

**Explanatory Memorandum to The Sea Fish (Specified Area) (Prohibition of Fixed Engines) (Wales) Order 2010 and The Marine and Coastal Access Act 2009 (Consequential Provisions) (Wales) (No. 2) Order 2010**

This Explanatory Memorandum has been prepared by the Department for Rural Affairs and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and 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 Sea Fish (Specified Area) (Prohibition of Fixed Engines) (Wales) Order 2010 and the Marine and Coastal Access Act 2009 (Consequential Provisions) (Wales) (No. 2) Order 2010.

*ELIN JONES AM*

Minister for Rural Affairs, one of the Welsh Ministers

7 December 2010

## **1. Description**

- 1.1 The Sea Fish (Specified Area) (Prohibition of Fixed Engines) (Wales) Order 2010 provides that fishing for sea fish, within the specified area, with a fixed engine is prohibited subject to certain exemptions. The specified area is defined as any inland or tidal waters in Wales.
- 1.2 The Sea Fish (Specified Area) (Prohibition of Fixed Engines) (Wales) Order 2010 maintains the current level of regulation in relation to the use of fixed engines in connection with fishing for sea fish in Wales.
- 1.3 The Marine and Coastal Access Act 2009 (Consequential Provisions) (Wales) (No. 2) Order 2010 removes references to repealed legislation in byelaws 24 and 25 of the former North Western and North Wales Sea Fisheries Committee.

## **2. Matters of special interest to the Constitutional Affairs Committee**

- 2.1 None

## **3. Legislative background**

- 3.1 Section 6 of the Salmon and Freshwater Fisheries Act 1975, which dealt with the regulation of fixed engines, is to be repealed by section 233 of and paragraph 4 of Schedule 16 of the Marine and Coastal Access Act 2009 (“the 2009 Act”) on 1 January 2011.
- 3.2 In order to preserve the current level of regulation on the use of fixed engines in relation to fishing for sea fish (which, for these purposes, includes salmon and migratory trout) the Sea Fish (Specified Area) (Prohibition of Fixed Engines) (Wales) Order 2010 is made under section 5(1) and (9) of the Sea Fish (Conservation) Act 1967. The functions in section 5(1) and (9) of the 1967 Act are conferred directly on the Welsh Ministers.
- 3.3 Section 37 of the Salmon Act 1986 (“the 1986 Act”) enabled various Byelaws made under the Sea Fisheries Regulation Act 1966 to be made for the purposes of protecting salmon and that section has also been repealed in relation to Wales (as a result of section 321 of and Schedule 22 of the 2009 Act).
- 3.4 Byelaws 24 and 25 of the former North Western and North Wales Sea Fisheries Committee (“NWNWSFC”) currently make reference to section 37 of the 1986 Act and, as that is no longer relevant, those references need to be removed. The Byelaws of the former Sea Fisheries Committees have (since 1 April 2010) effect, to the extent that the provisions could have been made by the Welsh Ministers in a Statutory

Instrument, as a result of Article 13 of and Schedules 3, 4 and 5 to the Marine and Coastal Access Act 2009 (Commencement No.1, Consequential, transitional and Savings Provisions) (England and Wales) Order 2010 (S.I. 2010/630 (c.42)).

3.5 The Marine and Coastal Access Act 2009 (Consequential Provisions) (Wales) (No. 2) Order 2010 removes references to section 37 of the Salmon Act 1986 in byelaws 24 and 25 of the former NWNWSFC and is made by the Welsh Ministers pursuant to section 188(1) and (2)(d) of the Marine and Coastal Access Act 2009. The functions under section 188 (1) and (2)(d) have been conferred directly on the Welsh Ministers.

3.6 Both instruments are being progressed through the negative resolution procedure.

#### **4. Purpose & intended effect of the legislation**

4.1 It has long been recognised that it is appropriate to regulate the use of fixed engines in sensitive areas such as estuaries. In these environments, sea fish are constrained into relatively narrow channel areas at all states of the tide, which renders them vulnerable to capture by 'barrier' methods. Short term, 'local' stock depletion could occur if fixed engines (and other similar fishing methods) are not regulated appropriately. In more exposed intertidal beach areas it is also appropriate that fixed engines do not form continuous barriers to fish movement and so spatial restrictions are employed.

4.2 In general terms fixed engines include any fixed implements or engines used for taking fish and fixed nets which are secured by anchors, made stationary in any other way or placed or suspended in any inland waters or tidal waters and used for the taking of fish.

4.3 At present, section 6 of the Salmon and Freshwater Fisheries Act 1975 provides that any person who places or uses an unauthorised fixed engine in any inland or tidal waters is guilty of an offence. An "authorised" fixed engine includes one which has been authorised by Byelaws made by a local fisheries committee or by the Environment Agency while exercising the powers of the local fisheries committee.

4.4 Section 6 of the Salmon and Freshwater Fisheries Act 1975 is to be repealed by section 233 of and paragraph 4 of Schedule 16 to the Marine and Coastal Access Act 2009 on 1<sup>st</sup> January 2011.

4.5 Consequently, in order to preserve the current level of regulation of the use of fixed engines, new legislation is now required. The new Sea Fish (Specified Area) (Prohibition of Fixed Engines) (Wales) Order 2010 has the effect of replicating the provisions of section 6 of the Salmon and Freshwater Fisheries Act 1975. It prohibits the use of fixed engines in

relation to fishing for sea fish subject to a number of exemptions which include those authorised by Byelaws of the former Sea Fisheries Committees and the Environment Agency when exercising functions of the Sea Fisheries Committees.

4.6 The byelaws of the former Sea Fisheries Committees have (since 1 April 2010 ) effect, to the extent that the provisions could have been made by the Welsh Ministers in a Statutory Instrument, as if they were made by the Welsh Ministers in a Statutory Instrument, as a result of Article 13 of and Schedules 3, 4 and 5 to the Marine and Coastal Access Act 2009 (Commencement No.1, Consequential, Transitional and Savings Provisions) (England and Wales) Order 2010 (S.I. 2010/630 (c.42)).

4.7 The Marine and Coastal Access Act 2009 (Consequential Provisions) (Wales) (No. 2) Order 2010 makes consequential amendments to the former NWNWSFC Byelaws 24 & 25 to remove references to section 37 of the Salmon Act 1986. Byelaw 25 of the former NWNWSFC Byelaws relates to drift nets, and not to fixed engines, and consequently, rather than include the necessary consequential amendments in the Fixed Engines Order, it was felt more appropriate to make a separate Order removing references to section 37 of the Salmon Act 1986 from the operative parts of the byelaws.

## **5. Consultation**

5.1 No consultation was undertaken as no changes in policy were being made. The Sea Fish (Specified Area) (Prohibition of Fixed Engines) (Wales) Order 2010 maintains the status quo and the Marine and Coastal Access Act 2009 (Consequential Provisions) (Wales) (No.2) Order 2010 makes minor consequential amendments.

## **6. Regulatory Impact Assessment (RIA)**

6.1 No Regulatory Impact Assessment was undertaken as the Order retains the status quo and so no new impact on the public, private or voluntary sector is foreseen.