

**EXPLANATORY MEMORANDUM TO**  
**THE LOBSTERS AND CRAWFISH (PROHIBITION OF FISHING AND LANDING)**  
**(AMENDMENT) (ENGLAND) ORDER 2017**

**2017 No. 899**

**1. Introduction**

- 1.1 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. Purpose of the instrument**

- 2.1 This Order amends the Lobsters and Crawfish (Prohibition of Fishing and Landing) Order 2000 (SI 2000/874) (“the 2000 Order”). The amendments to the 2000 Order introduce a ban on UK vessels fishing for egg-bearing (“berried”) lobsters and crawfish within British fishery limits (excluding the waters of the devolved administrations and the Crown dependencies). Any berried lobsters or crawfish caught in contravention of the ban must be returned to the sea and the Order also prohibits UK vessels landing berried lobsters and crawfish into English ports, wherever they have been caught.

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

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

- 4.1 Sections 5 and 6 of the Sea Fish (Conservation) Act 1967 (“the 1967 Act”) permit the Secretary of State to restrict sea fishing and prohibit the landing of sea fish in specified areas. The 2000 Order prohibited fishing for and/or the landing of lobsters or crawfish bearing ‘V notches’ in their tails (including those mutilated to obscure a ‘V notch’). This Order amends the 2000 Order to extend the restrictions to include berried lobsters and crawfish.
- 4.2 The fishing prohibition applies within British fishery limits but does not apply to the Northern Ireland zone, the Scottish zone, the Welsh zone, the territorial sea adjacent to the Isle of Man, the territorial sea adjacent to the Bailiwick of Jersey or the seas adjacent to Guernsey. The prohibition follows the terminology of the 2000 Order and the 1967 Act by applying to “relevant British fishing boats” (defined in the 1967 Act to exclude Scottish fishing boats) and “Scottish fishing boats”. The fishing prohibition ties in with section 5(6) of the 1967 Act which requires all fish caught in contravention of the prohibition to “be returned to the sea forthwith”. This is subject

to the exemption contained in section 9 of the 1967 Act which applies for the purposes of scientific investigation.

- 4.3 The landing prohibition also applies to “relevant British fishing boats” and “Scottish fishing boats” landing in English ports but it applies to berried lobsters and crawfish wherever they may have been caught. Both the fishing and landing prohibitions include non-egg bearing lobsters or crawfish that, following inspection and/or the use of tests available to enforcement authorities, can be shown to have been carrying eggs when caught. In addition to these main provisions, the Order also makes consequential amendments to the interpretation provisions of the 2000 Order and inserts a standard statutory review clause.

## **5. Extent and Territorial Application**

- 5.1 The extent of this instrument is England and Wales.  
5.2 The territorial application of this instrument is England only.

## **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 English shellfish sector is one of our most important fisheries. Landings of lobster into English ports by UK vessels were worth £17.85 million in 2015. Although significantly smaller in total size, crawfish is also a valuable fishery, attracting the highest price per kilogram for all shellfish species. Vessels using pots and traps (gear primarily used for catching lobster and crawfish, as well as crabs) employed around 2000 people in 2014. The future sustainability of species and profitability of the industry relies on the appropriate methods and level of exploitation.
- 7.2 National stock assessments on European lobster in English waters indicate that these stocks are being overfished. For some stocks the stock size (spawning stock biomass) is below the limit at which the stock is still considered to be sustainable. Crawfish was added to the list of UK Biodiversity Action Plan species when it was reviewed in 2007. This is a list of priority species that are the most threatened and require priority conservation action. Crawfish are also classed as “Vulnerable” under the International Union for Conservation of Nature designation system, meaning that it is facing a high risk of extinction in the wild in the medium-term future.
- 7.3 Some statutory measures to protect the sustainability of the stocks are already in place. Fishers are prohibited from catching lobsters and crawfish that are under Minimum Conservation Reference Sizes, to allow females to mature and spawn before they can be removed from the stock. Fishers are also banned from landing lobsters and crawfish that have had their tails ‘V notched’. V notching is a voluntary activity, whereby some fishers put a notch in the tail of a berried lobster or crawfish and return it to the sea to prevent some fertile female lobsters and crawfish from being removed. Six Inshore Fisheries Conservation Authorities (IFCAs) have also introduced local byelaws to prohibit fishing for berried lobsters and crawfish within their coastal districts (up to 6 nautical miles from the coast). Some fishers already voluntarily

return berried lobsters and crawfish to the sea as it is recognised as good fisheries practice.

- 7.4 The continued over-exploitation of these stocks indicates that current national and voluntary measures have not gone far enough to protect their sustainability. The stock assessments indicate that if we do nothing the sustainability of the stocks and industry are under threat. Local byelaws can be difficult to enforce and require IFCA's to be able to determine whether a berried lobster or crawfish has been caught within the banned 6 nautical mile area or not. Even if all IFCA's introduced a local ban, there would still be insufficient management measures beyond the 6 nautical mile limit. Introducing a national ban will address these issues and ensure that regulation in this area is clear, consistent and fair.
- 7.5 Preventing spawning lobsters and crawfish from being removed from the stock will contribute to protecting the spawning biomass that is essential to the sustainability of the stock. Our modelling suggests that the lobster spawning stock will begin to increase within two years of the introduction of a ban, even if fishers increase their effort to catch non-berried lobsters to mitigate for the lobsters that have to be returned. Landings are estimated to drop initially but will begin to increase within two years. Areas that are currently fished at higher rates are likely to see a larger initial drop in landings but the spawning stock and landing rates should increase at a greater rate than lower fishing rate areas. After 15 years of a berried lobster ban landings should be 43% higher in areas currently fished at higher rates. Areas that are currently fished at a lower rate will not see as great an increase. However, in most instances these are areas where local bans are already in place.
- 7.6 We received 155 responses to the consultation, nearly half of which came from commercial fishers. However, we also received responses from private individuals, processors and retailers, government agencies, local authorities, conservationists and recreational fishers and marine leisure users.

