

## SECTION 1. WHAT ACTION IS THE WELSH GOVERNMENT CONSIDERING AND WHY?

The Menai Strait (East) Oyster and Mussel Fishery Order expires on 2 April 2022. The Menai Strait Fishery Order Management Association (MSFOMA) applied for a new Order on 18 August 2018 to ensure production continues and further investment can take place, and to safeguard existing businesses. The proposed coming into force date of the new Order is 2 April 2022.

The proposed Order would cover an area of 694.48 hectares (ha) and would be made pursuant to section 1 (3) (c) of the Sea Fisheries (Shellfish) Act 1967.

In the short-term, the expectation is the fishery will operate as it does at present, with eight privately leased lays and regulated fishery areas, but with the flexibility to adapt to demand and fishery conditions.

The fishery directly supports around 20 full time equivalent (FTE) workers and since 2015 generates £1m - £4m annually for the Welsh economy<sup>1</sup>. This range includes a period of poor recruitment to the wild seed mussel beds, which constrained the quantity of seed mussel available for relaying in the fishery.

### Context

A Several Order confers a right on the grantee, subject to any restrictions and exceptions, of depositing, propagating, dredging, fishing for and taking of specified shellfish within the limits of the fishery. A Several Order transfers legal ownership of the shellfish to which it applies to the grantee. This arrangement provides a secure basis for aquaculture.

A Regulating Order confers a right of regulating a fishery, permitting the person on whom the order is granted ("the grantee") to impose restrictions on dredging, fishing for and taking of any specified shellfish within the limits of the regulated fishery, or part of the fishery, within which the right is exercisable. This arrangement is generally used to regulate a natural fishery, with the grantee of the Order acting as the regulator.

The current Order is a hybrid Order, which confers on MSFOMA both the right of regulating a fishery and of several fishery. The current Order operates eight privately leased lays under the several fishery, the designated area, with the remaining fishery area operating as a regulated fishery. Seed mussel is gathered from ephemeral beds elsewhere and is laid, cultivated and harvested within the protection of the several order. The focus in the several

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<sup>1</sup> Cefas figures "Aquaculture in Wales"

fishery lays has been on mussels (*Mytilus edulis*), although the terms of the Order allow also for the cultivation of oyster.

With the proposed Order the Welsh Government intends to enable MSFOMA to continue running the fishery. This will require the drafting of a new Order. Whilst this could be seen as a renewal, it is important to note this is a distinct new Order, which comes into force upon the expiration of the current Order. Therefore, any challenges made will be based solely on this Order, and not on the content or process of the previous Order.

## **Policy development and alignment with the Well-being of Future Generations (Wales) Act 2015**

### **Long term**

The Order as applied for is for a duration of 35 years. Although this is a longer term than is usual (standard is 7 years), MSFOMA's financial analysis justifies and supports a term of 35 years as it provides a long-term foundation for the businesses operating in the several fishery, which will enable them to secure the financial investment necessary for the businesses.

The proposed Order will support the continuation of a long-standing, sustainable and economically important fishery. The current leased lays provide for a turnover of up to £4 million per annum and skilled employment of around 20 FTEs. Additionally, the proposed Order will support various ancillary services, such as processors, restaurants and UK markets for Welsh mussel. Opportunities may exist in the future to increase the fishing effort, potentially expanding the number and diversity of the people involved. Possible future challenges may include the effects of climate change altering the temperature of the seawater in the Menai Straits to a level that may not be tolerated by the current biota, and this could, potentially affect the stock and its food sources.

In January 2021, the transition period for the United Kingdom leaving the European Union came to an end. Despite a deal being agreed between the UK and the EU, many fishing industries have suffered financially due to EU regulations regarding the export of Live Bivalve Molluscs (LBM) from class B waters. LBMs from class B require depuration or processing before human consumption.

Currently it is not possible for businesses to acquire an Export Health Certificate to export LBMs for class B water. To date, this issue has not been resolved. At present it is not possible to determine what the impact on the shellfish industry will be as this situation continues. Ongoing or further disruption to the shellfish industry could have severe financial consequences for the industry as a whole.

Although the current operating model is several fishery dominated the proposed Order would enable a shift to a balance between several fishery and regulated fishery or even become regulated fishery dominated depending on market forces. Whatever happens to the operating model, the flexibility of a hybrid Order would enable and facilitate integrated management and co-operation between those involved in the fishery in terms of husbandry, marketing and added-value products. It would enable local management and encourage engagement with local stakeholders to optimise the social and economic benefits of the fishery in uncertain times.

