

## EXPLANATORY MEMORANDUM TO

### THE SEA FISHING (LANDING AND WEIGHING OF HERRING, MACKEREL AND HORSE MACKEREL) ORDER 2009

2009 No. 1850

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.

#### 2. **Purpose of the instrument**

This Order provides for the enforcement of Commission Regulation (EC) No 1542/2007 on the landing and weighing procedures for herring, mackerel and horse mackerel.

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

3.1 None.

#### 4. **Legislative context**

4.1 This Order implements the control measures in Commission Regulation (EC) 1542/2007 which supports the conservation and sustainable exploitation of pelagic fisheries.

4.2 This Order revokes and replaces The Sea Fishing (Enforcement of Annual Community and Third Country Fishing Measures) (England) Order 2006 No 1970 which implemented the previous EC measures regarding pelagic landing and weighing.

4.3 A new Order is required in order to refer to the new Commission Regulation dealing with landing and weighing of herring, mackerel and horse mackerel and to enforce its provisions.

#### 5. **Territorial Extent and Application**

5.1 This instrument applies to England only.

5.2 The provisions of the Commission Regulation have already been implemented in Scotland by SSI 2008/102.

#### 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 Given the bulk nature of pelagic fishery often direct into fish processing plants, it is essential that landings are accurately and properly recorded against quotas, special monitoring arrangements are also required to ensure that the stocks are managed sustainably.

7.2 Without the improved fisheries control that the Regulation is intended to ensure, conservation and other measures designed to safeguard fish stocks and to improve their long term sustainability will not be fully effective.

7.3 Failing to provide for implementation and enforcement of EU controls could leave the UK open to infraction procedures by the Commission. The likelihood of this risk being realised is high, since the Commission is taking a close interest in the implementation of fisheries enforcement requirements by Member States.

7.4 The provisions of the Commission Regulation are very similar to those contained in previous EC legislation. The main change is that there are new provisions relating to the weighing and labelling of frozen catches of herring, mackerel and horse mackerel.

7.5 This Order provides that any breach of specified provisions of the Commission Regulation is a criminal offence. Enforcement will be the responsibility of the Marine and Fisheries Agency.

## 8. **Consultation outcome**

8.1 There is only one pelagic processor in England who receives fish direct from fishing vessels and only one other major English catcher of pelagic stocks, who lands abroad. Both were consulted before the Regulation was agreed but no wider consultation was carried out in England. Feedback received from them showed that they were quite content to adopt the weighing provisions that would be introduced by the EC Regulations.

## 9. **Guidance**

9.1 There are existing guidelines in place for enforcement officers and pelagic processors since most of the obligations are the same as those contained in previous EC legislation, however this will be updated in light of the new provisions about frozen fish.

## 10. **Impact**

10.1 An Impact Assessment has been carried out and is attached to this memorandum. Since most of the obligations in the Commission Regulation are not new, our findings have shown that its provisions would not impose any new additional burdens on those businesses concerned.

## 11. **Regulating small businesses**

11.1 This Regulation applies to all relevant small businesses involved in pelagic fishing.

11.2. Virtually all businesses in the fish catching sector are classified as small to medium enterprise (SME) employing a small number of staff (less than 10 employees). Therefore, to minimise the impact of the requirement on small businesses, the approach taken by the Department is simplified enforcement procedure. This would ensure compliance with the simplification principles that embodies the rules of Common Fisheries Policy which in turn conforms to the five principles of sustainable development to which the Government is committed.

11.3 As previously stated in paragraph 8 above, those pelagic processors who were consulted about the Commission's Regulation were content to adopt the new provisions that the Regulations would introduce since it will not add any new administrative burdens on them.

## 12. **Monitoring and Review**

12.1 The implementing Order will be monitored and reviewed continuously by the Government against agreed recommendations by the EU and may be amended as necessary.

13. **Contact**

Eileen Ashamu at the Department for the Environment Food and Rural Affairs Tel: 0207 238 4437 or email [Eileen.Ashamu@defra.gsi.gov.uk](mailto:Eileen.Ashamu@defra.gsi.gov.uk) can answer any queries regarding this instrument.

