

Leased Areas Update

Background

There are 6 leased areas within the Menai Strait Oyster and Mussel Fishery Order area. This report provides a brief update on discussions over leased area boundaries and lease fees for existing leased areas.

Recommendations

1. That the action with respect to lease area boundaries is noted.
2. That the Association should consider the alternative funding scenarios presented in this report.

1. Leased area boundaries

- 1.1 The last meeting of the Association considered a request that the landward boundary of Area 2 in the Fishery Order should be altered. It was resolved that the boundary should not be altered.
- 1.2 A verbal report on the lease holder's response to the Association's decision will be made to the meeting.

2. Fees charged for Leased Areas

- 2.1 At the Association meeting in December 2013 it was agreed that options for changing the charges for leased areas should be considered and agreed at this meeting. The purpose of these changes would be to set out options for achieving the level of income to the Order required by the Association's agreed Financial Plan. These will result in the income required during 2014-15 increasing to £21,676pa.
- 2.2 The Secretariat has considered 3 alternative options for allocating costs among the lay holders so that this level of income is achieved. These are a "status quo" based on the current allocation of costs; an equal allocation, so that the fee charged is the same for each laying; and an area-based calculation so that the fee charged for each laying is the same per unit area. The fees resulting from each option are summarised in Tables 1 and 2 of this report.
- 2.3 It was agreed that the new fees should be levied when the next round of invoices for leased areas are sent out (on 1st April 2014). Members' views on the attached proposals are invited.
- 2.4 It is noted that new leased areas might come into being in the near future. It is proposed that these new areas should be incorporated in the favoured funding model if and when they are formally established.

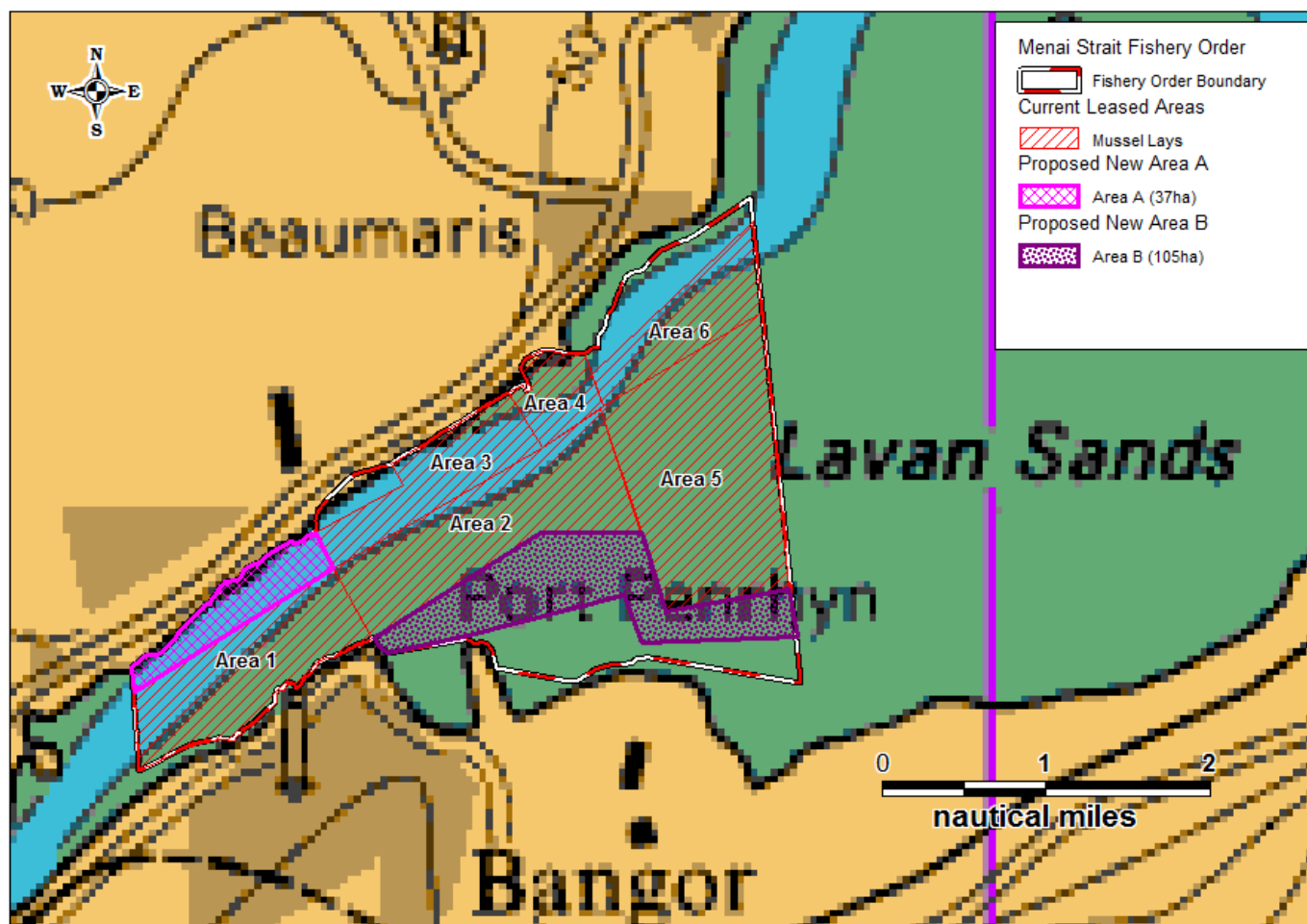
MSFOMA Secretariat
March 2014

Table 1: Summary of alternative financial options for achieving the target income to MSFOMA for the 2014-15 FY (by laying). (Current = current allocation of costs; Equal Allocation = costs shared equally between layings; Equal price / ha = fee based on area of laying).

Lay	Area (ha)	Company	Financial Scenario					
			Current Allocation		Equal Allocation		Equal Price / ha	
			2014/15	% of total	2014/15	Change	2014/15	Change
1	92.8	Myti Mussels	£ 1,604.40	7.40%	£ 3,612.75	£ 2,008.34	£ 3,929.09	£2,324.69
2	117.1	Myti Mussels	£ 3,208.80	14.80%	£ 3,612.75	£ 403.94	£ 4,957.94	£1,749.14
3	57.0	Extramussel	£ 3,208.80	14.80%	£ 3,612.75	£ 403.94	£ 2,412.92	-£ 795.88
4	25.7	Deepdock	£ 2,986.92	13.78%	£ 3,612.75	£ 625.83	£ 1,086.00	-£1,900.91
5	169.2	Ogwen Mussels Ltd	£ 5,973.83	27.56%	£ 3,612.75	-£ 2,361.09	£ 7,163.82	-£1,189.99
6	50.2	Deepdock	£ 4,693.72	21.65%	£ 3,612.75	-£ 1,080.98	£ 2,126.70	-£2,567.02
	512.0		£ 21,676.47	100.00%	£ 21,676.47		£21,676.47	

Table 2: Summary of alternative financial options for achieving the target income to MSFOMA for the 2014-15 FY (by company). (Current = current allocation of costs; Equal Allocation = costs shared equally between layings; Equal price / ha = fee based on area of laying).

