

## **Explanatory Memorandum to the Prohibition of Fishing for Scallops (Wales) Order 2009.**

This Explanatory Memorandum has been prepared by the Fisheries Policy Branch of the Department for Rural Affairs and is laid before the National Assembly for Wales in accordance with Standing Order 24.1.

- (i) **Description** - This Statutory Instrument will extend the closed season for “fishing for, taking and killing of scallops” (*Pecten maximus*) during the period 1 November 2009 and 28 February 2010.
- (ii) **Matters of special interest to the Subordinate Legislation Committee** – None
- (iii) **Legislative Background** – The Order will be made under sections 5(1), 5A(1), 15(3) and 20(1) of the Sea Fish (Conservation) Act 1967. Functions under those sections have been transferred to the Welsh Ministers by the National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672) and section 162 of and para. 30 of Schedule 11 to the Government of Wales Act 2006). This SI follows the negative resolution procedure.
- (iv) **Purpose and intended effect of the legislation**

Scallop fishing has been established within Cardigan Bay and other parts of Wales for over 30 years. Most of the prime scallop beds are within the Cardigan Bay Special Area of Conservation (SAC) which was designated in 2002 although there are smaller pockets of scallop beds in other areas of the Welsh coastline. It is not possible to predict with any degree of certainty where the smaller scallop beds would exist.

There has been a significant increase in the weight of scallops landed (248 tonnes in 2005 to 3836 tonnes in 2008) and the number of vessels (6 Welsh vessels in 2005 to 18 vessels in 2008, plus an increase from 8 to 60 vessels from the rest of the UK) that prosecute the fishery in Wales over the last three years and the Minister for Rural Affairs sought advice from a scallop working group on future management of the fishery. The Department for Rural Affairs subsequently consulted on a set of measures to restrict fishing effort in the scallop fishery with the aim of ensuring its longer term sustainability and minimising the extent of damage that is being done to the Welsh marine habitat due to scallop fishing methods.

The measures proposed in the consultation will take 3 – 4 months to implement due to the legal requirement that they need to be lodged with the Commission (under the EC Technical Standards Directive) for a minimum ‘stand still’ period of three months. Scallop fishermen will also need time to adjust their gear to meet the new requirements. The purpose of this legislation is to extend the closed season for “fishing for, taking and killing of scallops” from the 1 November 2009, when it is currently due to open, to 28 February 2010.

By prohibiting all fishing for scallops in Wales until 28 February 2009 the new technical Statutory Instrument will have cleared the three month standstill period with the European Commission, and will subsequently be introduced.

Welsh fishermen will be affected by this prohibition, along with vessels from other parts of the UK who seasonally fish in Welsh waters.

- (v) **Implementation** – The scallop fishing industry are aware that restrictions are to be implemented for the coming season. There is a risk that any delay to implementation will result in a large number of scallop vessels seeking to prosecute the fishery as soon as possible in the season and may lead to prospective dredging for further scallop beds which may damage features that are important to the Welsh ecosystem.
- (vi) **Consultation** – On the 17 July 2009 a ten week consultation was launched to seek the views of all stakeholders on amending and supplementing Welsh scallop fishery management measures which presently exist. The formal consultation closed on the 25<sup>th</sup> September.

However, as the season is due to open again on 1 November and there is insufficient time to implement the technical measures before the season opens, it is imperative to keep the season closed until such measures can be implemented. A RIA was produced for the consultation.

## (VII) **Regulatory Impact Assessment –**

To extend the existing closed season for scallop fishing in all Welsh waters until such a time as new technical measures can be introduced. This is the only workable option as it provides time for measures to be implemented in accordance with the EC requirements for technical measures and for the scallop fleet to adjust to the new measures. It will also provide time for some scientific study to take place to identify areas that can be open to limited scallop dredging which should provide better opportunity

for the fleet. There are two main drawbacks for this approach – scallop dredging activity will be displaced to other parts of the UK and the local scallop vessels that cannot fish outside 12nm from shore will not be able to prosecute the fishery from 1 November and would be forced to find alternative ways of making a living / covering their costs.

Statistics indicate that the loss of earnings to the Welsh scallop vessels for the period of the 4 month prohibition will be in the region of £722,000. This figure being based on earnings averaged out per month for the 2008/9 season. The loss of earnings to non Welsh vessels will be in the region of £2.92 million – this figure is again based on average earnings per month during the 2008/9 season.

a) **Benefits –**

This Order will provide time for the technical measures in the consultation to be implemented and for the fleet to adjust.

The introduction of new measures will provide better protection of the scallop stocks and lead to greater sustainability for the future fishery. By minimising damage to the seabed and other features measures will lead to the creation of a healthier marine habitat which will in turn support the sustainability of other fisheries.

b) **Costs –**

There will be no additional costs. This Order will be enforced by shore and marine based fishery officers and surveillance aircraft under existing contracts and budgets.

c) **Competition Assessment –**

This Order will apply equally to all scallop fishers across the UK industry. No European Vessel has historic rights to fish for scallops within Welsh Waters. There will be no negative competitive impact arising from this Order. It does not restrict the ability of firms to choose a price, quality, range or location of their products, nor will it lead to a differentiation in costs between new and existing fishermen. The Order is unlikely to affect the market structure. No company has more than a 10% share of the Welsh Market.

d) **Consultation**

A formal consultation on the future management of scallop fisheries was launched in July 2009. The consultation period ended on the 25 September 2009.

The full range of marine stakeholders were included in the consultation. These included all registered fishermen in Wales and their representative bodies, UK fisheries and environmental NGO's, the Countryside Council for Wales and Natural England, UK scientific agencies, all UK fisheries administrations plus the Isle of Man and Ireland and relevant Welsh local authorities. The consultation document was also provided on the WAG website.

The consultation document detailed proposals that were agreed at the Welsh Scallop Working Group. The consultation exercise sought to alert stakeholders to the proposals and also capture the maximum response from those who had views on the changes to scallop management measures in Wales.

The consultation lasted 10 weeks.

There have been 61 responses received and a summary report of the consultation is included at Annex I.

The Order to be introduced is an interim measure which will regulate fisheries until the anticipated full technical Statutory Instrument is introduced on 1 March 2010.

#### **e) Post implementation review –**

The effects of the Order will be monitored and reviewed by the Rural Affairs Fisheries Unit at the end of December 2009. Given the limited duration of the Order it is unlikely that it will be amended.

#### **f) Summary -**

By prohibiting all scallop fishing in Wales until 28 February 2010 this Order will provide stopgap legislation preventing uncontrolled exploitation of Welsh stocks and continued damage to the marine habitat.

The Order will affect all UK catchers which have been historically involved in fishing for scallops in Welsh waters. However, the long term beneficiaries to the Order will be the fishermen themselves who stand to gain access to a sustainable fishery in Welsh waters (including access to waters with the SAC's) once enhanced technical measures can be introduced in March 2010. The option embodied in the Order is the only practical means of addressing

the requirement for longer term management for the scallop fishery in Wales.