### *Consolidation*

- 7.7 The introduction of this ban is being added to the 2000 Order and it doesn't amend the original prohibition on catching and/or landing V notched or mutilated lobsters and crawfish. Therefore the Department does not intend to consolidate the relevant legislation.

## **8. Consultation outcome**

- 8.1 The Department conducted a public consultation over a period of eight weeks. It was an open consultation and relevant stakeholders were informed it had been published. The consultation focussed specifically on the issue of berried lobsters and crawfish and the proposal to introduce a ban on catching and/or landing berried lobsters/crawfish. As well as asking for their views on addressing this issue, including the timing of the introduction of a ban, we also sought views on our assessment of the scale of the issue and the potential impacts of introducing the ban.
- 8.2 Eighty eight percent of respondents agreed that this issue should be addressed, nearly all of whom supported the proposal to introduce this ban. This included three quarters of the commercial fishers that responded to the consultation. All of the respondents who felt that there wasn't an issue to be addressed were commercial fishers (19 in total). Half of these respondents fish off of the Northumberland coast and they indicated that their view was based on their first-hand experience of fishing in that

area. They particularly cited the number of juvenile lobsters that they are currently catching and returning to the seas. However, a number of those who supported taking action cited the number of juveniles that they were catching as evidence that the mature spawning stock has been over-exploited. The other respondents thought that either current measures were sufficient, further measures would be taken voluntarily where they were necessary or that alternative measures to a ban should be considered. Those in support of addressing the issue included people who felt that the stock is currently healthy but that it needed to be protected from over-exploitation in the future.

- 8.3 The majority of respondents supported a ban because they felt it would ensure a clear, equitable and consistent approach to protecting stocks. Only 27 respondents opposed the introduction of the ban. Some of these favoured a regional approach, which the Department has rejected because this hasn't had the desired impact so far. Some of the respondents in favour of a ban also stated that it should be in addition to alternative measures. The Government will continue to work with scientists, enforcement bodies and industry to consider whether further changes to management measures are needed and what these might be. However, other measures are not required in order for the ban to be effective and so they will be considered separately.
- 8.4 Three quarters of respondents thought that a ban could be introduced immediately and at most within a season or year. That included three quarters of the respondents from the commercial fishing sector. Respondents felt that a ban could be easily implemented because it did not require changes to gear or other technical changes. They also thought it was important to take action as quickly as possible to prevent the further decline in stocks. Nearly all respondents who thought that a ban should be phased in over a period of two years or more were opposed to a ban in the first place. This was rejected by the Department because any delays would only further threaten the future of the stock and the rate at which it could recover.

## **9. Guidance**

- 9.1 We do not plan to issue guidance. This is a simple measure that will only require fishers to return berried lobsters and crawfish to the sea. The Marine Management Organisation and IFCA enforcement officers will be required to train staff to use testing kits that can demonstrate if eggs have been recently removed from a berried lobster or crawfish. There are no other changes to fishing practices or enforcement of fishing management measures required.

## **10. Impact**

- 10.1 The impact on business, charities or voluntary bodies is £2.45m per annum when the ban is first introduced. This is comprised almost entirely from the loss of revenue from the estimated value of berried lobsters that are currently landed each year. This may be partially mitigated by a rise in prices if availability is reduced or by increased effort to catch non-berried lobsters. In addition, the ban also only prevents fishing for female lobsters temporarily, during the period they are visibly bearing eggs. This potential lost revenue should reduce as the stock recovers. Vessels that are initially impacted the most because they currently exploit spawning stock at a higher rate would also gain the largest benefits from stock recovery.
- 10.2 The impact on the public sector is minimal.

10.3 An Impact Assessment is submitted with this memorandum and is published alongside the Explanatory Memorandum on the [legislation.gov.uk](http://legislation.gov.uk) website.

## **11. Regulating small business**

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

11.2 It is estimated that 99% of commercial fishing enterprises in England and Wales have fewer than 10 employees and the remainder employ fewer than 50 employees. It is assumed that the net cost to business will fall entirely on small and micro businesses. If small and micro businesses were exempted from the ban then all fishers would be able to land berried lobsters and crawfish and the ban would not achieve its primary aim of protecting lobster and crawfish stocks from over-exploitation. Small and micro businesses will also be the beneficiaries from improved lobster and crawfish stocks as they will be able to catch more lobsters and crawfish sustainably in the future. The increase in landings in the long term are expected to more than compensate for the initial impacts. Partial or temporary exemptions or transitional arrangements would delay or reduce these benefits.

## **12. Monitoring & review**

12.1 A standard review provision has been inserted in to the 2000 Order. This requires the Secretary of State to carry out a review of the operation and effect of the 2000 Order and publish a report within five years of the implementation of the ban (and thereafter at intervals of no more than five years). The review will consider the extent to which the objectives of the ban and the predicted benefits have been achieved.

## **13. Contact**

13.1 Bill Badger at the Department for Environment, Food and Rural Affairs. Telephone: 020 8026 4328 or email: [bill.badger@defra.gsi.gov.uk](mailto:bill.badger@defra.gsi.gov.uk) can answer any queries regarding the instrument.