

**(WG21-99)**

**The Whelk Fishing Permit (Wales)  
Order 2021**

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order, which applies in relation to Wales and the Welsh offshore region, makes provision for a permitting regime in relation to UK and foreign vessels fishing for whelk with pots in the Welsh Zone (the Welsh inshore region and the Welsh offshore region).

Articles 3 to 7 of the Order provide that a permit is required to fish for whelk in the Welsh Zone. An exception applies for vessels under 10 metres in length without means of propulsion or vessels used for recreation. Provision is made regarding entitlement to apply for a permit, the application process and the content, duration and requirements of a permit.

Articles 8 and 9 set out the approach to setting and adjusting the annual catch limit. The annual catch limit is the combined total maximum catch under all permits issued in any given permit period.

Articles 10 to 12 make provision about the conditions which may be attached to a permit. Article 12 provides for flexible conditions to be imposed on a permit which set the monthly catch limit restricting the amount of whelk that can be taken in a month during a permit period.

Articles 13 and 14 make provision about the suspension of fishing authorised by all permits in response to an emergency and the resumption of fishing following the suspension.

Article 15 makes provision about fees.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, a Regulatory Impact Assessment has been prepared as to the likely costs and benefits of complying with this Order. A copy can be obtained from the Welsh

Government, Marine and Fisheries Division, Cathays  
Park, Cardiff CF10 3NQ.

**(WG21-99)**

**The Whelk Fishing Permit (Wales)  
Order 2021**

*Made* 7 December 2021

*Coming into force in accordance with article  
1(2)*

The Welsh Ministers make the following Order in exercise of the powers conferred by sections 134A, 134B, 134C(1), and 316(1) of the Marine and Coastal Access Act 2009(2).

The requirements of sections 135 and 135(1A)(3) of the Marine and Coastal Access Act 2009 (consultation) have been satisfied.

**Title, commencement and application**

1.—(1) The title of this Order is the Whelk Fishing Permit (Wales) Order 2021.

(2) This Order comes into force on 10 December 2021 for the purpose of receiving and processing permit applications and on 1 March 2022 otherwise.

(3) This Order applies in relation to Wales and the Welsh offshore region.

**Interpretation**

2. In this Order—

“annual catch limit” (“*terfyn dalfa blynyddol*”) means the limit on the total amount of whelk that can be taken and retained in the Welsh Zone by the combined total of relevant vessels authorised by a

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(1) Sections 134A, 134B and 134C were added to the Marine and Coastal Access Act 2009 c. 23 by the Fisheries Act 2020 c. 22, Schedule 10, Part 2, paragraphs 6 and 17 (January 23, 2021).

(2) 2009 c. 23.

(3) Section 135(1A) was added to the Marine and Coastal Access Act 2009 c. 23 by the Fisheries Act 2020 c. 22, Schedule 10, Part 2, paragraph 18(4) (January 23, 2021).

permit during a permit period under articles 8 and 9;

“catch” (“*dalfa*”) means whelk which is taken and retained in the Welsh zone;

“monthly catch limit” (“*terfyn dalfa misol*”) means the catch limit under article 12;

“owner” (“*perchennog*”) includes a charterer;

“permit” (“*trwydded*”) means a permit issued by the Welsh Ministers under article 3;

“permit period” (“*cyfnod trwydded*”) means the period commencing 1 March each year until the end of February the following year;

“relevant vessel” (“*llestr berthnasol*”) means a fishing vessel which is—

(a) licensed under section 15 of the Fisheries Act 2020<sup>(1)</sup>; or

(b) licensed under section 17 of the Fisheries Act 2020;

“vessel master” (“*meistr llestr*”) in relation to a relevant vessel includes the person for the time being in command or charge of the vessel;

“whelk” (“*cragen foch*”) means shellfish of the species *Buccinum undatum*;

“Welsh inshore region” (“*rhanbarth glannau Cymru*”) has the meaning given in section 322 of the Marine and Coastal Access Act 2009;

“Welsh offshore region” (“*rhanbarth môr mawr Cymru*”) has the meaning given in section 322 of the Marine and Coastal Access Act 2009;

“Welsh zone” (“*parth Cymru*”) means the Welsh inshore region and the Welsh offshore region.

### **Requirement for permit**

**3.**—(1) The Welsh Ministers may issue a permit under this Order for the purposes of conserving whelk in the Welsh zone.

(2) A permit may be issued—

(a) in relation to a single permit period; and

(b) in relation to a single relevant vessel.

(3) No person may take and retain whelk or cause or knowingly allow or assist any other person to take and retain whelk in the Welsh zone except under and to the extent authorised by a permit but see article 4.

### **Exemption**

**4.**—(1) A permit is not required for a fishing vessel which is—

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(1) 2020 c.23.