Company	Scenario		
	Current	Equal	Area
Myti Mussels	£ 4,813.20	£ 7,225.49	£ 8,887.03
Extramussel	£ 3,208.80	£ 3,612.75	£ 2,412.92
Deepdock	£ 7,680.64	£ 7,225.49	£ 3,212.71
Ogwen	£ 5,973.83	£ 3,612.75	£ 7,163.82



Map is illustrative not definitive.

Figure 1: Map of the Menai Strait Oyster and Mussel Fishery Order 1962 (as amended), showing existing and proposed new mussel cultivation areas.

Developing the Fishery Order Area

Background

This report considers the proposals for developing new cultivation areas within the Fishery Order area.

Recommendations

1. That the Association should determine whether or not to approve the two applications for the creation of new leased areas, taking into account the relevant fisheries and wildlife conservation requirements associated with this decision.
2. That if the Association is minded to approve the applications, an application should be submitted to the Minister to seek consent to create and lease the two new cultivation areas.

1. Background

- 1.1 When the Menai Strait Fishery Order was made in 1962, it set out provision for both the cultivation of mussels and oysters and for the regulation of the fishery for wild mussels in the eastern end of the Menai Strait.
- 1.2 At the October 2012 meeting of this Association there was some discussion about the possibility of creating two new cultivation areas in addition to the current 6 cultivation areas in the Fishery Order. The location of these proposed new areas is shown in Figure 1 overleaf.
- 1.3 Following discussions in the October 2012 and March 2013 meetings of the Association it was resolved that the applicants for these areas should be invited to carry out formal consultations with Natural Resources Wales and with Ynys Môn and Gwynedd County Councils about the implications of cultivating mussels in these areas. The Association further resolved that if the outcome of these consultations was favourable, the Association would request the consent of the Minister to create two new cultivation areas.
- 1.4 The remainder of this report considers the progress that has been made with these two applications and the procedure for this Association to follow if it chooses to create the proposed two new cultivation areas.

2. Legal and procedural context

- 2.1 The Association is required to operate within a well-defined set of legal procedures that are set out in fisheries and nature conservation legislation that applies specifically to the eastern Menai Strait. Extracts from the relevant legislation are included in Annex A of this report and summarised briefly below.
- 2.2 The Association has the power under the Menai Strait Oyster and Mussel Fishery Order 1962 (the "1962 Order") to create and lease "layings" for shellfish cultivation in the Menai Strait. This power can only be exercised with the consent of the Minister.

- 2.3 The eastern Menai Strait is an important area for wildlife. The area lies within the Menai Strait and Conwy Bay Special Area of Conservation. The key UK legislation that protects the wildlife in this area is the Conservation of Habitats and Species Regulations 2010 (the “Habitats Regulations 2010”). These Regulations require that both this Association and the Minister exercise their functions in a manner that is compliant with the requirements of the Habitats Directive (because both the Association and the Minister are “competent authorities” with respect to this legislation). Under the terms of this legislation the Menai Strait is regarded as a “European Marine Site”.
- 2.4 The key requirements for both this Association and the Minister in determining the proposals to create new leased areas are identical (they are set out in §61 of the Habitats Regulations 2010). In summary, each competent authority is required to consider:-
- a) Is the proposal likely to have a significant effect on a European marine site (either alone or in combination with other plans or projects)?
- And if so, the competent authority must carry out an “appropriate assessment” of the implications of the proposal for the site in view of the site’s conservation objectives. Having carried out an appropriate assessment, the competent authority may agree to the proposal only if:-
- b) The plan or project will not adversely affect the integrity of the European marine site.
- 2.5 It is important that the competent authorities clearly comply with this procedure and take all relevant information into account in reaching their determination of a decision affecting a European Marine Site. The procedure is referred to as a “Habitats Regulations Assessment”, abbreviated to HRA.
- 2.6 For European Marine Sites, the key source of advice for an HRA are the Government’s nature conservation advisors: Natural Resources Wales (NRW).

3. Current status of proposals

- 3.1 Both applicants have consulted with statutory bodies as requested by the Association. Gwynedd and Ynys Môn County Councils are understood to have provided letters of support to each applicant.
- 3.2 In response to concerns that were raised about the potential for adverse interactions with established yacht moorings in the Menai Strait, the westernmost new area (“Area A”) has been reduced in size, from the initial 37ha to an area of 15ha (see Figure 1).
- 3.3 It would seem prudent to exclude all of that part of the initial Area A that is occupied by yacht moorings from this and any future proposals to extend cultivation areas in the Menai Strait.