As a requirement of the Habitats and Species Regulations 2017 (the 2017 Regulations) the Welsh Government, in consultation with Natural Resources Wales (NRW), conducted a Habitats Regulations Assessment (HRA) of any potential adverse effects resulting from activities authorised by the new Order on European Marine Site features.

The maximum period over which a HRA can conclude there will be no adverse effects is 7 years and will, therefore, be subject to review every 7 years.

The HRA concludes the proposed Order will not adversely affect the integrity of any European Site.

The scope of the Order allows for the farming of oysters to be considered. Whilst no species of oyster is currently specified, the Pacific oyster (*Crassostrea gigas*), which is currently farmed in Menai West outside of a SO, is the likely choice.

In the event the Grantee of the Order proposed farming any species of oyster in the designated area, any development would be subject to the findings of a HRA to ensure there are no adverse impacts on any EMS.

## **Prevention**

The actions of this proposal will support and retain an appropriately managed fishery that supports local employment. MSFOMA will liaise and work with local businesses, leisure facilities and the public to ensure fishery activities do not negatively impact on the activities of these or their ability to thrive economically or socially.

With an Order in place, the Welsh Government can appropriately assess and monitor any activities or future developments to ensure the environment is protected both within and outside of the designated area.

The proposal ensures a source of income for the industry and provides benefits to the local area through its contributions to the local economy. Ensuring this fishery is present in years to come will contribute to the local area, provide employment and help to combat poverty.

## Integration

Broadly speaking, the intentions of the proposed Order will integrate with the aims of the Well-being of Future Generations Act 2015 by supporting a sustainable, resilient, well-managed fishery. The proposed Order will continue to support around 20 (FTE) jobs, local fishing communities and ancillary services, for example, shellfish processors.

**The proposed Order seeks to ensure the continuation of an active sustainable fishery for the life of the Order, supporting local employment opportunities in both fishing and associated industries. Integrating our approach with statutory nature conservation requirements to conduct a Habitats Regulations Assessment ensures the proposals consider any adverse impacts on protected European Marine Site features. Protection of such features will be integrated into lease and licence conditions, which all fishers must adhere to.**

## Collaboration

The Welsh Government has worked with the applicant throughout the development of this proposal. The intention of this collaboration was to make the proposed Order equitable and fit for purpose. The stakeholders have previously worked and negotiated with the local community and members of the Royal Yachting Association to put into place various mitigating measures to reduce conflict between the fishery activities and leisure, health activities and businesses in the immediate area, for example, the yachting/sailing club.

In analysing the responses to the public consultation, officials sought advice from relevant internal teams and NRW. Continued collaboration with fisheries science experts, NRW and the applicant will be essential to the success of the ongoing activities under the proposed Order.

## Involving and consulting stakeholders

The Welsh Government began working with the applicant in 2018 to develop a new Fishery Order.

In accordance with Schedule 1 of the 1967 Act the applicant undertook a one month public consultation between 8 April and 8 May 2021. The proposed Fishery Order was published in the Fishing News, Daily Post and Western Mail and was available on the applicant's website. It was also published on the Marine and Fisheries section of the Welsh Government website. Additionally, both the applicant and Welsh Government wrote to their stakeholders notifying them of the consultation.

The consultation on the making of the proposed Order ended on 8 May with a total of 24 responses received (**Table 1**); 33% objected, 25% were supportive and 42% were queries and comments which neither indicated support for nor objection to the proposed Order.

Table 1: Responses received

Responses received	Number	Percentage of responses
In support	6	25%
Objections	8	33%
Queries	4	17%
Neutral/No Comment	2	8%
Comments	4	17%

Representations were grouped into three groups: firstly, those relating to pleasure craft moorings and navigation ('disputed areas'), secondly those relating to environmental concerns and thirdly, a miscellaneous group.

MSFOMA invited the objectors to meet and discuss their concerns. Three of the four objectors who had expressed concerns over the boundary of the fishery area and the impact on moorings, met with MSFOMA and said they would withdraw their objection if the fishery area was modified to exclude the moorings ('the disputed area').

