

EXPLANATORY MEMORANDUM TO
THE FISH LABELLING (ENGLAND) REGULATIONS 2010
2010 No. 420

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

2. Purpose of the instrument

2.1 This Statutory Instrument revokes and replaces the Fish Labelling (England) Regulations 2003 and the Fish Labelling (Amendment) (England) Regulations 2006.

It updates the existing national list of commercial designations for fish species (i.e. the designated common names such as 'cod', 'salmon', etc.) in the Fish Labelling (Amendment) (England) Regulations 2006. The new Schedule includes a number of new fish species to allow for newly commercialised species in the market place and makes some changes to existing designations in light of new scientific information.

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

3.1 None.

4. Legislative Background

4.1 The Fish Labelling (England) Regulations 2010 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 the 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 and also some changes are being made to existing designations.

5. Territorial Extent and Application

5.1 This instrument applies to England.

5.2 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

- *What is being done and why*

7.1 The Fish Labelling (England) Regulations, which came into force on 28 March 2003 and applied to England only, provided 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. These were amended by the Fish Labelling (Amendment) (England) Regulations 2006, in which changes were made to the designations of fish.

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, 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 25 new fish species/families, makes 12 amendments to existing commercial designations and deletes five designations for particular Latin names, following requests for newly commercialised species to be added to the list, fish being newly marketed 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. 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 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 consequent lack of business certainty with regards to their labelling. This could then 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 Fishbase database of aquatic species, developed by the Food and Agriculture Organisation (FAO) and other partners. 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.

7.5 A 12-week public consultation of 155 interested parties was carried out on this SI and an accompanying partial Impact Assessment (IA), which concluded on 1 October 2009.

8. Consultation outcome

8.1 Seven responses were received to the public consultation in England. Most of these covered a number of topics, one was a specific request for a new designation, one about the layout of the Schedule and one, not relevant to the consultation, was about the addition of other ingredients to fish that are not declared on the labelling. The 'Fish Expert Working Group' was reconvened in October 2009 to consider further these consultation responses. Some of the requested amendments and additions, with some further qualifications in line with FAO reference sources, are reflected in the Schedule to this SI. Others were not adopted on the grounds that the designations proposed were inappropriate for the fish concerned. 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: account was taken of responses to the Scottish consultation: there were no responses to the Welsh and Northern Irish consultations. The Agency's responses to the consultation are on the Agency's website. There were two subsequent

requests for provisional designations and these have been considered by members of the Fish Expert Working Group and the agreed designations included in the Schedule.

9. Guidance

9.1 The Food Standards Agency will produce updated guidance for these Regulations to coincide with their publication.

10. Impact

10.1 The impact on businesses is in the range £37,000 to £219,000. A range has been provided as there are no reliable data for the amount of general food businesses that will be impacted. The true figure is likely to be nearer to the lower end of the estimate, as many general food retailers will not be impacted. These figures relate to England only.

10.2 The impact on the public sector in England is estimated to be a £2,700 one-off familiarisation cost.

10.3 An Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 The legislation applies to small business. The new Regulations are likely to impact in a positive way on small firms, since the new fish being marketed are likely to be sold mostly in small, minority ethnic fishmongers who will obtain maximum benefit from the economic gain realised from being able to sell these legally. Small businesses may have some extra labelling costs from having to change labels on fish which had yet to obtain a commercial designation and which were previously being marketed under a different name. The Small Business Service and some small businesses were among the consultees, but there were no consultation responses about the impact on small businesses.

12. Monitoring and review

12.1 The legislation will be reviewed two years after it becomes law.

13. Contact

Bill Drennan at the Food Standards Agency (Tel: 020 7276 8138 or E-mail: bill.drennan@foodstandards.gsi.gov.uk) can answer any queries regarding the new Regulations.

