

Explanatory Memorandum to The Sea Fishing (Miscellaneous Amendments)(Wales) Order 2018.

This Explanatory Memorandum has been prepared by the Marine and Fisheries Division 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 Sea Fishing (Miscellaneous Amendments)(Wales) Order 2018.

Lesley Griffiths AM
Cabinet Secretary for Energy, Planning and Rural Affairs

18 October 2018

Description

1. This Order amends the following existing pieces of fisheries legislation in order to correct errors and update references to the relevant EU legislation following the introduction of Council Regulation (EC) No 1224/2009:
 - The Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites (Wales) Regulations 2006
 - The Tote (Prohibition of Fishing)(Wales) Order 2008
 - The Shrimp Fishing Nets (Wales) Order 2008

Matters of special interest to the Constitutional and Legislative Affairs Committee

2. None.

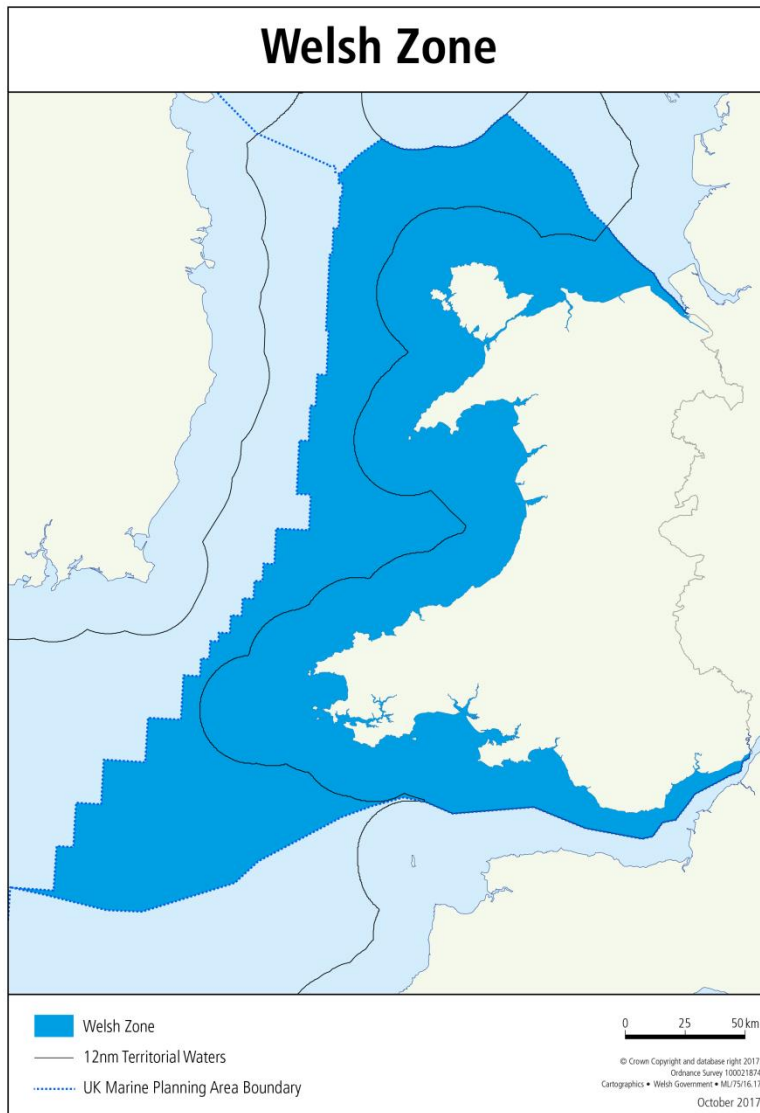
Legislative background

3. This Order is made in exercise of the powers conferred by Sections 5(1), 5(6), 6(1), 6(1A) and 15(3) of the Sea Fish Conservation Act 1967 and Section 2(2) of, and paragraph 1A of Schedule 2 to the European Communities Act 1972.
4. The Order follows the negative resolution procedure (pursuant to section 316(8) of the 2009 Act).

Purpose & intended effect of the legislation

5. The Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites (Wales) Regulations 2006 No.1495 (W.145), provides that any individual or company purchasing first sale fish for commercial purposes must be a registered buyer of fish and provide sales notes to Welsh Government. The submission of sales notes is the main mechanism for monitoring the exploitation of fisheries resources to ensure compliance with national quotas. This is an important part of the audit process to ensure all fish landed in Wales is legitimately sourced.
6. The Registration of Buyers and Sellers (RBS) is an EU requirement through the Common Fisheries Policy and associated Control Regulations. Member States are required to ensure this requirement is met through domestic legislation where necessary.
7. The above Statutory Instrument (No.1495 (W.145)) currently makes reference to the former EU Regulations (Council Regulation (EEC) No. 2847/93 and Council Regulation 2371/2002) rather than the current Regulation (Council Regulation (EC) No 1224/2009). Therefore there is a significant risk the current regulations cannot be enforced until an amendment is made.
8. In addition, the 2006 SI extends to “Wales” but that term is not defined in the Regulations. Consequently, the Interpretation Act definition of “Wales” applies and the 2006 SI is, therefore, limited to the land mass of Wales only. A definition of “Wales” was omitted in error when those Regulations were originally made. Since that time the Welsh Zone has also been

created (as defined by the Government of Wales Act 2006 and illustrated below). The existing English Legislation (SI 2005/1605 as amended) does not apply to either Wales or the Welsh Zone.



9. At present, therefore, there is no Registered Buyers and Sellers regime which applies throughout the territorial waters of Wales or the Welsh Zone. The purpose of this legislation is to reinstate the regime and ensure it applies throughout the territorial waters of Wales and the Welsh Zone.
10. The Tope (Prohibition of Fishing) (Wales) Order 2008 No.1438 (W.150), prohibits fishing for Tope (a species of shark) in Welsh waters other than by rod and line. The Order also prohibits the landing of Tope caught by rod and line. It allows for a small by-catch for commercial vessels (45kg per day). The Order therefore prevents a targeted fishery, while allowing recreational rod and line vessels to target Tope for catch and release fishing. The Order currently references the previous Common Fisheries Policy and this reference needs updating to ensure it applies in Welsh waters.

11. The Shrimp Fishing Nets (Wales) Order 2008 No. 1811 (W.175) regulates the carriage and use of any fishing nets with mesh size between 16 and 31 millimeters. The Order applies to British fishing boats in Wales and prohibits them from carrying or using such nets, other than in certain specified circumstances. The Order currently references a previous EU regulation which lays down detailed rules for determining the mesh size and thickness of twine of fishing nets. This reference needs updating to the current EU regulation to ensure it applies in Welsh waters

Consultation

12. The amendments required are of a technical nature and do not alter the intended purpose of the specified Regulations. Therefore, no consultation process was considered necessary.

Regulatory Impact Assessment (RIA)

13. The amendments required within this regulation are of a technical nature and do not alter the intended purpose of the specified Regulations. There are no costs or benefits associated with its introduction, therefore there is not requirement to carry out a Regulatory Impact Assessment. This legislation has no impact on the statutory duties (sections 77-79 GOWA 06) or statutory partners (sections 72-75 GOWA 06)