

Final Business and Regulatory Impact Assessment

Title of Proposal

THE SHETLAND ISLANDS REGULATED FISHERY (SCOTLAND) ORDER 2012

Purpose and intended effect

Background

The Shetland Islands Regulated Fishery (Scotland) Order 2009 (“the 2009 Order”) is due to expire at the end of January 2013. A new Regulating Order needs to come into effect to prevent a regulatory vacuum. The Regulating Order is an effective local management tool with the purpose of maintaining sustainable shellfish stocks around Shetland. The proposed order is for 15 years which follows on from the Shetland Islands Regulated Fishery (Scotland) Order (“the 1999 Order”) which was in force for 10 years and the 2009 Order which was in force for 3 years.

Objective

The aim of the proposed Regulating Order is to grant the Shetland Shellfish Management Organisation (SSMO) the legal right to manage the commercial fisheries for lobsters, crabs, scallops, queens, whelks, mussels, cockles, razorshells, clams and oysters around the Shetland Islands within the area between the low water mark out to the 6 mile limit. The result of this would be to continue to put the management of these fisheries in local hands, maintaining a more targeted management regime and access to high quality local science from the North Atlantic Fisheries College. The SSMO would be able to apply restrictions to the fishing activity and effort in a way that is not possible in the absence of a localised inshore management regime.

Rationale for Government intervention

The Government has already intervened by making the 1999 and 2009 Orders and it is important to maintain the stability provided by those Orders. It should be noted that the fishery received MSC accreditation for king scallops, brown crabs and velvet crabs in 2012.

This order will contribute to the Scottish Government’s strategic objective to improve Scotland’s natural and built environment and the sustainable use and enjoyment of it. It also supports the inshore strategy of local fisheries management.

Consultation

Within Government

The proposed Regulating Order itself has already been the subject of consultation as part of the requirements of Schedule 1 to the Sea Fisheries (Shellfish) Act 1967.

In addition to the Regulating Order consultation, as per the requirements of Schedule 1 to the Sea Fisheries (Shellfish) Act 1967, the following organisations have also been consulted on the terms of this proposed Order:

- Scottish Natural Heritage
- The Crown Estate
- Scottish Environmental Protection Agency
- BT
- National Grid

The effect of the Order is to continue with the existing management of the fishery and there were no suggestions for any changes to the proposals.

Public Consultation

The SSMO consulted on their application for a Regulating Order itself as part of the requirements of Schedule 1 to the Sea Fisheries (Shellfish) Act 1967. The consultation responses were included in the application and were supportive of the application. There was a period of one month of consultation after advertising the draft Order on 20 July 2012. No objections were raised.

Business

The SSMO consulted on their application for a Regulating Order itself as part of the requirements of Schedule 1 to the Sea Fisheries (Shellfish) Act 1967. The consultation responses were included in the application and were supportive of the application. There was a period of one month of consultation after advertising the Order on 20 July 2012. No objections were raised.

For the purposes of this assessment, fishing vessel owners affected by the proposed Order have been consulted and can be considered as individual businesses.

Options

Two options have been considered in relation to the proposed Regulating Order:

1. do nothing; and
2. make a new Regulating Order to come into force upon the expiry of the existing 2009 Order.

Option 1 - Do nothing. This option would raise the potential for a regulatory vacuum which might destabilise the local inshore sector. Without a Regulating Order there is potential for overfishing and oversupply, thus upsetting the delicate balance of the local market and leading to a fall in prices.

Option 2 - To bring in a 15 year Regulating Order which will maintain the status quo and provide long term stability to the inshore fishing sector.

Sectors and groups affected

The affected group will mainly be the shellfish catching and processing sector in Shetland. The Order is unlikely to have an effect beyond Shetland as the shellfish sector tends to be locally based and the small vessels involved in inshore fisheries elsewhere would be unlikely to sail to Shetland to fish or to sell to processors on the Shetland Islands.

Benefits

Option 1 – there are no benefits in allowing the existing 2009 Order to lapse without making a new Regulating Order to follow on from the 2009 Order at this time. As mentioned above, there may be serious repercussions for the local industry and economy. Longer term, the ongoing sustainability of the fishery may be compromised.

Option 2 – The benefit of bringing into force a new Order is the stability it provides for the local market and catchers.