Summary: Intervention & Options

Department /Agency:
Food Standards Agency

Title:
Impact Assessment of Fish Labelling (England) Regulations 2010

Stage: Final

Version: 1

Date: 3 February 2010

Related Publications:, Fish Labelling (England) Regulations 2003, Fish Labelling (Amendment) (England) Regulations 2006, Draft Labelling (England) Regulations 2009

Available to view or download at:

<http://www.food.gov.uk>

Contact for enquiries: Bill Drennan

Telephone: 020 7276 8138

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

The Regulations update labelling legislation in respect of newly commercialised fish species and clarify names for some previously commercialised species. This is to ensure that consumers have accurate and reliable information when making purchasing choices.

What are the policy objectives and the intended effects?

To ensure that all retailers of fish can readily comply with their statutory duties to label fish correctly and to help consumers by ensuring fish are labelled in a way that is informative, consistent and not misleading.

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

- a) Do nothing.
- b) To update the Schedule of Commercial Designations for the names of fish by domestic Regulations.
- Option b) is preferred, to update the Schedule by new Regulations, allowing fish businesses to market a wider variety of fish with accurate and consistent labelling, improve consumer choice and simplify current legislation.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

Two years after implementation.

Ministerial/CEO Sign-off For Final Proposal/Implementation Stage Impact Assessments:

I have read the 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) the benefits justify the costs.

Signed by the responsible Minister/Chief Executive*:

Gillian Merron.....Date: **23rd February 2010**

* for Impact Assessments undertaken by non-ministerial departments/agencies and NOT being considered by Parliament

Summary: Analysis & Evidence

| | |
|-------------------------|---|
| Policy Option: b | Description: Update the schedule of commercially designated fish names |
|-------------------------|---|

| | | | | | |
|--|--|--|--|--|---|
| COSTS | ANNUAL COSTS | Description and scale of key monetised costs by 'main affected groups' Familiarisation with the revised Schedule. A range has been provided as there are no reliable data for the amount of general food businesses that will be impacted. The true figure is likely to be nearer the lower end of the estimate as many general food retailers will not be impacted. These figures relate to England only. UK figures are provided in the main section. | | | |
| | One-off (Transition) Yrs | | | | |
| | £ 37,000 – 219,000 | | | | 5 |
| | Average Annual Cost (excluding one-off) | | | | |
| | £ 0 | | | | |
| | Total Cost (PV) | £ 37,000 – 219,000 | | | |
| Other key non-monetised costs by 'main affected groups' N/A | | | | | |

| | | | | | |
|--|---|--|--|--|---|
| BENEFITS | ANNUAL BENEFITS | Description and scale of key monetised benefits by 'main affected groups' Please see non-monetised benefits below | | | |
| | One-off Yrs | | | | |
| | £ N/K | | | | 5 |
| | Average Annual Benefit (excluding one-off) | | | | |
| | £ N/K | | | | |
| | Total Benefit (PV) | £ N/K | | | |
| Other key non-monetised benefits by 'main affected groups' Consumers and firms dealing with fish will benefit from the accurate and consistent commercial designations. The Regulations will expand the range of fish and fish products available at all stages of marketing. | | | | | |

Key Assumptions/Sensitivities/Risks Depends on number of fish related business affected (see monetised costs above)

| | | | |
|------------------------|--------------------------|--|--|
| Price Base Year N/K | Time Period Years N/K | Net Benefit Range (NPV) £ -37,000 to -219,000 | NET BENEFIT (NPV Best estimate) £ -37,000 |
|------------------------|--------------------------|--|--|

| | | | | |
|---|-------------------|------------|-------------|------------|
| What is the geographic coverage of the policy/option? | England | | | |
| On what date will the policy be implemented? | 06.04.10 | | | |
| Which organisation(s) will enforce the policy? | Local authorities | | | |
| 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 0 | Small 0 | Medium 0 | Large 0 |
| Are any of these organisations exempt? | No | No | N/A | N/A |

| | | | | |
|---|---|-------------|-----------------------|-------------------|
| Impact on Admin Burdens Baseline (2005 Prices) N/A | | | (Increase - Decrease) | |
| Increase of | £ | Decrease of | £ | Net Impact |
| | | | | £ |

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

Reason for Intervention

1. It is important that fish are labelled correctly and consistently at the point of sale so that purchasers know exactly what they are buying. The proposed Fish Labelling (England) Regulations 2010 add new commercial designations and give extra options for others already within the Schedule. If the commercial designations contained within the Schedule to these Regulations are not updated to reflect newly commercialised fish species there may be inaccurate, inconsistent and illegal labelling of these species by businesses and misinformation for consumers. Similar Regulations will be made in Scotland, Wales and Northern Ireland.
2. Regulations (EC) Nos. 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 then be used in the labelling of fish. Failure to update and publish a list amended in respect of newly commercialised species may leave the UK open to infraction proceedings from the European Commission.

