

EXECUTIVE NOTE

The Sea Fishing (Control Procedures for Herring, Mackerel and Horse Mackerel) (Scotland) Order 2008 (S.S.I. 2008/102)

1. The above instrument was made in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981 (as amended) and paragraph 1A of Schedule 2 to the European Communities Act 1972. Paragraph 1A of Schedule 2 is used so that any reference in the instrument to Commission Regulation 1542/2007 is construed as a reference to that Regulation as amended from time to time. The instrument is subject to negative resolution procedure.

Policy Objectives

2. It is necessary to make a Scottish Statutory Instrument to fully implement Commission Regulation (EC) No1542/2007, which came into effect on 1 January 2008. The Regulation provides that where more than 10 tonnes of herring, mackerel or horse mackerel are landed they must be weighed using weighing equipment which has been calibrated, approved and sealed by the Competent Authorities. In addition fishing vessels with more than 10 tonnes of mackerel or horse mackerel on board must land at a designated port and the Master or his agent are required to give the Competent Authorities prior notification of the vessel's entry into port and the quantity of fish retained on board. There are also controls relating to the transport of fish before weighing and extra provisions relating to the completion and submission of logbooks.

3. The provisions outlined above were previously set out in Council Regulation (EC) No 41/2007 (The TAC Regulation) which implement measures agreed by the EU with Norway and Faroes in annual fisheries negotiations and decisions taken at the December Agriculture and Fisheries Council. These provisions have featured in each of the annual TAC Regulations since 1 May 2005. As part of their action plan for the simplification of fisheries regulations the European Commission are committed to removing long standing control and technical provisions from the annual TAC Regulation and reinstating them in a more

appropriate regulation. The adoption of Commission Regulation (EC) No 1542/2007 is part of this exercise.

4. A number of the provisions in this Regulation can already be enforced directly under section 30(1) of the Fisheries Act 1981, but an Order is also considered necessary to fully implement the rules, to provide powers of enforcement to British Sea Fishery Officers (BSFOs) and penalties for offences committed within the Scottish zone and in Scottish ports. The Order also applies to Scottish vessels fishing anywhere outside the Scottish zone. The penalties for offences and the powers available to BSFOs are similar to those previously contained in the Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures)(Scotland) Order 2007 (SSI 2007/127) which implemented these measures last year..

Consultation

5. Meetings between all sectors of the pelagic fishing industry and the Marine Directorate are held annually and the industry was fully consulted prior to the measures first coming into effect on 1 May 2005. In addition, during the lead up to the EU/Norway/Faroes annual negotiations and the December Fisheries Council, the fishing industry as a whole is regularly kept up to date with developments.

6. Following publication of Commission Regulation (EC) No 1542/2007 in the Official Journal of the European Union the Marine Directorate wrote to Fishermen's Organisations, the owners of pelagic processing factories and producers organisations which manage pelagic quotas to inform them of the new Regulation.

Financial Effects

7. There are no additional financial implications for the industry as all the measures were in force under different regulations since 1 May 2005. A copy of the Regulatory Impact Assessment is attached.

Scottish Fisheries (Management) Division

Marine Directorate

Scottish Government

8 February 2008

Final Regulatory Impact Assessment

1. Title of proposal

1.1 The Sea Fishing (Control Procedures for Herring, Mackerel and Horse Mackerel) (Scotland) Order 2008

2. Purpose and intended effect of the proposal

Objectives

2.1 To provide fisheries control measures to monitor landings of Herring, Mackerel and Horse Mackerel to ensure that fishermen do not exceed quotas towards providing sustainable commercial fisheries for these species throughout the North East Atlantic. Norway and the Faroe Islands have also agreed to implement these measures which should create a level playing field throughout Europe for both the catching and marketing sectors of the fishing industry.

Background

2.2 We are required to fully implement Commission Regulation (EC) No1542/2007, which came into effect on 1 January 2008. The provisions in the Regulation were first introduced on 1 May 2005 and have featured in the annual EC TACs and Quota Regulations during 2005, 2006 and 2007. During 2007 The Sea Fishing (Enforcement of Community Quota and Third Country Measures)(Scotland) Order 2007 provided enforcement powers in Scottish ports and in the Scottish Zone and penalties for offences.

2.3 Commission Regulation (EC) No 1542/2007 was adopted at the end of 2007 year as part of the European Commission's simplification exercise which requires, where possible, to remove transitional control and technical conservation measures from the annual TACs and Quota Regulation. The new Regulation continues to provide that where more than 10 tonnes of herring, mackerel or horse mackerel are landed they must be weighed using weighing equipment which has been calibrated, approved and sealed by the Competent Authorities, in this case the Scottish Fisheries Protection Agency (SFPA). Additionally, fishing vessels with more than 10 tonnes of mackerel or horse mackerel on board must land at a designated port and the Master or his agent are required to give the Competent Authorities prior notification of the vessel's entry into port and the quantity of fish retained on board.

Rationale for government intervention

2.4 Although a number of these provisions were already enforceable under section 30(1) of the Fisheries Act 1981, this Order will fully implement the rules, to provide powers of enforcement to British Sea Fishery Officers (BSFOs) and penalties for offences committed within the Scottish zone and in Scottish ports. The Order also applies to Scottish vessels fishing anywhere outside the Scottish zone.

3. Consultation

3.1 **Within Government:-** UK policy has been agreed with colleagues in other UK administrations as well as enforcement agencies.

3.2 **Public Consultation:-** Meetings between all sectors of the pelagic fishing industry and the Marine Directorate are held annually and the industry was fully consulted prior to the measures first coming into effect on 1 May 2005. In addition, during the lead up to the EU/Norway/Faroes annual negotiations and the December Fisheries Council, the fishing industry as a whole is regularly kept up to date with developments.

4. Options

4.1 Do nothing - Continue with current arrangements relying on section 30(1) of the Fisheries Act 1981. This option however may lead to infraction proceedings being taken against the UK as it is necessary to make an Order to fully implement and enforce these provisions in Scottish ports and within the Scottish Zone

4.2 To make a Scottish Statutory Instrument to fully implement the provisions of the regulation in Scottish ports and within the Scottish Zone.

5. Costs and benefits

There are no additional financial burdens placed on the fishing industry with the introduction of this Order. All fishing vessels both indigenous and foreign that fish for the species specified in Scottish waters or land in Scottish ports will be covered by this Order.

6. Small Firms Impact Assessment

There will be no additional costs.

7. Legal Aid Impact Test

There is no implications for legal aid

8. Test Run of Business Forms

Forms have been used over the last 2 ½ years without any problems

9. Competition Assessment

The measures are designed to create a level playing field throughout Europe for both processors and the catching sector of the fishing industry

10. Enforcement, Sanctions and Monitoring

Enforcement of the measures in Scotland would be undertaken by the Scottish Fisheries Protection Agency (SFPA) and in other parts of the UK by officers in the appropriate sea fisheries inspectorates. Enforcement powers and penalties are set out in accompanying Order.

11. Implementation and delivery plan

There is no need for an implementation and delivery plan as the measures have already been in force for over 2 years.

12. Post implementation plan

The measures in the Commission Regulation are reviewed on an annual basis by the EU/Norway/Faroe Islands Pelagic Working Group. In addition the Marine Directorate meet annually with industry representatives to consult on fisheries management issues.

13. Summary and Recommendations

It is necessary to fully implement all the measures set out in the Commission Regulation in and as regards Scotland.

14. Regulatory Quality Declaration

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

Signed.....

Date.....

Richard Lochhead
Cabinet Secretary for Rural Affairs and the Environment
Scottish Government