

**EXPLANATORY MEMORANDUM TO**  
**THE SEA FISHERIES (AMENDMENT ETC.) (NO. 2) REGULATIONS 2021**  
**2021 No. 1429**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for the Environment, Food and Rural Affairs (“Defra”) and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 This instrument makes various amendments to retained EU law relating to sea fisheries. This instrument amends retained EU law which was previously part of the Common Fisheries Policy so that it continues to function effectively for the UK as an independent coastal state.

**3. Matters of special interest to Parliament**

*Matters of special interest to the [Joint Committee on Statutory Instruments OR the Select Committee on Statutory Instruments OR the Sifting Committees]*

- 3.1 This instrument will be laid on 14<sup>th</sup> December 2021 and will come into force on 31<sup>st</sup> December. As this instrument will be laid through the negative resolution procedure this will breach the 21-day rule. Delays in finalising the SI and in obtaining the necessary DA consents resulted in slippage in the original timetable for laying and the SI could not be laid as planned on 9<sup>th</sup> December 2021.
- 3.2 A delay in the introduction of the measures beyond 31<sup>st</sup> December 2021 would fail to protect vulnerable fishing stocks and compromise the UK’s compliance with international obligations. It would also cause disruption to the fishing industry at the start of the new fishing year. This resulting uncertainty would cause reputational damage to the UK government and may lead to economic impacts on the industry. It would result in a number of legislative gaps such as the expiration of certain de minimis exemptions (in Regulation 1393/2014 and Regulation 1395/2014) as well as amendments which need to be made to Regulations 2238/2019 and 2239/2019 that reflect scientific advice for the protection of fishing stocks.
- 3.3 The justification for breaching the 21-day rule is to ensure compliance with the landing obligation and provide legislative underpinning to support enforcement against illegal discarding. The latter has significant implications on the sustainability of fish stocks. These measures will also reduce the risk of choke in some fisheries. Choke occurs when the available quota for a species is exhausted before the quotas of other species that are caught in a mixed fishery and can result in a fishery having to close.
- 3.4 This instrument will also introduce vital measures for the protection of European Seabass in UK waters. Without this instrument coming into force on 31<sup>st</sup> December, this vulnerable stock would be placed at risk and could potentially be subject to

opportunistic over-fishing. The UK would also be in breach of its international obligations, in particular its bilateral commitment from EU annual negotiations to introduce agreed bass management measures by the end of 2021. This would have a reputational impact and potential adverse effects on our bilateral relationship with the EU. It would also be non-compliant with the retained Data Collection Framework Regulation, which requires a multiannual programme to underpin the UK work plan.

#### **4. Extent and Territorial Application**

4.1 The territorial extent of this instrument is England and Wales, Scotland and Northern Ireland.

4.2 The territorial application of this instrument is England and Wales, Scotland and Northern Ireland.

#### **5. European Convention on Human Rights**

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

#### **6. Legislative Context**

6.1 The landing obligation is contained in retained EU law in Article 15 of Regulation (EU) No 1380/2013 of the European Parliament and of the Council on the Common Fisheries Policy. Supplementing the landing obligation are four retained EU law Regulations which specify exemptions that permit the discarding of certain species (“the discard plans”). The discard plans are:

- Commission Delegated Regulation (EU) No 1393/2014 establishing a discard plan for certain pelagic fisheries in North-Western waters;
- Commission Delegated Regulation (EU) No 1395/2014 establishing a discard plan for small pelagic fisheries and fisheries for industrial purposes in the North Sea;
- Commission Delegated Regulation (EU) 2019/2238 specifying details of implementation of the landing obligation for certain demersal fisheries in the North Sea for the period 2020-2021; and
- Commission Delegated Regulation (EU) 2019/2239 specifying details of the landing obligation for certain demersal fisheries in North-Western waters for the period 2020-2021.

6.2 This instrument amends the four discard plans to extend their application beyond the end of 2021 for a further three years as well as updating the plans to ensure the exemptions remain appropriate.

#### *Extending the Multiannual Programme for collection and management of fisheries data*

6.3 The Data Collection Framework Regulation (Regulation (EU) 2017/1004 of the European Parliament and of the Council on the establishment of a Union framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the common fisheries policy) as amended in retained EU law provides for a data collection multiannual programme. The multiannual programme comprises of:

- Commission Implementing Decision (EU) 2019/909 establishing the list of mandatory research surveys and thresholds for the purposes of the multiannual

Union programme for the collection and management of data in the fisheries and aquaculture sectors, as it applies in retained EU law; and

- Commission Delegated Decision (EU) 2019/910 establishing the multiannual Union programme for the collection and management of biological, environmental, technical and socioeconomic data in the fisheries and aquaculture sectors, as it applies in retained EU law.

