

**EXPLANATORY MEMORANDUM TO
THE FISH LABELLING (AMENDMENT) (ENGLAND) REGULATIONS 2006**

2006 No. 506

1. This explanatory memorandum has been prepared by the Food Standards Agency and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This Statutory Instrument updates the existing national list of commercial designations for fish species (i.e. the designated common names such as ‘cod’, ‘salmon’, etc.) by replacing the Schedule to the Fish Labelling (England) Regulations 2003 (“the principal Regulations”). The new Schedule includes a number of additions of new fish species to allow for newly commercialised species in the marketplace and makes some changes to existing designations in light of new scientific information. It also clarifies that commercial designations in the English language accepted in other EU Member States are considered to be names prescribed by law.

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

3.1 None.

4. Legislative Background

4.1 The principal Regulations provide for the execution and enforcement of Article 4 of Council Regulation (EC) No. 104/2000 and Commission Regulation (EC) No. 2065/2001. These EC Regulations together require that certain fish and aquaculture products are labelled at retail sale with the commercial designation (i.e. an agreed common name) of the fish species, the production method (i.e. whether caught at sea or farmed, etc.) and the catch area or country of origin. The EC Regulations also require that Member States establish and publish a list of commercial designations for fish species that must be used in labelling of fish. The list of commercial designations for species of seafish, salmon and freshwater fish and shellfish is included as a Schedule to the principal Regulations.

4.2 Under Regulation (EC) No. 2065/2001, any newly commercialised species for which no commercial designation has been given in the Regulation may be marketed under a provisional commercial designation, agreed by the competent authority (in the UK this is the Food Standards Agency) of the Member State. Within 5 months, a definitive commercial designation should be decided and added to the established national list by the Member State.

4.3 This SI is being made to update the existing Schedule of commercial designations. There have been a number of requests for commercial designations to be used for newly commercialised species. Some species for which provisional designations have been granted are added to the list. Some changes are being made to existing designations.

4.4 This SI also amends regulation 4(2) of the principal Regulations. The amendment clarifies that a commercial designation published in the English language, accepted in another EU Member State, and which may therefore be used as an alternative commercial designation in this country shall be a name prescribed by law. Regulation 6 of the Food Labelling Regulations 1996 requires that a name prescribed by law for a food **must** be used as the name of that food. The amendment to regulation 4(2) of the principal Regulations is a drafting clarification.

4.5 The Ministerial powers under which this Statutory Instrument is being made are sections 16(1)(e) and (f), 17(2), 26(3) and 48(1) of the Food Safety Act 1990.

5. Extent

5.1 This instrument applies to England. Separate but similar legislation is being developed in Scotland, Wales and Northern Ireland.

6. European Convention on Human Rights

6.1 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 principal Regulations, which came into force on 28 March 2003 and apply to England only, already provide for the execution and enforcement of Council Regulation (EC) No. 104/2000 and Commission Regulation (EC) No. 2065/2001 as regards informing consumers about certain fish and aquaculture products.

7.2 Regulation (EC) No. 2065/2001 allows Member States to make additions and changes to fish names which are marketed in their territory (see para. 4.2 above). Therefore, this SI simply, by way of a revised Schedule, establishes new national common names under which fish are to be sold, as is allowed under EC Regulations that have already been in place and have been in force for some time. The new Schedule of commercial designations included in this SI adds 46 new fish species/families, 14 alternative commercial designations and 7 changes to existing commercial designations following requests for newly commercialised species to be added to the list and in light of new scientific information.

7.3 Article 2 of Regulation (EC) No. 2065/2001 also requires that any changes to the list of commercial designations accepted by a Member State

must be notified to the European Commission. The Commission has been informed of our intention to amend and update the UK national list of commercial designations and a copy of the public consultation package was sent to them; no response was received. This SI will be notified to the Commission, which will in turn inform other Member States as required by Regulation (EC) No. 2065/2001.

7.4 This SI also amends regulation 4(2) of the principal Regulations to clarify that commercial designations accepted in other Member States are also names prescribed by law (see para. 4.4. above). This reads across to regulation 6 of the Food Labelling Regulations 1996, which requires that names prescribed by law for a food shall be used as the name of the food.