Intended Effect

3. To help consumers by ensuring fish are labelled in a way that is accurate, consistent and not misleading and to ensure that the fish industry can readily comply with its statutory duties to label fish correctly.

Background

4. The Fish Labelling (England) Regulations 2003 (as amended) 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 was included as a schedule to these Regulations. The UK list of commercial designations was also included as a schedule to equivalent Fish Labelling Regulations in Scotland, Wales and Northern Ireland.
5. The Fish Labelling (Amendment) (England) Regulations 2006 were adopted to allow for the updating of the Schedule of Commercial Designations. Equivalent amendment Regulations were made in Scotland, Wales and Northern Ireland.
6. Regulation (EC) No. 2065/2001 states 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). However, within the subsequent five months, a definitive commercial designation must be decided and added to the established national lists.
7. The Fish Expert Working Group, membership of which includes representatives from the Food Standards Agency, Seafish, fish and food industry representative organisations and the Natural History Museum, gives specialist advice to the Food Standards Agency in this area. The Working Group has become aware of a number of new fish which have come onto the market and the Agency has also received a number of requests from the fish industry for additions to the Schedules of each of the UK's four countries' Regulations. The Working Group has noted that most of the new fish are imported and are being sold primarily at Billingsgate Fish Market by minority ethnic fish wholesalers, and it is likely that they will then be sold mostly by minority ethnic retailers also. These requests have been

considered and an amended Schedule of Commercial Designations drawn up, taking into account reference sources such as the Fishbase website and the OECD Multilingual Dictionary of Fish and Fish Products.

8. The revisions (see Annex 2 for details) include:

- the addition of 26 new fish species/families;
- 16 additions to existing commercial designations for fish species;
- the deletion of 5 designations for particular Latin names.

Options

9. The options are:

- **Option a.** - Do nothing – no change to legislation
- **Option b.** - Update the Schedule through legislation by adopting the draft Fish Labelling (England) Regulations 2010.

Option a.

10. Failure to update the national list of commercial designations contained within the Schedule in respect of certain fish species may leave the UK open to infraction procedures from the Commission.

Option b.

11. The Fish Labelling (England) Regulations 2010 would 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.

Costs and Benefits

Sectors and Groups Affected

Market size

12. The analysis of costs and benefits covers all devolved administrations and is done on a UK-wide basis. The UK fish retail market (excluding shellfish) was valued at approximately £1.8 billion by Mintel in 2007.¹ The majority of fish and seafood sales (85%) were through supermarkets (multiples and discounters) and 11% were through fishmongers or specialists.

¹ Mintel: Fish and seafood, September 2008

Fish retail, wholesalers and manufacturing

Number of businesses by activity, split by country

| SIC Code 2003: 5223, 5138, 1520, 5211 | England | Scotland | Wales | Northern Ireland | TOTAL UK |
|--|---------|----------|-------|------------------|----------|
| Retail - fish, crustaceans & molluscs | 1,050 | 270 | 50 | 20 | 1,390 |
| Wholesale of other food including fish, crustaceans and molluscs | 1,610 | 285 | 70 | 90 | 2,055 |
| Processing and preserving of fish and fish products | 200 | 185 | 5 | 25 | 415 |
| Retail general | 35,370 | 4,610 | 2,305 | 1,545 | 43,830 |

13. The business sectors potentially affected by this proposal would be a proportion of retail fishmongers (of which there are 1,390), fish product manufacturers (of which there are approximately 415) and wholesale fish suppliers (approximately 2,055).² General retailers with wet fish counters may also be affected and this would represent a fraction of the general retail figure in the table above.
14. These businesses must already provide the labelling information (including the commercial designation) required by the Fish Labelling (England) Regulations 2003 (as amended) 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. It is assumed that only a very small number of labels will need to be re-designed and re-printed where the commercial designations of existing species 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.

