

EXPLANATORY MEMORANDUM TO

The Rathlin Island (Prohibited Methods of Fishing) Regulations (Northern Ireland) 2016

SR 2016 No. 408

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of Agriculture Environment and Rural Affairs (DAERA) to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under powers conferred by sections 19(1) and 124(1), (2) and (2A) of the Fisheries Act (Northern Ireland) 1966. and is subject to the negative resolution procedure.

2. Purpose

- 2.1. The Statutory Rule provides protection for designated features within the Rathlin Island Special Area of Conservation (SAC) and Special Protection Area (SPA) from potentially damaging sea fishing activities).

3. Background

- 3.1. Under the EU Habitats and Birds Directives, responsible Departments are required to take appropriate steps to avoid, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant. Failure to protect such sites may lead to infringement action and ultimately fines from Europe if no action is taken.
- 3.2. A Habitats Regulations Assessment has identified that the fishing activities with potential to cause significant impacts to the site are dredging for scallops and bottom trawling. The Regulations will prohibit these activities within the SAC area.
- 3.3. The Regulations ban the use of bottom mobile fishing gear such as scallop dredges and bottom trawls within the SAC area. This will protect reef features and their associated habitats and marine wildlife from fishing gear that could cause direct damage. Fishing with passive gear such as lobster and crab pots will still be permitted.

4. Consultation

- 4.1. Discussions took place between the Department of Agriculture and Rural Development (DARD), the fishing industry in Ballycastle, and Rathlin Island and also with North Coast Lobster Fishermen's Association and the Northern Ireland Scallop Association in developing the policy.
- 4.2. A public consultation, lasting 12 weeks, took place from 12th December 2011 to 7th March 2012 and 28 responses were received. A prohibition of all mobile gear (including pelagic trawls, bottom trawls and dredges) was supported by 64% of respondents. A dredge only ban was supported by 22% of respondents.

- 4.3. There was a long period between the end of the consultation and the final Regulations coming forward due to a combination of factors including, resources, and deliberations with interested parties over detailed implementation of the policy, in particular restricting access by permit, and provision of increased protection for part of the SAC area.
- 4.4. Restriction of access by permit was ruled out due to the risk of increasing fishing effort by irregular or low intensity fishers in an attempt to establish permit eligibility.
- 4.5. The provision of greater protection for certain high value areas has been deferred as this was not covered in the original consultation. If the Department wishes to introduce restricted access or higher levels of protection in future, further consultation will take place with stakeholders.
- 4.6. Whilst there was large support for a complete mobile gear ban, legal advice suggests that there is not sufficient evidence of negative impact to justify a ban on pelagic (mid water column) trawling, and therefore it may not be safe to legislate for this at this time.

5. Equality Impact

- 5.1. In accordance with the Department's obligations under Section 75 of the Northern Ireland Act 1998, the equality implications of the proposed Regulations have been assessed. The Regulations have been screened out and the Department considers that the regulations will not result in any equality differentials amongst Section 75 groups.

6. Regulatory Impact

- 6.1. A Regulatory Impact Assessment (RIA) was completed and found that the benefits from prohibiting the use of bottom mobile gear, in terms of avoiding the risk of infringement action and ultimately fines for failing to protect the site, outweigh the income from scallop fishing within the SAC.
- 6.2. The preferred option of a prohibition on the use of bottom mobile gear within the SAC would have a modest cost to the fishing sector but this may be mitigated over time through a boost to scallop populations outside the SAC area, arising from the protection of scallops within the SAC.
- 6.3. The Department of Justice (DoJ) was consulted and indicated that they were content at official level with the offences and penalties of the Fisheries Act (Northern Ireland) 1966 applying in these Regulations and the level being a maximum of level 5 (£5000). DoJ also indicated that Court Service had no comment to make on the operational aspects. DAERA Fisheries inspectors will be responsible for enforcing the regulations and investigating any breaches. Compliance is expected to be good through the raising of awareness of the regulations with industry and the consultation that has already taken place, and therefore additional impacts on the courts is expected to be low.
- 6.4. The Department is content that the proposed legislation meets DAERA's commitment to Better Regulation and "gold plating" is not applicable.

7. Financial Implications

- 7.1. There may be a modest immediate cost to the fishing industry from loss of a small king scallop fishing area within the SAC boundary. However progeny from the protected area should spread outside the protected area and boost surrounding scallop fisheries over time. Cost of monitoring and enforcement will be born by DAERA but is expected to be absorbed within the routine patrol coverage of the area that currently takes place.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The Regulations deal with protecting the designated features of the Rathlin SAC as required by the Habitats Directive. They do not have any human rights implications, nor are they incompatible with EU law. The Regulations are therefore deemed to comply with the requirements of section 24 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1. Rathlin Island is designated under the Birds and Habitats Directives and forms part of the Natura 2000 ecological network of protected areas. Member States are required take appropriate steps to avoid, in special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant. The Regulations will prohibit those activities with potential to cause significant impacts.

10. Parity or Replicatory Measure

- 10.1. All UK Fisheries Administrations are required to protect European protected sites and species within their jurisdiction. Regulatory measures are site specific.

11. Additional Information

- 11.1. None.