7.5 If the existing list of commercial designations contained in the Schedule to the principal Regulations was not updated to reflect newly commercialised fish species, there may be inaccurate and inconsistent labelling of these species with a lack of business certainty with regards to their labelling. This may reduce consumer choice in availability of fish products, disadvantage the UK fish industry and lead to barriers to trade. The amendments made by this SI follow advice from experts in fish taxonomy and are also based on the Food and Agriculture Organisation (FAO) database of aquatic species. Failure to update and publish an amended list for newly commercialised species would leave the UK open to infraction proceedings from the European Commission. The widening variety of supply of fishery products makes it essential to give clear consumer information.

7.6 A 12-week public consultation of over 160 interested parties was carried out on this SI and an accompanying partial Regulatory Impact Assessment (RIA), which concluded on 7 December 2005. Sixteen responses (of which three responded with 'no comment') were received to the public consultation in England. The majority (i.e. 10) of these responses requested further additions and changes to the proposed, replacement Schedule. The 'fish names expert consultative group' was re-convened in mid-January 2006 to further consider these consultation responses. All except two of the requested additions, with some further qualifications in line with FAO reference sources, are reflected in the Schedule to this SI. The exceptions not accommodated related to the two requests for changes to the 'salmon' designation, asking that 'chum or keta salmon' and 'medium red or coho salmon' be allowed to be called 'Pacific or Alaskan salmon'. These requests were not accommodated for consumer protection reasons to ensure that consumers would continue to be provided with accurate fish names for these species since the expert group considered that the term, 'Pacific' should continue to be reserved for high quality salmon; in their view, the aforementioned species were not high quality salmon species. The remaining consultation responses related to points of clarification which the expert group considered would be best accommodated in the future revision of existing guidance notes and for which no regulatory change was necessary. Consideration was also given to comments made in response to the parallel consultations carried out in the devolved administrations on proposed legislation in similar terms, that is 4 responses to the Scottish consultation, 1

response to the Welsh consultation and 1 response to the Northern Irish consultation.

8. Impact

8.1 A Regulatory Impact Assessment (RIA) has been prepared for this Statutory Instrument and is attached to this memorandum at Annex 1.

9. Contact

Alison Asquith at the Food Standards Agency (Tel: 020 7276 8637) or E-mail: alison.asquith@foodstandards.gsi.gov.uk) can answer any queries regarding the instrument.

FULL REGULATORY IMPACT ASSESSMENT

1. Title of Proposal

1.1 The Fish Labelling (Amendment) (England) Regulations 2006.

2. Purpose and Intended Effect

Objective

- 2.1 To allow certain newly commercialised fish species to be labelled with accurate and consistent commercial designations and also allow a number of changes to existing commercial designations for fish species in light of new scientific information. This will be effected by updating the UK national list of commercial designations for fish species, laid down in the schedule to the Fish Labelling (England) Regulations 2003.
- 2.2 This is principally a consumer information measure in line with the requirements of EC Regulations (paragraph 2.5 refers). It will allow accurate and consistent labelling of certain fish and fish products and prevent the mis-description of these commodities.
- 2.3 In addition, clarification of the Regulations is needed to indicate that commercial designations published in English, recognised in other Member States, shall be considered names prescribed by law.
- 2.4 This proposal is not dependent on an EU set timescale. However, as the proposal is a straightforward amendment it is hoped that the objective will be achieved by early 2006 at the latest. As part of our work on simplification we have sought to align the date from which proposed Regulations come into force with one of the common commencement dates for new regulatory proposals i.e. 6 April 2006. This will help provide clarity and certainty for both consumers and industry.

Background

- 2.5 Article 4(1) (a) of Council Regulation 104/2000, on the common organisation of the markets in fishery and aquaculture products, requires that certain fish products must, at retail sale to the final consumer, be labelled with the commercial designation of the species (i.e., an agreed common name for the species of fish). Regulation (EC) No. 2065/2001 laying down detailed rules for the application of Council Regulation 104/2000 as regards informing consumers about fishery and aquaculture products requires that Member States establish commercial designations for fish species that must be used when applying Article 4(1)(a) of Regulation (EC) No. 104/2000.