6.4 This instrument amends the two Decisions above to extend the application of the multiannual programme by three years to the end of 2024.

Measures on European seabass fisheries

6.5 The provisions relating to measures on European seabass fisheries amend the following legislation:

- Article 10 of Council Regulation (EU) 2020/123 fixing for 2020 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters, as it applies in retained EU law.
- Annex 6 Part B of Regulation (EU) 2019/1241 of the European Parliament and of the Council on the conservation of fisheries resources and the protection of marine ecosystems through technical measures, as it applies in retained EU law.

Amendment of the Sandeel Tac and Quota Regulation provisions

6.6 The provisions relating to the amendment of sandeel measures in the retained EU TQR legislation revoke the following expired Article:

- Article 12a of Council Regulation (EU) 2020/123 fixing for 2020 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters, as it applies in retained EU law.

Amendment of the UK Illegal Unreported Unregulated Vessel List

6.7 Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing, as it applies in retained EU law, provides for the concept of a United Kingdom IUU vessel list. The list is contained in:

- Commission Regulation (EU) No 468/2010 of 28 May 2010 establishing the EU list of vessels engaged in illegal, unreported and unregulated fishing, as it applies in retained EU law.

6.8 This instrument amends the UK IUU vessel list to include vessels included in an IUU vessel list adopted by a regional fisheries management organisation.

## **7. Policy background**

*What is being done and why?*

Updating the discard exemptions

7.1 The current discard exemptions and technical measures outlined in the discard plans covering the North Sea and North-Western Waters delegated acts, and all the discard exemptions and technical measures outlined within, expire at the end of this year. To

address the choke risk<sup>1</sup> and to support fishers to comply with the landing obligation, these scientifically justified exemptions allow a limited level of discarding, for certain stocks, in certain fisheries, under the landing obligation.

- 7.2 Following a scientific review of exemptions by the Centre for Environment, Fisheries and Aquaculture Science (Cefas) in 2021, this instrument will extend most current exemptions in UK waters from 31 December 2021 for a further three years and make some changes for sustainability reasons, or to support compliance with the landing obligation.
- 7.3 Three new exemptions will be introduced to support compliance with the landing obligation. These new exemptions are for sprat and horse mackerel in International Council for the Exploration of the Sea (ICES) divisions VIIe and f; for sole in VIIa, d, e, f and g; and for monkfish in VIII d – j.
- 7.4 To support fishers to comply with the landing obligation and for consistency, the *de minimis* exemption for boarfish in ICES divisions VIIb, c and VIIf - k will be amended to cover VIII d – j. This extends the scope of the exemption in UK waters to include divisions VIII d and e, and removes divisions VIIb, c and k which are not in UK waters.
- 7.5 The cod element of the *de minimis* exemption for cod and whiting in ICES divisions IVa and IVb will be discontinued to safeguard the sustainability of the highly depleted cod stock. The *de minimis* exemption for ling caught by vessels using bottom trawls in ICES area IV will also be discontinued as there is a low discard rate and the exemption is not widely used.
- 7.6 Some exemptions will be made conditional on using selective fishing practices to safeguard the sustainability of the exempted stocks. The exemptions for plaice in ICES areas VIII d – g and plaice in ICES area IV will require fish to be released during the net hauling process.
- 7.7 The current mesh size requirement will also be modified for the brown shrimp exemption in ICES area VIIa so that the legally permitted mesh size for these vessels is equal to or greater than 16mm in line with current legislation on mesh sizes for vessels in this fishery. The mesh size for the exemption for Norway lobster in ICES area VII will be amended so that it is equal to or greater than 70mm for the whole exemption.
- 7.8 The percentage limit on discards for sole in ICES areas VIIf and g will be increased to reflect current discard rates and ensure that fishing does not exceed the TAC (Total Allowable Catch) limit. The percentages will not change for the remaining ICES areas in the exemption.
- 7.9 The TAC deduction exemption for all species in the brown shrimp fisheries in ICES areas IVb and c will be amended so that it accounts for all unwanted catch to safeguard the sustainability of fish stocks.
- 7.10 ICES areas only applying in EU waters will also be removed from exemptions where relevant. This primarily concerns exemptions in the North Western Waters demersal fisheries of which some exemptions cover ICES areas only in EU water.

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<sup>1</sup> Choke occurs when the available quota for a species is exhausted before the quotas of other species that are caught in a mixed fishery. This may result in fishing vessels having to cease operations before they have caught their main quota allocations.

- 7.11 The SI also extends some standalone selective technical gear measures within the current retained Regulation that help to reduce the incidence of unwanted catches. Technical measures are a broad set of rules that govern how, where and when fishers may fish.

