

EXPLANATORY MEMORANDUM TO THE SCALLOP DREDGING OPERATIONS (TRACKING DEVICES) (WALES) ORDER 2012

This Explanatory Memorandum has been prepared by the Agriculture, Fisheries and Rural Strategy Division of the Welsh Government and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Member's Declaration

In my view this Explanatory Memorandum gives a fair and reasonable view of the expected impact of Scallop Dredging Operations (Tracking Devices) (Wales) Order 2012

I am satisfied that the benefits outweigh any costs

Alun Davies AM
Deputy Minister for Agriculture, Food, Fisheries and European Programmes

30 October 2012

1. Description

This order assists with the regulation of the Scallop Fishery in Wales by requiring certain British vessels carrying scallop fishing gear to install a Boat Tracking Device which allows the Welsh Government to ensure the fishing is taking place within the regulated areas.

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

This Order is being introduced in response to the need to ensure a sustainable fishery for scallops in Wales and in parallel enable Welsh Ministers to manage fishing activity in such a way as to protect marine sites designated for protection under European Directives, namely the *Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora*. Should Welsh Ministers fail to put in place adequate measures to protect these sites from damage the risk of infraction proceedings from the European Commission would be very high.

Section 18(2) of the Sea Fisheries Act 1968 provides that an Order made under any provision of this Act must be laid before National Assembly for Wales.

Functions of the Ministers, 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, art 2, Sch 1. Those functions have since been transferred to the Welsh Ministers by virtue of section 162 or and paragraph 30 of Schedule 11 to the Government of the Wales Act 2006.

3. Legislative Background

This Order is made under section 5(1) of the Sea Fisheries Act 1968 which provides the Welsh Ministers with the power to make provision by Order which regulates the conduct of, and safeguards, fishing operations and operations ancillary thereto, including provision with respect to the identification and marking of fishing boats and fishing gear.

The functions of the Ministers exercisable under section 5 of the 1968 Act were, 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, art 2, Sch 1 provided that the functions under section 5 relating to the identification and marking of fishing boats are exercisable by the National Assembly for Wales concurrently with any other Minister of the Crown by whom they are exercisable. Those functions have since been transferred to the Welsh Ministers by virtue of section 162 or and paragraph 30 of Schedule 11 to the Government of the Wales Act 2006.

4. Purpose and intended effect of the legislation

The Order will affect those UK registered fishing vessels wishing to catch scallops of the species *Pecten maximus* (King Scallop) in Wales (i.e. within 12 nautical miles).

The objective of this Order is to make mandatory the carriage of a fully functioning boat tracking system onboard all UK vessels fishing for scallops in Wales. The Welsh Ministers can then monitor the movements of vessels which engage in the fishery, and store the data. That data will enable further studies to be undertaken on scallop stocks in Wales with a view to informing fisheries managers how best to ensure the future of the fishery

The Welsh Government is committed to the development of viable and sustainable fisheries through an ecosystem based approach to fisheries management. The scallop fishery is one of the most successful, productive and high earning fisheries found in Welsh waters. It is therefore subject to intense fishing effort for the 6 month season is 'open'. The exploitation of the scallop stocks at the level which were occurring at pre-2010 levels would have inevitably led to overfishing and the subsequent collapse of the scallop stock had not management measures been introduced. The Scallop Fishing (Wales) (No 2) Order 2010 introduced a number of measures which aimed to restrict the fishing effort that could be exerted by vessels engaged in the fishery. It also defined several areas around the Welsh coastline where scallop dredging is prohibited. These areas were created in order to provide protection against scallop dredging inside several marine areas which Welsh Ministers have identified as requiring protection from the possible damaging impacts that certain fishing gears such as scallop dredges can inflict.

The prohibited areas detailed within the 2010 Order include several Special Areas of Conservation (SAC's) and a Special Protection Area (SPA), where Welsh Ministers have obligations under the EC Habitats Directive to protect identified flora, fauna and marine features from damage by such activities as scallop dredging. Scallop beds are found within several of the prohibited areas and there is evidence – both anecdotal and from recent prosecutions taken by Welsh Ministers against vessels that have been found scallop dredging illegally within the sites. Given the earning presently to be made in the fishery (up to £5,000 per day per vessel) then it cannot be ruled out that fishermen would deliberately fish in the prohibited areas when they know they are not monitored.