- 2.6 The Fish Labelling (England) Regulations 2003 provide for the enforcement of Article 4 of Council Regulation 104/2000 and Commission Regulation 2065/2001 in England. The list of agreed commercial designations for fish species for the UK is currently included as a schedule to the Fish Labelling (England) Regulations 2003. The UK list of commercial designations is also included as a schedule to equivalent Fish Labelling Regulations in Scotland, Wales and Northern Ireland.
- 2.7 Regulation (EC) No. 2065/2001 requires that newly commercialised species, for which no commercial designation currently exists, may be marketed under a provisional commercial designation, agreed by the competent authority of the Member State (in the UK this is the Food Standards Agency). Within 5 months, a definitive commercial designation must have been decided and added to the established national lists.
- 2.8 The Agency has received a number of requests from various sectors of the fish industry, including wholesale, processing and retail, for newly commercialised fish species to be added to the UK national list. In addition, a number of requests have been received for the addition of species unintentionally omitted when the list was first considered and for changes to current commercial designations. These requests have been considered by the Agency's national fish expert consultative group and an amended list of commercial designations has been drawn up. Alternative commercial designations were suggested and agreed by the expert consultative group for species where requested names were considered inappropriate e.g. the names requested may be misleading to consumers. The list of revisions has therefore been compiled in consultation with experts in fish taxonomy and is also based on the Food and Agriculture Organisation (FAO) database of aquatic species, the main reference source used by the European Commission in naming fish species.

The revisions include:

- the addition of 46 new fish species/families,
 - the addition of 14 alternative commercial designations to existing designations for fish species,
 - changes to 7 of the existing commercial designations for fish species.
- 2.9 Regulation 4 of the Fish Labelling (England) Regulations 2003 provides that the commercial designations set out in the Schedule to the Regulations are names prescribed by law within the context of the Food Labelling Regulations 1996 (FLR). The relevant Regulations in the FLR require that "if there is a name prescribed by law for a food, that name shall be used as the name of the food". Under regulation 4(2) of the 2003 Regulations a commercial designation published in English in a list that has effect in another Member State may be used as an alternative commercial designation. These names should also be considered names prescribed by law. Regulation 4(2) therefore needs to be clarified in this

respect. This is only a minor point of drafting clarification and would not make any changes to the existing requirements of the Regulation.

Rationale for government intervention

- 2.10 The Fish Labelling (England) Regulations 2003 ensure that UK consumers benefit from additional information relating to certain fish and fish products and that these products are labelled accurately.
- 2.11 If the list of commercial designations contained in the Schedule to these Regulations is not updated to reflect newly commercialised fish species, there may be inaccurate and inconsistent labelling of these species with a lack of business certainty with regards to their labelling. This may disadvantage the UK fish industry, lead to barriers to trade and reduce consumer choice in availability of fish products. In respect of the changes to existing commercial designations, these amendments, which were made following expert advice, will more accurately reflect the correct classification of certain fish species and their corresponding commercial designations and will ensure clear and consistent labelling of these products for consumers.
- 2.12 In addition, Regulations (EC) No. 104/2000 and 2065/2001 require that certain fish and fish products are labelled at retail sale with an accepted name of the species, and that Member States establish commercial designations for fish species that must be used in labelling of fish. Failure to update and publish an amended list for newly commercialised species may leave the UK open to infraction proceedings from the European Commission.

3. Consultation

Within government

- 3.1 DEFRA and the devolved administrations in Scotland, Wales and Northern Ireland have been kept informed of the progress of the proposed amendment Regulations and new developments as they have arisen. They have also had the opportunity to comment on the public consultation papers and the requested commercial designations for new fish species.

