

EXPLANATORY MEMORANDUM TO

THE SEA FISHERIES (AMENDMENT ETC.) REGULATIONS 2021

2021 No. 698

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.

2. Purpose of the instrument

- 2.1 This instrument revokes retained EU legislation relevant to technical measures in the Celtic Sea, which currently apply within the English and Welsh zones of British fishery limits. The purpose of this change is to enable improved measures, to be brought in through appropriate application of domestic and foreign vessel licence conditions. Content relevant specifically to this aspect within this document is set out under the subheading ‘Celtic Sea technical measures’.
- 2.2 This instrument also makes adjustments to the level of European seabass that may be caught as bycatch within the English and Welsh zones of British fishery limits and incidental and consequential adjustments to the bass management measures. Content relevant specifically to this aspect within this document is set out under the subheading ‘Measures on European seabass fisheries.’

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

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 to 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 This instrument is made under powers in the Fisheries Act 2020 and is the first exercise of any powers conferred by that Act.

Celtic Sea technical measures

6.2 Section 36(1)(c) of the Fisheries Act 2020 provides that the Secretary of State may by regulations make provision for a fish industry purpose. This instrument is made in exercise of these powers with the purpose of ‘developing commercial fish activities.

6.3 This instrument revokes the following legislation:

- Article 13 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.
- Articles 2(8) and 9 of 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 as it applies in retained EU law.
- Commission Implementing Regulation (EU) No 737/2012 on the protection of certain stocks in the Celtic Sea as it applies in retained EU law.

Measures on European seabass fisheries

6.4 Sections 36(1)(c) and 51(1) of the Fisheries Act 2020 provide, respectively, that the Secretary of State may by regulations make provision for a fish industry purpose and that regulations made under that power may make consequential provision and different provision for different purposes or areas.

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.

7. Policy background

What is being done and why?

Celtic Sea technical measures

7.1 The legislation specified in Section 6 has applied in UK law as retained EU legislation since 1st January 2021 and relates specifically to Celtic Sea technical measures.

7.2 The Government’s objectives in relation to Celtic Sea technical measures are to improve the selectivity in the fishery as a whole, to enable the vulnerable stocks that are in a poor state (including cod) to recover, and to enable the continuation of a profitable and sustainable fishery as stocks recover. New measures introduced should be practical for our fleets and as straightforward to understand as possible, recognising the complex nature of the fishery.

- 7.3 The UK intends to increase the overall level of selectivity resulting from the measures that apply in the English and Welsh zones of British fishery limits in the Celtic Sea. Specifically, the UK intends to refine the measures which apply to otter trawl¹ and bottom seine² vessels within the Celtic Sea Protection Zone and apply additional measures specific to otter trawl and bottom seine fisheries in the wider Celtic Sea area. The refinement of *Nephrops*³-directed fishery measures is also under consideration but remains subject to further consultation. Through this process the UK also intends to address conflicting requirements between the relevant legislative elements.
- 7.4 This instrument will revoke the relevant legislation as specified, allowing refined and additional measures to be brought in through domestic and foreign vessel licence conditions. This will provide for a more responsive management regime, allowing improvements in selectivity to be applied more rapidly, in response to new scientific information or the outcomes of negotiations on fishing opportunities. Guidance will also be developed to provide industry with relevant information on measures. Minister Prentis sent a letter on 10th June 2021 to MPs with a potential interest and relevant Committee Chairs notifying of the government's intention to implement changes to the UK fisheries management measures relevant to the Celtic Sea technical measures and seabass fisheries management. Within the annex, the minister provided a detailed summary of the new improved Celtic Sea technical measures which are to be applied on 5 September 2021 through vessel licence conditions⁴.
- 7.5 The timing of applying the instrument will ensure there is no gap of relevant measures applying between revocation of legislation and the application of the new improved measures through domestic and foreign vessel licence conditions. The relevant Celtic Sea legislation will be revoked via this instrument on 5th September 2021. On the same day the Marine Management Organisation will apply the new package of measures as new conditions within domestic and foreign vessel licence conditions.
- 7.6 Under the UK EU Trade and Cooperation Agreement (TCA), each party is required to notify the other Party of new measures that are likely to affect the vessels of the other Party before those measures are applied, allowing sufficient time for the other Party to provide comments or seek clarification. The UK is therefore in the process of formally notifying the EU of proposed measures to be brought in through domestic and foreign vessel licence conditions in advance of changes being made.

