

## **Explanatory Memorandum to Menai Strait (East) Mussel and Oyster Fishery Order 2022.**

This Explanatory Memorandum has been prepared by Marine and Fisheries Division and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of **Menai Strait (East) Mussel and Oyster Fishery Order 2022**. I am satisfied the benefits justify the likely costs.

**Lesley Griffiths AS/MS**

**Minister for Rural Affairs and North Wales, and Trefnydd**

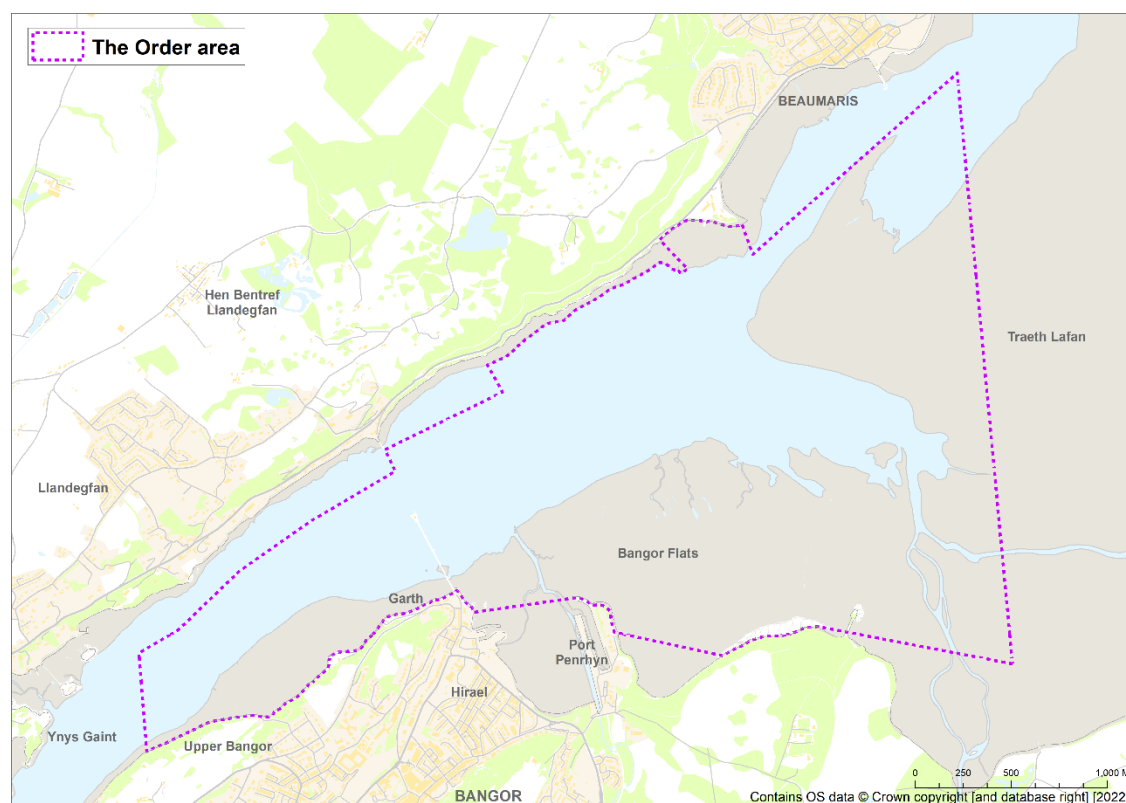
4 March 2022

## PART 1

### 1. Description

1.1 This Order confers on the Grantee a right of several and regulated fishery for mussels (*Mytilus Edulis*) and oyster (*Ostreidae*) over an area of approximately 694.48 hectares (ha) in the Menai Strait (East), for a period of 35 years.

1.2 An illustrative map of the Order area is included below:



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

2.1 None.

### 3. Legislative background

3.1 The Order is made under Sections 1 and 4 of the Sea Fisheries (Shellfish) Act 1967 (c83) (“the 1967 Act”).

3.2 Section 1(1) of the 1967 Act provides that the Appropriate Minister may, on application, provide by order for the establishment or improvement, and for the maintenance and regulation, of a fishery for shellfish of any kind specified in the order. The order can cover any portion of the seashore and bed or estuary or tidal river within 6 nautical miles of the baselines.

3.3 Functions of the appropriate Minister under the section 1, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672 article 2, Schedule 1). Those functions have since been transferred to the Welsh Ministers by virtue of section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

3.4 Section 1 (3) of the 1967 Act provides that an order may confer both a right of several fishery and a right of regulating fishery with respect to the remainder. Section 3 confirms the effect of a right of several fishery is that the Grantee of an order has the exclusive right of depositing, propagating, dredging, fishing for and taking shellfish of the type described in an order. Section 4 confirms the effect of a right of regulating a fishery is to that the Grantee of the Order can enforce the fishing rights given and also put restrictions upon it, for example issuing licences to gather.