Costs

Under the proposed Regulating Order, the grantee, SSMO, may issue vessels licences to fish, take or dredge in the area covered by the Order. A toll of £250 is payable to SSMO in respect of the issue of such a licence. The income generated from these tolls funds the management of the fishery. Under article 6(2) of the 2009 Order the level of toll was £150.00. Enforcement of the Regulating Order will continue to be provided by Marine Scotland Compliance from within existing resources and priorities.

Scottish Firms Impact Test

The impact on local businesses should be positive as the proposed Regulating Order will allow them to continue to operate as they have done over the past 13 years. With effective local management, the sustainability of the stocks in the longer term guarantees their future. Consultation has shown overwhelming support from local fisheries interests, including fishing vessel owners, who are effectively small businesses. These fishermen support the introduction of the Order, which will allow them to continue to fish in a sustainable environment.

Competition Assessment

The Sea Fisheries (Shellfish) Act 1967 gives the grantee - in this case the Shetland Shellfish Management Organisation (SSMO) - the right to regulate the fishery prescribed in the Regulating Order. The Regulating Order is in place to allow the fishery to be locally managed on a sustainable footing, which in turn allows fishermen to make a living. The absence of the management regime could lead to overfishing and result in the collapse of the stocks to the detriment of the local fishing community. The SSMO operates a transparent licensing regime, and applicants are all scored on a standard set of criteria. This creates a level playing field and equal competition within the fishery.

Test run of business forms

There are no forms directly introduced by this Order and therefore no requirement for a test run of business forms. Application forms used are the ones used by the SSMO for the life of the previous Orders, i.e. those provided for by the Several and Regulated Fisheries (Form of Application) Regulations 1987".

Legal Aid Impact Test

The proposals will not have any impact upon legally compliant licence holders. It remains the responsibility of Marine Scotland Compliance to investigate whether there has been a breach of licence conditions. In that event, Marine Scotland Compliance will still be able to refer cases to the Crown Office and Procurator Fiscal Service for prosecution, but this does not alter or undermine an individual's access to the justice system. It does, in the majority of cases, allow them to accept and pay an administrative penalty without venturing into the court system should they elect to do so.

Enforcement, sanctions and monitoring

Marine Scotland Compliance is empowered to enforce the proposed Order, in terms of sections 4A to 4D of the Sea Fisheries (Shellfish) Act 1967 (which provisions were inserted by section 98(1) of the Police, Public Order and Criminal Justice (Scotland) Act 2006) British Sea Fishery Officers are empowered to monitor, and enforce the fisheries regulated by the proposed Order. A person who commits an offence under the Order may be liable, on summary conviction, to a fine of the statutory maximum.

Implementation and delivery plan

The proposed Regulating Order will come into force on 1 February 2013 which will enable the Shetland Shellfish Management Organisation to continue to manage the fishery as it has done over the past 13 years.

Post-implementation review

The proposed Order will run for 15 years. The management of the fishery by the SSMO is widely considered to be effective and successful. A formal review will be undertaken towards the end of a ten year period. However, informal monitoring will continue to take place on an ongoing basis and a formal review will be undertaken sooner should it be considered necessary.

Summary and recommendation

To proceed with option 2.

The current proposal is in effect a renewal of the existing Order which will maintain the current management arrangements, which are generally regarded as successful.

The Order will allow for continued stable and sustainable fishing in Shetland and regulate fair access to that fishery.

Conversely, the effect of non-renewal of the Order would have the potential to create a free for all in the fishery causing instability in the local fishing market and possible over fishing resulting in a decline of fish stocks.

Summary costs and benefits table

Option	Total benefits per annum: economic, environmental and social	Total cost per annum: economic, environmental, social, policy and administrative
1	Nil – danger of destabilisation of local markets.	Nil economic cost to business but risk of destabilisation of local markets which could have a negative impact on the fishing industry. There is also a risk that a detrimental impact on the environment could result.
2	Maintaining a stable environment for the sector to operate in. The SSMO is able to access excellent local science from the North Atlantic Fisheries College (NAFC) on the islands and can use that science to make informed management decisions to ensure a sustainable fishery. NAFC do not charge for that service and support.	The SSMO will charge £250.00 annual fee for a fishing licence and that income covers their costs but will result in a more stable and sustainable industry for fishermen and processors.

Declaration and publication

I have read the Regulatory impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of the businesses in Scotland.

Signed:**Date:**

**Richard Lochhead
Cabinet Secretary for Rural Affairs and the Environment
Scottish Government**

Scottish Government Contact point:

Michael Cutts
Inshore Fisheries and Coastal Communities Team
Marine Scotland
Ext 44756