¹ A single boat demersal/bottom otter trawl is a cone-shaped net consisting of a body, normally made from two, four and sometimes more panels, closed by one or two codends, and with lateral wings extending forward from the opening. A bottom trawl is kept open horizontally by two otter boards (trawl doors). A boat can be rigged to tow a single or two parallel trawls (<http://www.fao.org/fishery/geartype/306/en>). There is also the option of pair trawling where rather than using otter boards to hold the mouth of the net open the net is pulled by two vessels (<http://www.fao.org/fishery/geartype/307/en>).

² There are several types of bottom seine. Anchor/Danish seines consist basically of a conical netting body, two relatively long wings and a bag ahead of the wings, are long ropes which are used to encircle a large bottom area with the purpose of herding (catching) fish from that area (<http://www.fao.org/fishery/fishtech/1003/en>). In the area concerned vessels deploy Scottish seines which are similar except that the net is hauled to the vessel under engine power rather than pulling against an anchor (<http://www.fao.org/fishery/fishtech/1008/en>).

³ *Nephrops* also known as Norway lobster or langoustine can be caught using a *Nephrops* demersal trawl, a low demersal trawl towed on the seabed, with the mouth held open by a pair of otter boards (trawl doors) designed to target *Nephrops* (<https://www.seafish.org/responsible-sourcing/fishing-gear-database/gear/demersal-trawl-nephrops-trawl/>).

⁴ See, for example, letter to the Chair of the House of Commons International Trade Committee, 10 June 2021: <https://committees.parliament.uk/publications/6321/documents/69486/default/>.

Measures on European seabass fisheries

- 7.7 The measures relevant to seabass fisheries listed in Section 6 above have applied in UK law as retained EU legislation since 1st January 2021. The amendments made through this instrument will be applied from 30th July 2021.
- 7.8 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, this year, brought the fishing pressure on the stock down to within sustainable limits. As seabass has not been managed as a quota species the landing obligation has not applied. The UK's objectives, therefore, are to further rebalance the discarding/landing ratio of the existing level of fishing mortality occurring under the current commercial fishing measures under fixed vessel landing limits, in favour of landing. Doing so is aimed at reducing the level of wasted discards by providing additional flexibility in the English and Welsh zones to the vessel landing limit derogation in respect of seabass bycatch in fisheries using demersal trawl and seine fishing gear. This features an adjustment to the cap on how much bass can be cumulatively landed under the current 5% of bass in the total species retained on board and landed per fishing trip, from 520kg per two months, to 380kg per month.
- 7.9 The measures also include an adjustment to the scope of the general bass fishing prohibition so that it does not apply to bycatches in a specified number of shore-based fixed gillnets⁵ locally regulated in England and Wales that are not set from a vessel. This will have the effect of restoring the marketability of this bycatch, rather than discarding, and this does not result in an increase in bass fishing mortality above the level of regulated shore netting specified.
- 7.10 The UK, while remaining within the shared management approach with the EU and adhering to mutually agreed catch limits to manage fishing mortality, is now able to exercise regulatory autonomy to make incidental adjustments to the retained measures. This instrument makes amendments in relation to measures applying in the English and Welsh zones:
- Removing the word 'unavoidable' where it appears in the annual bycatch derogation for vessels using fixed gillnets (Article 10, paragraph 2 (d))⁶. This is to provide additional clarity on enforcement of the vessel annual bycatch landing limit. The 'unavoidable' condition has been consistently contested by the UK in the EU measures, as it is undefined, and is incompatible with effective utilisation of the annual bycatch limit set and the nature of fixed gillnetting activity per fishing trip, particularly during seasonal peaks featuring increased bass prevalence. This is not a relaxation of the mutually agreed annual bycatch derogation limit itself in order to increase landings.
 - Adding a condition to managing overall fishing capacity (last sentence of last sub-paragraph of paragraph 2 in Article 10) in the context of vessel

⁵Gillnets and entangling nets are strings of single, double or triple netting walls, vertical, near by the surface, in midwater or on the bottom, in which fish will gill, entangle or enmesh. These nets can be used either alone or, as is more usual, in large numbers placed in line ('fleets' of nets) (<http://www.fao.org/fishery/geartype/107/en>). A fixed gill net is anchored to the bottom. Shore-based fixed gill nets are set from the shore rather than vessels, and can be fixed at low tide with stakes rather than anchors.

