

# Final Business and Regulatory Impact Assessment

## **1. Title of Proposal**

**1.1.** The Sea Fishing (EU Control Measures) (Scotland) Order 2015

1.2. The Scottish Ministers make the above Order in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981 and section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972 and all other powers enabling them to do so.

## **2. Purpose and intended effect**

### **2.1 Background**

The Order is a compendium of provisions relating to the implementation and enforcement in Scotland of obligations under EU Sea Fisheries Regulations - Council Regulation (EC) No 1224/2009 (the Control Regulation) and Commission Implementing Regulation (EU) No 404/2011 (the Implementing Regulation). The Order seeks to ensure that Scottish technical control measures are consistent with the terminology and updated provisions of these EU Regulations.

- The Order designates the Scottish Ministers as the competent authority for specified purposes of the Control and Implementing Regulations.
- The Order makes provision for the registration of buyers of fisheries products and provision for offences in relation to the purchase of fish by unregistered buyers.
- The Order makes provision for the registration of sellers of fisheries products.
- The Order makes provision for the registration of auctions.
- The Order makes provision for offences in relation to the marketing and purchase of fisheries products landed from unlicensed fishing boats.
- The Order confers powers on British sea-fishery officers for the purposes of enforcing the Order or any equivalent provision.
- The Order makes provision for the protection of British sea-fishery officers in the exercise of their powers under the Order.
- Provision is made in relation to offences and proceedings
- The Order makes provision in relation to the admissibility of evidence of the weight of fish in any proceedings.
- The Order makes provision in relation to the landing of herring, mackerel and horse mackerel.
- Provision is made in relation to penalties.

Amendments are made to specified instruments, other instruments are revoked and savings provision is made, specifically;

- Amendment to the Sea Fish (Marketing Standards)(Scotland) Regulations 2004
- Amendment of the Sea Fishing (Prohibition on the Removal of Shark Fins)(Scotland) Order 2007.
- Amendment of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007.

- Amendment of the Sea Fishing (Restriction on Days at Sea)(Scotland) Order 2010.
- Amendment of the Sea Fishing (EU Recording and Reporting Requirements)(Scotland) Order 2010.
- Amendment of the Sharks, Skates and Rays (Prohibition of Fishing, Trans-shipment and Landing)(Scotland) Order 2012.
- Amendment of the Sea Fishing (Illegal, Unreported and Unregulated Fishing)(Scotland) Order 2013.

The following instruments will be revoked;

- The Foreign Fishing Boats (Stowage of Gear) Order 1970.
- The Fishing Boats (Marking and Documentation)(Enforcement) Order 1993.
- The Sea Fishing (Enforcement of Community Satellite Monitoring Measures)(Scotland) Order 2004.
- The Registration of Fish Sellers and Buyers and Designation Sites (Scotland) Regulations 2005.
- The Registration of Fish Sellers and Buyers and Designation Sites (Scotland) Amendment Regulations 2005.
- The Sea Fishing (Marking and Identification of Passive Fishing Gear and Beam Trawls (Scotland) Order 2006.
- The Sea Fishing (Northern Hake Stock)(Scotland) Order 2006.
- The Sea Fishing (Control Procedures for Herring, Mackerel and Horse Mackerel)(Scotland) Order 2008.
- The Sea Fishing (Control Procedures for Herring, Mackerel and Horse Mackerel)(Scotland) Amendment Order 2008.
- The Sea Fishing (Prohibition on the Removal of Shark Fins)(Scotland) Amendment Order 2009.
- Articles 4 and 7(a) of, Part 1 of Schedule 1 to, the Sea Fishing (EU Recording and Reporting Requirements)(Scotland) Amendment Order 2011.

## **2.2 Objective**

The title SSI is being introduced to ensure that Scottish technical control measures are consistent with the terminology and updated provisions of the Control Regulation and the Implementing Regulation and to ensure consistency with the rest of the UK.

## **2.3 Rationale for Government intervention**

Government intervention is necessary in order to fully reflect the provisions of the EU Fisheries Control and Implementation Regulations in national law. The Sea Fishing (EU Control Measures) (Scotland) Order 2015 ensures that Scottish legislation is consistent with both EU and UK Fisheries statutory measures.

The Sea Fishing (EU Control Measures) (Scotland) Regulations 2015 will be in line with the purpose articulated in the Scottish Government's Economic Strategy: to focus Government and public services on creating a more successful country with opportunities for all of Scotland to flourish bring increased sustainable growth. The Order will contribute to a wealthier and fairer country by providing a level regulatory playing field whilst safeguarding sustainable legal fishing and trading activity. In this respect they will also contribute to the following National Outcomes: we value and enjoy our built and natural environment and protect it and enhance it for future generations and we reduce the local and global environmental impact of our consumption and production. In addition, they will contribute to the National Indicator

outcomes aimed at improving the state of Scotland's marine environment.

## **Consultation**

### **Within Government**

Officials and Ministers from the other UK Fisheries Administrations (Department for Environment, Food and Rural Affairs, Marine Management Organisation, Welsh Assembly Government and Department of Agriculture and Rural Development Northern Ireland and their predecessor departments) were all involved in the negotiation of the fisheries Control Regulation and its provisions. Amendments and revocations to the specific areas of legislation mentioned above have been discussed and co-ordinated across the UK Departments and their respective legal services during the course of 2014/15.

### **Public Consultation**

Given that fishermen, those trading in the first sale of fish, and other individuals which might be affected by the Order have already required to comply with the requirements of the Control Regulation and the Implementing Regulation for some time, and that this Order simply contains technical provisions which supplement the EU Regulations on specific matters, it was not considered necessary to run a public consultation in Scotland.