The efficiency of existing monitoring and surveillance of scallop dredging activities are limited because they require an almost permanent enforcement presence on the fishing grounds. This is a difficult commitment to meet because of the demands and costs to manpower and surveillance assets. The fishing vessel tracking technology which will be required by the Order will allow remote monitoring of vessel activity to within a few metres at 10 minute intervals. Such technology will allow the fisheries unit to better target enforcement and also provide very accurate assessments of individual vessel movements.

Should the Welsh Ministers not have an effective tool in place to monitor fishing activity there is a high risk that infraction proceedings from the European

Commission will result from a failure to protect the network of SAC's and SPA's which exist in Wales. Welsh Ministers would therefore have no alternative but the blanket closure of the scallop fishery in all of Wales in order to guarantee this protection. It is unlikely that the fishery could ever re-open without a vessel tracking system in place.

On 27th March 2012 the Deputy Minister for Agriculture, Fisheries, Food and European Programmes announced the Welsh Government's intention to introduce a system for monitoring scallop fishing vessel activity electronically. The Welsh Government's consultation on the future management of the scallop fishery launched in July 2009 included a section concerning the proposal to introduce such a system. The response from consultees was almost unanimously in favour, notably amongst fishermen and their representative organisations. The Welsh Government has successfully trialled the technology aboard a number of Welsh fishing vessels since the autumn of 2011. The Welsh Government is confident that a requirement upon UK vessels fishing for scallops in Wales to install the equipment aboard their vessels and ensure its operation will be effective.

Given the technical nature of the equipment and information technology involved there is a requirement that the Welsh Government must comply with a three month standstill period under the Technical Standards Directive, (Directive 98/34/EC Technical Standards and Regulations Directive). This three month standstill will mean that the Order cannot enter into force before the autumn of 2012.

Assessments of the Welsh Scallop Fishery

a) Fleet capacity and activity

Between 2006 and 2010 landing data indicated that the quantities of scallops landed in Wales had increased from 1,000 to 3,500 tonnes per season with a corresponding rise in value of catches from £1.4m to £4.1m. Given the limited number of UK vessels that are involved then vessel earnings over the 6-month season would be substantive. It is likely that many boats would have recorded earnings up to £200,000 per season per vessel. Such earnings will be many hundreds of percent above the average for similar UK vessels. The official statistics for 2011 have not yet been published but it is likely that global earnings from the Welsh fishery would have again seen an increase to something like £5m. With many sectors of the UK fishing industry faced with gradual decline due to reduced quotas this fishery remains extremely attractive to vessel owners.

Should the Welsh fishery be allowed to continue to expand with no monitoring system in place that allow evidence based management decisions to be made, scallop stocks will become overfished with a rapid and unstoppable population collapse will occur. The scallop grounds which can be fished in Wales are geographically small and a huge concentration of vessels in these areas will simply result in the stocks rapidly becoming exhausted. This is neither environmentally or economically sustainable.

b) Employment and associated services in the fishing industry

There are approximately 150 people employed aboard the vessels involved, additionally there are shore based support involving at least this number of people again in the processing and transport industries.

Scallop dredging is also a very fuel consuming method of fishing and the gear used is subject to considerable wear and tear. The associated running and maintenance costs of a scallop dredger therefore place heavy demands on engineering and fuel companies ashore.

Many vessels operate in Wales from remote ports and the employment and secondary support services which have developed are of increasing importance in the economically vulnerable areas which exist in such rural communities. Should the fishery collapse then many of these jobs and services will be lost.

c) Risks arising from illegal activity

Given the rewards to be gained and the widespread knowledge amongst fishermen that huge unexploited scallop beds are located in prohibited areas the risks of illegal fishing is very high. Not only would this result in damage to the protected areas but it also undermines the principles of fishing sustainability as part of a wider eco-system based approach to management.

