

EXPLANATORY MEMORANDUM TO
THE DEE ESTUARY COCKLE FISHERY ORDER 2008

This Explanatory Memorandum has been prepared by The Fisheries Policy branch of the Department for Rural Affairs and is laid before the National Assembly for Wales in accordance with Standing Order 24.1.

1. **Description** -This Order will enable the Environment Agency to carry into effect and enforce regulations and restrictions relating to the dredging, fishing for and taking of cockles within a designated area of the Dee Estuary. The Agency will be able to manage and conserve the wild fishery by the use of licences to control the number of people who fish there and make regulations and levy tolls for the benefit of the fishery. Unlicensed persons will be excluded from the regulated area except for individuals taking no more than 5 kg of cockle daily by hand for personal consumption.

2. **Matters of special interest to the Subordinate Legislation Committee**- None.

3. **Legislative Background**
 - 3.1 In 2004 the Agency made an application under the Sea Fisheries (Shellfish) Act 1967 to the Secretary of State and Welsh Ministers for a regulating Order in respect of cockles in the Dee Estuary, to grant them a right of regulating a fishery for 20 years. As the fishery straddles the border between England and Wales, the application was progressed jointly by the Secretary of State (acting for England) and Welsh Ministers (acting for Wales), and a single Order was made for the designated area.

 - 3.2 The functions of the National Assembly for Wales were transferred to the Welsh Ministers by the Government of Wales Act 2006 on 25 May 2007

4. **Purpose and intended effect of the legislation** -
 - 4.1 Section 1 of the Sea Fisheries (Shellfish) Act 1967 allows the Secretary of State and Welsh Ministers to make regulating Orders granting rights to carry into effect and enforce regulations and restrictions relative to the dredging, fishing for and taking of any specified shellfish within a designated area. The purpose of a regulating Order is to help to preserve fisheries which might otherwise be at risk of over-exploitation.

- 4.2 The Act requires that all applications for regulating orders must be subject to public consultation. The Order must be advertised in draft form and all interested parties given the right to state their views and objections. If the applicant is unable to secure the withdrawal of these objections then, provided that they are not frivolous or irrelevant, the Act requires that a public inquiry is held and chaired by an Inspector appointed by the Secretary of State or Welsh Ministers.
 - 4.3 Application for the proposed Order was subject to public consultation which ended on 13 February 2006. 36 representations to the making of the Order were received, and the Secretary of State and Welsh Ministers considered that 25 of these contained or constituted objections, and that none of them were frivolous or irrelevant. As none were withdrawn under the terms of the Act a public inquiry was held from 5 – 8 June.
 - 4.4 The Inspector's report of the inquiry concluded that the Order be made subject to minor amendments being made to the draft Order.
 - 4.5 The Secretary of State and Welsh Ministers considered the findings of the consultation and public inquiry and concluded that the Order should be made.
5. **Implementation** – The implication should this Order not be made is that the Cockle beds of the River Dee would continue to be run by the Environment Agency under bye laws. The current management is unsustainable and over fishing resulted in the crash of the fishery. The Agency is not empowered to recover its costs under the 1966 Act and it is difficult to use byelaws to limit the number of permits issued, enforcing the fishery can be costly when the beds are open as large numbers descend onto the cockle beds.
 6. **Consultation** – This legislation has been prepared after the out come of a public enquiry into the Draft Dee Estuary Cockle Fishery Order 2006
 7. **Regulatory Impact Assessment**– The impact on the public sector is that the Order places restrictions on other fishing practices which may take place within the area of the Order. These include practices that would damage or place at risk the cockle stock for which the Order has been given. The IA produced by Defra is attached.