EXPLANATORY MEMORANDUM TO

THE COMMON FISHERIES POLICY (AMENDMENT ETC.) (EU EXIT) (NO. 2) REGULATIONS 2019

2019 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs ("Defra") and is laid before Parliament by Act.

2. Purpose of the instrument

2.1 This instrument will make corrections to Regulations that deal with fishing opportunities, so that they continue to operate effectively as retained EU law, after the UK leaves the EU.

Explanations

What did any relevant EU law do before exit day?

2.2 This instrument will amend the following EU Regulations:

a) Two Regulations that set fishing opportunities (the total allowable catch (TAC) and each Member State's allocated quota for certain fish stocks) in Union waters and certain non-Union waters. The Regulations also implement the landing obligation, in accordance with Article 15 of the Common Fisheries Policy Regulation (1380/2013). Additional provisions are made for prohibitions on fishing for certain stocks at certain times and in certain areas, as well as fishing opportunities in waters of regional fisheries management organisations (RFMOs). The two Regulations are:

   i. Council Regulation (EU) 2019/124, setting fishing opportunities for certain fish stocks and groups of fish stocks for 2019.

   ii. Council Regulation (EU) 2018/2025, setting fishing opportunities for certain deep-sea fish stocks for 2019 and 2020.

b) Three Regulations that set out exemptions from the landing obligation (also known as the 'discard plan', as set out in the Common Fisheries Policy Regulation (1380/2013)), as recommended by the North-Western Waters (NWW) or North Sea (NS) Regional Groups, in order to facilitate full implementation of the landing obligation from 1st January 2019. The Regulations are:

   i. Commission Delegated Regulation (EU) 2018/2034 of 18 October 2018, establishing a discard plan for certain demersal fisheries in North-Western waters for the period 2019-2021.

   ii. Commission Delegated Regulation (EU) 2018/2035 of 18 October 2018, specifying details of the implementation of a landing obligation for certain demersal fisheries in the North Sea for the period 2019-2021.

iii. Commission Delegated Regulation (EU) No 1395/2014 establishing a discard plan for certain small pelagic fisheries and fisheries for industrial purposes in the North Sea.

Why is it being changed?

2.3 The technical changes made to these five Regulations are necessary to ensure that the rules contained in this legislation operate effectively as retained EU law, once the UK leaves the EU.

What will it now do?

2.4 This instrument makes the minimum necessary technical fixes to the landing obligation, to maintain the same conservation requirements that currently exist.

2.5 It also amends provisions on prohibitions on fishing for certain species in certain areas so that these prohibitions continue to have effect in UK law. Furthermore, it revokes provisions which put into law the fishing opportunities that are set by the EU for the UK, as it will no longer be appropriate for these to apply to the UK once it is not a member of the EU (instead, the Secretary of State will set fishing opportunities for the UK).

2.6 An explanation of the amendments made by this instrument is included in Annex B to this explanatory memorandum.

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 The territorial application of this instrument includes Scotland and Northern Ireland.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 Section 8(1) of the European Union (Withdrawal) Act 2018 provides that a Minister of the Crown may by regulations make such provision as the Minister considers appropriate to prevent, remedy or mitigate any failure of retained EU law to operate effectively or any other deficiency in retained EU law arising from the withdrawal of the United Kingdom from the EU. The instrument is made in exercise of these powers.

6.2 Paragraph 21 of Schedule 7 to the Act specifies that the power to modify retained EU law includes a power to make supplementary, incidental and consequential provision and the power to restate retained EU law in a clearer or more accessible way.

6.3 This instrument amends directly applicable EU Regulations that came into force in December 2018 and in late January 2019, and therefore could not be amended in earlier instruments.

6.4 The Regulations amended in this instrument include cross-references to other EU Regulations, particularly the Common Fisheries Policy Regulation (EU) No 1380/2013, and the Control Regulation (EC) No 1224/2009. These Regulations have been amended in a previous instrument, the Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2019.

7. Policy background

What is being done and why?

7.1 This instrument would remove provisions which impose the fishing opportunities set by the EU for Member States, as those provisions would not be appropriate in circumstances where the UK is no longer a Member State and there is no agreement with the EU on fishing opportunities in UK waters. Instead, the UK has powers in domestic law to set fishing opportunities which, in those circumstances, it would be more appropriate to rely upon.

