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WELSH STATUTORY INSTRUMENTS

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**2022 No. 213**

**The Menai Strait (East) Mussel and Oyster Fishery Order 2022**

**PART 1**

Introductory matters

**Title, commencement and application**

1.—(1) The title of this Order is the Menai Strait (East) Mussel and Oyster Fishery Order 2022 and it comes into force on 2 April 2022.

(2) This Order applies in relation to Wales.

**Interpretation**

2. In this Order—

“the Act” (“*y Ddeddf*”) means the Sea Fisheries (Shellfish) Act 1967;

“co-ordinate” (“*cyfesuryn*”) means a co-ordinate of latitude and longitude on the World Geodetic System 1984;

“the European marine sites” (“*y safleoedd morol Ewropeaidd*”) means —

- (a) Anglesey Terns/Morwenoliaid Ynys Môn designated special protection area ((EU code UK 9013061);
- (b) Liverpool Bay/Bae Lerpwl designated special protection area (EU code UK 9020294);
- (c) Traeth Lafan/Lavan Sands Conway Bay designated special protection area (EU code UK 9013031);
- (d) Y Fenai a Bae Conwy/Menai Strait and Conwy Bay designated special area of conservation (EU code UK 0030202);
- (e) Ynys Seiriol/Puffin Island designated special protection area (EU code UK 9020285);  
in so far as they consist of marine areas;

“the Grantee” (“*y Granti*”) means the Menai Strait Fishery Order Management Association (Company number: 07163689) whose registered office is at c/o Myti Mussels Limited, Port Penrhyn, Bangor, Gwynedd, LL57 4HN;

“laying” (“*magwrfa*”) means an area of the several fishery area with respect to which a lease may be or has been granted;

“lease” (“*les*”) means a lease of the right of several fishery;

“licence” (“*trwydded*”) means a licence granted under section 4 of the Act;

“licensed vessel” (“*llestr drwyddedig*”) means a vessel authorised to fish by a licence issued under section 14 or section 16 of the Fisheries Act 2020(1);

“marine environment” (“*amgylchedd morol*”) has the meaning given in section 5A(2) of the Act;

“the Order area” (“*ardal y Gorchymyn*”) means the area described in the Schedule to this Order;

“the prescribed species” (“*y rhywogaethau rhagnodedig*”) means shellfish of the species *mytilus edulis* and *ostreidae*;

“the regulated fishery area” (“*ardal y bysgodfa a reoleiddir*”) means any part of the Order area that is not for the time being designated as the several fishery area;

“the several fishery area” (“*ardal y bysgodfa unigol*”) means any part of the Order area designated as the several fishery area in accordance with article 4(1);

“site protection notice” (“*hysbysiad gwarchod safle*”) means a notice served on the Grantee under section 5B of the Act(2);

“statutory undertaker” (“*ymgymerydd statudol*”) means any person who is, or is deemed to be, a statutory undertaker for the purposes of any provision of Part 11 of the Town and Country Planning Act 1990(3);

“tenant” (“*tenant*”) means a person to whom a lease is granted under article 8(2);

“watercraft identification number” (“*rhif adnabod bad dŵr*”) means an identification number provided for—

- (a) in Part A, paragraph 2.1 of Annex 1 to the Directive as set out in Schedule 1 to the Recreational Craft Regulations 2017(4);
- (b) in Part A, paragraph 2.1 of Annex 1 to the Directive as set out in Schedule 1 to the Recreational Craft Regulations 2004(5);
- (c) in paragraph 2.1 of Annex 1 to the Directive as set out in Schedule 1 to the Recreational Craft Regulations 1996(6).

## PART 2

### The right of several fishery

#### The right of several fishery

3. The right of several fishery for the prescribed species is conferred on the Grantee for a period of 35 years beginning on 2 April 2022 in relation to the several fishery area(7).

#### Designation of several fishery area

4.—(1) The Grantee may, from time to time, with the consent of the Welsh Ministers, designate the several fishery area.

(2) The designation must be in writing and must—

- (a) identify all areas to be designated by reference to an area within a line drawn between listed co-ordinates;

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(2) Section 5B was inserted by section 73 of the Environment (Wales) Act 2016.

(3) 1990 c. 8.

(4) S.I. 2017/737 amended by S.I. 2019/696.

(5) S.I. 2004/1464. These Regulations were revoked by regulation 90(2) of the Recreational Craft Regulations 2017 save as regard their application to any watercraft placed on the market or put into service prior to 3 August 2017.