Public consultation

- 3.2 A partial RIA accompanied a formal 12 week public consultation between 14 September – 7 December 2005 to gain stakeholder comments on the proposed draft Amendment England Regulation. Around 160 interested parties, including consumer organisations, fish industry associations and enforcement authorities were consulted on the draft Regulations. Sixteen responses to the England consultation were received, the majority from individual fish businesses and fish trade organisations. Of these consultation responses, 4 were requests for further new species to be

added, 6 were for changes to existing designations in the draft Regulations, 3 were other general comments, and 3 were 'no comment' responses. Responses to the Scottish consultation which totalled 4 responses, as well as 1 response to the Welsh consultation and 1 response to the Northern Irish consultation were also taken into account, since the proposed legislation consulted on in the devolved administrations was in similar terms. The consultation responses were fully discussed by the re-convened fish expert consultative group following the close of the consultation and consensus decisions were reached on all the requested new additions and changes.

3.3 The draft Regulations were further amended to take most of these requests into account with a further 5 new species and a further 2 alternative commercial designations being added. Two responses requesting changes to the 'salmon' designation for 'chum or keta salmon' and 'medium red or coho salmon' to be allowed to be called 'Pacific or Alaskan salmon' were not accommodated for consumer protection reasons. This was to ensure that consumers would continue to be provided with accurate fish names for these species and not be misled about the nature of these species since the expert group considered that the term, 'Pacific' should continue to be reserved for high quality salmon. It was also considered that making the changes requested for these salmon species could potentially have far-reaching consequences if changed at this late stage and, if they were to be considered, this should be subject to fuller public consultation when the national list is next updated.

3.4 In terms of the other comments, these related to points of clarification which it was considered would be best accommodated in future revision of existing guidance notes and would not require legislative change. A full Agency response to the consultation will be published on the Agency website.

4. Options

4.1 There appear to be two possible options:

- **Option 1** - Do nothing;
- **Option 2** - Legislative change to update the list of commercial designations and amend regulation 4(2).

Option 1:

4.2 This option will not achieve the intended objective of establishing accurate, consistent commercial designations for newly commercialised species to be marketed in the UK. Failure to update the national list of commercial designations in respect of certain fish species may leave the UK open to infraction procedures from the Commission (see 2.11 & 2.12).

Option 2:

- 4.3 The Fish Labelling (Amendment) (England) Regulations 2006 will contain an updated list of commercial designations as a Schedule to the Regulations. This will achieve the intended objective of establishing appropriate commercial designations for newly commercialised fish species and amending existing commercial designations, where appropriate.
- 4.4 In addition, regulation 4(2) will be amended to clarify that recognised commercial designations published in the English language in other Member States' lists should be considered names prescribed by law. This amendment will merely be a 'tidying up' exercise to clarify a legal point, therefore there are no associated costs as this will not affect the requirements of this Regulation.
- 4.5 Following consultation on the draft amendment Regulations, comments received were considered and the finalised amendment SI containing the list of definitive commercial designations will be published. The amendment Regulations will apply in England only. Separate, equivalent legislation will be made in Scotland, Wales and Northern Ireland. The list of commercial designations will be identical in these respective Regulations as the amendments apply on a UK-wide basis.

5. Costs and Benefits

Sectors and Groups affected

- 5.1 The business sectors potentially affected by this proposal would be retailers (including 10 large retailers), fishmongers (of which there are 1,400), fish product manufacturers (of which there are approximately 550) and wholesale fish suppliers. These businesses must already provide the labelling information (including the commercial designation) required by the Fish Labelling (England) Regulations 2003 on all products at retail sale to the final consumer. In most cases this will be on pre-packed products, where new labels will have to be designed and printed for the newly commercialised species. A small number of labels will need to be re-designed and re-printed where the commercial designations have been changed. For products sold loose i.e. at wet fish counters, the labelling information required is often provided by point of sale displays which will be cheaper and easier to amend. Those retailers that simply sell on pre-packed produce, other than own-label, will not be affected because labelling would be the responsibility of the producer or packer.
- 5.2 Fish auctions (of which there are 32), trawlers (of which there are 6735) and other businesses at the first stage of the supply chain (of which there are about 20) would also be affected by this proposal. The commercial designation for each species is needed under the traceability requirements of the Regulations at each stage of marketing prior to final retail sale. This information may be given by labelling, packaging or on

commercial documents accompanying the fish which will need to reflect the new or amended commercial designations added to the list.

