eligibility checks to ensure permit holders are individuals who fish responsibly and in a safe manner.
- 4.10 The measures introduced by the new Order include:
- i) a prohibition on fishing for and taking cockles from cockle beds which are closed and without a permit,
 - ii) provision for the assessment and opening and closing of cockle beds within the specified area,
 - iii) provision for a new cockle fishing permitting regime including a cockle fishing permit which will permit fishing from cockle beds within the specified area and will be issued annually, modified eligibility criteria and an annual fee for cockle permits,
 - iv) provision for conditions to be attached to every permit issued,
 - v) provision for additional conditions to be attached to every permit which are specific to individual cockle beds and are variable.

vi) provision which standardises the personal recreational allowance across the specified area.

5. Consultation

- 5.1 A 12-week public consultation on proposals for new cockle fishery management measures was launched on 11 February 2022 and closed on 6 May 2022. The consultation was drawn to the attention of a wide range of stakeholders including cockle gatherers, processors, buyers, local authorities, Natural Resources Wales, Food Standards Agency, Gangmasters Labour Abuse Authority, Cefas, Seafish and all local stakeholders and landowners with an interest in cockle fisheries.
- 5.2 One hundred and seventy-four responses were received from a range of individuals and constituted bodies who have an interest in the Welsh cockle industry. Of these, 80 were received via the Welsh Government website, 80 were completed response forms received via email and 14 were written responses received via email not on a response form. The 14 responses received by email not on a response form did not respond to the specific consultation questions, however, they were direct responses to the consultation and were received during the consultation period. Therefore, they have been considered in the total consultation responses.
- 5.3 The majority of respondents agreed with all but one of the proposals in the consultation. The proposed daily catch limit divided opinion equally. After careful consideration of the responses, power to add a condition stipulating a daily catch limit has been included in the measures contained in this order. Where possible permit holders will be consulted before conditions are added to permits and the inclusion of conditions will be based on evidence that they are required. A daily catch limit can provide the ability to control the rate of exploitation of cockle beds which is fundamental to the sustainable management of cockle stocks.
- 5.4 The consultation documents and a summary of the responses are available at link: <https://gov.wales/cockle-fishery-management-measures-2022> There has been continuous engagement between officials and stakeholders since the consultation and they are aware the Order is due to be laid.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Options

Option 1: Do Nothing – Business as usual

- 6.1 Currently, approximately 350 permits to gather cockle are issued each year. It is estimated cockle with a first sale value of between £3M and £10 million is taken by gatherers annually. The industry also provides employment in processing and other related activities including retail (local markets). However, if the current regulatory system is not modernised the likelihood is public cockle fisheries will not be sustainable, may be over-exploited and collapse in a boom-and-bust cycle. The current challenges and costs encountered in managing and enforcing these fisheries are likely to increase. Inexperienced gatherers driven by the opportunity to make money quickly will continue to join the fishery due to lack of adequate controls on eligibility. The management of public cockle fisheries will be neither efficient nor effective as illegal activity will continue to blight local communities and threaten the livelihoods of legitimate gatherers.
- 6.2 With no eligibility checks on permit applications there will continue to be risks associated with gatherer safety, environmental protection, and over-exploitation of cockles. Furthermore, this could hamper the delivery of the Programme for Government and Net Zero Wales commitment to restore saltmarsh and sea grass habitats.
- 6.3 Partner public bodies, the cockle industry, and communities adjacent to cockle fisheries are frustrated at the lack of progress in strengthening the regulation of public cockle fisheries. Therefore, if this policy area is not progressed, it is likely to lead to more complaints, reputational damage, and potentially negative media coverage.

Option 2: Minimum changes – conditions only

- 6.4 The current legislation and byelaws under which the cockle fisheries are managed give only limited powers to make small changes to permit conditions. The potential to make improvements to management under this regime are limited and can be slow to take effect because they are not enforceable.
- 6.5 This can also cause problems when trying to protect the sensitive habitats which exist close to these fisheries. Permit holders have been known to ignore permit conditions and trample sensitive habitats if they know of a short cut to the cockle bed. This continues to cause problems for local landowners, NRW and Welsh Government officials who have to deal with the consequences. Identifying the perpetrators

and dealing with the subsequent complaints is extremely resource intensive.

