EXECUTIVE NOTE

THE INSHORE FISHING (PROHIBITION OF FISHING FOR COCKLES) (WESTERN ISLES) (SCOTLAND) ORDER 2009 SSI/2009/444

The above instrument is made in exercise of the powers in section 1 of the Inshore Fishing (Scotland) Act 1984 ("the 1984 Act"). The instrument is subject to negative Parliamentary procedure.

Policy Objectives

By prohibiting fishing for cockles less than 30mm in size[1], the Inshore Fishing (Prohibition of Fishing for Cockles) (Western Isles) (Scotland) Order 2009 ("the Order") aims to protect smaller and juvenile cockles, aiding recruitment to the stock and protecting the long term biological sustainability and commercial viability of the islands' cockle fishery. The Order applies to the foreshore of the Western Isles, i.e. the shore between the low and high water marks of ordinary spring tides. An illustrative map of the specified area is attached.

The additional protection supports the work of the Outer Hebrides Inshore Fisheries Group ("IFG"), which is tasked with the development of management plans for the area's inshore fisheries. A surge in cockle gathering activity (and there have been recent reports of increased fishing effort in the area) and the associated potential risk to cockle stocks - especially if smaller, juvenile shellfish are taken - could seriously disrupt the IFG's longer term planning for the cockle fishery, including its current scientific survey into the volume and condition of cockle stocks in the Western Isles.

The proposed Order prohibits only the fishing for cockles less than 30mm in size, leaving open the prospective harvest of larger cockles and the financial benefit that will bring to all those gathering cockles and to the wider cockle industry. The Order enables fishing for cockles smaller than 30mm, when that fishing is by or authorised by the Scottish Ministers for scientific purposes.

Additionally, the improved long term sustainability of the islands' cockle stocks can benefit birdlife, wildlife and the wider ecological environment. This may have a positive economic impact on tourism in the area.

Consultation

[1] As measured across the shell's longest part (if the cockle is likened to a compass face, the hinge of the cockle would be "north" and the measurement would be made straight across on approximately the "east/west" axis of the shell). Article 2(2) of the Order provides a diagram showing the measurement required.

In terms of section 1 of the 1984 Act, the Scottish Ministers are required to consult such bodies as they consider appropriate prior to making an order under that section. In relation to the proposed Order, Marine Scotland has consulted with a wide range of statutory, industry and environmental consultees and other relevant bodies[2].

None of the consultees have objected to the making of the proposed Order.

Financial Effects

Marine Scotland Compliance is responsible for the enforcement of Inshore Fishing Order. The cost of enforcing the order will be met from within existing resources, allocated on a prioritised basis subject to operational requirements.

If there is any potential short term loss to those fishing or selling cockles smaller than 30mm in size, that should be offset by the higher prices commanded by larger cockles and the longer term commercial viability of the cockle fishery

Marine Scotland: Sea Fisheries Policy
14 December 2009

[2] The following persons were consulted in terms of section 1 of the 1984 Act in relation to the proposed Order: Marine Scotland Compliance, Marine Scotland Science, Outer Hebrides Inshore Fisheries Group (IFG), Scottish Natural Heritage, Comhairle nan Eilean Siar, COSLA, Northern Constabulary (Western Isles), Food Standards Agency, Health & Safety Executive, Maritime Coastguard Agency, Scottish Environmental Protection Agency, Highlands & Islands Enterprise, Crown Estate, the five other extant IFGs (Clyde, South East, Moray Firth, North West, Mull & Small Isles), RSPB, WWF Scotland, Scottish Fishermen's Federation, Highlands & Islands Fishermen's Association, Solway Shellfish Management Association and approximately a dozen businesses, based in the Outer Hebrides and elsewhere in Scotland and the UK, involved in buying or processing cockles.

Regulatory Impact Assessment

Title of proposal

1. **The Inshore Fishing (Prohibition of Fishing for Cockles) (Western Isles) (Scotland) Order 2009**.

Purpose and Intended Effect

2. The Order prohibits the fishing for cockles less than 30mm in size[3]. Any undersized cockles must be returned forthwith to the foreshore whence they came. The Order applies to the area of the shore between high and low water marks of ordinary spring tides, i.e. the inter-tidal zone of the Western Isles (also known as the Outer Hebrides or nan Eilean Siar).

3. By introducing a minimum size, the Order aims to protect smaller and juvenile cockles, thereby aiding recruitment to the stock and protecting the long term biological sustainability and commercial viability of the islands' cockle fishery.

Background

4. In late 2009, reports of increased hand gathering effort on Harris beaches suggested that the area's cockle stocks could be at risk of over exploitation. There are examples elsewhere of cockles being a "boom and bust" fishery and areas identified (at least initially) as having reasonably abundant stocks can be targeted by organised cockle-gathering enterprises with subsequent risk to the stocks and the ongoing commercial viability of that fishery.