### **Business**

The title SSI is being introduced to meet Scotland's obligations to implement and enforce certain provisions of Council Regulation (EC) No 1224/2009 (the Control Regulation) and Commission Implementing Regulation (EU) No 404/2011 (the Implementing Regulation). Fisheries related businesses and individual fishers have been working to the provisions of these regulations for some time and the Order does not impose any new requirements or have any additional adverse impact on business, charities of voluntary bodies.

## **Options**

Two options have been considered in introducing the proposed regulatory amendments, consolidations and revocations under the Sea Fishing (EU Control Measures)(Scotland) Order 2015; **Option 1** do nothing and **Option 2** implement the European Regulatory changes fully by making a specific SSI.

**Option 1.** This could create a risk that the Scottish Government could be viewed as failing to discharge its regulatory obligations under EU Law and could lead to the UK facing infraction measures.

**Option 2.** Introduce the legislative changes required and consolidate the necessary changes into a single SSI. This provides consistency for Scottish industry across the EU.

### **Sectors and groups affected**

While these proposed Regulations apply to Scotland only, equivalent subordinate legislation has been introduced in England, Wales and Northern Ireland. Fishers and businesses that trade in the first sale of fish are the only sector or groups who will be impacted by the relevant provisions, amendments and revocations contained in the Order.

## **Benefits**

The title SSI is being introduced to meet Scotland's obligations to implement and enforce certain provisions of Council Regulation (EC) No 1224/2009 (the Control Regulation) and Commission Implementing Regulation (EU) No 404/2011 (the Implementing Regulation) and ensures Scottish fisheries legislation is consistent with legislative provision in both the EU and in the rest of the UK.

**Option 1.** Do nothing. - There are no perceivable benefits to this option; the UK (and Scotland) must meet its legal obligations in line with all Member States. Failing to introduce the appropriate legislative provisions could lead to infraction proceedings and ultimately large fines being placed upon the UK.

**Option 2.** Introduce the appropriate legislative provisions. – This option will ensure compliance with EU law and provide continuity (a level playing field) across the UK and EC for Scottish fishers and their industry. Option 2 is considered as bring the greatest benefits to all stakeholders.

## **Costs**

Direct costs coming about as a result of this legislation will be negligible and are already contained within business and Government operating budgets.

**Option 1.** Do nothing. – This could lead to potential maximum infraction fines of €703K per day or £256m per annum.

**Option 2.** Introduce the appropriate legislative provisions. – low level non-monetised administrative costs to the Scottish Government with no risk of infraction fines.

## **Scottish Firms Impact Test**

The title SSI is being introduced to meet Scotland's obligations to implement and enforce certain provisions of Council Regulation (EC) No 1224/2009 (the Control Regulation) and Commission Implementing Regulation (EU) No 404/2011 (the Implementing Regulation) and brings Scottish fisheries legislation into line with the rest of the UK.

The Scottish and UK fishing industries have been aware of the provisions of the Control Regulation since it was adopted in November 2009 and through continuous contact with industry groups such as FMAC (90%+ industry coverage) the Scottish Government has been able to take soundings on the implementation on the raft of control measures contained within the European legislation.

## **Competition Assessment**

The enforcement of fisheries legislation is done to create a level playing field to ensure that all vessels comply with technical and conservation measures aimed at the sustainable development of the industry. The provisions within this new Regulation is unlikely to have any major impact on the ability of operators to compete against each other as all fishers and those involved in the first sale of fish within the European Union must comply with the provisions of the Control Regulation.

Using the Competition & Markets Authority Competition Filter questions we have concluded that the proposals will neither directly or indirectly limit the number or range of suppliers, limit the ability of suppliers to compete or reduce suppliers' incentive to compete vigorously.

**Test run of business forms**

The proposals do not introduce any new forms for business to complete.

**Legal Aid Impact Test**

The proposals will not have any impact on legally compliant fishers or those operators involved with the first sale of fish. Prosecutions are very rare with most offences being dealt with by way of Fixed Penalty Notices. The provisions within the Regulations will not lead to an increase in prosecutions nor alter or undermine an individual's access to the justice system.

Directorate for Justice: Criminal Law and Licensing Division and Crown Office have reviewed the draft Order and are content with its provisions.

**Enforcement, sanctions and monitoring**

The Compliance unit within Marine Scotland is responsible for monitoring and enforcing fisheries rules and regulations. It also has responsibility for detecting and investigating offences and monitoring convictions. Marine Scotland is required annually to report all enforcement action taken on serious fisheries infringements to the European Commission.

**Implementation and delivery plan**

Marine Scotland, along with other UK Fisheries Administrations, will monitor the application of the new legislative provisions and review, each year, in advance of the annual report to the European Commission.

- **Post-implementation review**

Marine Scotland will undertake a review of the new legislation within the specified 10 year period.

**Summary and recommendation**

Which option is being recommended and why? Refer to analysis of the costs and benefits in reaching the decision. Summarise, using the table below, the information gathered for each option.

- **Summary costs and benefits table**

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	Low level non-monetised cost benefit to industry in respect of administrative costs	Potential maximum infraction fines €703k per day or £256m per annum
2	Avoidance of infraction fines – maximum infraction fines €703k per day or £256m per annum.	None, costs will be contained within Marine Scotland's current enforcement budget.

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**Declaration and publication**

- The Cabinet Secretary or Minister responsible for the policy (or the Chief Executive of non departmental public bodies and other agencies if appropriate) is required to sign off all BRIAs prior to publication.

Sign-off for Final BRIAs:

I have read the Business and 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 businesses in Scotland.

**Signed:**

**Date:**

**Richard Lochhead  
Cabinet Secretary for Rural Affairs, Food and the Environment**

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