- 6.6 Ensuring cockle fisheries are able to attract lawful commercial interest and improving safety will require specific eligibility checks to be evidenced before a permit can be given. An Order will be required for this.
- 6.7 Like the business-as-usual option above, the cockle industry as a whole and all relevant stakeholders will continue to be frustrated at the lack of progress in strengthening the regulation of public cockle fisheries. Stakeholders have been requesting new legislation repeatedly for many years.
- 6.8 Industry has suggested introducing a charge for a cockle permit to encourage gatherers who genuinely want to continually support the industry and ensure its viability for years to come. As managing cockle fisheries is resource intensive it would be wise for the Welsh Government to recover management and scientific costs. The introduction of a permit fee cannot be achieved by introducing conditions – an Order will be required. For this reason, this option has been discounted and not taken forward for further analysis.

Option 3 – Restricted fishery

- 6.9 Over the years, a number of local permit holders and stakeholders have suggested the Welsh Government creates a restricted permitting regime. In such a scenario, the numbers of gatherers able to use the fishery or fisheries would be limited. Effectively this would mean cockle fisheries would only partly open for a specified number of selected individuals.
- 6.10 Limiting the number of permit holders in this way would result in those gatherers' successful in obtaining a permit receiving 'exclusive rights' which would generate a substantial increase in their income even after allowing for an increase in the permit fee. Conversely, a greater number of gatherers who currently rely on income generated from cockle gathering would not receive a permit and would need to seek alternative sources of income and employment.
- 6.11 The likelihood is, at least some of the individuals who were unable to get a permit would gather cockle illegally. This increased poaching would make the fishery even more difficult to manage and place additional demands on control and enforcement resources which are already stretched.
- 6.12 If the Welsh Government wants to uphold its commitments to equality, future generations, diversity, fair work, and sustainability of industries in the future, then it is important that anyone applying for a permit does so on an equal footing. By restricting licences, it would be hard

to defend one person's right to work over another's. An appeals process would be an essential part of such a regime.

- 6.13 A First Tier Tribunal would be required to consider appeals. Costs in relation to setting up a First Tier Tribunal would be in the region of:
- £7K to initially change Her Majesty's Crown Prosecution Service (HMCPs) processes.
 - £35K charge per annum (this will cover up to 10 appeals per annum and will be payable even if less than 10 appeals had been processed).
 - £3.5K for each appeal over and above the 10 appeals above.
- 6.14 A further complication in setting up a licensing regime is ensuring everyone has a fair chance at obtaining a licence and new gatherers to the industry are able to enter the profession whether it is through an apprenticeship or setting up as self-employed. Set up costs can be in the tens of thousands of pounds which is prohibitive if the new gatherer cannot guarantee they would get through the selection process.
- 6.15 There is already a system in place to enable individuals or organisations to apply for a restricted licence fishery in specified areas for specified shell fish. These are known as regulating orders which can be granted by Welsh Ministers under the Shell Fisheries Act 1967. NRW manage regulated cockle fisheries in the Dee estuary (52 licences) and the Burry Inlet (36 licences). These fisheries, which are not under Welsh Government management, have received some criticism as evidence of previous gathering and first come, first served processes tend to ensure the same people hold on to permits for many years. In some cases, these long held licences are not actually used by the holder whilst new gatherers are effectively excluded.

Option 4 – New Order

- 6.16 Officials recently consulted with the general public, gatherers and interested parties on a series of measures to provide robust, consistent, and flexible management of public cockle fisheries across Wales (Consultation WG42711) as follows:
- i. All Wales Cockle Permit
 - ii. Eligibility checks for cockle permit applicants
 - iii. Charging an annual fee for cockle permits
 - iv. Universal permit conditions attached to all permits
 - v. Adaptive cockle fishery management determined by local conditions, specific to individual named fisheries
 - vi. Standardising the personal recreational allowance across Wales

6.17 The response was overwhelmingly in favour of a new Order.

6.18 The preferred option is Option No. 4, to create The Cockle Fishing Management and Permitting (Specified Area) (Wales) Order 2024 which not only gives the Welsh Government flexibility to manage cockle fisheries now but also the powers and flexibility to improve the management, viability, and credibility of the industry in to the future.