5. The Outer Hebrides Inshore Fisheries Group (IFG), via its Cockles Sub-Group, supported the concerns and proposed the introduction of a minimum size. The IFG is developing a longer term strategic management plan for the islands' cockle fisheries. Amongst other things, the IFG has commissioned a scientific survey into the volume and condition of cockle stocks in the Western Isles. This is ongoing and is likely to report in April 2010. As well as the possibility of intensified effort damaging the area's cockle stocks, Marine Scotland is concerned that a surge in cockling effort could compromise the usefulness of the current science work and undermine the IFG's efforts to manage the cockles as a sustainable and commercially viable resource.

6. Inshore Fishing Orders are made under section 1 of the Inshore Fishing (Scotland) Act 1984 ("the 1984 Act") and prohibit or regulate sea fishing in a specified area by method and/or by means and/or by time and/or by species.

Rationale for government intervention

[3] As measured across the shell's longest part. If the cockle is likened to a compass face, the hinge of the cockle would be "north" and the measurement would be made straight across on approximately the "east/west" axis of the shell. Article 2(2) of the Order provides a diagram to show the measurement required.

7. Whilst the IFG is well placed to develop a management plan for the islands' cockle fisheries, it does not have any statutory powers. By making this Inshore Fishing Order, the Scottish Government introduces some regulation and protection for the area's cockle fishery.

8. As well as enhancing the sustainability of the stocks, and therefore the commercial viability of the fishery, the additional protection brought by the Order supports the work of the Outer Hebrides IFG. A surge in cockle fishing activity and the associated potential risk to cockle stocks - especially if smaller, juvenile shellfish are taken - could seriously disrupt the IFG's longer term planning for the cockle fishery including its current scientific survey. The Scottish Government is committed to the success of the IFGs. They are best placed – on an inclusive basis, supported by expert advisers and in liaison with all relevant stakeholders – to harness fishermen's expertise, develop local management planning and build a strong voice for the commercial inshore fisheries sector in wider marine policy developments.

Consultation

9. In terms of section 1(1) of the Inshore Fishing (Scotland) Act 1984, the Scottish Ministers are required to consult such bodies as they consider appropriate prior to making an order under that section. There is no requirement for a wider, public consultation under the 1984 Act.

10. In relation to the Inshore Fishing (Prohibition of Fishing for Cockles) (Western Isles) (Scotland) Order 2009, Marine Scotland Policy has consulted with:

- Marine Scotland Compliance
- Marine Scotland Science
- Outer Hebrides IFG
- Scottish Natural Heritage
- Comhairle nan Eilean Siar
- COSLA
- Northern Constabulary (Western Isles)
- Food Standards Agency
- Health and Safety Executive
- Maritime Coastguard Agency
- Scottish Environmental Protection Agency
- Highlands and Islands Enterprise
- Crown Estate
- Clyde IFG
- South East IFG
- Moray Firth IFG
- North West IFG
- Mull & Small Isles IFG
- RSPB
- WWF Scotland
- Scottish Fishermen's Federation
- Highlands & Islands Fishermen's Association
- Solway Shellfish Management Association
- Approximately a dozen businesses, based in the Outer Hebrides and elsewhere in Scotland and the UK, involved in buying or processing cockles.

11. Responses to the consultation have been generally supportive of the proposed introduction of a minimum size, which will prohibit fishing for cockles that are less than a prescribed size. Some concerns were raised about enforcement. No formal objections have been made.

Sectors and groups affected

12. **Fishing industry**. Improved recruitment to the area's cockle stocks should enhance the long term commercial viability of the islands' cockle fishery. Fishers and associated

industry (both on the islands and beyond) stand to benefit from the longer term viability of the fishery and the higher market price that larger cockles command.

13. **Outer Hebrides Inshore Fisheries Group**. The Order supports the work of the IFG as it develops its longer term management plan for the fishery. That plan, in keeping with the emphasis and wider work of an IFG, must be developed in an inclusive and consensual manner and in proper liaison with expert advisors and all relevant stakeholders.

Options, costs and benefits

14. Three options were considered: (1) do nothing, (2) prohibit completely the fishing for cockles on affected beaches and (3) introduce a statutory minimum size to apply across the Western Isles.

14.1 **Do nothing**. A surge in gathering effort, especially if it includes collection of juvenile cockles, could damage the immediate and longer term sustainability and commercial viability of the fishery. The work of the IFG would be compromised, including the usefulness of their current and ongoing survey of the Western Isles' beaches. The Western Isles' cockle fishery is a well established source of income for some local communities and the businesses to which they supply. Quantifying this financially, however, is currently problematic due to inconsistent recording of catches and sale, particularly of hand gathered shellfish. This is one of a number of areas that the IFG's cockle management plan will seek to address. Marine Scotland intends also to consider this matter.