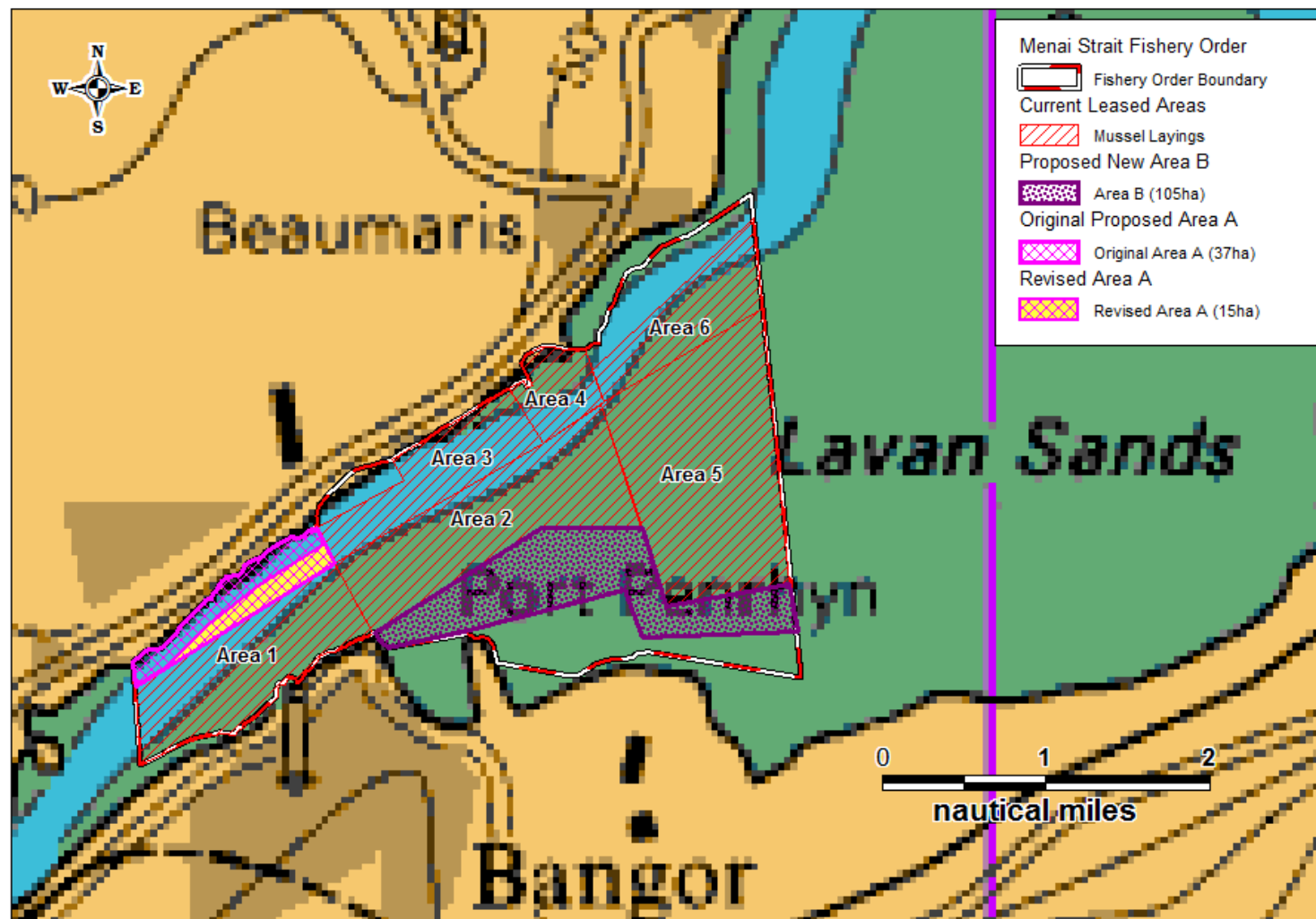
4. Habitats Regulations Assessment

- 4.1 As part of their requirement to progress the proposed new cultivation areas both applicants have consulted with NRW, and have produced a draft HRA. Part of this HRA is attached at Annex B of this report.
- 4.2 The draft HRA has considered the potential impact of the proposed cultivation activities on all of the communities and species in the European Marine Site. NRW have indicated that they are content with the technical information within the draft HRA (see Annex C of this report).
- 4.3 The conclusion of the HRA is that the proposed activities will not have a significant effect on the features of the Menai Strait and Conwy SAC (the “European Marine Site”).
- 4.4 The available information indicates that MSFOMA may approve the proposed new leased areas without risk of failing to comply with its obligations with respect to the Habitats Directive and the UK Habitats Regulations.
- 4.5 Members are advised that the NRW representative on the Association may be able to answer any detailed questions about the HRA process and outcome at the meeting.

5. Next Steps

- 5.1 If MSFOMA is minded to approve the creation of the two new leased areas and the leasing of these areas to the respective applicants, the next step in the process will be to seek the Minister’s consent for these actions. This is a statutory requirement of §7(b) and §8(1) of the 1962 Fishery Order (see Annex A of this report).
- 5.2 It is understood that the Welsh Government have a preferred proforma for applications that have to undergo the HRA procedure outlined above; the HRA might need to be reformatted and altered to conform to this proforma.
- 5.3 If the applications are approved by the Association, it would seem appropriate for the Association to authorise the Chair to work with the applicants to draft a consent request with supporting information so that the Minister can determine these applications.

MSFOMA Secretariat
March 2014



Map is illustrative not definitive.

Figure 1: Map of the Menai Strait Oyster and Mussel Fishery Order 1962 (as amended), showing existing and proposed new mussel cultivation areas.

Annex A: Extracts of relevant legislation

The Conservation of Habitats and Species Regulations 2010 (SI2010 No.490)

[...]¹

Competent Authorities

7.—(1) For the purposes of these Regulations, “competent authority” includes—

(a) any Minister of the Crown (as defined in the Ministers of the Crown Act 1975(a)), government department, statutory undertaker, public body of any description or person holding a public office;

[...]

(3) In paragraph (1)—

(a) “public body” includes any local authority, joint board, joint committee or National Park authority; and

(b) “public office” means—

(i) an office under the Crown,

(ii) an office created or continued in existence by a public general Act or by legislation passed by the National Assembly for Wales, or

(iii) an office the remuneration in respect of which is paid out of money provided by Parliament or the National Assembly for Wales.

[...]

Exercise of functions in accordance with the Habitats Directive

9.—[...]

(3) A competent authority must, in relation to a marine area, exercise any of their functions which are relevant to marine conservation so as to secure compliance with the requirements of the Habitats Directive.

(4) Paragraph (3) applies, in particular, to functions under the following enactments—

(a) the Sea Fisheries Acts within the meaning of section 1 of the Sea Fisheries (Wildlife Conservation) Act 1992(c) (conservation in the exercise of sea fisheries functions);

[...]

(i) the Marine Act; and

(j) these Regulations.

(5) Without prejudice to the preceding provisions, a competent authority, in exercising any of their functions, must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions.

[...]

Assessment of implications for European sites and European offshore marine sites

61.—(1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which—

(a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and

¹ [...] indicates that text in the legislation has been omitted. Only the text that is relevant to this report is shown here.

(b) is not directly connected with or necessary to the management of that site, must make an appropriate assessment of the implications for that site in view of that site's conservation objectives.

(2) A person applying for any such consent, permission or other authorisation must provide such information as the competent authority may reasonably require for the purposes of the assessment or to enable them to determine whether an appropriate assessment is required.

(3) The competent authority must for the purposes of the assessment consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority specify.

(4) They must also, if they consider it appropriate, take the opinion of the general public, and if they do so, they must take such steps for that purpose as they consider appropriate.

(5) In the light of the conclusions of the assessment, and subject to regulation 62 (considerations of overriding public interest), the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).

(6) In considering whether a plan or project will adversely affect the integrity of the site, the authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which they propose that the consent, permission or other authorisation should be given.