Fishing vessels

Registered fishing vessels by nationality

| | ENGLISH | SCOTLAND | WALES | N IRELAND | All total |
|----------|---------|----------|-------|-----------|-----------|
| Vessels | 3015 | 2149 | 544 | 228 | 5936 |
| Auctions | 25 | 3 | 3 | 1 | 32 |

Vessels Source: Marine and Fisheries Agency³

Auctions Source: Marine and Fisheries Agency⁴

15. Fish auctions (of which there are 28)⁵, fish vessels (of which there are 5,936)⁶ 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 Schedule.

² IBDR ONS: VAT/PAYE registered local units 2008

³ Marines and Fisheries Agency 2008, <http://www.mfa.gov.uk/statistics/vessellists.htm>

⁴ www.fishregister.co.uk

⁵ www.fishregister.co.uk

⁶ Marines and Fisheries Agency 2008, <http://www.mfa.gov.uk/statistics/vessellists.htm>

Consumers

16. Consumers will benefit from clear and informative provisions in which there are specified designations for new fish which have come onto the market and some amendments to existing designations which describe certain fish more accurately. The purpose of these is more consistent labelling. Consumers from minority ethnic groups in particular are likely to benefit from this, as many of the new fish are likely to be marketed mostly to them.

Enforcers

17. Enforcement bodies will benefit from having clearer, up-to-date information located in one place, i.e. in the amended Schedule.

Exceptions

18. Catering establishments and processed fish products sold at retail will not be affected by these proposals because s.3(1) of the Fish Labelling (England) Regulations 2003 (as amended) applies to retail sales only, and processed fish products are not subject to the labelling requirements of Article 4 of Regulation (EC) 104/2000.

Option a. – Do nothing

Benefits

19. There are no additional benefits to continuing with the current list as it is now outdated.

Costs

20. There are potential costs in terms of consumer choice in that fish businesses may be reluctant to sell fish which have come onto the market which are not listed in the Schedule and to enforcement bodies from not having clear, consolidated enforcement information .

Option b. – Legislative change

Benefits

21. The new fish species added to the list will ensure accurate and consistent commercial designations in England, in the other countries within the United Kingdom and in other Member States where the common commercial name for the same species is in English. This may expand the range of fish and fish products available at all stages of marketing.
22. Consistent labelling of fish products in accordance with the 2010 Regulations will benefit the consumer via clarity and help prevent potential misdescription of the wider choice of fish and fish products available to the consumer. In addition, it may also help deter mislabelling that passes off inferior fish as different “premium” species.
23. There are no significant environmental benefits associated with this option.
24. There may be some advantages to UK businesses in terms of facilitating trade and the ability to place a wider range of fish on the market.

Costs

i) Familiarisation costs

25. There will be a one-off familiarisation cost to industry and the enforcement authorities in terms of reading and familiarising themselves with the new Regulations and the new Schedule.

Local Authorities

| Area | Number of LAs | Familiarisation cost (£'00s) |
|-----------------------------|---------------|------------------------------|
| England | 389 | £2,684 |
| Scotland | 32 | £221 |
| Wales | 22 | £152 |
| Northern Ireland | 26 | £179 |
| UK total | 469 | £3,236 |
| UK rounded to nearest £1000 | 469 | £3,000 |

Note: All figures rounded

26. It is estimated by the Agency that it would take one local authority officer, in each of the 469 local authorities in the UK, 20 minutes to read the Schedule. With an average hourly pay rate for environmental health practitioners⁷ of approximately £15.92⁸ which, in line with the standard cost model, is then up-rated by 30% to account for overheads, this provides an hourly cost of £20.70, which equates to £6.90 per 20 minutes. This would be equivalent to a one-off familiarisation cost of around £3,000 for the UK (rounded) assuming that one officer can then disseminate this information to colleagues⁹.