## Summary: Intervention & Options

<b>Department /Agency:</b> <b>Department for Environment Food and Rural Affairs</b>	<b>Title:</b> <b>Impact Assessment of The Landing and Weighing Procedures for Herring, Mackerel and Horse Mackerel</b>	
<b>Stage:</b> Implementation	<b>Version:</b> 1	<b>Date:</b> 22 May 2009
<b>Related Publications:</b> Commission Regulation (EC) No 1542/2007		

**Available to view or download at:**

<http://www.>

**Contact for enquiries:** Eileen Ashamu

**Telephone:** 0207 238 4437

**What is the problem under consideration? Why is government intervention necessary?**

The very large volume, bulk nature of landings of pelagic species, the majority of which are sold direct to processors, mean that special measures are necessary to ensure that landings are accurately weighed and properly recorded against quota uptake. These measures have previously been included in the annual TACs and quotas regulation but have now been included in a separate and permanent Commission Regulation, (EC) No. 1542/2007. Intervention is necessary to implement the regulation.

**What are the policy objectives and the intended effects?**

To support the conservation and sustainable exploitation of pelagic fisheries resources by ensuring that bulk landings of herring, mackerel and horse mackerel are properly recorded and reflected in the uptake against relevant fish quotas.

**What policy options have been considered? Please justify any preferred option.**

Two options have been considered - 1. Doing nothing (included as baseline only), or 2. Full implementation of the Regulation. We have a legal obligation to transpose Community requirements into domestic legislation. The preferred option is therefore to implement the Regulation in full. There are no additional costs associated with this option as most of the measures are already implemented at present (for details see evidence base)

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?** This Regulation will be reviewed by the Government in the light of any changes in pelagic weighing policy agreed at EU level..

**Ministerial Sign-off** For final proposal/implementation stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:

Huw Irranca-Davies

.....Date: 2nd July 2009

## Summary: Analysis & Evidence

<b>Policy Option: 2</b>	<b>Description: Full Implementation of Commission Regulations (EC) No 1542/2007 on landing and weighing procedures for herring, mackerel and horse mack</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>	Description and scale of <b>key monetised costs</b> by 'main affected groups' No additional costs would be incurred over and above baseline.					
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%; padding: 2px;"><b>One-off</b> (Transition)</td> <td style="width: 30%; text-align: center; padding: 2px;"><b>Yrs</b></td> </tr> <tr> <td style="padding: 2px;"><b>£ 0</b></td> <td></td> </tr> </table>		<b>One-off</b> (Transition)	<b>Yrs</b>	<b>£ 0</b>		
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<b>£ 0</b>							
<b>Total Cost (PV)</b>		<b>£ 0</b>					
Other <b>key non-monetised costs</b> by 'main affected groups'							

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>	Description and scale of <b>key monetised benefits</b> by 'main affected groups' No additional benefit over and above baseline					
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<b>£ 0</b>							
<b>Total Benefit (PV)</b>		<b>£ 0</b>					
Other <b>key non-monetised benefits</b> by 'main affected groups' The main benefit of implementing this EU Regs would be to protect the UK against infraction proceedings as no additional requirements are being imposed.							

Key Assumptions/Sensitivities/Risks
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Price Base Year	Time Period Years	<b>Net Benefit Range (NPV)</b> <b>£ 0</b>	<b>NET BENEFIT (NPV Best estimate)</b> <b>£ 0</b>
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What is the geographic coverage of the policy/option?	England			
On what date will the policy be implemented?	CIF date			
Which organisation(s) will enforce the policy?	MFA			
What is the total annual cost of enforcement for these organisations?	£ 0			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ n/a			
What is the value of changes in greenhouse gas emissions?	£ n/a			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro n/a	Small n/a	Medium n/a	Large n/a
Are any of these organisations exempt?	No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase - Decrease)	
Increase of    £ 0	Decrease of    £ 0	<b>Net Impact</b>	<b>£ 0</b>

Key:    Annual costs and benefits: Constant Prices    (Net) Present Value

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

### **1. INTRODUCTION**

This Order transposes the provisions of Commission Regulation (EC) No 1542/2007 on landing and weighing procedures for herring, mackerel and horse mackerel. The purpose of that Regulation is to ensure that large volume, bulk landings of herring, mackerel and horse mackerel are accurately weighed and properly recorded against relevant fish quotas.