(7) This regulation does not apply in relation to a site which is—

(a) a European site by reason of regulation 8(1)(c), or

(b) a European offshore marine site by reason of regulation 15(c) of the 2007 Regulations (site protected in accordance with Article 5(4) of the Habitats Directive).

(8) Where a plan or project requires an appropriate assessment both under this regulation and under the 2007 Regulations, the assessment required by this regulation need not identify those effects of the plan or project that are specifically attributable to that part of it that is to be carried out in Great Britain, provided that an assessment made for the purpose of this regulation and the 2007 Regulations assesses the effects of the plan or project as a whole.

The Menai Strait Oyster and Mussel Fishery Order 1962

[...]

7. — The Grantees may from time to time and as occasion may require

(a) with the consent in writing of the Minister designate as reserves such portions of the area within the limits of this Order as they may think necessary for experimental or scientific purposes or for the purpose of the collection of spat, that is to say, the young of oysters or mussels in connection with the propagation cultivation breeding fattening or gathering of oysters or mussels and may use or authorise the use of such reserves for the purposes aforesaid;

(b) with like consent designate such portions (in this Order referred to as "layings") of the area within the limits defined in this Order as they may think fit so that the same may be leased as lays or layings or breeding or fattening grounds for the cultivation of oysters or mussels.

8. — (1) The Grantee may with the consent in writing of the Minister lease reserves or laying or offer leases of reserves or layings to or enter into Tenancy Agreements relating to the reserves or layings with any person or associations of persons upon such terms and for such periods and subject to such conditions as may be determined by the Grantees provided that no such lease shall be granted for any period terminating after the date on which this Order ceases to operate as provided in Article 19 hereof.

(2) Upon the execution of a lease or agreement for a lease of a reserve or laying the person to whom such lease is granted or with whom such agreement is made (hereinafter called "the Tenant") shall have as respects the reserve or laying the right of several fishery therein as if he were the grantee of an Order under the Sea Fisheries Act, 1868, or any statutory re-enactment modification or amendment thereof conferring on him a right of several oyster or mussel fishery within the reserve or laying and as if any regulations restrictions terms and conditions comprised in the lease or agreement were restrictions and exceptions contained in that Order.

[...]

Annex B: Summary of the assessment of likely significant effect of the proposed new cultivation areas (“Habitats Regulations Assessment”).

A. Conservation Objective: RANGE (Menai Strait and Conwy SAC) To achieve favourable conservation status, the overall distribution and extent of the feature within the site should be stable or increasing, subject to natural processes			
Feature or sub-feature	Potential hazard	Mitigation	Likely Significant effect
Intertidal mudflats and sandflats	Areas of intertidal mudflat and sandflat occur within the proposed site.	The intertidal area will not be used for mussel cultivation.	No, provided the intertidal area isn't used for mussel cultivation.
Reef	The reef feature occurs along part of the western boundary of the proposed area and in the intertidal area.	Mussel cultivation will take place at least 10m away from the reef feature and will not take place within the intertidal zone. A study of the effects of transplanting mussels on species richness has found that the effects were localised (0-10m) and not detectable at larger distances (10-100m). See Annex 1.	No, provided mussel cultivation doesn't overlap with the reef feature on the western boundary of the proposed area and doesn't occur in the intertidal zone.

B. Conservation Objective: STRUCTURE AND FUNCTION (Menai Strait and Conwy SAC) To achieve favourable conservation status, the physical, biological and chemical structure and function necessary for the long-term maintenance and quality of the habitat should not be degraded			
Structure or function	Potential hazard	Mitigation	Likely Significant effect
Sediment processes and small-scale hydrodynamics	Mussel cultivation has the potential to affect sediment processes and hydrodynamics through processes of filtration, deposition of faeces and pseudofaeces, the physical presence of the mussels themselves, and dredging operations.	None required. A study of the effects of transplanting mussels on species richness has found that the effects were localised (0-10m) and not detectable at larger distances (10-100m). See Annex 1.	No
Nutrient flux and phytoplankton levels	Mussel cultivation also has the potential to affect nutrient flux and phytoplankton levels through processes of filtration and mussel metabolism.	None required. Studies indicate that, although the mussel cultivation does result in depletion of phytoplankton, a strong residual flow coupled with turbulent conditions, and a regular influx of plankton-rich water from Liverpool Bay means that only about 50% of incoming plankton is removed by the mussels. Only short periods of bottom-layer depletion, that might affect filter-feeders occur, and from the viewpoint of plankton supply, the mussel population has not reached its theoretical carrying capacity. See Annex 2	No

C. Conservation Objective: TYPICAL SPECIES (Menai Strait and Conwy SAC) To achieve favourable conservation status, the presence, abundance, condition and diversity of typical species should be such that habitat quality is not degraded.			
Community or species	Potential hazard	Mitigation	Likely Significant effect
Feature – Intertidal mudflats and sandflats Typical species of intertidal mudflats and sandflats	Mussel cultivation has the potential to impact the typical species associated with intertidal mudflats and sandflats through smothering, habitat modification, removal of phytoplankton, nutrient modification and interspecific competition	None required. The intertidal area will not be used for mussel cultivation. A study of the effects of transplanting mussels on species richness has found that the effects were localised (0-10m) and not detectable at larger distances (10-100m). See Annex 1.	No, provided the intertidal area isn't used for mussel cultivation.
Feature – Reef Typical species of reef features	Mussel cultivation has the potential to impact the typical species associated with reef communities, particularly through modification of structure and function. Mussel cultivation may also influence reef species through changes in the levels of predatory species, either through attraction or by depletion through predator control	None required. The reef feature occurs along part of the western boundary of the proposed area and in the intertidal area and mussel cultivation will take place at least 10m away from the reef feature and will not take place within the intertidal zone. A study of the effects of transplanting mussels on species richness has found that the effects were localised (0-10m) and not detectable at larger distances (10-100m). See Annex 1.	No, provided mussel cultivation doesn't overlap with the reef feature on the western boundary of the proposed area and doesn't occur in the intertidal zone.
Typical species of both features. Possible effects of predator control, <i>Carcinus maenas</i>	A small-scale pot fishery for shore crabs <i>Carcinus maenas</i> takes place on or adjacent to the Leased Areas. This has the potential to affect the population level and distribution of this	Continued monitoring of the pot fishery. Monitoring of the <i>Carcinus</i> pot fishery to date indicates that effort is not increasing, and that catch rates are stable, indicating that a sustainable balance between fishing effort and	No, provided that the scale of the shore crab fishery does not substantially increase.

