

Explanatory Memorandum to the Cockles and Mussels (Specified Area) (Wales) Order 2011

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 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Cockles and Mussels (Specified Area) (Wales) Order 2011.

ALUN DAVIES

Deputy Minister for Agriculture, Food, Fisheries and European Programmes

10 August 2011

1. Description

1.1 This Order prohibits commercial hand gathering of cockles and mussels in north Wales without a permit granted by the Welsh Ministers.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

2.1 None

3. Legislative background

3.1 The Order is made under sections 189(1) and 316(1) of the Marine and Coastal Access Act 2009 (c23) (“the 2009 Act”).

3.2 Section 189(1) provides that “...*the Welsh Ministers may by order make any provision in relation to Wales which the authority for an IFC district may make for that district by a byelaw...*”.

3.3 Section 189(2) of the 2009 Act provides that the Welsh Minister can only use the power in sub-section (1) where they have no other powers available for making the proposed provision. We are content that there are no other powers available under which the Minister could impose a permitting regime upon every person fishing for these species (including hand gatherers).

3.4 The provisions that an authority for an IFC (Inshore Fisheries and Conservation) district may make Byelaws are set out in section 156 of the 2009 Act and subsection (4) enables IFCA's to make “...*provision prohibiting or restricting the exploitation of fisheries resources without a permit issued by an IFC authority, including-*

- a. *provision for the charging of fees for permits;*
- b. *provision enabling conditions to be attached to a permit;*
- c. *provision enabling an IFC authority to limit the number of permits issued by it.*”.

3.5 Section 316(1) of the 2009 Act enables the Welsh Ministers to make provision for incidental and consequential provisions in the Order (made primarily under section 189 of the 2009 Act) and this power will be relied upon to revoke Byelaw 5 of the former North Western and North Wales Sea Fisheries Committee (which this Order replaces) and remove references to the same from the Marine and Coastal Access Act 2009 (Commencement No. 1, Consequential, Transitional and Savings Provisions) (England and Wales) Order 2010 (SI 2010/630 (c.42)).

3.6 This Order is subject to negative resolution procedure (pursuant to section 316(8) of the 2009 Act) which means (s 316(10)) that it is subject to annulment by resolution of the Assembly.

4. Purpose & intended effect of the legislation

- 4.1 On the 1 April 2010 the Sea Fisheries Regulation Act 1966 was repealed in relation to Wales and the two Sea Fisheries Committees (“SFCs”) which were operational around the Welsh coast were abolished. Those SFCs had introduced a number of Byelaws over many years to manage the local fishing industry and protect the environment. Those byelaws now have effect as if made by the Welsh Ministers in a Statutory Instrument (pursuant to 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).
- 4.2 The former North Western and North Wales Sea Fisheries Committee controlled the exploitation of local mussel and cockle stocks throughout its district under Byelaw 5 (‘Permit to fish for cockles (*Cerastoderma edule*) and mussels (*Mytilus edulis*)). Under that Byelaw it is prohibited (subject to the following exceptions) to remove cockles or mussels from fisheries in north Wales without a permit. The exceptions mentioned above are that the Byelaw does not apply to any person who gathers less than 5kg of cockles and 5kg of mussels for personal consumption in any one day or any person who gathers cockles or mussels from a licensed fishing vessel. The Byelaw was introduced in 2009 for a 2 year period and the current permits (and the Byelaw itself) will expire on the 31 August 2011.
- 4.3 This Order preserves the provisions of Byelaw 5 (by revoking and remaking its provisions). This will prevent the unregulated exploitation of cockle and mussel stocks in north Wales while a detailed review of these provisions is undertaken with a longer term management plan being developed and consulted upon.

5. Consultation

- 5.1 No consultation took place in relation to this transitional Order as we are simply extending the current provisions (without further change to the substance of the same) whilst the longer term replacement provisions are developed. There has, in effect, been no change of policy in this area. The long term management solution will be developed in partnership with the relevant stakeholder groups and full consultation will be carried out in due course.

6. Regulatory Impact Assessment (RIA)

- 6.1 No RIA has been completed, the current provisions are being maintained and no change is being imposed. There is no impact on the statutory provisions outlined in the Government of Wales Act 2006 (c32) sections 77-79 or the statutory partners, sections 72-75 of the 2006 Act.

