

## EXPLANATORY MEMORANDUM TO

### THE SEA FISHING (RESTRICTION ON DAYS AT SEA) ORDER 2007

2007 No. 927

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. Description

2.1 This Order provides for the administration and enforcement in England of the provisions of Annex IIA and IIC (“the Annexes”) to Council Regulation (EC) No 41/2007 which together impose restrictions on days spent at sea and the use of fishing gear in areas subject to stock recovery measures for cod and sole. Annex IIC imposes further requirements relating to fishing in the area subject to stock recovery measures for sole and those requirements are also enforced by this Order.

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

3.1 None

#### 4. Legislative Background

4.1 Council Regulation (EC) No 41/2007 is this year’s annual Council Regulation fixing fishing opportunities and associated conditions for certain fish stocks applicable in community waters and for Community vessels in waters where catch limitations are required.

4.2 This Order replaces Parts 1, 2, 4 and 5 of the Sea Fishing (Restriction on Days at Sea) (Monitoring, Inspection and Surveillance) Order 2006, S.I. 2006/1327, which provided for administration and enforcement of equivalent annexes in the 2006 Regulation. Part 3 of the 2006 Order (which relates to sole) will be incorporated in a new Order combining the provisions with similar rules applying to hake and cod (also recovery stocks).

#### 5. Extent

5.1 This Order applies in England, and in relation to English and Welsh fishing boats wherever they are (except when they are in Welsh waters) and to other fishing boats within British Fishery Limits (other than the Scottish zone, the Northern Ireland zone or Welsh waters).

#### 6. European Convention on Human Rights

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

## **7. Policy background**

7.1 As a result of concerns about the worsening state of stocks of cod in waters adjacent to the UK, traditional quantitative restrictions on catches in the form of annual quotas have, since 2003, been supplemented by Community limits on the amount of time the larger (over 10 metre) vessels can spend fishing for the species (termed 'days at sea'). Similar restrictions have also been applied to sole in the Western English Channel from 2005. This regulation extends the English implementation of the EU days at sea arrangements for a further year, with a number of relatively minor adjustments designed to improve the respective controls to assist the desired recovery of both stocks. The only significant changes are reductions in the number of days available to each fishing vessel concerned, required to ensure the regime delivers the necessary reduction in fishing effort (in response to the latest scientific advice).

7.2 We have not yet identified a significant public interest in the days at sea policy itself. However, it is clear that an increasing number of consumers are becoming interested in the sources of their food and the sustainability of its production and this is beginning to have a significant effect on their purchasing decisions. Such a policy is therefore consistent with a desire for greater long-term stability both of the stocks and within the catching sector.

7.3 The English industry have been extensively consulted as the regimes have developed over the last few years - and have been actively involved in the negotiation process with the Commission and other Member States (see RIA for fuller details). They remain largely opposed to the principle of effort control, on the grounds that it interferes with historic fishing patterns, but recognise that quotas have in themselves not been sufficient to delivery healthy and sustainable stocks and have not offered any real alternatives. (They are however appreciative of our efforts to maximise their potential flexibility within the parameters of the EU schemes.) Ultimately however, mindful of the contribution of such activities to the social fabric of fishing communities throughout the country, we have sought to strike an appropriate balance between the needs of the industry long-term and the achievement of the necessary recovery of cod and sole.

## **8. Impact**

8.1 A Regulatory Impact Assessment is attached to this memorandum.

## **9. Contact**

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Tel: 0207 270 8021 or email: [simon.waterfield@defra.gsi.gov.uk](mailto:simon.waterfield@defra.gsi.gov.uk) can answer any queries regarding the instrument.**

## ***REGULATORY IMPACT ASSESSMENT***

### 1. Title

The Sea Fishing (Restriction on Days at Sea) Order 2007

### 2. Purpose and intended effect of measure

#### (i) Objective

The Statutory Instrument provides for the enforcement of the EU measures which limit, from 1 February 2007, days at sea by fishing vessels, with the objective of reducing damage to cod and sole stocks (Annexes IIA and IIC respectively). The measures extend and enhance controls applied since February 2003 for cod and January 2005 for sole.

The SI applies to the English fleet, wherever it is active (except within the Welsh 12 mile zone and the waters of Jersey, Guernsey and the Isle of Man) and all vessels fishing within English waters (except those of the Islands mentioned). Separate secondary legislation establishing equivalent arrangements is being made for Scotland, Wales and Northern Ireland.

The policy goal in implementing the EU measures is to meet UK obligations to apply this fisheries legislation effectively, while providing the flexibility allowed by the measures to the benefit of the industry, and avoiding undue difficulties in or costs of, administration and enforcement.

#### (ii) Background

At the December 2006 Council of Ministers, agreement was reached on a further year's extension of the restrictions on fishing effort for cod and sole – pending, in the case of cod, a review of the recovery regime this year. The measures (known as Annex IIA and IIC) continue the work of their predecessor (also known as Annex IIA and IIC) by further restricting the activities of certain of the vessels concerned, in order to ensure the necessary effort reduction is actually delivered.