3.5 The Order follows the Senedd's negative resolution procedure.

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

4.1 A hybrid Fishery Order (several and regulating) was granted to the North West and North Wales Sea Fisheries Committee for the production of mussels and oysters at the east end of the Menai Strait (Menai East), under the Sea Fisheries Act 1868, for a period of 60 years in 1962.

4.2 When the North West and North Wales Sea Fisheries Committee was abolished in 2010 (by provisions of the Marine and Coastal Access Act 2009) the Committee's functions, property, rights and liabilities under the 1962 Act were transferred to the Menai Strait Fishery Order Management Association (MSFOMA). Its objectives include, amongst others, meeting all statutory obligations as a grantee under the 1962 Order in exercising its duties and responsibilities arising out of the fishery legislation

4.3 The current legislation, the Menai Strait Oyster and Mussel Fishery Order 1962, will expire on 2 April 2022.

4.4 The new Order, the Menai Strait Oyster and Mussel Fishery Order 2022, will come into force on 2 April 2022 enabling the long-standing and economically important Menai East fishery to continue with its current conferred rights.

4.5 A Several Order confers a right on the grantee, subject to any restrictions and exceptions, of depositing, propagating, dredging, fishing for and taking of specified shellfish within the limits of the fishery. A Several Order transfers legal ownership of the shellfish to which it applies to the grantee. This arrangement provides a secure basis for aquaculture.

4.6 A Regulating Order confers a right of regulating a fishery, permitting the person on whom the order is granted ("the grantee") to impose restrictions on dredging, fishing for and taking of any specified shellfish within the limits of the

regulated fishery, or part of the fishery, within which the right is exercisable. This arrangement is generally used to regulate a natural fishery, with the grantee of the Order acting as the regulator.

4.7 The new Order will confer on the Grantee a right of several and regulating fishery for the cultivation of mussels and oysters within an area of approximately 694.48ha, in the eastern Menai Strait for a period of 35 years from 2 April 2022.

## 5. Consultation

5.1 In accordance with Schedule 1 of the 1967 Act a one-month public consultation was launched on 8 April 2021 on the Menai Strait (East) Oyster and Mussel Fishery Order, which ran until 8 May 2021.

5.2 The consultation asked for any objections or representation concerning the draft Fishery Order should be made in writing to the Welsh Government's Marine and Fisheries Division.

5.3 The proposed Fishery Order was published in the Fishing News, Daily Post and Western Mail and was available on the MSFOMA website. It was also published on the Marine and Fisheries section of the Welsh Government website.

5.4 A total of 24 responses were received. The responses showed:

<b>Responses received</b>	<b>Number</b>	<b>Percentage of responses</b>
In support	6	25%
Objections	8	33%
Queries	4	17%
Neutral/No Comment	2	8%
Comments	4	17%

5.5 As these figures suggest, only 33% of those who responded to the consultation actively opposed the making of the proposed Order. Many of the objections failed to provide any evidence in support of their objection. Other objections were not relevant to the content of the Order.

5.6 Several responses in support of the proposal were also received, along with neutral responses who, whilst not voicing support, had no objection to the proposals. These respondents felt there would be little impact as the proposed Order is merely replicating the current arrangements.

5.7 A full summary of responses will be made publicly available.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **6. Options**

6.1 Three options have been considered in relation to the Order:

- Option 1 – Make an Order with a modified boundary, to exclude areas subject to objection from the fishery;
- Option 2 – Make the Order as applied for; or
- Option 3 – Reject the Order application.

Option 2 has since been rejected due to a total absence of fishing activity in some areas of the fishery and a lack of intention to begin fishing it again, and following objections raised by those using recreational craft in these areas.

The options considered in this assessment are therefore:

#### **Option A – Make the Menai Strait (East) Oyster and Mussel Fishery Order, with a modified boundary.**

6.5 This would grant MSFOMA a right of several fishery and of regulating a fishery for mussel and oyster over a smaller area than applied for, for a period of 35 years.

6.6 Such an Order would safeguard all the current mussel production along with the economic activity and employment it supports in its entirety.

#### **Option B – Reject the Order**

6.7 A decision to reject the Order would fail to give the leaseholders and operators of these companies the protection necessary to secure investments, develop the businesses and safeguard or increase employment.

6.8 Rejecting the Order would also be contradictory to the Welsh National Marine Plan aquaculture sector objective to facilitate the development of sustainable aquaculture, including shellfish.