The Order will apply to English vessels wherever they may be, (except when in Crown Dependency waters) and all other vessels including Welsh, Scottish, Northern Irish vessels and foreign vessels in English waters.

### **2. BACKGROUND**

2.1 In order to ensure that fish stocks are managed sustainably it is essential that landings are accurately and properly recorded against quotas. In order to achieve this for landings of pelagic stocks, given their bulk nature, often direct into processing plants, special monitoring arrangements are required. These include:

- the requirement to give 4 hours notice of arrival in port
- immediate submission of the logbook upon arrival in the port of landing;
- privately operated weighing facilities to be approved, calibrated and sealed by the competent authorities;
- a reduced 10% margin of tolerance for estimating the quantities of fish retained on board;
- a maximum 2% deduction for water when determining the weight of fish;
- special arrangements for fish transported by tanker from the port of landing; and
- special provisions concerning the labelling and weighing of frozen fish.

2.2 These obligations are not new and many have previously been contained in the annual EU TACs and Quotas Regulation. The measures included in the EU Regulation are not therefore expected to lead to additional costs on businesses (for details see section 6).

2.3 The TACs and Quotas Regulations are temporary measures set annually by the Commission to fix the maximum quantities of fish that may be landed by fishermen from a specific stock each year, whilst the provisions for pelagic fishing though contained in the TACs and Quotas Regulations are permanent measures. This is why for the first time they now appear in a separate, permanent Regulation.

### **3. RATIONALE FOR GOVERNMENT INTERVENTION**

3.1 We have a legal obligation to transpose Community requirements into domestic legislation. Government intervention is necessary to ensure that the provisions of Regulation 1542/2007 are fully implemented.

### **4. CONSULTATION**

#### **4.1 Within Government**

UK policy in relation to the adoption of this measure has been agreed by Defra and other Fisheries Administrations in the UK.

## 4.2 Public Consultation

There is only one major pelagic processor in England who receives fish direct from fishing vessels and only one other major English catcher of pelagic stocks, who lands abroad. Both were consulted before the Commission Regulation was agreed but no wider consultation was carried out in England. With regard to the special weighing provisions for frozen fish, the processor commented that “this method of calculation is a very simple system to follow and creates a standardised procedure which has previously been lacking. We will be happy to adopt this method for the future”.

## **5. OPTIONS**

5.1 EU legislation requires Member States to implement the enforcement provisions of the CFP. In the light of this two options have been considered.

### 5.2 Option 1

Do nothing: This would mean that we would not be able to enforce the additional monitoring requirements set out in the Commission Regulation. This would expose the UK to the risk of infraction proceedings, hence this option is being considered as the baseline option only.

### 5.3 Option 2

Implement the EU measure in full: Implementing the EU Regulation in full would help improve current controls and assist in their sustainable management.

## **6. COSTS AND BENEFITS**

### **Sectors**

Those English vessels involved in pelagic trawling and pelagic processors will be affected by these EU Regulations.

#### 7.1 Option 1:

Doing nothing would not add or remove any additional administrative burdens on those involved in this type of fishery and the Government. It would however not be possible to enforce some of the control obligations placed on Member States by the Regulation.

#### 7.2 Option 2:

The following impacts have been estimated for introducing the requirements in the EU measure:

### **Costs**

Logbook requirements

#### Government

This requirement would not place any additional costs on the Government since there are no additional monitoring measures required.

#### Fishermen

The reduced margin of tolerance and requirement to submit logbooks immediately upon arrival in port are not expected to impose any additional costs on fishermen.

Prior Notification:

## Government

This requirement would not place any additional costs on the Government since equipments are already available to receive and process prior notifications of arrival into port.

## Fishermen

There is already a national requirement for pelagic vessels to give 4 hours notice of arrival in port so this will not add any costs.