The Annexes are part of EU Regulation 41/2007. They set the number of days at sea that a vessel may carry certain types of fishing gear in the North Sea, Irish Sea, Eastern Channel and waters west of Scotland (in respect of cod) and the Western Channel (in respect of sole). The number of permitted days per monthly management period varies, depending on the type of gear carried by the vessel.

In addition, the measures permit Member States to allow:

- the management periods of one month to be replaced by ones of up to 12 months;
- additional days to be granted to vessels continuing to limit their catches of cod, using more sustainable gears or collecting enhanced data on catches and discards; and
- the transfer of days from one vessel to another within the same or similar gear category.

The SI provides for these management options to be made available to fishermen, subject to some limitations on transfers between vessels.

In addition, the EU rules newly permit the carriage of multiple (restricted) gears. However, we believe the provision of such a facility would undermine our ability to enforce other gear-specific rules, like those relating to catch composition and thus threaten the long-term sustainability of a whole range of stocks – not just cod and sole. The Commission have accepted that this was an unintended consequence of their proposal and are sympathetic. However, it is not clear what if anything they will do to resolve the situation. In the meantime therefore, we have chosen to impose stricter controls on English boats in our own waters, to prevent these potential problems (which under the current circumstances amounts to gold-plating). In practice however, they are subject to the same restrictions in this regard, as in previous years.

The management regime has direct effect in the UK, but enforcement powers are required, and this SI also establishes the necessary offences and penalties to ensure compliance.

The EU measures, which were agreed by the Council of Ministers in Brussels in December, came into force on 1 February. This RIA however relates to the implementing SI, not the EU measures themselves.

### **Cod**

*As background to this RIA*, the effect of the directly applicable EU measure for cod, is to maintain a cap on the effort of certain types of vessels. Vessels targeting cod or undertaking beam trawling, are eligible for a basic minimum 155 and 156 days per year respectively, before transfers take place (if they fish in the North Sea). Other categories of vessels will be entitled to a higher number of days at sea and will therefore be less affected.

It is expected that the limits will cause considerable difficulty for some English vessels. It is not possible to quantify the actual impact, because vessel owners are likely to adjust their fishing practices in order to make the most efficient use of their permitted time at sea. They could also seek to increase their allocation through transfers and/or undertake greater fishing in non-regulated areas. Not only that, the profitability of individual vessels, and thus their scope for adjustment of time at sea, varies greatly depending on a range of factors.

Pressure on cod from the UK whitefish fleet has reduced significantly during the application of the days at sea arrangements, not least because of the impact of the decommissioning scheme the Government ran in 2003, under which vessel owners could receive grants to scrap their boats and cancel the vessel licence. The scheme was designed to address the problems of those vessel owners most affected by the regime, by enabling them to leave the industry. The effects were most obvious in 2004, the first full fishing year following the removal of the vessels from the fleet. Additional benefits have been extended to the UK in the interim, in the form of additional days available in lieu of the effort removed through the scheme.

### **Sole**

It had been hoped to introduce for this year, a management plan reflecting the need to deliver long-term sustainability for Western Channel sole, but recognising that it was not as vulnerable as the various stocks of cod (and thus did not require a recovery plan). Unfortunately, this did not prove possible. However, the agreement reached at the December Council, set the Total Allowable Catch (TAC) and days limitations at the level commensurate with such a plan had it been in place. The number of days available (for the year) was therefore reduced by some 11% from 216 to 192. However, we are anticipating that the UK will obtain additional days in respect of effort reductions already achieved and may also get

further concessions in the light of the effects of the anticipated decommissioning scheme. We have also successfully retained the exemption for UK netters who do not have a significant impact on the stock and we do not therefore believe the new regime will create a major problem for our sole fleet.

(iii) Risk assessment

**Cod**

The original EU measure was introduced because of scientific evidence that stocks of cod had reached their lowest ever levels, and that direct cuts in fishing time by vessels were the only way to achieve their recovery to sustainable levels. The measure, together with cuts in allowable catches for cod, was designed to reduce directed fish mortality by 65%, as part of a future strategy to restore cod stocks to a sustainable level over the coming decade. It has not however fully delivered thus far and the latest measure is therefore designed to ensure the recovery programme remains on track.

**Sole**

The new measure created a relatively light regime designed to achieve stock recovery with the minimum of pain for the industry. This principle should be extended to the anticipated long-term management plan.

(iv) Business sectors affected

Many of the fishing vessels which operate in the restricted areas are directly affected. To the extent that they cannot carry on their business, a reduction in the numbers of vessels in a port can also have effects on related local enterprises, including suppliers to vessels, such as chandlers and the purchasers of landed fish, including merchants and processing companies. These will generally be small businesses.

(v) Issues of equity and fairness

This RIA relates to the SI implementing the EU measures, not to the EU measures themselves. It does not therefore address issues such as the variation in numbers of permitted days per month between vessels with different categories of gear. However, looking broadly at the effects of the latest controls, the issue of whether the benefits of the measure will accrue to those subject to the controls can be addressed. The benefits of avoiding the collapse of cod or sole stocks and in the long term their recovery, will be reaped by the fishing fleet, which is subject to the EU controls.