- 5.3 Consumers and enforcement bodies will also be affected by this proposal. Consumers will benefit from clear informative labelling which is not misleading. Enforcement bodies will be responsible for enforcing the amendment Regulations.
- 5.4 The labelling requirements of the Fish Labelling (England) Regulations 2003 do not apply to fish products that have been processed in some way, have added ingredients or are served with accompanying ingredients (e.g., sauce, salad etc.). Therefore, catering establishments and processed fish products sold at retail will not be affected by these proposals.
- 5.5 The costs and benefits identified below do not give rise to concerns about the overall sustainability of either option. In so far as the proposals affect the fishing industry this will impact on rural communities. However, the impacts identified in the costs and benefits section are relatively minor. There are no race equality impacts associated with this proposal.

Benefits

Option 1 – Do nothing

- 5.6 There do not appear to be any significant benefits (economic, social or environmental) associated with this option.

Option 2 – Legislative change

- 5.7 The 46 new fish/shellfish species added to the list will ensure accurate and consistent commercial designations in the UK and other Member States where the common commercial name is in the same language for the same species. This will expand the range of fish and fish products available at all stages of marketing, with benefits to all sectors of the market from fish auctions, trawlers, wholesalers through to retailers, fishmongers, product manufacturers etc. The UK fish retail market is valued at approximately £1.75 billion/year. Even if the new fish species marketed account for only a 0.1% increase in retail market sales this would equate to approximately £1.75 million/year. Even if the retail market only grew by one-hundredth of one percent, then this still amounts to £175,000 per annum.
- 5.8 Consistent labelling of fish products in line with the amended Regulations will benefit the consumer via clarity and help prevent potential mis-description. There is likely to also be a wider choice of fish and fish products available to the consumer, thus increasing choice. In addition, it may also help deter mislabelling that passes off inferior fish as different “premium” species.

5.9 There are no significant environmental benefits associated with this option.

Costs

Option 1 – Do nothing

5.10 There may be some disadvantages to UK businesses in terms of restricting trade and development of new products and a lack of business certainty if appropriate commercial designations were not established for new species which could be consistently used. In addition, the outlined benefits to consumer choice and information would not accrue.

5.11 There are no significant social or environmental costs associated with this option. However, the UK could be open to infraction proceedings.

Option 2 – Legislative change

i) Administrative costs

5.12 There will be a one-off administrative cost to industry and the enforcement authorities in terms of reading and familiarising themselves with the amending Regulations and new commercial designations list. There will also be an ongoing administrative cost to enforcement authorities in terms of monitoring and enforcing the amendment Regulations.

5.13 It is estimated by the Agency that it would take one local authority officer in each of the 499 local authorities in the UK 20 minutes to read the commercial designations list. With an hourly pay rate of approximately £32, estimated by the Local Authority Co-ordinators of Regulatory services (LACORS), this would be equivalent to a one-off administrative cost of approximately £5,300 (assuming that one officer can then disseminate this information to colleagues). In the absence of any accurate data on an average hourly pay rate for the fish industry a wage equivalent to a local government pay scale 5 was used (£18,000 per annum) to estimate the administrative costs to industry. Using information gathered from DEFRA fisheries statistics department and the Seafish Industry Authority it is estimated there are approximately 8760 businesses in the fish sector that would be affected by the amendment Regulations. Based on £18K as the estimated annual wage, the hourly pay rate would be £9.60. Assuming that it would also take industry about 20 minutes to read the new list, this gives an approximate administrative cost to industry of about £28,000 (again, assuming that one employee can then disseminate this information to colleagues).

5.14 Local Authority enforcement bodies already have responsibility for the enforcement of the current Fish Labelling (England) Regulations 2003 so the amendments do not represent a very significant extension to their responsibilities. It is estimated by LACORS that the administrative costs

of enforcing the amendment Regulations, in terms of ensuring new species added to the list are labelled with the correct commercial designation, would be approximately £20,000/year. This concerns the sampling and analysis of any newly commercialised fish at the cost of approximately £100-£120 per analysis (estimated by Aberdeen Public Analyst Laboratories) and assumes 200 tests/year are carried out. The number of analyses undertaken is dependent on the local authority and their sampling programmes which will vary for different authorities; this figure also depends on the extent of marketing of the new species.