⁶Prior to this change the condition for fixed gill nets stated "(iv) using fixed gillnets, for unavoidable bycatches not exceeding 1,4 tonnes per vessel per year." We have removed the term unavoidable here after it was consistently contested, particularly during seasonal peaks of bass when the increased prevalence leads to higher proportions of bycatch in nets.

replacement and transferring the bass derogation eligibility⁷ from the replaced vessel, in the context of single hulled small vessels in the 8 metres and under category. This enables replacement of small vessels to take place, thereby facilitating vessel replacement, and not getting in the way of acquiring newer, safer vessels in this size category with bass derogation eligibility transfer considerations (the retained EU law requirements did not allow for any increase in capacity parameters for the intended replacement vessel, however minor). Enforcement advice was that minor capacity parameter⁸ changes between vessels in this size category of single hulled vessels would not create additional potential for increased uptake of available limits to affect bass management objectives.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

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

10. Consultation outcome

Celtic Sea technical measures

10.1 The decision to revoke the relevant legislation has been developed in consultation across all Devolved Administrations for purposes of transparency and information sharing. Formal consent has been confirmed by Welsh Government as the specific legislation is directly relevant to the English and Welsh zones only. Elements of Scottish and Northern Irish industry operate within the relevant area.

10.2 Formal consultation is not deemed necessary on the approach to revoke legislation. The proposed measures to be brought in following revocation of the legislation (through domestic and foreign vessel licence conditions) have been closely developed with industry; further consultation is planned on the details of some elements, specifically the measures relevant to *Nephrops*-directed fisheries.

Measures on European seabass fisheries

10.3 As above for the Celtic Sea on development with DAs and consent from the Welsh Government in the context of the overall SI development. On the seabass elements of this instrument there were traditional consultation initiatives undertaken with stakeholder interests: key sectors of commercial and angling interests and eNGOs in preparing the UK approach to bilateral discussions for this year with the EU as joint managers of the seabass stock. These have featured the key elements of the

⁷ Bass derogation eligibility is when a vessel has authorisation to retain bass. Bass authorisation is tied specifically to vessels rather than a licence to ensure that overall capacity for bass is not increased in the fleet. There are strict rules around transferring this authorisation to new vessels to ensure that this capacity, which is determined in storage capability of the vessel and its power, is not increased.

⁸ For vessels under 8 metres this relates to the storage capability of the vessel and its power, these minor capacity changes will allow these smaller vessel owners to purchase newer vessels which have better safety features without having an unintended consequence on that individual of losing their bass authorisation. This is because new vessels under 8 metres tend to have slightly increased capacity.

adjustments to the measures to apply in 2021. These also have a history of consultation while developing negotiation initiatives to attempt to shape the EU management approach in previous annual negotiation rounds while still a Member State, where the UK pursued similar objectives, now reflected in the key features of this instrument.

11. Guidance

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

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 An Impact Assessment (IA) has not been prepared for this instrument because a Regulatory Triage Assessment (RTA), which was carried out to ensure that costs to business were considered in a proportionate way, deemed an IA unnecessary as there is no, or no significant, impact to be assessed.

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 in sufficient time which will allow industry to take practical steps required to meet the new standards.
- 13.3 The Marine Management Organisation will provide a communications note detailing the changes and timelines well in advance of new requirements being applied.

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 Georgina Evans at the Department for Environment, Food and Rural Affairs. (telephone: 0208 225 6675 or email: georgina.evans@defra.gov.uk) or Chris Pirie at the Department for Environment, Food and Rural Affairs (telephone: 020 8026 7633 or email: chris.pirie@defra.gov.uk) can be contacted with any queries regarding the Celtic Sea elements featured in this instrument.
- 15.2 Phil McBryde at the Department for Environment, Food, and Rural Affairs (telephone: 0208 026 5426 or email: phil.mcbride@defra.gov.uk) can be contacted

with any queries regarding the seabass management elements featured in this instrument.

- 15.3 Nigel Gooding, Deputy Director for EU Fisheries Policy and Negotiations, and 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.
- 15.4 Victoria Prentis MP, Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs can confirm that this explanatory memorandum meets the required standard.