The provisions made by the SI apply equivalently across the relevant sectors of the fleet.

3 Options

EU legislation requires Member States to enforce the provisions of fisheries controls. The range of offences and scale of penalties included in this SI, reflect the standard UK approach to equivalent EU fisheries legislation, itself influenced by experience and by European Commission expectations of effective enforcement activity.

The SI implements Government decisions as to the use of the flexibility permitted to Member States by the EU measures (see paragraph 2(ii) above). The options for implementation were:

- Option 1 - refuse to allow any of the permitted flexibility;
- Option 2 - permit it with no additional limitations; or
- Option 3 - permit it, whilst restricting the carriage of multiple gears.

#### 4. Benefits

Option 1 - this is the base option: it would provide no benefits to fishermen over and above those offered by the basic EU measure;

Option 2 - powers to transfer days provide flexibility to the industry to enable it to make best use of the available time at sea. It could reduce the number of vessels, which became unviable. (As could the granting of the various derogations, providing additional days for more sustainable fishing.) It could also increase fish catches in the longer term, but within the levels considered acceptable by the Council in agreeing the EU measure (ie as not jeopardising the respective stocks). Carriage of multiple gears would enhance the ability of fishermen to adapt to changing circumstances whilst at sea;

Option 3 - this would provide most of the flexibility of Option 2, but retain the existing restrictions on multiple gear use – which the industry have got used to during the course of the previous operation of the scheme.

#### 5. Costs for business

(i) compliance costs

#### **Policy costs of the measures provided for in this SI**

None of the options impose additional costs on the industry above those applied by the EU measures (although Options 2 and 3 would reduce them).

#### **Implementation costs of the measures provided for in this SI**

Under Options 2 and 3, fishermen will need to report any transfers of days they wish to make, on a simple form, to enable each vessel's entitlement to days to be monitored. This should not constitute a significant cost.

#### **Timescale**

The EU measures will last until the end of January 2008, but are then likely to be extended in some similar form or other (following, in the case at least of cod, decisions taken during this year's review).

(ii) costs for a typical business

As described above, the costs will depend on the extent to which a vessel has to reduce its effective time at sea and the extent to which vessels can adjust their practices cannot be quantified. It is clear however that under Options 2 and 3, the flexibility for adaptation is greater and the potential costs therefore appreciably reduced.

6. Consultation with small business

Virtually all businesses in the fish catching industry are small businesses. Since the original regulation for cod was agreed on 20 December 2002 there have been a significant number of meetings with representatives of the English industry. Those members of the industry who have written in to Defra have been contacted to discuss their concerns. The industry maintain their disagreement in principle with the concept of limits on days at sea, but have constructively suggested issues for resolution in implementing the schemes. They have pressed for the granting of the additional flexibility and are content to follow the slightly more limited Option 3.

7. Competition assessment

The intention and effect of the EU measures are to impose tighter limits on vessels which fish for cod than on vessels which take cod as a limited bycatch (only those gears actually used to target sole are included in that scheme). The options considered above for the SI would not create significant distorting effects. Indications are that other Member States intend to implement at least the majority of the flexibilities in the EU measure in a similar way to that intended by the UK Government.

8. Enforcement and sanctions

The SI confirms offences for breaches of the EU measures, along standard lines for equivalent fisheries legislation and will be enforced by inspectors from the Marine Fisheries Agency.

The MFA have established a small team to advise the industry and monitor activity. Use of Options 2 or 3 will require limited additional effort in this team to monitor transfers, possibly of the order of one person/year.

9. Monitoring and Review

The EU measures and the SI apply for the period to the end of January 2008. The Government will monitor the effects of the measures and feed into the European Commission our views on what should succeed them.

10. Consultation

Fisheries Departments agreed on an appropriate UK-wide approach to the negotiations, reflecting the particular concerns of their own fishermen.

The industry were also extensively consulted in the lead-up to the December Council decision. Because there have been few substantive changes to the rules themselves, it was not considered appropriate to discuss implementation further with the wider industry thereafter, but discussions have taken place with various industry representatives. See also para 6 above.

## 11. Guidance

Provisional guidance was issued to the industry in January. More detailed advice will follow shortly.

## 12. Summary and recommendation

Although the SI essentially provides offences and penalties to permit enforcement of the directly applicable EU measures, there is scope to decide whether to take up the options provided within these measures. These provide flexibility for fishermen and help to reduce the costs to the industry. The Government must however ensure that flexibilities provided do not undermine the effectiveness of the regimes.

On that basis it would appear unreasonable to refuse the industry access to the benefits (Option 1). Equally, Option 2 would limit our enforcement capability. The Government therefore intends that Option 3 be adopted.



13. Declaration

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed Ben Bradshaw

Date 19th March 2007

**Ben Bradshaw**  
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