(6) S.I. 1996/1353. These Regulations were revoked by regulation 90(1) of the Recreational Craft Regulations 2017 save as regard their application to any watercraft placed on the market or put into service prior to 1 January 2005.

(7) The effect of a grant of right of several fishery is set out in section 2 of the Act.

- (b) confirm that it is made under this article;
- (c) state the date upon which it is to take effect; and
- (d) be signed by the Grantee.

(3) The designation must be published by the Grantee on their website no later than 7 days after it takes effect.

#### **Welsh Ministers' consent to a designation made under article 4(1)**

5.—(1) A request for the Welsh Ministers' consent to a designation under article 4(1) must be made in writing and —

- (a) identify the area of the proposed several fishery area in accordance with article 4(2)(a);
- (b) include an illustrative map of the Order area with proposed boundaries between the regulated fishery area and the several fishery area marked on it;
- (c) include a statement from the Grantee in support of the request; and
- (d) where the Grantee has made regulations under article 20, confirm that the Grantee has given consideration to whether amendment of those regulations is necessary.

(2) The Grantee must not seek the Welsh Ministers' consent to a designation under article 4(1) that includes a part of the Order area in relation to which there are licences in force.

(3) The Welsh Ministers may require the Grantee to provide them with any further information as they reasonably require to consider the request.

(4) When considering whether to consent to a designation the Welsh Ministers must have regard to—

- (a) the impact of the designation on the European marine sites; and
- (b) the impact of the designation on the marine environment.

(5) The Welsh Ministers' consent must be given in writing.

#### **Cancellation of a designation made under article 4(1)**

6.—(1) The Grantee may, from time to time, with the consent of the Welsh Ministers, cancel the designation made under article 4(1).

(2) A cancellation of the designation must be made in writing and must—

- (a) confirm it is made under this article;
- (b) confirm the date upon which it is to take effect; and
- (c) be signed by the Grantee.

(3) The Grantee must not seek the Welsh Ministers' consent to a cancellation that includes a part of the Order area in relation to which there are leases in force.

(4) The cancellation of the designation must be published by the Grantee on their website no later than 7 days after it takes effect.

#### **Welsh Ministers' consent to cancellation of a designation made under article 4(1)**

7.—(1) A request for the Welsh Ministers' consent to a cancellation of a designation made under article 4(1) must be made in writing and—

- (a) include a statement from the Grantee in support of the request;
- (b) confirm it is made under this article;
- (c) confirm the date upon which it takes effect; and

- (d) be signed by the Grantee.
- (2) The Welsh Ministers may require the Grantee to provide them with any further information as they reasonably require to consider the request.
- (3) When considering whether to consent to a cancellation the Welsh Ministers must have regard to—
  - (a) the impact of the cancellation on the European marine sites; and
  - (b) the impact of the cancellation on the marine environment.
- (4) The Welsh Ministers' consent must be given in writing.

### **Restrictions on the right of several fishery**

- 8.—**(1) The right of several fishery may not be exercised by the Grantee.
- (2) The Grantee may, from time to time, with the consent of the Welsh Ministers, grant a lease over part of the several fishery area.
- (3) The Grantee may not, without the prior written consent of the Welsh Ministers, lease, assign or in any other way transfer the right of several fishery to another person.
- (4) Any lease granted by the Grantee must—
- (a) not exceed a term of 7 years and where applicable must expire on or before the date upon which the right of several fishery ceases in accordance with article 3;
  - (b) prohibit assignment of the lease, or the grant of a sub-lease and assignment of it, without the prior written consent of the Welsh Ministers;
  - (c) require the tenant to maintain laying markings in position and in good repair;
  - (d) require the tenant to maintain the laying to the satisfaction of the Grantee;
  - (e) permit the Welsh Ministers, or any person authorised by them, access to the laying for the purpose of—
    - (i) an environmental survey;
    - (ii) monitoring stock;
    - (iii) monitoring the spread of the prescribed species;
    - (iv) disease prevention; and
    - (v) the collection of samples.
  - (f) permit the Grantee to inspect the laying for the purpose of monitoring compliance with the lease;
  - (g) require the tenant to comply with any site protection notice relating to their laying served on the Grantee; and
  - (h) provide that in the event of the tenant breaching the lease the Grantee may —
    - (i) take the necessary action to remedy the breach; and
    - (ii) terminate the lease.