The concerns over the disputed areas have been mitigated by drafting the Order with a modified boundary which excludes the disputed areas from the fishery. In relation to the representations received on environmental matters, the majority of the matters raised have been considered as part and parcel of the HRA carried out in relation to the application. The HRA has not identified any adverse effects on the integrity of features in the fishery area, as resulting from the activities of the fishery under the Order. Representations on environmental matters not addressed by the HRA were considered separately, and are set out in earlier advice (MA/3342/21)

Finally, the miscellaneous queries were resolved directly with the representees and drafting suggestions were considered by Legal Services during the drafting of the Order.

A full summary of responses will be made publicly available.

*In addition to the five ways of working above, consider the following areas:*

## **Impact**

The primary purpose of the Order is to allow a long-established, profitable and sustainable industry to continue to operate, legally and exclusively, in the areas detailed within the proposed Order. The introduction of the proposed Order will support MSFOMA and the operators of the fishery to continue to invest in and manage this important fishery for future generations.

This will protect livelihoods and guarantee contributions to the Welsh economy. Whilst maintaining the status quo is, in itself, not a justification to avoid change, the track record of the fishery does indicate this is a worthwhile endeavour.

If the current Order were to expire, the mussel fishery would no longer be managed by MSFOMA, and would instead revert to being a public fishery. This would mean the area is covered by The Cockles and Mussels (Specified Area) (Wales) Order 2011, which states that any person who wished to gather in excess of 5kg of mussel per day would be required to apply for a permit to do so from the Minister.

As the mussel stock is enhanced by the adding of seed mussel by mussel lay holders within the designated area, should this activity cease the mussel stock will be substantially reduced along with the income and biodiversity benefits it generates.

Issuing the Order as proposed removes the financial and resource burden of issuing permits for the fishery from the Welsh Government and allows a group with a proven track record to continue running a successful fishery.

## **Costs and Savings**

The budget for Welsh Government resources engaged in this proposal will be met from within the Marine and Fisheries Directorate.

There are no additional costs. Any costs associated with the making of the proposed Order and the public consultation on the draft Order will be met by the applicant. Any costs incurred by Welsh Government in connection with the consultation, i.e. instructing a public inquiry, will be reimbursed by the applicant.

Any costs associated with managing the fishery under the Order will be met by the applicant.

## **Mechanism**

The proposed Menai Strait (East) Mussel and Oyster Fishery Order 2022 will be a Statutory Instrument introduced using Section 1 of the Sea Fisheries (Shellfish) Act 1967.

A full Regulatory Impact Assessment has been completed and is available.

## SECTION 8. CONCLUSION

(Please note that this section will be published)

### **8.1 How have people most likely to be affected by the proposal been involved in developing it?**

The Welsh Government began working with the applicant in 2018 to develop a new Fishery Order.

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Both the published notification of the consultation and the letters notifying stakeholders were issued bilingually, echoing Welsh Governments policy of supporting the Welsh language.

A total of 24 responses received; 33% objected, 25% were supportive and 42% were queries and comments which neither indicated support for nor objection to the proposed Order.

MSFOMA invited the objectors to meet and discuss their concerns. Three of the four objectors who had expressed concerns over the boundary of the fishery area and the impact on moorings, met with MSFOMA and said they would withdraw their objection if the fishery area was modified to exclude the moorings ('the disputed area').

The concerns over the disputed areas have been mitigated by drafting the Order with a modified boundary which excludes the disputed areas from the fishery. In relation to the representations received on environmental matters, the majority of the matters raised have been considered as part and parcel of the HRA carried out in relation to the application. The HRA has not identified any adverse effects on the integrity of features in the fishery area, as resulting from the activities of the fishery under the Order. Representations on environmental matters not addressed by the HRA were considered separately, and are set out in earlier advice (MA/3342/21)

Finally, the miscellaneous queries were resolved directly with the representees and drafting suggestions were considered by Legal Services during the drafting of the Order.

The final draft Order has been developed over a period of more than 18 months, including engagement with the applicant, internal stakeholders and NRW, and has been through a number of iterations.

## **8.2 What are the most significant impacts, positive and negative?**

The primary intention of this proposal is to support the continuation of a long-standing, sustainable and economically important fishery.

The Order area lies within the Eastern area of the Menai Strait, of which 625 hectares has been designated as 8 private mussel lays, where mussels can be cultivated. These lays are leased by the Menai Strait Fishery Order Management Association (MSFOMA) to private aquaculture businesses. Under the terms of their leases, the tenants have 'several rights' as private fishery owners within their individual lays. 'Spat' (mussel seed) is collected, when available, from natural seed beds in North Wales and elsewhere and redeposited onto the seabed within the lays in the Order area and are harvested when mature. Cultivated mussels are harvested by the use of vessels drawing 'dredges' across the mussels beds within the lays located in the Menai Straits. The Regulated areas are within the inter-tidal areas and can be opened to be fished via licences by means of hand-gathering when there is sufficient mussel to support the activity. Mussel seed is ephemeral in the water column and at time may be scarce in any particular area.