- (a) less than 10 metres in length and which is not propelled by an engine or an electric motor; or
- (b) used wholly for the purpose of recreational fishing.

(2) In this article, “fishing vessel” means any vessel for the time being employed in sea fishing.

### **Persons entitled to apply for a permit**

5. Only the owner of a relevant vessel may apply for a permit.

### **Application for a permit**

6.—(1) An application for a permit may be made by—

- (a) submitting to the Welsh Ministers an application in such form as the Welsh Ministers may require;
- (b) providing a copy of the licence to fish under section 15 or 17 of the Fisheries Act 2020(1); and
- (c) providing any information that the Welsh Ministers consider is necessary to enable them to determine an application including information relating to—
  - (i) the vessel owner;
  - (ii) the vessel master;
  - (iii) the vessel.

(2) An application may be made—

- (a) in respect of the permit period which starts in March 2022, on or after 15 December 2021;
- (b) in respect of subsequent permit periods, on or after 1 December in the year preceding the year in which the permit period is due to start.

(3) Where a relevant vessel is owned by more than one person, a single application is required which details all of the owners.

(4) Where an applicant owns more than one relevant vessel, a separate application is required for each vessel.

### **Terms of a permit**

7.—(1) A permit—

- (a) authorises only the following persons to take and retain whelk in the Welsh zone—
  - (i) the permit holder;
  - (ii) the vessel master (if any);

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(1) 2020 c.23.

- (iii) the charterer (if any);
  - (b) authorises only the use of a pot as a means of fishing for whelk;
  - (c) authorises only the relevant vessel which is identified in the permit;
  - (d) is not transferable;
  - (e) may contain conditions relating to taking and retaining whelk in the Welsh zone;
  - (f) may be issued in duplicate to all joint owners of a relevant vessel in the case of shared ownership of the relevant vessel;
  - (g) may be issued in electronic form.
- (2) In this article “pot” means any pot, creel, trap or cage used to fish for whelk.

### **Annual catch limit for permit period before 2027**

**8.**—(1) The annual catch limit for each permit period mentioned in paragraph (2) is 5298 tonnes but see paragraphs (3), (4) and (5) which relate to setting or adjusting the annual catch limit.

(2) The permit periods mentioned in paragraph (1) are the periods which begin with—

- (a) 1 March 2022;
- (b) 1 March 2023;
- (c) 1 March 2024;
- (d) 1 March 2025; and
- (e) 1 March 2026.

(3) The Welsh Ministers may adjust the annual catch limit mentioned in paragraph (1) on the basis of data relating to the size of the whelk but see paragraphs (4) and (5).

(4) In relation to the permit periods mentioned in sub-paragraph (d) and (e) of paragraph (2), the Welsh Ministers may, in addition, adjust the annual catch limit on the basis of—

- (a) catch data relating to the abundance of the whelk;
- (b) any other information that the Welsh Ministers consider appropriate.

(5) In relation to the permit periods mentioned in sub-paragraphs (b) to (e), if the annual catch limit is exceeded in any permit period, a deduction may be applied to the limit in the subsequent permit period to compensate for the amount by which the annual catch limit is exceeded.

### **Annual catch limit for permit period from 2027 onwards**

**9.**—(1) In relation to the permit period commencing 1 March 2027 and for each subsequent permit period the Welsh Ministers will determine the annual catch limit in accordance with paragraphs (2) to (6).

(2) The Welsh Ministers will, before the beginning of the December preceding each permit period from the 2027 permit period onwards, publish a report determining the annual catch limit for the subsequent period (see paragraph 5).

(3) In determining the annual catch limit the Welsh Ministers will take into account—

- (a) scientific and survey data;
- (b) catch and landings data;
- (c) any advice from relevant scientific organisations;
- (d) any representations from the consultation mentioned in paragraph (4);
- (e) any other information that the Welsh Ministers consider appropriate.

(4) The Welsh Ministers will, in respect of the report mentioned in paragraph (2), consult—

- (a) permit holders; and
- (b) any other person who they consider appropriate.

(5) The Welsh Ministers will publish the report mentioned in paragraph (2) and any other relevant information they take into account in their determination of the annual catch limit under paragraph (3) on the Welsh Government's website.

(6) In relation to a permit period, if the annual catch limit is exceeded in the previous permit period, a deduction may be applied to the limit in the subsequent permit period to compensate for the amount by which the annual catch limit is exceeded.

### **Permit conditions**

**10.**—(1) A permit holder must comply with the conditions in paragraph (2) and any conditions attached to a permit under articles 11 and 12.

(2) It is a condition of a permit that—

- (a) a permit holder must notify the Welsh Ministers if the details relating to the relevant vessel change at any time during the permit period;
- (b) whelk which is taken and retained is whole whelk in its shell.

