

EXECUTIVE NOTE

The Inshore Fishing (Prohibition of Fishing for Cockles) (Scotland) No 2 Order 2006

S.S.I. 2006/383

This instrument was made in exercise of the powers conferred by Section 1 of the Inshore Fishing (Scotland) Act 1984 (“the 1984 Act”). The instrument is subject to negative resolution procedure. Owing to the urgency of imposing a prohibition on fishing for cockles under the 1984 Act, article 10(2) of the Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999 has not been complied with, and the Scottish Executive Environmental and Rural Affairs Department has written to the Presiding Officer explaining the reasons for this.

Policy Objectives

The purpose of this instrument is to prohibit the fishing for cockles within the area currently covered by the Solway Firth Regulated Fishery (Scotland) Order 2006 (Regulating Order). Although that Order prohibits fishing for cockles during the summer closed season, the Scottish Fisheries Protection Agency (SFPA) have no powers to enforce this prohibition. The effect of the Instrument is to apply a prohibition under the 1984 Act which the SFPA will be able to enforce. The policy aim is to ensure that the Solway cockle fishery is viable and sustainable in a long term basis.

The Regulating Order came into force on 13 March 2006. This enabled the fishery to be open to licence holders under the Regulating Order for a short period during the spring but it is currently closed until the cockle reproduction cycle is complete. Despite the fishery being closed there continues to be reports of fishing by hand pickers and by vessels and there are concerns that if this continues there will be a major impact on the stocks and in turn the viability of the fishery. Illegal fishing is also a danger to the lives of those involved and to those who may be asked to rescue illegal fishermen who find themselves in trouble.

It is proposed that the closure under this Order will be lifted around mid-September by which time the enforcement difficulty of the lack of locus for the Scottish Fisheries Protection

Agency will have been resolved by the enactment of the Police, Public Order and Criminal Justice (Scotland) Act 2006.

Consultation

The following bodies have been consulted during the preparation of the Instrument, in accordance with the requirements of section 1 of the 1984 Act: Scottish Natural Heritage, the Solway Shellfish Management Association; Scottish Enterprise; Dumfries and Galloway Council; the Scottish Fishermen's Federation; the Crown Estate; Cumbria Sea Fisheries Committee; Dumfries and Galloway Police; the Scottish Fisheries Protection Agency; the Health and Safety Executive; the Marine and Coastguard Agency and the Royal Society for the Protection of Birds.

Financial Effects

The instrument has no financial effects on the Scottish Executive, local government or on business. A Regulatory Impact Assessment has been completed and accompanies this Note.

Scottish Executive Environmental and Rural Affairs Department

June 2006

Regulatory Impact Assessment

1. Title of proposal

The proposed Scottish Statutory Instrument (SSI) will be known as the **Inshore Fishing (Prohibition of fishing for Cockles) (Scotland No 2) Order 2006 (S.S.I. 2006/383)**. The purpose of the Order is to put in place a further closure under the **Inshore Fishing (Scotland) Act 1984** in conjunction with that presently in place under the **Solway Firth Regulated Fishery (Scotland) Order 2006**, to make provisions for more effective enforcement of the fishery.

2. Purpose and intended effect

2.1 Objectives

A spatially and time limited actively managed Solway cockle fishery, permitting exploitation on a viable and sustainable basis of cockle stocks in areas stipulated by the Solway Firth Regulated Fishery (Scotland) Order 2006 (the Regulating Order).

2.2 Background

As a result of over-fishing and subsequent depletion of cockle stocks, Ministers made a series of Inshore Fishing Orders made under the Inshore Fishing (Scotland) Act 1984 to close the Solway Firth to cockle fishing by vessels (in 1992); by tractor dredges (in 1995; an Order that applies to all Scottish waters); by all forms of cockle fishing, including hand picking (in 2001). Subsequently the Regulating Order came into force on 13 March 2006 allowing the fishery to be opened on a managed basis.

An annual scientific survey has been undertaken in the Solway since the late 1980s and recent results indicate a significant recovery of cockle stocks. The Solway Shellfish Management Association (SSMA) is the grantee of the Regulating Order and as such is permitted to regulate the fishery in accordance with the terms of that Order and its Management Plan. This Regulation involves the issuing of fishing licences on a limited basis to control access and effort in the fishery, a total allowable catch (TAC) established by scientific analysis during the life of the Order and limits to the fishing season. The SSMA Board comprises a wide range of statutory and other bodies including SNH, Scottish Enterprise Dumfries and Galloway, Dumfries and Galloway Council, the RSPB and interested fishermen. The Association was formed following the closure of the fishery to identify and promote the best means of undertaking sustainable cockle fishing in the Solway Firth.