A significant positive impact is that the fishery can continue to operate legally, and within the scope and conditions laid down in a Habitats Regulations Assessment. These measures enable the operators and Welsh Government to mitigate any activities that could negatively affect the specially protected areas within the Menai Strait. The new Order will give assurance that the fishery will continue beyond the date that the current Order will expire in April 2022.

### **A description of the aspects of the environment likely to be significantly affected by the project:**

As detailed in the HRA, no adverse effects on the integrity of any European Marine Site have been identified as resulting from this proposed plan or project. That conclusion has been reached as a result of the "Test of Likely significant effect" (TLSE) and Appropriate Assessment made in compliance with Article 6.3 of EC Council Directive 92/43/EEC.

### **8.3 In light of the impacts identified, how will the proposal:**

- **maximise contribution to our well-being objectives and the seven well-being goals; and/or,**
- **avoid, reduce or mitigate any negative impacts?**

Given the scope of this proposal, there are limited impacts identified. Indeed, many of the impacts which would need addressing come from a failure to introduce this proposed Order



and maintain the current management scheme. This can be mitigated wholly by ensuring the proposed Order is put in place before the expiry of the current Order.

#### **8.4 How will the impact of the proposal be monitored and evaluated as it progresses and when it concludes?**

The proposed Order would be granted for a period of 35 years to allow for an economically viable business. The Order may, through the terms of a lease (several fishery) or licence (regulated fishery) impose conditions or restrictions on the holder, for example specifying the methods by which shellfish will be harvested, and different conditions may be applied to different parts of the Order area. Under the proposed Order MSFOMA will issue leases to shellfish farmers for 7-year periods. This will ensure Welsh Government officials have an opportunity at the end of each 7-year lease to review the Habitat Regulations Assessment and ensure it continues to be fit for purpose, based on a thorough scientific review of current ecological and environmental conditions in the Order area. If necessary, the Welsh Government may work collaboratively with MSFOMA to mitigate any observable negative impacts of continued operations.

MSFOMA have also laid down a number of control rules regarding harvesting from the Regulated (hand-gathering) area (below):

##### 1. Input controls

Licences shall only be issued to permit the removal of mussels from the Regulated Fishery if the Association has determined that fishing effort is sustainable in terms of the mussel stocks in the fishery, the quality of the environment, and the economic viability of mussel fishing in the Fishery Order.

##### 2. Output controls: if it is determined that the Association should issue permits for the Regulated Fishery:-

###### a. The Association may apply one or more of the following controls to the Regulated Fishery:-

- i. Total Allowable Catch (TAC) to ensure that the fishery removals are sustainable;
- ii. Spatial controls to limit the area where fishing is permissible; and
- iii. Temporal controls to limit the period when fishing is permissible.

###### b. The Association may determine a quota for each operator that may limit the quantity that they may gather in a specified period of time.

