

## **Explanatory Memorandum to The Whelk Fishing (Wales) Order 2019**

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 Whelk Fishing (Wales) Order 2019.

I am satisfied that the benefits justify the likely costs.

Lesley Griffiths AM

**Minister for Environment, Energy and Rural Affairs**

25 June 2019

## **Description**

The new Statutory Instrument will increase the Minimum Conservation Reference Size (MCRS) of Welsh whelks. Their minimum size will increase from 45mm to 55mm from the date on which the Statutory Instrument comes into force, and further increasing to 65mm one year later. This measure will enhance the sustainability of the Welsh whelk fishery and will apply to all UK vessels which fish within the Welsh zone.

It will revoke the following legislation:

- Byelaw 11 of the former South Wales Sea Fisheries Committee and
- The part of Byelaw 19 of the former North Western and North Wales Sea Fisheries Committee that prescribes a 45mm minimum size for whelks.

## **Matters of special interest to the Constitutional and Legislative Affairs Committee**

The ability of an EU Member State to increase the MCRS for its vessels is contained within Article 46 of the Technical Conservation Regulation 850/1998. Officials have recently become aware that Article 46 of the Technical Conservation EC Regulation 850/98 will be repealed imminently.

On 13 June 2019 the EC's Employment, Social Policy, Health and Consumer Affairs Council approved the new Technical Conservation Regulation, which will replace Regulation 850/1998. The new regulation is expected to come into force at the end of June or the beginning of July 2019 (the exact date will be twenty days after its publication of the new Regulation in the Official Journal of the EU which has not yet occurred).

The replacement Technical Conservation Regulation does not include any equivalent power for Member States to legislate unilaterally in relation to an MCRS. The new EU legislation will provide a system whereby groups of Member states can submit proposals for conservation measures to the European Commission. Given that this is a Wales specific issue, no EU countries target whelks in Welsh waters and the UK intends to leave the EU, it is unlikely that any other EU state or the Commission will be interested in cooperating with us in using this regional mechanism.

Due to the timescales involved the Whelk Fishing (Wales) Order 2019 is being laid under the negative procedure with deviation from the standard 21 day laying day period. It is necessary to breach the 21 day rule to ensure the Order comes into force before the repeal of Article 46 of the Technical Conservation Regulation 850/1998.

## **Legislative Background**

Council Regulation (EC) No 850/98 provides for the conservation of fishery resources through technical measures, including the protection of juvenile marine organisms through specified MCRS. Currently EC Regulation 850/98 specifies the MCRS for whelks as 45mm (Article 17 and Annex XII to that Council Regulation).

In terms of our domestic legislation, Byelaw 11 of the former South Wales Sea Fisheries Committee specifies a 35mm riddle size but not the minimum size of whelk, hence the

byelaw is unenforceable. Byelaw 19 of the former North Western and North Wales Sea Fisheries Committee specifies a 45mm MCRS. Those Byelaws would be revoked (in as far as they related to whelk) as part of the proposed new legislation to increase MCRS in the Welsh zone.

Currently, the Welsh Government only has powers to raise the MCRS for UK vessels fishing for whelk in the Welsh Zone. The possibility of legislating for non-UK vessels will be considered in the light of the new legislative landscape post-Brexit.

The Order is being laid under the negative procedure with deviation from the standard 21 day laying day period. It is necessary to breach the 21 day rule to ensure the Order comes into force prior to the repeal of Article 46 of the Technical Conservation Regulation 850/1998.

### **Enabling powers**

To introduce the new MCRS and fishing/catch/landing limits, the Welsh Ministers will rely on domestic powers available to them under the Sea Fish (Conservation) Act 1967 ('the 1967 Act').

The 1967 Act powers are now exercisable by the Ministers in relation to Wales (see SI 1999/672) and the Welsh Zone (SI 2010/760). These domestic enabling powers will continue to operate post-Brexit.

Section 1(1) of the 1967 Act enables the Welsh Ministers to make an Order prescribing the minimum size at which any specified sea fish (includes shellfish) may be landed.

Section 1(3) allows for the imposition of restrictions on the carriage of any description of fish subject to landing restrictions under section 1(1).

Section 5(1) of the 1967 Act allows the Welsh Ministers to prohibit fishing for any specified description of sea fish.