14.2 **Prohibit completely the fishing for cockles on affected beaches**. This also would require an Inshore Fishing Order under section 1 of the 1984 Act. Subject to Parliamentary approval, such an Order could be made quickly and would introduce protection for the Harris beaches that were of particular concern. However, such an Order could risk displacing effort elsewhere and could be seen more as a protectionist rather than a management measure. Blanket prohibition would prevent anyone from harvesting the beaches' cockles, including mature beasts that command a high market price and would pass their prime or die of natural causes if left on the beaches much longer. Responsibility for the enforcement of the Order rests with Marine Scotland Compliance. The costs of this would be met from within existing resources, allocated on a prioritised basis subject to operational requirements. The making of such an Order would demand a similar administrative effort to the making of any alternative suitable legislation. This calls into question the realisation of best effect for administrative effort expended and suggests the loss of an opportunity to regulate and protect the sustainability and commercial viability of the cockle fishery right across the Outer Hebrides.

14.3 **Introduce a statutory minimum size across the Western Isles**. This measure protects smaller and juvenile cockles, aiding recruitment to the stock and protecting the biological sustainability and commercial viability of the cockle fishery right across the Western Isles. The measure leaves open the prospective harvest of larger year classes and the financial benefit that will bring to all cockle gatherers and the wider cockle industry. The measure supports the work of the IFG as it develops its longer term management plan for the fishery. Responsibility for the enforcement of the Order rests with Marine Scotland Compliance. The costs of this would be met from within existing resources, allocated on a

prioritised basis subject to operational requirements. The improved long term sustainability of the islands' cockle stocks can benefit birdlife, wildlife and the wider ecological environment which could have a positive economic impact on tourism in the area.

Small/Micro Firms Impact Test

15. As well as individual cockle fishermen, a number of smaller firms (e.g. organised cockling enterprises, buyers and processors) may be affected by the measure. Those cockle related businesses that responded to consultation advised that they did not deal in smaller cockles and, with some minor reservations about the prospective enforcement regime, that they supported the introduction of a minimum size of 30mm. If there was any potential short term loss, this should be offset by the higher prices commanded by larger cockles and the longer term commercial viability of the cockle fishery.

Legal Aid Impact Test

16. Enforcement and investigative responsibility lies with Marine Scotland Compliance. In certain circumstances relatively minor infringements can be dealt with outwith the criminal court system through the offer of a fixed financial penalty as an alternative to the matter being referred to the Procurator Fiscal. Commercial (company) operators are unlikely to require legal aid to access the justice system. Individual hand gatherers, however, are likely to be employed on the basis of piece work and in receipt of relatively low wages, or sometimes in receipt of benefits when not working. Whilst these individuals are likely to require access to the legal aid fund, that need should be minimised through the use of fixed financial penalties.

"Test Run" of business forms

17. No forms are involved and therefore this is not relevant for this Order.

Competition assessment

18. The current absence of any regulation could lead to unsustainable exploitation and eventual collapse of the area's cockle fishery. The measure protects the ongoing biological and commercial viability of the fishery. It does not place restrictions on who or how many may utilise the fishery. It applies to all those gathering cockles; it does not discriminate against any individual or business.

Enforcement, sanctions and monitoring

19. Marine Scotland Compliance is responsible for the enforcement of the Order. The cost of enforcing the order will be met from within existing resources, allocated on a prioritised basis subject to operational requirements.

Implementation and delivery plan

20. The Inshore Fishing (Prohibition of Fishing for Cockles) (Western Isles) (Scotland) Order 2009 was laid before Parliament on 18th December 2009 and will come into force on

25th January 2010. Those most likely to be affected by the Order have been involved in consultation via both Marine Scotland and the Outer Hebrides IFG. Marine Scotland intends to issue a News Release to coincide with the Order coming into force.

Post-implementation review

21. Over the next two years, the Outer Hebrides IFG will continue to develop its local management plan, including for cockles. Marine Scotland anticipates that the Order can be looked at again in the context of this work. Alternatively, the Order will be reviewed within ten years of its commencement, i.e. by January 2020.

Summary and recommendation

22. A surge in cockle fishing effort, especially if it includes collection of juvenile cockles, risks damaging the sustainability and commercial viability of the fishery. Such a surge could compromise the work of the Outer Hebrides Inshore Fisheries Group to develop a long term management plan for cockles, including the usefulness of their current scientific survey of the Western Isles' beaches. The recommended measure aims to protect smaller and juvenile cockles, aiding recruitment to the stock and protecting the long term biological sustainability and commercial viability of the cockle fishery right across the Western Isles. The measure leaves open the prospective harvest of larger cockles and the financial benefit that will bring to all those gathering cockles and to the wider cockle industry. The measure supports the work of the IFG as it develops its management plan for the fishery. Additionally, the improved long term sustainability of the islands' cockle stocks can benefit birdlife, wildlife and the wider ecological environment.

We recommend introduction of Option 3 – to introduce a statutory minimum size for cockles that may be fished from the foreshore of the Western Isles.

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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 the costs.

Signed

Date

Richard Lochhead, Cabinet Secretary for Rural Affairs and the Environment

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