*Extending the Multiannual Programme for collection and management of fisheries data*

- 7.12 The current Multiannual Programme (MAP) expires on 31 December 2021. The MAP refers to a UK national work plan (non-legislative) for the detail of data collection and management activities.
- 7.13 The UK Work Plan ensures coordination of activities across the Fisheries Administrations to enable the UK to meet international commitments for fisheries data management and collection. Extending the MAP ensures that the UK Work Plan for 2022 onwards will have legislative underpinning (by referring back to a current MAP). This provides assurance that the four UK Fisheries Administrations collectively will meet international obligations.

*Measures on European seabass fisheries*

- 7.14 The measures relevant to seabass fisheries listed in Section 6 above have applied in UK law as retained EU legislation since 1 January 2021. The amendments made through this instrument will be applied from 31 December 2021.
- 7.15 Seabass fisheries are jointly managed by the UK and the EU and the management approach in place since 2015 that both parties provisionally continue to share has brought the fishing pressure on the stock down to within sustainable limits. The UK's objectives are to further rebalance the discarding/landing ratio of the existing level of fishing mortality in favour of landing. The UK, in agreement with the EU, previously increased the cap for trawls and seines on how much seabass can be cumulatively landed under the current 5% of seabass in the total species retained on board and landed per fishing trip, from 520kg per two months, to 380kg per month. This was implemented in English and Welsh zones of the British fishery limits and is here being extended to include Scottish and Northern Irish zones.
- 7.16 This instrument will further rebalance the discarding/landing ratio in favour of landings by removing the requirement for trawls and seines to have a track record in order to land seabass bycatch.
- 7.17 Seabass management measures are due to expire on 31 December each year. This instrument will remove the dates from the legislation in order to ensure fishing of this stock remains prohibited and the protections remain in place, notwithstanding any exemptions to the prohibition.
- 7.18 This instrument also changes the minimum mesh size requirements for retaining and landing seabass with fixed gillnets in ICES area VIIId in the English Channel. The minimum mesh size will be increased from 90mm to 100mm. This brings the area in line with the rest of the UK and is a more appropriate mesh size to ensure that smaller seabass, below the minimum conservation reference size (MCRS), are less likely to be caught.

*Revocation of sandeel measures in the TOR*

- 7.19 UK law has retained previous EU legislation on sandeels as per the conclusion of the Trade and Cooperation Agreement (TCA) from 1 January 2021.

- 7.20 These are now expired measures which previously implemented a closed season for sandeels in the ICES division of IIa and the ICES sub area IV of UK waters between 1 January and 31 March 2021.
- 7.21 This SI revokes these expired measures to allow for the easier introduction of new management measures if introduced by the UK in the future.
- 7.22 To ensure continuity in management, the closure will be reintroduced-until new management measures aimed at improving the long-term sustainability of sandeel stocks are developed.

#### *IUU Vessel List*

- 7.23 The IUU fishing vessel list is a way for the UK to tackle IUU fishing and reduce the risk of IUU fishing products being imported into the UK. If a vessel is added to the UK's IUU list, a number of restrictions are placed on that vessel, including preventing the vessel from fishing in UK waters, or the import of products caught by that vessel.
- 7.24 RFMOs (Regional Fisheries Management Organisations) also have their own vessel lists for IUU fishing activity in the areas they manage. As a contracting party to RFMOs, the UK has an obligation to list vessels according to decisions made by these organisations. This instrument updates the UK's IUU vessel list in line with the decisions by all RFMOs, not only those of which the UK is a member. This comprehensive approach ensures the UK contributes to the global effort to tackle IUU fishing.

#### ***Explanations***

##### *What did any law do before the changes to be made by this instrument?*

- 7.25 This instrument is acting to update retained EU law that had time limited implementation and to make adjustments to some of this legislation to improve the measures or update as is required by international obligations. Sandeel legislation (which expired on 31 March 2021) will be revoked but previously initiated a closed season for this fishery; this revocation allows new measures informed by a public Call for Evidence to be implemented in future. The IUU fishing vessel list will be updated to match current information on vessel activity. Discard policy and seabass management will, for the most part, stay in place with minor, scientifically justified adjustments as detailed above.

##### *Why is it being changed?*

- 7.26 The legislation is being updated to prevent a number of laws from expiring. This will allow the UK to continue to meet its international obligation in data collection (MAP) and on tackling IUU fishing, as well as providing continued support for the fishing industry and protection for important stocks. Updates to the legislation on discard policy and seabass management aim to improve the measures in place by providing flexibility for the fishing industry to allow them to meet requirements in relation to the landing obligation and to reduce the amount of seabass being wastefully discarded. This instrument also revokes expired legislation on sandeels to allow protections to be implemented via new management conditions.