Since the proposed measures relate to the conservation of marine biological resources, the UK (or in this case a part of the UK) can only act if EU law permits it to do so. Article 46 of Regulation 850/1998 provides the necessary power but requires the EU Commission be notified of the proposed conservation measures. In accordance with this provision the Commission were notified of the Whelk Fishing (Wales) Order 2019 on 18 June 2019 via the Department of Environment, Food and Rural Affairs. The Commission can delay and ultimately prevent the coming into force of the proposed measures where they do not comply with the other requirements of Article 46.

### **Purpose and intended effect of the proposal**

This new Statutory Instrument's provisions support the sustainable management of the Welsh whelk fishery. The Statutory Instrument will increase the MCRS of whelks, prohibiting fishing or carriage of any whelks below the new MCRS in the Welsh zone and landing of whelks below the new MCRS in Wales.

## REGULATORY IMPACT ASSESSMENT

1. This Regulatory Impact Assessment relates to the new Whelk Fishing (Wales) Order 2019. The new 2019 Order will increase the MCRS of whelk through the application of powers available in the Sea Fish (Conservation) Act 1967 the use of which is currently permitted by Article 46 of the Technical Conservation Regulation 850/98.
2. In recent years, due to the near doubling of the value of whelks, the fishery has been subjected to increased levels of fishing pressure. An inadequate MCRS combined with an increased level of fishing pressure threaten the long-term sustainability of the fishery, leaving the stock vulnerable to collapse.
3. Officials have recently become aware that Article 46 of the Technical Conservation EC Regulation 850/98 will be imminently repealed. That Article, among other things, allows Member States to introduce an MCRS greater than the EU minimum for their own fishing boats.
4. The replacement Technical Conservation Regulation does not include any equivalent power for Member States to legislate in this way. The new EU legislation will provide a system whereby groups of Member states can submit proposals for conservation measures to the European Commission. Given that this is a Wales specific issue, no EU countries target whelks in Welsh waters and the UK intends to leave the EU, it is unlikely that any other EU state or the Commission will be interested in cooperating with us in using this regional mechanism.
5. The new Welsh whelk MCRS legislation must be introduced before the Technical Conservation Regulation 850/98 is repealed or it is very unlikely we will be able to affect any change to the MCRS for Welsh whelks.

## Consultation

6. A consultation on management of the Welsh whelk fishery was held in 2017 and a Written Statement announcing the introduction of new measures was published in December 2018. The measures in the proposed SI do not significantly deviate from those consulted on at that time. If anything, the need to act has increased since the consultation was completed.
7. A total 89 Responses were received, many were supportive of the proposals put forward, with a number of responders also offering alternative measures for consideration. Copies of the consultation document and summary of response documents are available at: <https://gov.wales/proposed-sustainable-management-measures-welsh-whelk-fishery>
8. The consultation put forward several management options for the Welsh whelk fishery and a package of measures was announced in December 2018. These measures will

work towards ensuring the adequate protection and long-term sustainability of the Welsh whelk fishery.

9. The loss of powers due to the repeal of Regulation 850/98 means we need to secure an increase in the MCRS immediately. Separate legislation will introduce additional measures later in the year.

## **Options**

10. **Option A** – Do nothing: Continue to manage the Welsh whelk fishery under the current MCRS legislation. This could result in a collapse of the fishery due to too many juvenile whelks being fished before having an opportunity to reproduce.
11. **Option B** – Two stage increase in MCRS: This increase will occur in two parts with an immediate increase to 55mm from the date the Order comes into force, moving to 65mm within a year from the date the Order comes into force. This is a pragmatic approach to ensure the protection of immature whelks and enable them to develop and, in time, recruit to the fishery. This measure will apply to all UK vessels fishing within Welsh waters.
12. Given the concerns raised about the current unsustainable nature of the Welsh whelk fishery and the imminent loss of the ability to increase the MCRS under EU law, the Minister has agreed to the immediate introduction of an emergency SI to increase the MCRS of whelk.
13. Other management measures will be introduced separately.