### **Welsh Ministers' consent to a lease**

- 9.—**(1) A request for the Welsh Ministers' consent under article 8(2) must be made in writing and include—
- (a) a copy of the draft lease; and
  - (b) a statement from the Grantee in support of the request.

(2) The Welsh Ministers may require the Grantee to provide them with any further information they reasonably require to consider the request.

(3) Before consenting to any lease the Welsh Ministers must have regard to —

- (a) the impact of the proposed lease upon the European marine sites;
- (b) the impact of the proposed lease upon the marine environment.

(4) The Welsh Ministers' consent must be given in writing.

### **Grantee's duty to monitor compliance with a lease**

**10.** The Grantee must take all reasonable steps to monitor the tenant's compliance with any lease granted.

### **Effect of a lease**

**11.** A lease has effect as if the right which it confers on the tenant were conferred by an order made under section 1 of the Act, and as if any terms and conditions contained in the lease were contained in such an order.

### **New lease opportunities**

**12.—(1)** In the event that a laying becomes vacant, before granting a new lease, the Grantee must—

- (a) advertise the opportunity to apply for a lease on their website and in at least one local newspaper;
- (b) publish on their website the criteria the Grantee will use to assess the applications received;
- (c) allow a period of at least 28 days for submission of applications; and
- (d) assess all applications according to published criteria and in accordance with paragraph (2).

(2) When assessing applications received from prospective tenants, the Grantee must have regard to whether applicants can demonstrate either —

- (a) evidence of competence to safely operate a laying; or
- (b) proposals to obtain relevant training or qualifications to acquire competence to safely operate a laying.

(3) For the purposes of paragraph (1), a laying becomes vacant if the tenant of that laying—

- (a) surrenders their lease to the Grantee;
- (b) forfeits their lease to the Grantee; or
- (c) at the expiry of the term of one lease, does not seek a new lease.

### **Income from the several fishery area**

**13.** All income received by the Grantee by way of rent payable under a lease must be applied for the following purposes in order of priority listed below—

- (a) discharging the expenses of obtaining this Order;
- (b) marking out the boundaries of the several fishery area and layings;
- (c) the destruction of pests harmful to the prescribed species; and
- (d) management, supervision and improvement of the several fishery area.

## PART 3

### The right of regulating a fishery

#### Right of regulating a fishery

14. The right of regulating a fishery for the prescribed species is conferred on the Grantee for a period of 35 years beginning on 2 April 2022 in relation to the regulated fishery area<sup>(8)</sup>.

#### Licensing requirement in the regulated fishery

15. No person may dredge for, fish for or take any of the prescribed species in the regulated fishery area unless under the authority of a licence issued by the Grantee.

#### Matters the Grantee must have regard to when exercising their licensing functions

16. When exercising their licensing functions under this Order, the Grantee must have regard to the impact the licensed activities may have upon—

- (a) the European marine sites; and
- (b) the marine environment.

#### Licence applications, and information about the application process and amendment of a licence

17.—(1) An application for a licence must be made in such form and manner as the Grantee may specify.

(2) The Grantee must publish on its website a copy of the licence application form and information for applicants about the application process.

(3) A licensee may make a written request to the Grantee for an amendment of the licence, and must provide such information as the Grantee may reasonably require to consider the request.

#### Contents of a licence

18. A licence must—

- (a) state the name and address of the licensee;
- (b) identify any vessel authorised to operate in the regulated fishery area by either—
  - (i) the name and licence number of a licensed vessel; or
  - (ii) the watercraft identification number of an unlicensed vessel;
- (c) specify the methods of gathering that may be used;
- (d) specify the period of time for which a licence is valid, which must not exceed 1 year;
- (e) include appropriate licence conditions; and
- (f) have an unique identification number.

#### Licence toll

19.—(1) An applicant for a licence must pay a toll of £150 to the Grantee.

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(8) The effect of a grant of a right of regulating a fishery is set out in section 3 of the Act.

(2) The Grantee may vary the toll payable under paragraph (1) with the consent of the Welsh Ministers.

### **Power to make regulations**

**20.**—(1) The Grantee may, with the consent of the Welsh Ministers, make regulations in relation to the dredging for, fishing for or taking of the prescribed species in all or in part of the regulated fishery area.

(2) The Grantee may amend or revoke such regulations, with the consent of the Welsh Ministers.