7. Costs and benefits

Option 1 – Business as Usual

7.1 This is the baseline option and, as such, there are no additional costs or benefits associated with this option. Taking this approach, it would not be possible to recover the costs associated with managing public cockle fisheries in line with '*Managing Welsh Public Money 2016*'.

Option 4 – New Order

Costs:

7.2 Based on cost estimates from previous years, the initial permit fee will be set at £250 for the first year. This will enable Welsh Government to carry out a more detailed fee setting exercise to accurately cover management and scientific costs. An informal consultation will then take place with interested parties before a final decision on a fee is made. A permit fee is something the cockle gatherers have been requesting for some time as they feel it gives some credibility to their profession. This fee would be minimal in comparison to the income earned, approximately 1% of average earnings. Permit costs in other UK fisheries are approximately 3-4 times higher than this fee.

7.3 To support management of the fishery under the regime created by new order, the Welsh Government intends to set up a new Wales Cockle Advisory Group. This group would be representative of the cockle industry in Wales and enable stakeholders to directly advise on the management of the fishery.

7.4 It is anticipated the introduction of the new temporary permit fee (set at fixed rate of £250 for the first year) will be charged for the 2024 cockle season. The process for applying for a permit will be simplified through the introduction of a new digital application process which will allow applicants to apply for and receive permits online. This fee will be received through government finance systems/apps currently available and already used for fisheries licences i.e., Whelks. There are no additional costs expected.

- 7.5 Future permit fees will be calculated to cover all management and science costs. The calculations and subsequent fee will be subject to informal consultation with interested parties prior to being introduced. As with the initial permit fee, future fees will be received through current government finance systems. There are no additional costs expected.
- 7.6 At present, there is no fee for a Welsh Government cockle permit. The Welsh Government currently issues around 350 cockle permits each year (total for both North and South) with approximately 250-300 of the permits actually being used. By introducing an initial permit fee in 2024 and closely monitoring costs under the new management system, permit fees from 2025 onwards can be calculated and set.
- 7.7 Going forward, full recovery of management and science costs will be received through permit fees. Recovering costs for managing public cockle fisheries is in line with '*Managing Welsh Public Money 2016*'. Statutory obligations such as control and enforcement will continue to be covered as now through DRCs. When the Burry Inlet reverts to a public fishery in June 2025 then there will be a further burden on the enforcement team.

Benefits:

- 7.8 Adaptive management of the cockle fisheries based on evidence will ensure exploitation of the cockle beds does not impact the health of cockle stocks or the sustainability of the fishery for future generations. The introduction of measures such as daily catch limits and daily catch returns in particular will enable management at a 'finer scale'.
- 7.9 Methods of opening and closing of cockle fisheries have previously been disparate and rigid in nature. A new Order will provide the powers needed to ensure cohesion and flexibility across the specified areas. Any decision to open or close fisheries will take in to account scientific survey data and environmental assessments.
- 7.10 Ensuring permit holders are suitably qualified and are in possession of the appropriate safety equipment to work in these potentially hazardous areas, will improve the overall safety and reduce the risk to all those gathering on the fisheries.
- 7.11 Through amendments, the new order will allow the Welsh Government to open new commercially viable fisheries as and when they become available. Under the current legislation, there is no provision to open other cockle fisheries/beds in Wales other than those currently prescribed in outdated byelaws inherited from sea fisheries committees.
- 7.12 Permit fees will be used to ensure full cost recovery from 2025 onwards in line with '*Managing Welsh Public Money 2016*' and will

help to ensure sustainability through the recovery of management and science costs.

8 Competition Assessment

- 8.1 The competition filter test has been completed, the Order is not expected to have a negative impact on competition in Wales or the competitiveness of Welsh businesses.

9 Post implementation review

- 9.1 There will be a review of the new cockle fishery management regime at the end of each cockle fishing permit period. This will identify if further management changes or an amendment to the Order are required.
- 9.2 Any minor changes to permit conditions may take place when necessary (within the review timeframe) and will only be implemented following a short consultation with interested parties.

10. Other Issues

- 10.1 Integrated Impact Assessment (IIA) - An IIA has been completed.