	species within the Order or the wider SAC area.	<p>population is being achieved.</p> <p>The increased mussel population resulting from the relaying of substantial quantities of introduced mussels would be expected to artificially increase the shore crab population through increased shelter, refuge from predators and food availability. The pot fishery goes at least some way to redressing this artificial enhancement of shore crabs. See Annex 3</p>	
<p>Typical species of both features.</p> <p>Possible effects of predator control, <i>Asterias rubens</i></p>	<p>The starfish, <i>Asterias rubens</i>, is a natural predator of bivalves, including mussels. Starfish are abundant and widely distributed in British waters. However, their occurrence is often related to prey abundance, with resultant starfish “swarms”. Such swarms occur from time to time in the Menai Strait mussel fishery. Normal practice is to avoid starfish accumulation by husbandry: moving the mussels periodically into the intertidal zone, which discourages starfish, since they are vulnerable to desiccation and avian predation. When swarming does occur, though, direct control is carried out, by using either special dredges to catch</p>	<p>None required. Swarming represents an artificial increase in the starfish population stimulated by the high densities of mussels of a size suitable for starfish predation in the cultivated layings, and further encouraged by the low level of epibionts such as barnacles. The removal of starfish will redress this artificial increase in starfish numbers, reducing the population to more normal levels. A study of the interactions between mussel and starfish populations in the Menai Strait² found that mussel density and starfish abundance increased seasonally between April and July and declined between September and March. Starfish migration onto subtidal mussel beds was deemed to be in response to the transplantation of high densities of mussels, but starfish numbers reduced over the winter</p>	No

²Gallagher T., Richardson CA., Seed R, and Jones T. 2008. The Seasonal Movement and Abundance of the Starfish, *Asterias rubens* in Relation to Mussel Farming Practice: A Case Study from the Menai Strait, UK. Journal of Shellfish Research 27(5):1209-1215.

	starfish, or “starfish mops” to entangle them. Removal of starfish by dredges or mops has the potential to affect the typical species composition of the two features	period as a direct result of harvesting activities. The study found that starfish reproduction took place away from the mussel layings, when the starfish migrated into deeper water. Since predator control only takes place on the layings, it therefore does not endanger the ability of starfish to reproduce.	
Typical species of both features. Possible effects of alien species introduction	As part of the mussel cultivation operation, substantial quantities of juvenile mussels are brought into the Leased Areas annually as “seed”. There is potential for these mussels to contain alien invasive species which could affect the typical species composition of various features within the SAC.	Adherence to the Code of good practice for mussel seed movements. Section 12.5 of the new lease requires compliance with this code of good practice and the Memorandum of Understanding between Bangor Mussel Producers Association (BMPA), the Landlord and Countryside Council for Wales (CCW) signed on 14 July 2008	No, provided that leaseholders comply with Section 12.5 of the lease. See Annex 3.

Annex C: E-mail from NRW concerning the draft HRA

From: **Sharp, Rowland** <Rowland.Sharp@cyfoethnaturiolcymru.gov.uk>
Date: Mon, Feb 17, 2014 at 3:31 PM
Subject: RE: Mon mariculture / ballast bank hra
To: "sutting003@btinternet.com" <sutting003@btinternet.com>
Cc: James Wilson <jamesmussels@gmail.com>, "jim@awjmarine.co.uk" <jim@awjmarine.co.uk>, "keith.andrews123@yahoo.co.uk" <keith.andrews123@yahoo.co.uk>

Hi Sue

Following the email to James from Yourself on Feb 12th, I can let you know that NRW are content with the technical information provided in the document to inform a HRA for the development of the two areas within the Menai Strait East Fishery Order.

I am not sure at present whether it will be MSFOMA or the Welsh Government that will formally undertake the HRA.

If you would like to discuss this further please ring me

Thanks
Rowland

Rowland Sharp
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Ein diben yw sicrhau bod adnoddau naturiol Cymru yn cael eu cynnal, eu gwella a'u defnyddio yn gynaliadwy, yn awr ac yn y dyfodol.

Our purpose is to ensure that the natural resources of Wales are sustainably maintained, enhanced and used, now and in the future

North West Inshore Fisheries and Conservation Authority Activity

Background

The North West Inshore Fisheries and Conservation Authority (NWIFCA) is responsible for managing sea fisheries, including mussel fisheries, in the coastal waters lying between the Dee and the Solway Firth. This area includes the UK's largest seed mussel resource, which is vital to the ongoing success of the Menai Strait mussel fishery. This report provides a brief update on NWIFCA activities that could have an impact on the Menai Strait mussel fishery.

Recommendation

1. That progress with the proposed new Morecambe Bay Fishery Order is noted.
2. That the Association considers the nature of the response that it should make to the proposed new NWIFCA vessel size byelaw.
3. That the Association considers the nature of the response that it should make to the proposals to establish a track record for allocating seed mussel quota in Morecambe Bay.

1. Morecambe Bay Fishery Order

- 1.1 The NWIFCA has been working on proposals to establish a new Fishery Order for all of Morecambe Bay for several years. The proposed new Fishery Order would cover all of Morecambe Bay and would establish a Regulated Fishery for cockles and mussels, as well as providing opportunities for shellfish cultivation within Several areas in the Bay.
- 1.2 The new Fishery Order is larger in both scope and scale than its predecessor, the Morecambe Bay Fishery Order 1978, which expired in 2008. This earlier Order was limited in its scope to the regulation of fishing for mussels, and the extent was limited to the "South America" mussel skear in the northern part of Morecambe Bay where the annual seed mussel fishery takes place.
- 1.3 During January 2014 the mussel farmers from the Menai Strait met with Officers from the NWIFCA to discuss the proposed Fishery Order. It is understood that the meeting was productive. The NWIFCA recognise that the new Order is unlikely to be in place for the 2014 seed mussel fishery, and are making contingency plans for this.
- 1.4 A verbal update on the matters discussed with the NWIFCA will be provided to the Association by Mr James Wilson and Mr Trevor Jones who recently attended the meeting with NWIFCA.

2. Proposed new vessel size byelaw

- 2.1 The NWIFCA has been working on a new vessel size byelaw for some time. The latest version of the byelaw is attached at Annex A of this report. This draft was

considered at the “Technical, Scientific & Byelaws” (TSB) Sub-Committee of the NWIFCA on 7th February 2014.

- 2.2 The current draft of the byelaw appears to have taken account of the representations made by this Association and its members in response to earlier proposals. Importantly it specifically exempts mussel dredgers from the byelaw and does not preclude mussel farmers from replacing their existing dredgers.
- 2.3 It would be appropriate for the Association meeting to consider the nature of any comments that should be submitted to the NWIFCA in response to this draft byelaw.