Businesses

| No of Businesses/Costs | England | Scotland | Wales | N.Ireland | UK |
|--|------------------|-----------------|-----------------|-----------------|------------------|
| Retail - fish, crustaceans & molluscs | 1050 | 270 | 50 | 20 | 1390 |
| Wholesale of other food including fish, crustaceans and molluscs | 1610 | 285 | 70 | 90 | 2055 |
| Processing and preserving of fish and fish products | 200 | 185 | 5 | 25 | 415 |
| Fishing Vessels | 3040 | 2152 | 547 | 229 | 5968 |
| Total specialist | 5900 | 2892 | 672 | 364 | 9828 |
| Cost Specialist (£5.77) | £ 34,043 | £ 16,687 | £ 3,877 | £ 2,100 | £ 56,708 |
| Rounded | | | | | £57,000 |
| Retail | 35,370 | 4,610 | 2,305 | 1,545 | 43,830 |
| Cost Retail (£5.16) | £ 182,509 | £ 23,788 | £ 11,894 | £ 7,972 | £ 226,163 |
| Total Cost | £ 216,552 | £ 40,474 | £ 15,771 | £ 10,072 | £ 282,870 |
| Rounded | | | | | £283,000 |

27. It is estimated that again it will take each business 20 minutes to read the Schedule. Assuming an average hourly wage of £13.31 in 2009 for managers in fishing, this was taken and up-rated by 30% to £17.30 or £5.77 per 20 minutes, in-line with the standard cost model.¹⁰ Using the above IBDR data, it is estimated there are approximately 9828 specialist businesses (vessels, auctions and specific fish-related businesses in the fish

⁷ The wage rate of Inspectors of factories, utilities and trading standards was found to be £15.58 according to the ASHE 2009 table and so the higher wage for enforcement officers was used to be cautious.

⁸ ONS – Annual Survey of Hours and Earnings 2009 <http://www.statistics.gov.uk/statBase/product.asp?vlnk=13101>

⁹ Standard practice to ensure consistency across regulation familiarization costs.

¹⁰ Ibid.

sector that would be affected by the 2010 Regulations¹¹. This equates to a one-off familiarisation cost of approximately £57,000 for the UK.

28. The above figure does not include general food retailers, some of which may be affected by the 2010 Regulations. As there are no data on the proportion of general food retailers who will be affected, all are included to produce an upper bound estimate, which will equate to 43,830 local business units. Assuming an average hourly wage for managers in distribution, storage and retailing of £11.90, up-rated to £15.47 in line with the standard cost model and a 20 minutes familiarisation cost of £5.16, this equates to an upper estimate familiarisation cost of approximately £283,000. As the general food retail category includes many businesses which will not be affected by the legislation, the familiarisation cost will be closer to £57,000 than £283,000 for the UK.
29. Adding the Local Authority costs and rounding gives the range of £60,000 to £286,000 total familiarisation costs for the UK.

ii) Ongoing costs

Businesses

30. As under the requirements of the Food Labelling Regulations 1996 (as amended), businesses are still required to label a fish even in the absence of a current commercial designation, i.e. prior to it being listed in the Commercial Designations Schedule, it is assumed that the classification of new species will not add any ongoing costs to businesses.

iii) Other costs

Sustainability

31. Whilst we recognise that there may be some environmental impacts associated with the amendments, in that they allow a wider range of fish to be legitimately placed on the market in the UK, there is other legislation and agreements in place to control the sustainability of fish stocks. The Fish Labelling (England) Regulations 2010 would not override any other restrictions that may exist, for instance, on the fishing of endangered species. Therefore, we do not consider there to be any significant environmental costs associated with this option.
32. There are no significant social costs associated with this option.

Labelling

33. Almost all currently permitted commercial designations will still be allowed under the new Regulations, as all except two of the changes made to the existing Schedule add alternative names or new species. Therefore, there will be minimal administrative cost for industry for re-printing labels/documentation (including promotional material) unless it

¹¹ Obtained from DEFRA and Seafish statistics in the Fish Labelling (Amendment) (England) Regulations 2006 IA: <http://www.food.gov.uk/multimedia/pdfs/fishlabellingria2006.pdf>

wishes to take advantage of an alternative commercial designation or to market new species under an existing commercial designation.