5.15 There will be a one-off administrative cost to industry for re-printing labels/documentation (including promotional material) for the commercial designations that have been changed in the updated list. There are changes to 7 of the existing designations, mainly in light of further scientific evidence, but only 4 of these would require labelling changes, these are detailed below:

- The species, *Pangasius bocourti*, must now be labelled as River cobbler or Basa or Pangasius or Panga(s), or any of these names together with the optional additional word 'catfish' instead of Pacific dory or Vietnamese sole. This reflects more accurately the name recognised internationally and by industry. This name change will also benefit consumers by removing the possibility that they could confuse this fish with dory or sole, both of which are very different fish;
- The species, *Raja clavata*, must now be labelled only Roker rather than Skate or Ray or Roker (if this species is already labelled as Roker there may be no changes required);
- Any other species of *Raja* (except *Raja clavata*, see above) that was labelled Roker must now be labelled Skate or Ray. Again, no changes may be required if these species were already labelled as Skate or Ray; and
- The species, *Molva dypterygia*, must now be labelled as Blue ling rather than Ling.

5.16 There will also be potential re-labelling costs to industry for re-printing labels where the definitive designation in the amendment Regulations is not the same as the provisional designation granted for a species. There are two such cases where the provisional designations granted have subsequently changed (see sections 6.2 and 6.3 for details).

5.17 The cost of changing product labelling for pre-packed products is estimated by industry to be approximately £1,000 per product. For products sold loose e.g. on wet fish counters, labelling information is often given on pre-printed tickets displayed with the fish. These tickets would only need to be replaced once to amend any commercial designations that are changed. Information from one of the companies that produces these tickets for fishmongers shows that the approximate cost of changing one ticket is £3.00. If all 4 species where mandatory labelling changes are needed were sold, the cost associated with changing the labelling would be approximately £12.00 for one fishmonger. Given that there are approximately 1,400 fishmongers, the

maximum cost for re-labelling is £16,800. For traceability requirements, which include the commercial designation, information is often given on commercial documents accompanying the product e.g. sales note or invoice. Therefore, the cost of any labelling changes will be negligible as this information is individually printed for each product or batch.

- 5.18 Interested parties consulted about these re-labelling costs, including fish wholesalers, importers, retailers and various industry organisations, have indicated that re-labelling costs would be minimal as these fish species are not landed and sold in large quantities and companies are unlikely to hold large stocks of labels. In addition, administrative costs could be reduced by giving industry plenty of notice, through the consultation and other means, of the new species additions and changes. This will allow them to use up existing labels and not print off large numbers of new labels for products which will have to be changed. They are also more likely to be able to incorporate labelling changes into their normal re-labelling cycle.
- 5.19 For the 46 new fish species added to the list there are unlikely to be any significant administrative costs to industry as these products are mostly newly commercialised species which are not currently being sold; therefore no re-labelling costs would be incurred. In addition, the cost of printing new labels will be offset by the benefits of marketing these species. Similarly, many of the changes made to the list of commercial designations in fact add alternative names or new species to existing designations. Therefore, there will be no requirement for industry to alter the labelling for these species unless they wish to take advantage of an alternative commercial designation or market new species under an existing commercial designation.

ii) Policy costs

- 5.20 Whilst we recognise that there may theoretically be some environmental sustainability issues associated with the amendments there is other legislation and agreements in place to control the sustainability of fish stocks. The Fish Labelling (England) Regulations 2003 would not override any other restrictions that may exist, for instance on fishing of endangered species. Therefore, we do not consider there to be any significant environmental costs associated with this option.
- 5.21 There are no significant social costs associated with this option.