3. Seed mussel track record proposal

- 3.1 Another item considered at the NWIFCA TSB meeting on 7th February 2014 was a proposal to develop a track record system for the Morecambe Bay seed mussel fishery. A copy of the report that was submitted to that TSB meeting is included at Annex B of this report.
- 3.2 In summary, the NWIFCA propose to establish non-transferable quotas for companies and / or individuals based upon a qualifying period from 1978-2013.
- 3.3 This is a proposal that could have significant ramifications for the Menai Strait mussel farmers. It would be appropriate to submit some comments on this proposal following discussions at the Association meeting.

4. Byelaw 6: Protection for European Marine Sites

- 4.1 The NWIFCA has recently made a new byelaw which prohibits the use of bottom towed fishing gear and hand gathering of shellfish or bait in parts of the Solway Firth, Morecambe Bay, the Dee Estuary and Shell Flat & Lune Deep SACs.
- 4.2 The Association is advised that none of the areas where the use of bottom towed fishing gear is prohibited have ever been fished by mussel dredgers from the Menai Strait.

MSFOMA Secretariat
March 2014

Annex A: Proposed new IFCA Vessel Size Byelaw

NORTH WESTERN INSHORE FISHERIES AND CONSERVATION AUTHORITY

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ANNEX B

BYELAW 2

VESSEL MAXIMUM LENGTH

Interpretation

1. In this byelaw;
 - a) "the Authority" means the North Western Inshore Fisheries and Conservation Authority as defined in Articles 2, 4 and 5 of the North Western Inshore Fisheries and Conservation Order 2010;
 - b) "the District" means the North Western Inshore Fisheries and Conservation District as defined in Articles 2 and 3 of the North Western Inshore Fisheries and Conservation Order 2010 (S.I. 2010 No:2200)
 - c) "the baselines" means the baselines as defined in Article 3 of the North Western Inshore Fisheries and Conservation Order 2200 (S.I. 2010 No:2200).
 - d) "overall length" has the same meaning as in the Merchant shipping (Registration of Ships) Regulations 1993 (SI 1993/3138);

Prohibitions

2. No vessel which exceeds 15 metres overall length shall be used in fishing for or taking of sea fisheries resources within that part of the District that lies between 3 and 6 nautical miles offshore as measured from the baselines.
3. No vessel which exceeds 10 metres overall length shall be used in fishing for or taking of sea fisheries resources within that part of the District enclosed by a line drawn 3 nautical miles offshore as measured from the baselines.
4. This Byelaw shall not apply to the following vessels:-
 - a) Vessels used in the fishing, dredging, transport or relaying of Cockle (*Cerastoderma edule*) or Mussels (*Mytilus edulis*) while such vessels are operating under permit issued by the Authority.

- b) Vessels used solely for the purpose of angling by means of rod and line or handline.
- c) Any person performing an act that would otherwise constitute an offence against this Byelaw, if that act was carried out in accordance with a written permission issued by the North West Inshore Fisheries and Conservation Authority permitting that act for scientific, stocking or breeding purposes.

Exemptions

- 5. Vessels exceeding the length restrictions described in sections 2 and 3 may be used provided that:-
 - a) It can be demonstrated to the satisfaction of the Authority that the vessel held fishing entitlement for appropriate parts of the District and was built prior to the date of the introduction of this Byelaw and.
 - b) That the owner(s) of the vessel have obtained an authorisation permitting the use of the vessel within the appropriate parts of the District.
- 6. Newly constructed or purchased vessels exceeding the length restrictions set out in paragraphs 2 and 3 may be issued with an authorisation under paragraph 5 provided that:-
 - a) The owner can demonstrate that prior to the date of this Byelaw being made, they had entered into an enforceable financial commitment to construct or purchase such a vessel and.
 - b) The owner can demonstrate that the date of delivery prevented compliance with paragraph 5 of this Byelaw.

Revocation of Legacy Byelaws

Cumbria SFC Byelaws 3 and NWSFC Byelaw 9 are revoked.

Explanatory note (This note does not form part of the byelaw)

In order to provide protection for important inshore nursery areas this Byelaw restricts the maximum length of fishing vessels built after the date of the introduction of this Byelaw that may be used within the area enclosed by a line drawn 3 nautical miles to seaward of the baselines to 10 meters overall length, and within that part of the District that lies between 3 and 6 nautical miles of the baselines to 15 meters overall length and maintains the fishing entitlements of existing vessels built prior to the introduction of this byelaw.

Annex B: Proposals to establish a seed mussel track record

NWIFCA Technical, Science and Byelaw Sub-Committee

7th February 2014: 10:00am

REPORT NUMBER

9

NORTH MORECAMBE BAY SEED MUSSEL DREDGE FISHERY – TRACK RECORD

Background

Under the proposals in the Morecambe Bay Hybrid Fishery Order, the allocation procedure for hand-gathering licences is a tiered points system based on proven active and material participation in the Morecambe Bay cockle and mussel fisheries.

It is proposed to also incorporate an allocation system based on proven track record for seed mussel dredge licences either under the Order if it is granted by the time of the fishery in 2014, or for use under existing byelaw authorisation should the Order not be in place by then. Due to the increased interest in this fishery there is now a necessity to have a mechanism for limiting numbers of authorisations or licences issued, or for restricting catch per vessel (setting quota) should demand outweigh stock levels or capacity of the area in order to ensure sustainability of the fishery and ensure no risk of damage to any conservation features within the Morecambe Bay EMS.

Track Record

Under EU legislation a fishing vessel's 'track record' is the amount of the particular species of fish which it caught in any calendar year which forms the basis on which it is allocated quota for a subsequent year. The basis for allocating quota for a particular quota year is established by reference to the track record of that vessel over a number of previous years. For all intents and purposes schemes are complicated and based on a number of factors. Officers do not propose to bring in a complicated system for seed mussel dredging but there are a number of principles that could be adopted / adapted.

Officers would suggest that TSB use the following points for the basis of discussion, in order to develop a track record system acceptable to the Authority.

- a) Track record can be determined from a defined set of years – for Morecambe Bay seed mussel dredging it is proposed this should be defined as the period from the granting of the Morecambe Bay Mussel Fishery Order (1978) up to this year ie. 1978 – 2013.
- b) For Morecambe Bay seed mussel dredging it would be more appropriate to assign track record to a company or individual who has been actively involved in this fishery than to a vessel. Vessels have changed hands over the years, and vessel track record could preclude long-standing and known operators in favour of unknown operators who have had no investment or ownership of the fishery.
- c) Track record is not saleable or transferable. It remains with the company / individual.
- d) Track record cannot be increased or transferred by purchase or transfer from another company / individual.
- e) Track record can be used solely to allocate the number of licences / authorisations issued in a year or to also allocate the resource based on amounts fished during the defined track record period. The NW&NWSFC and NWIFCA have hard-copy landings returns which

have been required under the old Order and under recent authorisations on which to base this allocation.