## **Benefit to fishing industry**

14. The Welsh whelk fishery is currently being fished unsustainably. Whelks reach sexual maturity at different sizes, depending on environmental conditions. Scientific evidence indicates many Welsh whelks do not reach sexual maturity until after they exceed the current EU MCRS. Therefore, they do not have a chance to reproduce before they are fished.
15. The increase in MCRS will allow the whelk to reach sexual maturity and reproduce before they are fished.
16. Science officials have undertaken an aging assessment of whelks across Wales. The aging data shows that whelks of 45mm will reach 65mm within approximately 2 years. The proposed changes will affect catch levels for at least two years until the current 45mm whelk reach the new 65mm MCRS.
17. The new legislation will help promote long-term sustainable management of the fishery, in line with the principles of the Well Being and Future Generations Act and Prosperity for All: the National Strategy.

## Costs to Industry

18. There will be varying levels of impact on the phased increase in MCRS at differing regions in Wales. The evidence indicates that whelks reach sexual maturity at different sizes around areas of Wales. The size of maturity ranges from 45mm – 76mm.
19. Table 3.2b 'Landings into Wales by UK vessels: 2013 to 2017' from the UK Sea Fisheries Statistics 2017 Report indicates that UK vessels landed whelks worth a value £7.9 million in to Wales in 2017 (this figure does not include whelk caught in Wales but landed somewhere outside Wales by UK or foreign boats). The most up to date size profiling of whelks in 2013 indicated that whelks measuring 45-55mm account for approximately 3.5% - 23% of the overall fishery catch profile. Applying the 2013 size profiling to the 2017 landings data equates to approximately £0.3 – £1.8 million in value that could potentially be lost to the industry when the first phase of the new MCRS increase come into force as it will be prohibited to fish for, carry or land whelk in this size range.
20. In relation to the second whelk MCRS increase, whelks measuring 55-65mm account for approximately 9-45% of the overall fishery catch profile. Applying the 2013 size profiling to the 2017 landings data equates to approximately £0.7 - £3.6 million in value that could potentially be lost to the industry when the second phase of the new MCRS increase come into force as it will be prohibited to fish for, carry or land whelk in this size range.
21. The potential loss in value from catch to fishers during the initial two years could be significant in the short to medium term. However, this is balanced against the whelk growing through the size ranges from 45mm to 65mm in approximately two years. If we do nothing and the fishery collapses due to unsustainable fishing practices the value of landings would be expected to decrease significantly and in the long term.
22. Many processors of whelk pay on meat yield rather than on landed weight. In the medium to long term an increase in the size of the whelk and relative meat yield should lead to an increase the value of the fishery as the whelks grow through their size ranges.
23. The phased increase is set at a level which maximises the long term protection for the stock, while taking into account the economic impacts to fishers.
24. There will be a cost to fishers in purchasing/making new riddles to sort whelks by size. Currently most fishers in north and south Wales grade whelks with a riddle that allows the retention of > 45mm whelk
25. Replacement graders are estimated to cost £800 - £1000, therefore, for fishers who need to replace graders twice, the estimated cost will be £1600 - £2000. Based on average whelk landings and current market prices the replacement cost of £2,000 would equate to the value of approximately 0.95%-1.2% of average annual landings. Fishers' consultation responses preferred to have a phased increase to MCRS rather than a single increase.

## **Benefit to Welsh Government**

26. The proposed Order introduces the first in a package of management measures to enhance the long-term sustainability of the Welsh whelk fishery. The measure contributes to Welsh Government delivering our obligations under the Environment Act and Sustainable Management of Natural Resources (SMNR).

## **Costs to Welsh Government**

27. The financial implications of the introduction of this SI are covered by DRCs. There are no additional costs. The Marine & Fisheries Division MEOs will continue to monitor fishing activity and carry out enforcement activities.

## **Enforcement and Monitoring**

28. Routine compliance checks will be carried out at sea and at the point of landing to ensure MCRS requirements are adhered to.

## **Post Implementation Review**

29. The Marine & Fisheries Division MEO's will monitor the impact of the proposed measures and continue to monitor fishing activity and carry out enforcement activities.

## **Competition Assessment**

<b>The competition filter test</b>	
<b>Question</b>	<b>Answer yes or no</b>
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

The competition filter test	
Question	Answer yes or 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

### References:

Haig, J.A: et al 2015. The size at maturity for the common whelk, *Buccinum undatum* in Welsh Waters, with an industry perspective on the minimum landing sizes.

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Himmelman, J.H. and Hamel, J.r. (1993) Diet, behaviour and reproduction of the whelk *Buccinum undatum* in the northern Gulf of St Lawrence, eastern Canada. Marine Biology 430, 423-430