Despite the Regulating Order being in place, however, there are ongoing reports of illegal fishing by hand gatherers and by vessels. This has resulted in further concern about the long term viability and sustainability of the fishery. This Order responds to that concern in that it will enable the Scottish Fisheries Protection Agency (SFPA), which presently has no locus to enforce a Regulating Order, to become involved.

2.3 Rationale for Government Intervention

The Government has already intervened in the Solway cockle fishery by making the Regulating Order. The rationale for this was that there was an abundant cockle stock, but reopening the fishery on an unrestricted basis would result in over exploitation and ultimate collapse of the stocks. The issue now is, however, on the basis that the Regulating Order grantee currently has insufficient resources and powers to enforce the Regulating Order effectively there is broad consensus that the fishery would benefit from the additional enforcement effort which the SFPA can provide.

3. Consultation

The Regulating Order itself has already been the subject of consultation as part of the requirements of Schedule 1 of the Sea Fisheries Shellfish Act 1967. This included consultation with a wide range of statutory consultees, a public advertisement and a statutory period for objections to be raised.

3.1 Within Government

In addition to the Regulating Order consultation, as per the requirements of Schedule 1 of the Inshore Fishing (Scotland) Act 1984, the following organisations have also been approached on the terms of this Order:

Scottish Fisheries Protection Agency
Fisheries Research Services
Scottish Natural Heritage
The Crown Estate
Health and Safety Executive
Dumfries and Galloway Council
Cumbria Sea Fisheries Committee
Dumfries and Galloway Constabulary

3.2 Public Consultation

The consultation referred to at 3. above also involved an independent and comprehensive inquiry by an Inspector appointed by Ministers. This process involved a local public sitting.

4. Options

4.1 **No change.** With the recent completion of the cockle reproduction cycle there have been reports of plans being made for further illegal fishing. There are concerns about the associated risks and dangers of illegal hand gathering at night and in poor conditions and that illegal vessel fishing, in particular, could have a major impact on stock viability.

4.2 **Amend existing or introduce a new Fisheries Order.** A new Order would not impact on the application or management of the existing Regulating Order. It would, however, provide the means for additional enforcement effort.

5. Costs and benefits

5.1 Sectors and the Groups affected

5.1.1 Grantee. The proposed Order will be beneficial to the grantee of the Regulating Order. This is on the basis that improved enforcement will help towards long term viability and sustainability of the fishery. Revenues generated by the fishery to the grantee are required to be reinvested in the fishery.

5.1.2 Fishing Industry. The fishing industry and associated industries, such as distribution and processing, benefit from the Regulating Order and, therefore, this Order. The industry supports the concept of sustainable, viable and legal fishing. The industry is supportive, therefore, of this Order.

5.1.3 Social Impacts. The Regulated fishery is beneficial to a local community in that it is a boost to the local economy and provides a number of jobs. The additional enforcement effort for which this Order would provide is, therefore, also beneficial.

5.1.4 Environmental issues are already dealt with by the Regulating Order in that, in particular, a maximum total allowable catch is stipulated to reach season depending on stock assessments and key areas (special areas of conservation under the Habitats Directive and special protection areas under the Birds Directive) are closed to fishing within the Regulating Order area. The regulating Order is based on a management plan and was subject to an appropriate assessment under the Habitats Directive. This Order through better enforcement of the Regulating Order area will, therefore, bring benefits to the environment.

5.2 Benefits

The new enforcement provisions will help to deliver the aims of the Regulating Order, ie a commercially viable and sustainable cockle fishery which contributes to social and economic wellbeing without jeopardising the continued health of the stocks.

5.3 Costs

There are no cost implications of this Order for the grantee, the fishing industry, the local community or other stakeholders. The additional enforcement provision would be provided by the SFPA from within existing resources.

6. Small/Micro Firms impact test

The impact on small businesses is likely to be positive.

7. Test Run of Business Forms

Not relevant.

8. Competition Assessment

Not relevant.

9. Enforcement, Sanctions and Monitoring

Monitoring of Regulating Orders is already provided for in the Sea Fisheries (Shellfish) Act 1967.

10. Implementation and Delivery Plan

Not relevant.

11. Post-implementation Review

Not relevant.

12. Summary Recommendation

It is recommended that the Inshore Fisheries (Prohibition of Fishing for Cockles) (Scotland) No 2 (Order 2006) is made.

13. Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits arising from this Order outweigh any negative considerations and justify any cost.

Malcolm Chisholm

Signed by the responsible Minister

30 June 2006