

EXPLANATORY MEMORANDUM TO
THE SEA FISHING (ENFORCEMENT OF ANNUAL COMMUNITY AND
THIRD COUNTRY FISHING MEASURES) (ENGLAND) ORDER 2006

2006 No. 1970

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

2.1 This Order provides for the creation of offences, penalties and powers of enforcement in relation to breaches of certain provisions of Council Regulation 51/2006 which regulates fishing activities within European Community waters and by Community vessels in 2006.

2.2 The Sea Fishing (Restriction on Days at Sea) (Monitoring, Inspection and Surveillance) Order 2006 (S.I. 2006/1327 relates to Annex II of Regulation 51/2006, which regulates days at sea in various areas to protect cod and other depleted stocks.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

Equivalent provisions to those in the Order will be made in the other parts of the UK through separate Orders.

4. **Legislative Background**

- 4.1 Article 20 of Council Regulation 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the common fisheries policy (*Official Journal L 358 , 31/12/2002 P. 0059 – 0080*) requires the Council to decide on catch and/or fishing effort limits, the allocation of fishing opportunities between Member States and conditions associated with those limits. This is implemented through an annual regulation on fishing opportunities and associated conditions. This years annual Council Regulation is Council Regulation (EC) No. 51/2006 fixing for 2006 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and , for Community vessels, in waters where catch limitations apply (*Official Journal L 16 , 20.1.2006 P. 0001 – 0183*)

4.2 Consultation with the fishing industry and other interested parties took place throughout 2005 and during the Fisheries Council in December 2005.

5. Extent

The Order applies in England.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The annual regulation on fishing opportunities which sets Total Allowable Catches and quotas for the year is central to the Common Fisheries Policy. The Total Allowable Catches are distributed between Member States according to fixed percentages established for the most part in the 1980s.

7.2 The EU concludes annual fishery agreements with third countries - the most important of which is with Norway. The annual Community Regulation imposes conditions on EU vessels fishing in non-EU waters and on non-EU vessels fishing in Community waters.

7.3 In addition the annual regulation has been used increasingly in recent years to introduce other annual measures which apply to the exploitation of fishery resources. Most important are the days at sea restrictions for depleted stocks which are the subject of an additional SI. However, other measures imposed - to which this SI applies - include extra requirements for weighing of pelagic stocks, closed areas and technical requirements such as the requirement to use a specified mesh size.

8. Impact

A Regulatory Impact Assessment has been carried out and is attached.

The Statutory Instrument does not impose additional burdens to those in the Council Regulation and will not, therefore, have an additional financial impact.

9. Contact

Sean Ryan at the Department for Environment, Food and Rural Affairs Tel: 020 7 270 8255 or e-mail: sean.ryan@defra.gsi.gov.uk can answer any queries regarding the instrument.

REGULATORY IMPACT ASSESSMENT

Title

The Sea Fishing (Enforcement of Annual Community and Third Country Fishing Measures) (England) Order 2006

Purpose and Intended Effect of Measure

(i) Objective

The Statutory Instrument provides for the enforcement of various EU measures which will apply in 2006 to the exploitation of fishery resources by EU vessels and by third country vessels in EU waters. The EU measures are set out in Council Regulation 51/2006.

The SI applies to the English fleet wherever it is active. Separate secondary legislation establishing equivalent arrangements is being made for Scotland, Wales and Northern Ireland.

The policy goal in implementing the EU measures is to meet UK obligations to apply this fisheries legislation effectively.

(ii) Background

Under the Common Fisheries Policy an annual regulation on fishing opportunities sets Total Allowable Catches and quotas for the year. Catches are distributed between Member States according to fixed percentages established for the most part in the 1980s under a principle known as "relative stability".

The regulation increasingly also includes other conservation measures including restrictions on days at sea (Annex II of Regulation 51/2006) to help recovery of various stocks and technical measures (Annex III) which provide for weighing of pelagic species such as herring and mackerel and closed areas to protect certain species. The restrictions on days at sea in Annex II are implemented by the Sea Fishing (Restriction on Days at Sea) (Monitoring, Inspection and Surveillance) Order 2006 S.I. 2006/1327

Risk assessment

Limits on catches are needed if fish stocks are to be exploited sustainably and stocks not depleted. Under the Common Fisheries Policy, the main method of limiting catches is through the annual setting of Total Allowable Catches (TACs). However, Member States and scientists have recognized that in many cases TACs have not been successful in restricting actual catches which includes discarded fish and fish which are illegally landed "off-quota". Other measures have, therefore, been included in the annual regulation to enhance conservation of the exploited species and others taken as bycatches.

Business sectors affected

All fishing sectors which fish for stocks for which Total Allowable catches apply are affected to the extent that they are required to fish within the quotas set by the EU Regulation.

Issues of equity and fairness

This RIA relates to the Statutory Instrument implementing EU measures not to the EU measures themselves. The provisions within the EU Regulation apply equivalently across the relevant sectors of the EU fleet.

Options

EU legislation requires Member States to enforce agreed fisheries management measures. The range of offences and scale of penalties included in this SI reflect the standard UK approach to equivalent EU legislation.

Since the UK is required to implement Council Regulation 51/2006 and the SI does not more than is required, we are not able to identify alternative options which meet UK obligations.

Costs for business

Compliance costs

The SI does not impose costs on the industry additional to those applied by the EU measures. The major costs imposed by the annual EU regulation are those which result in changes to quotas available to fishermen and restrictions on days at sea. The Government prepared a Regulatory Impact Assessment on the Commission's proposal published in early December 2005. The EU measures form part of annual regulation and will apply until the end of December 2006 although many of the measures are likely to be renewed in future years.

Costs for a typical business

Our assessment after the Council is that the quota changes were equivalent to about a 4% increase in the value of landings to the UK fleet. This however varied between areas and stocks. The benefit to individual businesses will depend on their holdings of quota.

Consultation with small business

Most businesses in the fish catching industry are small businesses. There were a number of meetings during 2005 with the catching sector on UK priorities for negotiation of the EU regulation.

Competition Assessment

The SI is not expected to have a distorting effect on competition because it simply gives effect to already agreed measures which apply to all vessels.

Enforcement and sanctions

The SI confirms offences for breaches of EU measures and will be enforced by the Marine Fisheries Agency and their agents.

Monitoring and Review

The EU measures and the SI apply for the period to the end of December 2006. The Government will monitor the effects of the measures and inform the European Commission of our views on any changes that will need to be implemented for 2007.

Consultation

Beginning in April 2005 Fisheries Departments undertook extensive consultation with the fishing industry to identify UK objectives and priorities. Following initial meetings with the industry, we published a discussion paper in [June] 2005 setting out initial views on UK priorities for the Council. Further Ministerial and official level meetings were held with industry representatives before and after publication of the annual scientific advice in October 2005 and publication of the Commission's proposals in early December. Industry representatives were also consulted on the Regulatory Impact assessment referred to above. Finally consultations took place in Brussels during the fisheries Councils which agreed regulation 51/2006.

Guidance

Advice on quota levels and two new provisions - a ban on the use of gill nets and a Celtic Sea (Trevose area) was issued to the industry in January 2006.

Summary and Recommendations

The SI essentially provides offences and penalties to permit enforcement of directly applicable EU measures. There is not scope for flexibility within these requirements as to how they are implemented. The position is different in relation to the Sea Fishing (Restriction on Days at Sea) (Monitoring, Inspection and Surveillance) Order 2006. A separate RAI has been prepared for that SI.

Declaration

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Ben Bradshaw

18 July 2006

Ben Bradshaw**Minister for Local Environment, Marine and Animal Welfare****Defra**

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