Given the level of risk to the long term sustainability of scallop stocks and the very high likelihood of damage to the Welsh SAC's and SPA's through illegal fishing then Welsh Ministers would have no alternative but to introduce a permanent closure of the whole fishery in Wales.

d) Impacts of total closure on fishing industry

Given the fact that nearly all scallop catches in the area are taken within the 12 nautical mile zone of Wales this would effectively shut down the fishery with very little likelihood of it reopening due to the unacceptable risks faced by Welsh Ministers under their obligations with the Habitats Directive. A blanket closure would result in an estimated total loss of earnings of up to £8.5m per annum to the Welsh economy and the effects on rural communities would be considered catastrophic to the coastal communities.

e) Stakeholder support for vessel tracking technology

The Welsh Government Fisheries Unit has met extensively with Welsh fishermen and their representatives; their support for a vessel tracking system has been almost unanimous. UK fishermen's groups (notably the UK Scallop Group) have also indicated their support for the use of such technology. There has also been support from the Countryside Council for Wales (CCW), which is the Welsh Government's statutory nature advisor, for the technology and its future management potential in protected marine areas.

f) Fishing displacement

The permanent closure of scallop fishing grounds in Wales would undoubtedly lead to a displacement of the scallop fleet to fish to other areas where the fishery would be open. Locally, this will be outside the 12nm limit in areas of Cardigan Bay, but vessels could be expected to fish areas around the Isle of Man and further afield towards England and Scotland. All these areas have viable scallop fisheries that would remain open under The Scallops (Irish Sea) Order 1984. Local Statutory Instruments and Byelaws in England, Scotland, Northern Ireland and the Isle of Man may have other restrictions on local fisheries. The larger vessels do have the choice of moving further afield to other scallop grounds for example the English Channel, North Sea or West Scotland.

However, the smaller Welsh vessels dependant on the fishery would be unable to move to scallop fisheries elsewhere in the UK because of their size and would have little option but to increase their activity in the already over-subscribed crab and lobster fisheries currently undertaken in Wales.

5. Consultation

A formal consultation on the future management of scallop fisheries was undertaken by the Welsh Government in 2009 and a wide range of UK stakeholders were involved. Notably all registered fishermen in Wales, associated fishing businesses and their representative bodies, UK fisheries and environmental non-governmental organisations, the Countryside Council for Wales and Natural England, UK scientific agencies, the fisheries Administrations of the Isle of Man and the Republic of Ireland, all other UK fisheries administrations and the (relevant) local authorities of Wales,

The consultation document detailed proposals that were agreed at the Welsh Scallop Working Group. This group comprising of fishermen, the CCW, Bangor University School of Ocean Sciences and Welsh Government officials was set up by the in 2009 in response to concerns about the impacts of unregulated scallop fishing. In addition to seeking views on a number of proposals to take immediate effect the consultation exercise also sought to alert stakeholders to proposals on future management measures which included a system of electronic vessel tracking.

Approximately three quarters of respondents that replied on this issue agreed with proposals for vessel tracking of all scallop vessels operating in the Welsh fishery. Those that didn't agree felt that this was not necessary because all vessels over 15m in length already carried a system for making catch reports which are required under EC legislation. The Welsh Government subsequently looked at this system and found it to be inadequate for determining geographical location with timely accuracy (as the existing system reports positions only once every two hours). The Order provides for systems that will enable position reports to be sent every 10 minutes.

The proposed Order will pose a low risk that there will be a detrimental effect on small businesses and competition. It will apply equally to all UK scallop fishers across the industry. Although French vessels have access rights to the scallop fishery which exists in various parts of the Irish Sea they have not taken advantage of this opportunity.

6. REGULATORY IMPACT ASSESSMENT

Costs and benefits

The purpose and intention of the Boat Tracking System is to give wide ranging and long term benefits to the Welsh fishing industry, economy and environment. If scallop fishing activity were to remain at present levels then overfishing of scallop stocks would be inevitable with possibly detrimental impacts on flora and fauna within some European Marine Sites such as the Special Areas of Conservation.

It is generally considered that the UK scallop fishing fleet has difficulties in practicing voluntary self-regulation. This is due to the variations in fishing capacity and ability, spatial distribution of vessels and competition in harvesting scallops stocks and obviously the huge rewards to be had from illegal activity should it go undetected. Therefore this new Order would ensure a fair, evenly distributed industry that would be based on a recognised scallop stock. This would lead to a reliable and sustainable fishery for the future and, in time, encourage a sense of responsibility and ownership of the fishery which will lead to other ecosystem benefits such as supporting the sustainability of other types of fisheries.

A sustainable scallop fishery within Wales would also contribute increasing public awareness of environmental issues. A recognised, well managed, sustainable fishery has the potential to increase financially the value of the product and lead to improved profits for those who harvest, process and retail scallops.