34. For the 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. The only re-labelling costs will be in respect of new species which have come onto the market which have up to now been labelled differently or inconsistently prior to their listing within the Schedule.

Consultation

Within Government

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

Public consultation

36. The Food Standards Agency sent out a formal 12-week consultation on the draft Regulations, including the Schedule and proposed Impact Assessment, between 9 July and 1 October 2009. 156 interested parties, including consumer organisations, fish industry associations and enforcement authorities were consulted on the draft Regulations. Seven responses to the England consultation were received, from fish businesses, trade associations and enforcement bodies. Of these consultation responses, where most covered a number of topics, one was specifically a request for a further new designation, there was one about the layout of the Schedule and one about the addition of other substances to fish. There were three responses to the Scotland consultation, all of which were taken into account. The consultation responses were fully discussed by the re-convened Fish Expert Working Group following the close of the consultation and consensus decisions were reached on the requested new additions and changes.
37. The draft Regulations were amended to take some of these requests into account with an extra two species being added and some amendments to designations being made. LACORS responded to the consultation to the effect that they were unable to quantify costs and benefits for local authorities but that they expected the Regulations to be cost-neutral. Trading Standards South-East commented that the draft Impact Assessment:
- referred to the pay of an Environmental Health Officer rather than a Trading Standards Officer; and
 - did not take account of the time taken to cascade the legislation amongst food enforcement officers, as it works on the basis of only one officer per Authority reading the Regulations.

38. As the Fish Expert Working Group advised that different enforcement Departments were responsible for fish labelling within different Authorities. However, given that there was not a substantial difference in pay levels between enforcement officers and trading standards officers, the higher enforcement officer wage was used to be cautious (see footnote 7).
39. With regard to the issue of the number of enforcement officers having to read the Regulations, different Authorities operate in different ways; so, for some Authorities only one person will need to read them, while for others a few will need to. Without further evidence, the Agency cannot make an appropriate assumption and thus assumes one officer per Authority.

Enforcement

40. The provisions regarding enforcement and sanctions in the existing Fish Labelling (England) Regulations 2003 will remain untouched. Enforcement of the Regulations will continue to be the responsibility of Local Authority Trading Standards and Environmental Health Departments.

Simplification

41. We consider that there will be a simplification for businesses in having all permissible current names of commercially available fish in an up-to-date schedule, without needing to refer to the original 2003 Regulations. The presentation of the Schedule has been revised with the aim of making it more user-friendly. These proposed new consolidating Regulations would be simpler for businesses rather further amendments to the 2003 Regulations would be.

Small Firms Impact Test

42. The new Regulations would be likely to impact in a positive way on small firms, since we believe that the new fish being marketed are most likely to be sold in small, minority ethnic fishmongers who will obtain maximum benefit from the economic gain realised from being able to sell these. Small businesses may have some initial extra labelling costs from having to change labels on fish which had yet to obtain a commercial designation and which were previously being marketed under a different name. There were no comments in the responses to the consultation on the financial effect of the Regulations on small businesses.

Competition

43. Since there are only two fish (*Aphanopus Carbo* and *Lepidopus Caudatus*) for which existing names are being disallowed under the new Regulations, and these have alternative designations which can be used, there should be no significant impact on competition in the industry.

Implementation and Review

44. It is anticipated that the new Regulations will come into force on 6 April 2010.

45. The publication of the new Regulations will be communicated to stakeholders through the Agency's website at www.food.gov.uk and in FSA News; the revised Schedule will also be posted on the Agency website. It will be made available to local enforcement agencies via the Agency's enforcement portal.
46. The Agency will review the 2010 Regulations two years after their implementation, with the assistance of the Fish Expert Working Group, unless the Agency becomes aware that any amendment to them is needed earlier than this.