6. Small Firms Impact Test

- 6.1 Initial soundings with industry have indicated that there will be no significant impact associated with the amendment Regulations on small businesses. Several small businesses, 2 fishmongers and a fish importer/distributor have been contacted to discuss the impact of the proposed amendments. Both fishmongers used pre-printed tickets to display labelling information for their products. Neither of these

fishmongers currently sold any of the species where labelling changes would be necessary as a result of the amendments and so would not incur re-labelling costs. They also indicated that these species were not very widely sold in the UK but may be mainly for export. One fishmonger estimated that the costs of re-printing tickets would be in the region of £250 to £300 (for 60-70 new tickets). However, this includes the cost of re-printing labels for all product lines as retailers would probably review all product labelling at the same time. Therefore, this cost would not all be directly associated with the proposed amendments. The costs for small businesses will be up to £12.00 per fishmonger, as outlined in section 5.17.

6.2 The importer/distributor contacted sold the majority of their products to wholesalers. Most of this was already labelled when they received it, so re-labelling costs would be borne by their suppliers. However, they did label a small number of their own products, mainly shellfish. They indicated that there may be costs associated with re-printing price lists, brochures or promotional material, to reflect changes made to the commercial designations, estimated by this business as approximately £1500 per product. The main costs for this particular business would be that associated with the provisional designation 'Stargazer monkfish' granted for the species *Kathetostoma giganteum*. The fish expert group considered that the name 'Stargazer' would describe this species more accurately and that the use of the term monkfish, for this species, was misleading to consumers. Therefore, the definitive designation in the amended list was agreed as 'Stargazer' and the name 'Stargazer monkfish' is no longer allowed. It was estimated by this business that this would result in a 50% reduction in turnover of this species, as it could no longer be marketed as a type of Monkfish. This would be equivalent to a cost of approximately £175,000, but is less than 1% of the company's annual turnover, in the first 12 months decreasing with time as customers became more aware of the product. However, this company may be able to import one of the 'genuine' Monkfish species, designated "Monkfish" in the commercial designations list, as a replacement for any potential loss of market share.

6.3 In respect of the provisional designation 'Monk(fish) or Angler(fish)' granted for the fish species *Lophius litulon*, further reflection by the fish expert group considered that the name 'Pacific monk(fish) or Pacific angler(fish)' would describe this species more accurately. It was considered that the use of the term 'Monk(fish) or Angler(fish)', unqualified, for this species would be misleading to consumers given that this particular species was a small species of Monkfish with a different bone structure to the usual Monkfish species and, as such, was considered to be of a different quality to the usual species. Hence, it was agreed that an additional descriptor should be added to the provisional designation to enable this species to be differentiated from other monkfish so the definitive designation in the amended list is given as 'Pacific monk(fish) or Pacific angler(fish)'. The business requesting this addition was content with the additional qualification and the agreed definitive

designation. Since advance notice had been given to it on the name change for this species, this particular business considered that any costs relating to packaging waste could be minimised. The business relayed that the main costs would be incurred on the marketing side and they estimated that re-printing price lists and product brochures for this species would be in the region of £1,000-£2,000. However, it is anticipated that there would not be any significant loss of business given that this species can still be called monkfish, albeit with qualification, for full consumer information.

6.4 As a result of our findings with small businesses, we concluded that a more detailed analysis of the impact on small firms was not necessary as the effect on small businesses was not considered to be significant or disproportionate. During the public consultation, small businesses did not notify us of any significant impacts to them as a result of the proposed changes so stage two of the small firms impact test was not implemented. Several small firms and small firm trade associations were consulted on the draft amendment Regulations and representatives of small business took part in the re-convened fish expert consultative group meeting that considered the consultation responses in January 2006. We have consulted the Small Business Service who were happy with this approach.

7. Competition Assessment

7.1 A competition filter assessment was carried out when the Fish Labelling (England) Regulations 2003 were implemented. The results concluded it was unlikely that the Regulations would have a deleterious effect on competition within the UK industry. This position is unlikely to change with the amendment to the 2003 Regulations. However, a simple competition assessment has been carried out and the results suggest the proposal is likely to have little or no effect on competition.

7.2 The markets affected are summarised in 5.1-5.4. There would be no significant positive or negative competition issues associated with option 1 (do nothing) as none of the sectors affected would have accurate, consistent commercial designations for fish species if they were not given definitive designations in the national list.