##### *What will it now do?*

- 7.27 For the most part the intent of this instrument is to prevent legislation from expiring so that measures stay in force. There will also be an update to the IUU fishing vessel

list to allow the UK to meet its international obligation in tackling IUU fishing. Discard policy and seabass management will be updated to not only prevent the legislation from expiring but to also improve the existing measures. These improvements aim to allow the fishing industry to better meet the requirements of the landing obligation by providing flexibility and reduce the amount of seabass being wastefully discarded by allowing more to be retained. This instrument also revokes expired legislation on sandeels to allow protections to be implemented via new management conditions.

## **8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act.
- 8.2 This instrument does, however, relate to the implementation of the Trade and Cooperation Agreement 2020, whereby either party making changes to legislation which will have an effect on vessels of the other should notify ahead of the legislative changes coming into force. Considering this, the UK will notify the EU of the measures in this instrument which will affect EU vessels fishing in UK waters and allow time for comment before this instrument is laid.

## **9. Consolidation**

- 9.1 There are no plans to consolidate the legislation amended by this instrument.

## **10. Consultation outcome**

### Updating the discard exemptions

- 10.1 The Devolved Administrations have been consulted and have agreed that the amendments to discard exemptions should apply to their respective zones via this instrument. Industry and Environmental NGO representatives have also been consulted.

### Extending the Multiannual Programme for collection and management of fisheries data

- 10.2 The Devolved Administrations have been consulted and agreed to the proposed amendments for the Multiannual Programme via the main UK governance body for fisheries science, the UK Fisheries Science and Evidence Steering Group.

### Measures on European seabass fisheries

- 10.3 The seabass measures have been developed in discussion with all Devolved Administrations. Representatives from the commercial and recreational sectors, and Environmental NGOs, have been consulted both on measures related to bilateral negotiations with the EU and in preparing this instrument

## **11. Guidance**

- 11.1 As these are technical changes to existing legislation there is no associated guidance. The Marine Management Organisation issues annual online seabass fishing guidance for industry and recreational information on compliance which will be updated to reflect the amendments in this instrument.

11.2 A list of exemptions in force in UK waters from 31 December 2021 will be published on the Marine Management Organisation's website. This will reflect the approach previously taken for the publication of the list of exemptions.

## **12. Impact**

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because there are no significant impacts as result of the amendments made by this instrument.

## **13. Regulating small business**

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is that a note from the Marine Management Organisation, detailing the relevant changes and timelines, will be released in sufficient time which will allow industry to take any practical steps required to meet the new standards.

13.3 The basis for the final decision on what action to take to assist small businesses is that by releasing a note from the Marine Management Organisation the information would reach the relevant businesses in good time.

## **14. Monitoring & review**

14.1 The approach to monitoring of this legislation is that Defra, as well as the Devolved Administrations in relation to devolved matters, will monitor and review the impact of the instrument as part of their standard policy-making procedures.

14.2 The instrument does not include a statutory review clause, as a requirement for a review would be disproportionate when taking into account the economic impact of the regulatory provision on the qualifying activity. The economic impacts of measures are expected to be less than £5 million (net annualised).

## **15. Contact**

15.1 Amrita Rose at the Department for Environment, Food and Rural Affairs (telephone: 07342 701934 or email: [amrita.rose@defra.gov.uk](mailto:amrita.rose@defra.gov.uk)) can be contacted with any queries regarding the discard elements in this instrument.

15.2 Fiona Fletcher at the Department for Environment, Food and Rural Affairs (telephone: 0208 720 1538 or email: [fiona.fletcher@defra.gov.uk](mailto:fiona.fletcher@defra.gov.uk)) can be contacted with any queries regarding the Multiannual Programme elements in this instrument.

15.3 Lewis White at the Department for Environment, Food and Rural Affairs (telephone: 0208 720 4444 or email: [lewis.white@defra.gov.uk](mailto:lewis.white@defra.gov.uk)) can be contacted with any queries regarding the seabass management elements in this instrument.

15.4 Jack Heald at the Department for Environment, Food and Rural Affairs (telephone: 07917 513764 or email: [jack.heald@defra.gov.uk](mailto:jack.heald@defra.gov.uk)) can be contacted with any queries regarding the sandeel elements in this instrument.

15.5 Luke Bantock at the Department for Environment, Food and Rural Affairs (telephone: 07769 534029 or email [luke.bantock@defra.gov.uk](mailto:luke.bantock@defra.gov.uk)) can be contacted with any queries regarding the UK IUU Vessel List elements in this instrument.



- 15.6 Anne Freeman, Deputy Director for Domestic Fisheries and Reform, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.7 Victoria Prentis MP, Parliamentary Minister of State at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.