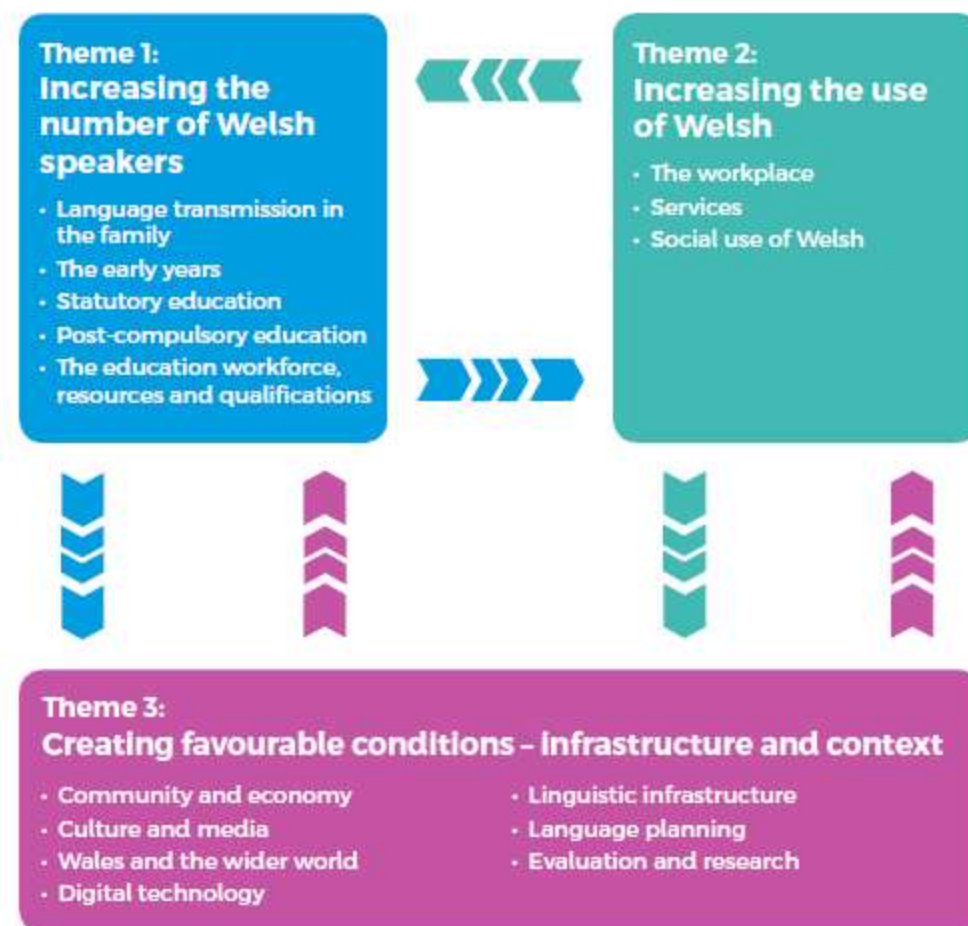
## A. WELSH LANGUAGE IMPACT ASSESSMENT

*Cymraeg 2050* is our national strategy for increasing the number of Welsh speakers to a million by 2050.

The Welsh Government is fully committed to the new strategy, with the target of a million speakers included in its Programme for Government. A thriving Welsh language is also included in one of the 7 well-being goals in the Well-being of Future Generations (Wales) Act 2015.

We also have a statutory obligation to fully consider the effects of our work on the Welsh Language. This means that any Welsh Government policy should consider how our policies affect the language and those who speak it.

The *Cymraeg 2050* strategy has three themes:



The headings under each theme outline the scope of activities that can affect the language.

As a general rule, if your policy has the potential to impact on people, it will impact in some way on Welsh speakers and therefore on the Welsh language.

1. Welsh Language Impact Assessment reference number (completed by the Welsh Language Standards Team, email: [Safonau.Standards@gov.wales](mailto:Safonau.Standards@gov.wales)): **01/07/2021**
2. Does the proposal demonstrate a clear link with the Welsh Government's strategy for the Welsh language? – *Cymraeg 2050 A million Welsh speakers* and the related Work Programme for 2017-2021?

Yes. By protecting industry in a Welsh-speaking area, this proposal creates a favourable condition for the Welsh language to thrive. As the industry has a number of Welsh speakers, providing economic support will allow them to continue working and living in a Welsh-speaking area and avoid outward migrating.

3. Describe and explain the impact of the proposal on the Welsh language, and explain how you will address these impacts in order to improve outcomes for the Welsh language. **How will the proposal affect Welsh speakers of all ages (both positive and/or adverse effects)? You should note your responses to the following in your answer to this question, along with any other relevant information:**

This proposal will have no adverse impact on the Welsh language. It will not affect Welsh education/services or the use of the Welsh language.

The Welsh language is spoken and maintained by many of the Directors, mussel farmers and other stakeholders in the fishery, and widely in the local community. The fishery, under the existing Several Order, has supported the tradition of mussel farming in the Menai Strait (East) for 60 years.

## **B. CHILDREN'S RIGHTS IMPACT ASSESSMENT**

(Please note that this Section will be published)

1. **Describe and explain the impact of the proposal on children and young people.**

There is no evidence to suggest this proposal will have an impact on children and young people.

As the proposed Order only concerns the mussel and oyster fishery in the Menai Strait, no full Children's Rights impact assessment is required.

**2. Explain how the proposal is likely to impact on children's rights.**

There is no evidence to suggest this proposal will have an impact on children's rights.

As the proposed Order only concerns the mussel and oyster fishery in the Menai Strait, no full Children's Rights impact assessment is required.