7.3 The commercial designation is required at retail sale to the final consumer and, for traceability requirements, should also be given at all other stages of marketing of the product. Therefore, any amendments made to the Regulations in terms of updating the national list of commercial designations would apply equally to all sectors of the fish industry as they would all be required to provide this information. It is possible that industry sectors that import and sell the species *Kathetostoma giganteum* may suffer some adverse competition effects if this species is no longer able to be sold as a type of monkfish (see section 6.2). However, alternative 'genuine' Monkfish species may be imported and sold in the place of this species, thus reducing any negative competition effects.

Therefore, there are unlikely to be any significant positive or negative effects on competition associated with option 2 (legislative change).

8. Enforcement Sanctions and Monitoring

- 8.1 The provisions regarding enforcement and sanctions in the Fish Labelling (England) Regulations 2003 will remain untouched. Enforcement of the England Regulations will be the responsibility of Local Authority Trading Standards or Environmental Health Departments.
- 8.2 The effectiveness and impact of the new Regulations will be monitored via feedback from stakeholders, as part of the ongoing policy process.

9. Implementation and Delivery Plan

- 9.1 Stakeholders were informed at the start of the consultation process in September 2005 that it was anticipated that the amendment Regulations would come into force with one of the common commencement dates for new regulatory proposals, specifically 6 April 2006 (see section 2.4 above). This provided stakeholders with early notification of when the Regulations would come into force, allowing those affected to plan for changes as appropriate.
- 9.2 The publication of the amendment Regulations will be communicated to stakeholders through the Agency's website, FSA News and it is anticipated that the new list of commercial designations will also be posted on the Agency website. The Agency will also be participating in some fish conferences, stakeholder meetings, etc., where information on the forthcoming amendment Regulations will be relayed to key stakeholders and trade associations.

10. Post-implementation Review

- 10.1 The Agency will consider proposals from stakeholders for any further changes to the Regulations that they may consider necessary in the light of experience and the effectiveness of the new legislation. Agency mechanisms for review include: open fora, stakeholder meetings, surveys, general enquiries from the public / industry.
- 10.2 In the longer term, it is likely that the amendment SI will need to be further reviewed and amended with new additions / updates to the list of fish names to reflect any newly commercialised species in the marketplace and in light of further, emerging scientific information. The amendments will be required to comply with EC rules which require all Member States to keep such lists and ensure that they are updated as necessary.

11. Summary and Recommendation

11.1 Summary costs and benefits table

Option	Total cost per annum: - economic, social, environmental - policy and administrative	Total benefit per annum: - economic, social, environmental
1. Do nothing	<ul style="list-style-type: none"> - Restrictions to trade and disadvantages to UK consumers and fish industry if there is no accurate and consistent labelling of newly commercialised species. - Possible misdescription of new fish species. - Possible infraction proceedings against the UK. 	- None
2. Legislative change	<ul style="list-style-type: none"> - One-off administrative costs to industry and enforcement authorities of £33,000. - Ongoing enforcement costs of approximately £20,000 / year. - Administrative costs to industry for re-labelling the 4 species where the commercial designations have changed. Up to £16,800 for fishmongers. 	<ul style="list-style-type: none"> - Accurate, consistent labelling of fish species will prevent mis-description. - There is likely to be expansion of the range of fish and fish products available to consumers and all sectors of the fish industry. - Even a one-tenth of a percentage point increase in retail sales would equate to approximately £1.75 million per annum.

11.2 The Fish Labelling (Amendment) (England) Regulations 2006 serve an important consumer protection measure. They are being made to ensure compliance with our Community obligation, to ensure consumers are not misled and to deliver trade benefits. There are a number of costs associated with option 1 - doing nothing, including disadvantages for the fish industry in terms of restricting trade and for consumers in terms of receiving consistent accurate information about the fish they buy. The benefits to trade and consumers of option 2 - legislative change, outweigh the costs of any new legislation estimated for local authorities and businesses.

11.3 Option 2, legislative change to make the Fish Labelling (Amendment) (England) Regulations 2006 is therefore the recommended option. It is recommended that the amendment SI is introduced into English law.

12. Declaration and Publication

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed: Caroline Flint

Date: 27th February 2006

Parliamentary Under-Secretary of State for Public Health

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