- f) Track record could also include a requirement to prove reliance on the stock during the defined track record period.

Mandy Knott
Senior Scientist and Morecambe Bay Fishery Order Officer
29th January 2014

Menai Strait West Fishery Order Proposal

Background

The Association is working with shellfish farmers from the western Menai Strait to reinstate the Fishery Order that lapsed in that area in 2008. This will form the foundation for the development of shellfish farming in that area. This report provides an update on progress with this proposal.

Recommendation

1. That the Association considers its response to recent developments outlined in this report.

1. Menai Strait West Fishery Order Proposal

- 1.1 The Menai Strait (West) Fishery Order was established in 1978 for a period of 30 years. This Fishery Order provided the basis for the development of some oyster and mussel farming activity in the western Strait. Unfortunately the Order lapsed in 2008, preventing the further development of these businesses.
- 1.2 The operators who had been working in this area before 2008 have been progressing an application for a new Fishery Order to set the foundations for developing sustainable shellfish cultivation in the western Menai Strait.
- 1.3 During 2013 a formal application was submitted to the Welsh Government for the creation of a new Fishery Order in the western Menai Strait. It was proposed that this Fishery Order should endure for a period of 28 years, with a review of management every 7 years.

2. Recent Progress & Developments

- 2.1 At the last meeting it was reported that meetings were held with Welsh Government officials to discuss the Menai Strait West Fishery Order application in September and November 2013. The November meeting was attended by Mr Graham Rees (Head of Fisheries) and also by Ynys Môn Assembly Member Mr Rhun Ap Iorwerth. That meeting was very positive indeed. The Chair of the Association wrote to Mr Rees afterwards to thank him for the meeting (letter attached at Annex A).
- 2.2 Following the November meeting, the application for the Menai West Fishery Order was revised and resubmitted by Dr Jon King. The revisions addressed issues that had been previously raised by the Welsh Government and which were discussed with Mr Graham Rees.
- 2.3 The Chair wrote again to the Welsh Government in February 2014 to enquire about progress (copy of letter attached at Annex B). This letter was copied to Mr Rhun Ap Iorwerth AM, who asked the First Minister about progress with the Menai West Fishery Order on the 11th February 2014. The First Minister indicated that the Welsh Government was due to reach a decision on this matter by the end of February (see extract of Record of Proceedings at Annex C).

- 2.4 In early March 2014, the Chair and shellfish farmers from the Menai Strait met with two officials from the Welsh Government to discuss prospects for progress. It was understood that some legal issues are still delaying progress with the Fishery Order application. The Association meeting will provide an opportunity for a verbal update on the outcome of this meeting and prospects for progress. Any recent developments will be reported verbally to the meeting.

MSFOMA Secretariat
March 2014

Annex A: Letter from Chair to Mr Graham Rees

Menai Strait Fishery Order Management Association

Port Penrhyn, Bangor, LL57 4HN

Graham Rees
Welsh Government
Sea Policy Executive
Rhodfa Padarn
Llanbadarn Fawr
Aberystwyth
Ceredigion
SY23 3UR

XXth November 2013

Dear Graham

MENAI STRAIT WEST FISHERY ORDER

I am writing further to our meeting in Brynsiencyn last week where we had an opportunity to resolve some of the issues that seem to have delayed progress with the proposed new Fishery Order that will allow shellfish farming to develop in the western Menai Strait.

We found the meeting very productive. It was very reassuring to hear from you that the Welsh Government is keen to see shellfish farming develop, and that we share the same overall objectives. With your guidance and assistance at the meeting it seems that we have been able to identify solutions to the problems that seem to have been holding up progress with this Fishery Order.

As agreed, we have summarised the key conclusions from the meeting and have set out a suggestion that could form the basis for part of the new Fishery Order.

1. Duration of the Fishery Order

The meeting provided us with an opportunity to consider that the grant of a Several Fishery Order for a period of less than 15 years does not provide sufficient time for a return on the investment required to establish shellfish farming operations, particularly for oysters. We were pleased to hear that you and your colleagues were aware of this issue.

It became clear during the meeting that through an unfortunate combination of the wording of the Fishery Order application form and the responses given in support of the application there had been some confusion and uncertainty about the duration of Fishery Order that had been requested and that it would thus be appropriate for the Minister to grant.

We all agreed that the application should be seen as for a 28 year order, with periodic review of management during this period (as outlined below).

Menai Strait Fisher Order Management Association
Company registered in England and Wales No 07163689

2. Ministerial oversight and control

During the meeting you outlined the concerns that your lawyers had raised about Fishery Orders exposing the Government to EC infraction proceedings. This has become manifest in a reluctance to support applications for Fishery Orders lasting more than 7 years.

During the meeting it became apparent that the new Environment Bill proposals might help to address this issue; however it was also clear that this solution may take several years to be implemented, during which time commercial opportunities for Welsh shellfish farmers will be lost.

We discussed an alternative option that would provide protection for the Government and security for shellfish farmers. This option would be to insert wording into any new Fishery Order that would give the Minister the power to review management and as necessary to direct the Grantees and lessees of the Order to ensure that shellfish farming does not adversely affect the integrity of Natura 2000 sites.

The wording we had in mind is a strengthened version of that already in force in a number of other Fishery Orders (such as §7 & 8 of the Menai Strait Oyster and Mussel Fishery Order 1962). It would seem relatively easy to bring these provisions up to date for any new Orders so that the Minister has oversight of the management of the Order and the full requirements of Article 6(3) of the EC Habitats Directive are woven into its very fabric. Our first attempt at this is outlined below:-

X. The Grantee may:-

- a) With the consent in writing of the Minister designate such portions of the area within the limits defined in this Order as "layings" so that these areas may be leased for the purpose of cultivating oysters or mussels; and*
- b) With the consent in writing of the Minister enter into agreements with any person or Associations of persons upon such terms and subject to such conditions that may be determined by the Minister and the Grantee provided that no such lease shall be granted for a period of longer than X years and that no such lease may terminate after the date under which this Order ceases to operate; and*
- c) With the consent in writing of the Minister, renew any leases issued under the terms of section X(b).*

Y. The Minister may from time to time and as occasion may require:-

- a) Direct the Grantee to review or modify the terms associated with any lease issued under section X of this Order if the Minister has been advised by the statutory nature conservation advisors that the activities authorised under the terms of the lease are likely to have a significant effect on any Natura 2000 site(s) within or in the vicinity of the Order; and*
- b) Direct the Grantee to review, modify or revoke any lease issued under section X of this Order if the Minister has been advised by the statutory nature conservation advisors that the activities authorised under the terms of the lease are adversely affecting the integrity of any Natura 2000 site(s) within or in the vicinity of the Order*

We realise that your lawyers could probably make considerable improvements to our wording. We offer these suggestions as the starting point in what we hope will be a constructive dialogue with you and your colleagues, and ideally the lawyers themselves, so that we can all work together to find a solution to the impasse that currently blights the shellfish farming industry in Wales.