### **7. Costs and benefits**

#### **Option A – Make the Menai Strait (East) Oyster and Mussel Fishery Order, with a modified boundary.**

7.1 This option will allow the fishery to continue production as it currently does, ensuring that existing businesses are safeguarded and that further investment can take place. The fishery currently provides for the operation of several successful companies, with a turnover of up to £4 million per annum and skilled employment of around 20 FTEs.

7.2 In the short term it is expected the fishery will operate as it does at present, with eight privately leased lays and regulated fishery areas, but with the flexibility to adapt to demand and fishery conditions. The proposal ensures a source of income for the industry and provides benefits to the local area through its contributions to the local economy. Ensuring that this fishery is present in years to come will contribute to the local area, provide employment and help to combat poverty.

7.3 This option will result in a reduction of the overall size of the Order area from 763.24ha to an area of 694.48ha. This modification will not change or otherwise affect the leased lays in the Order area. The areas removed reduce the size of the potential regulated fishery area.

7.4 Furthermore, there may also be environmental benefits as shellfish are known to sequester CO<sub>2</sub> during shell growth, as well as improvements in water quality.

7.5 A Habitats Regulation Assessment (HRA) has been undertaken in relation to the proposed activities and all adverse effects were ruled out. A HRA is updated every 7 years in order to ensure that current scientific knowledge is considered and utilised.

7.6 This option would not be expected to result in net economic change or additional costs to Welsh Government.

### **Option B – Reject the Order**

7.7 This option would fail to give the leaseholders and the companies the protection necessary to secure investments, develop the businesses and safeguard or increase employment.

7.8 Rejecting the Order would be contradictory to the Welsh National Marine Plan aquaculture sector objective to facilitate the development of sustainable aquaculture, including shellfish.

7.9 Furthermore, neither the HRA process, NRW or other scientific and environmental sources have found any adverse impacts, which could not be mitigated, of the fishery on the site, such as to be reason to reject the Order. Rejecting the Order may have a negative effect on the fishery as the mussel stock is enhanced by the adding of seed mussel. Should this activity cease the mussel stock will gradually decline, which may result in a decline of biodiversity.

7.10 If the Order were rejected the regulated fishery area would no longer be managed by MSFOMA and would instead revert to being a public fishery. This would mean the area would be covered by the Cockles and Mussels (Specified Area) (Wales) Order 2011, which states any person who wished to gather in excess of 5kg of mussel per day would be required to apply for a permit to do so from the Welsh Minister. The financial and resource burden for issuing permits would fall to Welsh Government.

7.11 Rejecting the Order would not prevent the current leaseholders from continuing their operations, however, this would be without the protection and legal ownership of the mussel provided by the Order.

7.12 It is possible rejecting the Order could lead to opportunities for another applicant to apply for a several order, or choose to operate a business without one, in this area. However, nobody submitted a representation or objection to the consultation exercise on that basis. Furthermore, we do not have evidence of the current Order restricting or preventing other activities, which would otherwise take place if the fishery order were not in place.

7.13 Furthermore, these opportunities could be short-lived if the fishery if there were no management of the fishery. While relayed seed mussels grow on well and ranching of mussels has been very productive, the area is not highly productive for wild mussels. There could be risk to both the fishery and the environment if new activities were not carried out sustainably.

### **Summary of the preferred option**

7.14 The preferred option is Option 1, bringing into force a new Order, the Menai Strait Oyster and Mussel Fishery Order 2022.

7.15 This would ensure production continues, existing businesses are safeguarded and further investment can take place, enabling the long-standing and economically important Menai East fishery to continue with its current conferred rights.

7.16 This option would be in line with the Welsh National Marine Plan aquaculture sector objective to facilitate the development of sustainable aquaculture, including shellfish.

## 8. Competition 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?	Yes
<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 firms?	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

“Yes” is answered to only 1 question, suggesting the regulation is unlikely to have a significant detrimental effect on competition.

It is anticipated the fishery will continue to operate as it does at present, with 8 privately leased lays and regulated fishery areas, but with the flexibility to adapt to demand and fishery conditions.

## 9. Post implementation review

The effect of the Fishery Order will be monitored as follows:

1. Section 23 of the proposed Order requires the Grantee to submit accounts of income and expenditure on an annual basis and that persons authorised by the Welsh Ministers must be allowed to inspect the Order area, accounts and any other documents relating to the Order;
2. Section 24 of the proposed Order requires the Grantee to submit an annual catch return to the Welsh Ministers; and



3. The requirement to review the Habitats Regulation Assessment (HRA) every 7 years, this being the maximum period over which a HRA can conclude there will be no adverse effects on any European Marine Site.