(3) Regulations made by the Grantee under paragraph (1) must—

(a) include such provision (if any) as the Grantee considers appropriate for the purpose of—

(i) preventing harm to the European marine sites; and

(ii) protecting the marine environment;

(b) state the date upon which they come into force;

(c) identify the part of the regulated fishery area they apply to by reference to—

(i) an area within a line drawn between listed co-ordinates; and

(ii) an illustrative map annexed to the regulations showing that part;

(d) be published on the Grantee's website at least 21 days before they come into force, unless regulations must be made urgently to protect—

(i) the European marine sites; or

(ii) the marine environment.

(4) The production of a copy of regulations made by the Grantee, and certified by the Welsh Ministers as a true copy of the original regulations approved by them, shall be conclusive evidence of the existence of the regulations.

### **Welsh Ministers' consent to regulations made under article 20(1)**

**21.**—(1) A request for the Welsh Ministers' consent under article 20(1) must be made in writing and must include—

(a) a copy of the draft regulations; and

(b) a statement from the Grantee in support of the request.

(2) The Welsh Ministers may require the Grantee to provide them with any further information they reasonably require to consider the request.

(3) Before consenting to any regulations the Welsh Ministers must have regard to—

(a) the impact of the regulations on the European marine sites; and

(b) the impact of the regulations upon the marine environment.

(4) The Welsh Ministers' consent must be given in writing.

## **PART 4**

### **Miscellaneous provisions**

#### **Duty to keep publicly available an illustrative map of the Order area**

**22.** Within 7 days of making a designation under article 4, or a cancellation of a designation under article 6, the Grantee must produce and make available for inspection on its website and at its

registered office an illustrative map of the Order area which must include the boundary between the several fishery area and the regulated fishery area.

### **Accounts of income and expenditure, other information and inspection**

**23.**—(1) The Grantee must by 31 July each year provide to the Welsh Ministers annual accounts of its income and expenditure under this Order for the preceding financial year.

(2) The Grantee must allow persons authorised by the Welsh Ministers to inspect any accounts or other documents relating to this Order in the possession of the Grantee, and must give that person any further information relating to those matters, which that person may reasonably require.

(3) The Grantee must allow persons authorised by the Welsh Ministers to inspect the Order area.

### **Catch return**

**24.**—(1) The Grantee must submit a catch return to the Welsh Ministers —

- (a) for the period between 2 April 2022 and 31 March 2023, on or before 30 April 2023; and
- (b) thereafter, for each period of time between 1 April and the following 31 March, on or before the 30 April in the same year in which that time period ends.

(2) A catch return must record—

- (a) the annual total live weight of seed of the specified species laid down in the regulated fishery area and in the several fishery area;
- (b) the location from which that seed was sourced;
- (c) the annual total live weight of the specified species taken from both the several fishery area and from the regulated fishery area; and
- (d) any further information as may be reasonably requested in writing by the Welsh Ministers.

### **Marking out of the Order area**

**25.**—(1) The Grantee must, in such manner as the Welsh Ministers may from time to time request, mark out—

- (a) the Order area or any part of it; and
- (b) the boundary between the several fishery area and the regulated fishery area.

(2) Prior to a request to mark out, the Welsh Ministers must consult—

- (a) Caernarfon Harbour Trust<sup>(9)</sup>; and
- (b) the Corporation of Trinity House of Deptford Strond<sup>(10)</sup>.

(3) The Grantee must maintain markings in position and in good repair.

### **Rights of landowners**

**26.** Nothing in this Order, or in any restriction imposed under it, or regulation made under it, affects prejudicially any rights, powers and authority of —

- (a) a person who owns part of the Order area; or
- (b) a person to whom such a person has granted a lease in respect of a part of the Order area.

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<sup>(9)</sup> <https://www.caernarfonharbour.org.uk/>

<sup>(10)</sup> <https://www.trinityhouse.co.uk/>



### **Rights of statutory undertakers**

**27.** Nothing in this Order, or in any restriction imposed under it, or in any regulation made under it, affects prejudicially the lawful activities of a statutory undertaker exercising its statutory functions.

### **Revocation**

**28.** The Menai Strait Oyster and Mussel Fishery Order 1962(**11**) and the Menai Strait Oyster and Mussel Fishery (Amendment) Order 1964(**12**) are revoked.

3 March 2022

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

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(11) S.I. 1962/705.

(12) S.I. 1964/550.