Menai Strait Fisher Order Management Association
Company registered in England and Wales No 07163689

We would welcome your views on the proposals set out in this letter, and look forward to working with you and your colleagues to progress the Fishery Order for the western Menai Strait.

You mentioned at the end of the meeting on Friday that you would be in our locality again on 9 December if we thought it useful to talk with you again. I would like to keep this option open in case some of the West Menai applicants would like to meet with you again.

Yours sincerely

SUE UTTING
Chair, MSFOMA

Cc Rhun Ap Iowerth, AM
David Jarrad, Shellfish Association of Great Britain
Dr Jon King, Trevor Jones, David Lea-Wilson – Fishery Order Applicants

Menai Strait Fisher Order Management Association
Company registered in England and Wales No 07163689

Annex B: Letter from the Chair to Welsh Government, February 2014

Menai Strait Fishery Order Management Association

Port Penrhyn, Bangor, LL57 4HN

Sarah Price
Welsh Government
Fisheries Policy Branch
Rhodfa Padarn
Llanbadarn Fawr
Aberystwyth
SY23 3UR

11 February 2014

Dear Sarah

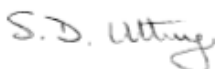
RE: MENAI STRAIT (WEST) FISHERY ORDER REVISED APPLICATION

I am writing to you on behalf of the growers in the West Menai as I am very concerned over the lack of progress being made with the application from MSFOMA for this Fishery Order, even though we were told that we would hear something by the end of January. I am aware that Jon King has been in regular touch with you and that the preparation of the paperwork is apparently underway.

As well as being the Chair of MSFOMA, I was a shellfish research scientist for many years and it is this expertise that the focus of my letter is based upon today. The sea water temperature in the Menai Strait will be rising from the beginning of March and this is when mussels and oysters will start to grow again after the winter. For growers to get the best from their businesses, it is now when they need to bring in and plant out new stock in order to get the most from the growing season. It is analogous to a farmer on the land who must plant seed crops in winter or early spring if they are to have a good harvest in the summer. Any time wasted will have dire consequences on their harvests and profits.

I cannot stress enough how vital it is that we see some progress with the Menai Strait (West) application so that the growers will have security over and benefit most from seed planted out now. We have a biological clock ticking here which can sometimes be overlooked by the administrators. I hope we hear from you very soon as time really is of the essence.

Yours sincerely



SUE UTTING
Chair, MSFOMA

Cc: Graham Rees, Bill Somerfield, Rhun Ap Iorwerth AM

Menai Strait Fisher Order Management Association
Company registered in England and Wales No 07163689

Annex C: Welsh Government Record of Proceedings: extract of questions to the First Minister, 11th February 2014.

Y Sector Pysgota

Rhun ap Iorwerth

- 14:06 7. A wnaiff y Prif Weinidog ddatganiad am flaenoriaethau Llywodraeth Cymru ar gyfer y sector pysgota? OAQ(4)1488(FM)

Carwyn Jones

Y Prif Weinidog / The First Minister

- 14:06 Rydym wedi amlinellu ein blaenoriaethau ar gyfer y sector pysgota yn y cynllun gweithredu strategol ar gyfer môr a physgodfeydd Cymru a lansiwyd ym mis Tachwedd y llynedd.

Rhun ap Iorwerth

- 14:06 Diolch yn fawr iawn. Thank you. You will be aware of the real economic potential of increasing shellfish production in Wales, but the long-term viability of the industry is at risk because of the current seven-year licences being offered to fishermen. Licences in the past been many decades long. With temperatures from the beginning of next month in the Menai Straits starting to rise, now is the time to put down mussel seed, but insecurity about the future is putting off investors. Will you act now to end delays within Government by bringing in a revised Menai fishing Order so that we can plan for a prosperous and sustainable future for the industry?

Carwyn Jones

Y Prif Weinidog / The First Minister

- 14:07 I think that the Member is referring to the Menai West several Order. I assume that that is what he means. I can tell him that we are looking to reach a decision on the issues that are holding up the current several Order application for Menai West before the end of this month.

The Fishing Sector

7. Will the First Minister make a statement on the Welsh Government's priorities for the fishing sector? OAQ(4)1488(FM)

We set out our priorities for the fishing sector in the marine and fisheries strategic action plan that was launched in November last year.

Diolch yn fawr iawn. Diolch. Byddwch yn ymwybodol o botensial economaidd gwirioneddol cynyddu cynhyrchiant pysgod cregyn yng Nghymru, ond mae hyfywedd hirdymor y diwydiant mewn perygl oherwydd y trwyddedau saith mlynedd cyfredol sy'n cael eu cynnig i bysgotwyr. Mae trwyddedau wedi para am sawl degawd yn y gorffennol. Wrth i'r tymheredd yn Afon Menai ddechrau codi o ddechrau mis nesaf, nawr yw'r amser i wasgaru hadau cregyn gleision, ond mae ansicrwydd am y dyfodol yn codi ofn ar fuddsoddwyr. A wnewch chi weithredu nawr i roi terfyn ar oediadau o fewn y Llywodraeth trwy gyflwyno Gorchymyn pysgota diwygiedig ar gyfer y Fenai fel y gallwn gynllunio ar gyfer dyfodol llewyrchus a chynaliadwy i'r diwydiant?

Rwy'n credu fod yr Aelod yn cyfeirio at Orchymyn pysgodfa unigol Gorllewin y Fenai. Rwy'n cymryd mai dyna y mae'n ei olygu. Gallaf ddweud wrtho ein bod yn bwriadu gwneud penderfyniad ar y materion sy'n oedi'r cais Gorchymyn pysgodfa unigol cyfredol ar gyfer Gorllewin y Fenai cyn diwedd y mis hwn.