**11.**—(1) The Welsh Ministers may attach to a permit conditions which relate to—

- (a) information requirements, including—
  - (i) catch data;
  - (ii) statistical data;
  - (iii) stipulations about the accuracy of the data;
- (b) flexible monthly catch limits (see article 12);
- (c) any measures identified as a result of Conservation of Habitats and Species Regulations 2017(1) and the Conservation of Offshore Marine Habitats and Species Regulations 2017(2);
- (d) the fitting of specified equipment in a relevant vessel;
- (e) any measure which is considered necessary for the purpose of conserving whelk.

(2) The Welsh Ministers may modify or remove a permit condition.

(3) The Welsh Ministers will, before attaching a condition to a permit under paragraph (1) or modifying or removing a condition under paragraph (2), consult—

- (a) permit holders; and
- (b) any other person who they consider appropriate.

(4) The Welsh Ministers will notify the following persons of a decision under paragraph (1) to attach a condition to a permit or a decision under paragraph (2) to modify or remove a permit condition —

- (a) permit holders; and
- (b) any other person who they consider appropriate.

(5) A notification under paragraph (4) will include the reasons for the Welsh Ministers' decision under paragraphs (1) and (2).

### **Flexible monthly catch limit condition**

**12.**—(1) The amount of whelk that can be taken and retained is to be subject to a catch limit—

- (a) for each month during a permit period;
- (b) in respect of each relevant vessel authorised by a permit

in accordance with paragraphs (2) to (4).

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(1) 2017 No. 1012 as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 No. 579. There are other amending instruments but none is relevant.

(2) 2017 No. 1013 as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 No.579. There are other amending instruments but none is relevant.



(2) The Welsh Ministers may allocate a monthly catch limit of an amount that they consider appropriate to each relevant vessel authorised by a permit during a permit period in accordance with paragraphs (3) and (4).

(3) The monthly catch limit referred to in paragraph (2) must be allocated so that each relevant vessel authorised by a permit is subject to the same catch limit.

(4) In determining the monthly catch limit under paragraph (3) the Welsh Ministers may take into account—

- (a) catch data in the current permit period;
- (b) historic catch data;
- (c) fishing activity patterns;
- (d) the annual catch limit including whether it is likely to be exceeded;
- (e) any adjustment to the annual catch limit when fishing resumes under article 14.

### **Suspension of fishing**

**13.**—(1) The Welsh Ministers may suspend fishing authorised by all permits —

- (a) where they consider that exploitation of whelk in the Welsh zone is not sustainable; or
- (b) in the event of an emergency.

(2) The Welsh Ministers will notify the following persons of any suspension under paragraph (1)—

- (a) permit holders; and
- (b) any other person who they consider appropriate.

(3) A notification under paragraph (2) will include the reasons for the Welsh Ministers' decision under paragraph (1).

### **Resumption of fishing following suspension**

**14.**—(1) Where the Welsh Ministers decide that fishing may resume following their decision to suspend fishing under article 13, they may revise the previous annual catch limit determined under articles 8 or 9 and decide the monthly catch limit taking account of—

- (a) scientific or catch data;
- (b) any advice from relevant scientific organisations; and
- (c) any other information that the Welsh Ministers consider appropriate.

(2) The Welsh Ministers will notify the following persons of their decision under paragraph (1)—

- (a) permit holders; and
- (b) any other person who they consider appropriate.

(3) A notification under paragraph (2) will include the reasons for the Welsh Ministers' decision under paragraph (1).

## **Fees**

**15.**—(1) An annual fee for a permit in respect of the permit period which starts in March 2023 and in respect of subsequent permit periods is chargeable in respect of each permit.

(2) The Welsh Ministers will determine the fee for a permit.

(3) Before determining the annual fee, the Welsh Ministers will consult permit holders any other person who they consider appropriate regarding the proposed fee in relation to—

- (a) the permit period which starts on 1 March 2023; and
- (b) each subsequent permit period.

(4) The matters upon which the Welsh Ministers will consult include;

- (a) the methodology for calculating the fee ; and
- (b) the amount of the fee.

(5) In determining the annual fee the Welsh Ministers will take into account—

- (a) expenditure arising from management of the whelk fishery;
- (b) expenditure arising from any scientific surveys relating to the whelk fishery;
- (c) expenditure arising from the administration of the permits;
- (d) expenditure arising from processing permit holder data required by the Welsh Ministers;
- (e) expenditure arising from any analysis of landings and sales data;
- (f) the responses from any consultation under paragraph (4);
- (g) any other information which the Welsh Ministers consider is relevant in relation to the proposed fee.

*Lesley Griffiths*

Minister for Rural Affairs and North Wales, and  
Trefnydd, one of the Welsh Ministers

7 December 2021