## Weighing of fish

### Government

This would not impose any additional costs since the requirement to weigh the fish is already in place.

### Fishermen

The requirement for fish to be weighed before it is sorted; processed stored, transported or resold and that scales have to be approved by the competent authority is already in place.

## Labelling of frozen fish

### Government

There are no additional costs to the Government from this requirement.

### Fishermen

Vessel operators are already required to label boxes of frozen fish and have the necessary on-board labelling equipment in order to do this. The new regulation simply clarifies the information that must appear on the label and will not impose any additional costs on operators in the requirement to produce specific labels for individual boxes of frozen fish.

## Benefits

### Government and Fishermen

Implementation of the EU Regulation will ensure improved accountability and traceability of fish landings which would provide more accurate and timely information on fish stocks and so reduce the scope for non-compliant behaviour. This in turn will lead to more accurate scientific assessments and help to ensure that the stocks in question continue to be exploited sustainably.

## **7. ENFORCEMENT AND SANCTIONS**

7.1 The SI confirms offences for breaches of the EU Regulation, along standard lines for equivalent fisheries legislation. Enforcement will be undertaken by British Sea Fisheries Officers operating under and on behalf of the Marine and Fisheries Agency.

## **8. SUMMARY AND RECOMMENDATIONS**

9.1 On the basis of the analysis presented in option 2 and considering the obligations placed on Member States by the EU to enforce provisions of fisheries control, it is recommended that option 2 be adopted.

## **9. IMPLEMENTATION AND DELIVERY**



9.1 Implementation will commence as soon as the SI is laid. The enforcement of these EU Regulations will be done as part of wider standard routine enforcement activities. Therefore there are no specific additional costs attached.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	Yes
Small Firms Impact Test	Yes	Yes
Legal Aid	Yes	Yes
Sustainable Development	Yes	Yes
Carbon Assessment	Yes	Yes
Other Environment	Yes	Yes
Health Impact Assessment	Yes	Yes
Race Equality	Yes	Yes
Disability Equality	Yes	Yes
Gender Equality	Yes	Yes
Human Rights	Yes	Yes
Rural Proofing	Yes	Yes

### IMPACT TEST

**Small firms impact test** – In England there are currently 5 pelagic licensed trawlers and they will be affected by the Regulations.

Virtually all businesses in the fish catching industry are classified as small or medium size enterprise (SMEs) employing a small number of staff (less than 10 employees).

**Competition Assessment** - The proposal will affect all businesses in the fish-catching sector in the same way and is unlikely to directly affect the market structure or change the number or the size of firms. It will not lead to higher set-up costs for new or potential firms that existing firms do not have to meet. The catching sector is not characterised by rapid technological changes and the proposal will not stop firms providing products or services that they would otherwise provide.

The competition assessment filter was applied to this regulation. This equally applies to all businesses, and no competition concerns were identified.

**Legal Aid** – This proposal creates 2 new offences which have been authorised by the Ministry of Justice.

**Sustainable Development** – The enforcement measures in these Regulations complies with the rules of the Common Fisheries Policy which conforms to the five principles of sustainable development to which the Government is committed.

**Carbon and other environment** – The options will have no significant effect on carbon emissions.

**Health Impact** – The proposal has no significant impact on human health by virtue of its effects on the wider determinants of human health; lifestyle related variables; or demand on health and social care services.

**Race/Disability/Gender Equality** – The implementation of this EU measures for ensuring compliance with the rules of the Common Fisheries Policy will be available to those involved in those fishermen involved in this type of fishery. There are no limitations on the grounds of race, disability or gender.

**Human Rights** – The proposal is consistent with the Human Rights Act 1998.

**Rural Proofing** – Rural proofing is a commitment by Government to ensure domestic policies take account of rural circumstances and needs. The majority of those employed in the fishing and support services are based in coastal communities in rural areas. The implementation of this EU measure is necessary to improve the monitoring of fishing effort for the concerned species so that stocks can be maintained at sustainable levels. This would have a positive effect on the fishing and support services.