It should be added that there are also additional benefits to the system in regard to safety of life at sea. The exact location and movements of vessels will be available to those given access to the system, as every individual vessel owner will be for their own boat. Additionally the information technology contained within the vessel tracking device software package is also designed to deliver other legislative requirements including the European Commission's fishing e-logbook. The owners of scallop vessels will therefore not have to purchase the equipment for this purpose which becomes mandatory later in 2012.

The costs to be incurred by the fishing industry were a central consideration of the Welsh Government when deciding on the introduction of fishing vessel tracking technology. The technology which has been decided on is considered 'low cost' mainly due to the fact that the data can be delivered by the mobile phone network rather than a satellite based system where transmission costs would have run into many thousands of pounds per annum to vessel owners. As a result the telephone and running costs are minimal – approximately £120 per year for continuous transmission. The purchase prices of the units and installation costs are currently

some £1,800 including VAT. This outlay of less than £2000 per vessel is considered acceptable when balanced against the earning which currently exist in the scallop industry (i.e. on average some £5,000 per day) and the longer term benefits which will derive from the measures to be introduced.

The system requires no technical or manual input from the crew of the vessel whilst it operates at sea.

Competition assessment

The Welsh Government has considered the relevant impacts on Small Firms that will arise from this Order. The conclusions are that the Order will apply equally to all scallop fishers across the UK industry and will not restrict or hinder 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 and no single company has more than a 10% share of the Welsh market.

See **Annex I** for completed Competition Filter.

Enforcement

Current levels of compliance with existing scallop legislation in regard to prohibited areas by fishermen are uncertain given the high value of the fishery but there is evidence that illegal fishing in these sites has occurred. Enforcement of the boat tracking system requirement will be carried out by Welsh Government fisheries enforcement officers and all costs will be met from current budgets

There will be no additional costs to other UK Administrations as a result of this Order.

Post implementation monitoring and review

The effects of the Order will be reviewed by the Fisheries Unit of the Welsh Government at the end of July 2013. This date will allow for a period of assessment of the success of the Order following the annual closure of the scallop fishery at the end of April 2013

APPENDIX I – Competition Filter Assessment

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

APPENDIX II

Groups/organisations that were directly consulted on tracking technology as part of the wider Welsh Scallop Consultation in 2009.

Anglesey and North Wales Fishermen Association	Joint Nature Conservancy Council (JNCC)	Seafish
Bangor University	Llyn Fishermen's Association	South East Inshore Fisheries Group
Bord Iascaigh Mhara (BIM)	Llyn Pot Fishermen's Association	South West Wales Fishing Communities Ltd (SWWFC Ltd)
Borth Community Council	Marine Conservation Society (MCS)	South Wales Sea Fisheries Committee (SWSFC)
Cardigan Bay Fishermen's Association	Marine Directorate (Scotland)	Wales Aqua and Subaqua Club (WASAC)
Cardigan Bay SAC Officer	Mwnt Dolphin Watch	Wales and West Coast Fish Producers Organisation
Centre for Environment and Fisheries Aquaculture Science (CEFAS)	National Federation of Fishermen's Organisations (NFFO)	Wales Environmental Link (WEL)
Ceredigion County Council	Natural England	Welsh Federation of Fishermen's Associations (WFFA)
Clyde Fishermen's Association	North Western and North Wales Sea Fisheries Committee (NWNWSFC)	Welsh Local Government Association (WLGA)
Clyde Inshore Fishery Group	Northern Ireland Marine Taskforce	Western Isles Fishermen's Association
Countryside Council for Wales (CCW)	Pen Llyn ar Sarnau SAC Officer	Whale and Dolphin Conservation Society (WDCS)
Dept. Agriculture and Rural Development (DARD NI)	Royal Society for the Protection of Birds (RSPB)	Wildlife and Countryside Link

Dept. Agriculture, Fisheries and Forestry (DAFF RoI)	Save our Seas	Wildlife Trusts
Dept. Agriculture, Fisheries and Forestry (DAFF IoM)	Scallop Association	WWF
Dept. of the Environment, Food and Rural Affairs (DEFRA)	Scottish Fisheries Council Sub-group	Friends of Cardigan Bay
Fishermen's Association Limited	Scottish natural Heritage (SNH)	Shellfish Association of Great Britain (SAGB)