Specific Impact Tests: Checklist

| Type of testing undertaken | <i>Results in Evidence Base?</i> | <i>Results annexed?</i> |
|----------------------------|----------------------------------|-------------------------|
| Competition Assessment | Yes | No |
| Small Firms Impact Test | Yes | No |
| Legal Aid | No | No |
| Sustainable Development | Yes | No |
| Carbon Assessment | No | No |
| Other Environment | No | No |
| Health Impact Assessment | No | No |
| Race Equality | No | Yes |
| Disability Equality | No | Yes |
| Gender Equality | No | Yes |
| Human Rights | No | No |
| Rural Proofing | No | No |

Competition Assessment

There were no comments in consultation responses to suggest distortion of competition.

Small Firms Impact Test

A number of small businesses were consulted individually, as was the Small Business Service, which would have alerted its members to the consultation. No comments were received about the impact these Regulations would have on small businesses

Sustainable development

The economic, social and environmental impacts of both options have been considered in the preparation of this Impact Assessment and are detailed in the Costs and Benefits section. Option 2 is considered to be relatively more sustainable as the limited financial costs to business and enforcement bodies are fully justified by the benefits to consumers in terms of improved information and choice. Consumers from minority ethnic groups in particular are likely to benefit from more consistent labelling, as many of the new fish are likely to be marketed mostly to them. None of the new species included in the Schedule is on the CITES list of endangered species, which should minimise any possible adverse impacts on the environment.

There were no comments on social or environmental costs arising from the consultation.

Race equality issues

No significant impact, although there may be some benefit to minority ethnic businesses.

Gender equality issues

No significant impact.

Disability equality issues

No significant impact.

Annex 2

Fish Labelling Regulations 2010 – Additional Species and Amendments to Species

New species

i) Sea Fish

| | |
|---|--|
| African sole | <i>Solea senegalensis</i> |
| Alaska plaice | <i>Pleuronectes quadrituberculatus</i> |
| Black bream or Black seabream | <i>Spondyliosoma cantharus</i> |
| Black oreo or Oreo | <i>Allocyttus niger</i> |
| Bombay duck | <i>Harpadon nehereus</i> |
| Doctor fish, Surgeon fish or Tang | All species of the family <i>Acanthuridae</i> |
| Flathead | All species of the family <i>Platycephalidae</i> |
| Flathead sole | <i>Hippoglossoides elassodon</i> |
| Halfbeak | All species of the family <i>Hemiramphidae</i> |
| Indian halibut | <i>Psettodes erumei</i> |
| Leatherjacket or Unicorn fish | <i>Aluterus monoceros</i> |
| Longfin codling | <i>Laemonema longipes</i> |
| Northern rock sole | <i>Lepidopsetta polyxystra</i> |
| Patagonian icefish | <i>Patagonotothen ramsayi</i> |
| Ponyfish or Thirali | All species of the family <i>Leiognathidae</i> |
| Rabbitfish | All species of the family <i>Siganidae</i> |
| Sillago | All species of the family <i>Sillaginidae</i> |
| Smooth oreo or Oreo | <i>Pseudocyttus maculatus</i> |
| Soldier fish or Squirrel fish | All species of the family <i>Holocentridae</i> |
| Spadefish | All species of the family <i>Ephippidae</i> |
| Spottail spiny turbot or Spottail turbot | <i>Psettodes belcheri</i> |
| Striped bass | <i>Morone saxatilis</i> |
| Threadfin | <i>Polynemus tetradactylum</i> |
| Wolf herring | <i>Chirocentrus dorab</i> |
| Yellowstripe scad | <i>Sellaroides leptolepis</i> |

ii) Freshwater Fish

| | |
|-----------|--|
| Snakehead | All species of the family <i>Channidae</i> |
|-----------|--|

Additional designations

i) Sea Fish

| | |
|--------|--|
| Bonito | All species of <i>Auxis</i> All species of <i>Euthynnus</i> , with the exception of <i>Euthynnus (Katsuwonus)</i> <i>pelamis</i> All species of <i>Sarda</i> |
|--------|--|

The following commercial designations may also be used in relation to fish of the species

listed against them in Column 2:

Bullet tuna or Melva *Auxis rochei*

(Bullet tuna or Melva is a new alternative)

Cutlassfish or Ribbonfish or Scabbard fish All species of the family *Trichiuridae*

The following commercial designations may also be used in relation to fish of the species listed against them in Column 2:

Black sabre or Black scabbard fish *Aphanopus carbo*
Sabre or Sabre fish *Lepidopus caudatus*
or Silver sabre

(Cutlassfish and Ribbonfish are new designations, Scabbard fish was previously *Lepidopus caudatus* or *Aphanopus carbo* only; Black sabre was previously allowed for *Lepidopus caudatus*.)

Garfish or Needlefish All seafish species of the family *Belonidae*

(Needlefish is new designation; Garfish was previously *Belone belone* only)

Kingfish or Spanish mackerel All species of the family *Scomberomoridae*

Alternatively:

King mackerel *Scomberomorus cavalla*

Pacific sierra or Sierra mackerel *Scomberomorus sierra*

(Kingfish was previously *Scomberomorus cavalla* only, Spanish mackerel is a new designation)

ii) Salmon and Freshwater Fish

Basa, or Panga(s) or Pangasius or River cobbler or any of these All species in the family *Pangasiidae*
together with the additional word 'catfish'

The following commercial designation may also be used in relation to fish of the species listed against it in Column 2:

Royal basa *Pangasianodon Bocourti*

(Previously Basa etc. could be applied to all species of *Pangasius* rather than *Pangasiidae*; Royal Basa is a new designation)

Carp All species of the family *Cyprinidae*

Alternatively, the following may be used

| | |
|------------------|------------------------------|
| Banspata | <i>Danio devario</i> |
| Barbel | <i>Barbus barbus</i> |
| Bata | <i>Labeo bata</i> |
| Chelapata | <i>Salmostoma bacaila</i> |
| Freshwater bream | <i>Abramis brama</i> |
| Ghania | <i>Labeo gonius</i> |
| Kalibous | <i>Labeo calbasu</i> |
| Mowrala | <i>Amblypharyngodon mola</i> |
| Punti | <i>Puntius sarana</i> |
| Roach | <i>Rutilus rutilus</i> |
| Rohu or Ruhi | <i>Labeo rohita</i> |
| Tench | <i>Tinca tinca</i> |

(Rohu is a new alternative designation for *Labeo rohita*).

Dry star baim or Largebaim All species in the family *Mastacembelidae*
or Patabaim

(Previously Largebaim was allowed as a designation for *Mastacembelus armatus* and Patabaim for *Macrognathus aculeatus*)

| | |
|----------------|---------------------------------|
| Pacific salmon | <i>Oncorhynchus gorbuscha</i> |
| | <i>Oncorhynchus keta</i> |
| | <i>Oncorhynchus kisutch</i> |
| | <i>Oncorhynchus masou masou</i> |
| | <i>Oncorhynchus nerka</i> |
| | <i>Oncorhynchus tshawytscha</i> |

The following commercial designations may also be used in relation to fish of the species listed against them in Column 2:

| | |
|---|---------------------------------|
| Cherry salmon | <i>Oncorhynchus masou masou</i> |
| Chinook salmon or Keta salmon or Spring salmon | <i>Oncorhynchus tshawytscha</i> |
| Chum salmon or Keta salmon | <i>Oncorhynchus keta</i> |
| Coho salmon or Medium red salmon or Silver salmon | <i>Oncorhynchus kisutch</i> |
| Pink salmon | <i>Oncorhynchus gorbuscha</i> |
| Red salmon or Sockeye salmon | <i>Oncorhynchus nerka</i> |

(Pacific salmon is a new designation for *Oncorhynchus gorbuscha*, *Oncorhynchus keta*, *Oncorhynchus kisutch* and *Oncorhynchus nerka*).

Deletions

Sea Fish

Scabbard fish, Sabre, Sabre fish or Silver sabre are no longer permitted designations for *Aphanopus carbo*.

Black sabre is no longer a permitted designation for *Lepidopus caudatus*.