7.2 Examples of the technical changes made to the remaining provisions include amending references from the "European Union" to the "United Kingdom"; and "Member State" to "fisheries administration", to enable the Secretary of State or devolved authority to carry out their specific functions post-Exit. Similarly, references to Union or Member State vessels and waters will be amended to UK vessels and waters.

7.3 Fisheries management is largely devolved to Scotland, Wales and Northern Ireland in relation to their vessels and their waters. Therefore, where provisions place an obligation on EU Member States, these references are mostly changed to "a fisheries administration", which is a term defined in amendments made by the Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2019 that applies to all of the retained Common Fisheries Policy Regulations.

7.4 The definition ensures that "a fisheries administration" means the Secretary of State, a devolved fisheries administration or the Marine Management Organisation, and "a devolved fisheries administration" means the Scottish Ministers, the Welsh Ministers or, in Northern Ireland, the Department of Agriculture, Environment and Rural Affairs. This definition has the effect of preserving the status quo, so that the administration which currently carries out the function in question, continues to do so.

8. European Union (Withdrawal) Act 2018 /Withdrawal of the United Kingdom from the European Union

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of Annex A to this explanatory memorandum.

9. Consolidation

9.1 There are no plans to consolidate the legislation.

10. Consultation outcome

10.1 The Devolved Administrations (the Scottish Government, Department of Agriculture, Environment and Rural Affairs in Northern Ireland, and the Welsh Government) were involved in the drafting of the proposed amendments.

10.2 A targeted engagement was carried out on the approach, involving key stakeholders from the fisheries sector, food industry and environment non-governmental bodies. In addition, a ten-week consultation was conducted through the Fisheries White Paper which described future fisheries policy. Stakeholders were broadly supportive of the approach being taken in the White Paper.

11. Guidance

11.1 As these are technical changes to existing legislation there is no associated guidance.

12. Impact

12.1 There is no, or no significant, impact on business, charities or the voluntary sector.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because no significant changes to what the public sector, or business, will have to do under the regulations are envisaged. The amendments made by this instrument will allow the fishing industry to continue following the same processes as before.

13. Regulating small business

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

13.2 As the legislation will continue to operate as it did before EU Exit it will not disproportionately affect small business.

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 its standard policy-making procedures.

14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

15.1 Tim Godson at the Department for Environment, Food and Rural Affairs, Telephone: 0208 225 8532 or email: Tim.Godson@defra.gov.uk can be contacted with any queries regarding the instrument.

15.2 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.

15.3 George Eustice MP, Minister of State for Agriculture, Fisheries and Food at the Department for Environment, Food and Rural Affairs can confirm that this explanatory memorandum meets the required standard.

Annex A

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

1.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2019 does no more than is appropriate".

1.2 This is the case because: this instrument corrects deficiencies in legislation to ensure the UK has functional and operable fisheries legislation after EU Exit.

2. Good reasons

2.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action".

2.2 These are to ensure that the UK has an operable legal framework for the maintenance of existing standards of sustainable fisheries management after EU Exit.

3. Equalities

3.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement:

"The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts".

3.2 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the draft instrument, I, George Eustice MP, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010".

4. Explanations

4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.

Annex B to the Explanatory Memorandum

Summary of amendments made in the Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2019

Fishing Opportunities Regulations	
Council Regulation (EU) **2019/124** of 30 January 2019 fixing for 2019 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	This instrument makes minor technical amendments to inoperable references throughout this Regulation. Articles 5, 6, 8, 9 and 12 are omitted by the instrument because, in the absence of an agreement with the EU, it would no longer be appropriate for the EU to set fishing opportunities for the UK as an independent coastal state. The UK has domestic powers to set its own fishing opportunities: common law powers, an express power which is currently contained in clause 18 of the draft Fisheries Bill, and powers to specify fishing opportunities through licence conditions. We would be unable to retain the fishing opportunities set by the EU as part of retained EU law because: • The UK would not have the ability to amend the allocations to reflect quota swaps or in-year adjustments to quota, without making an affirmative instrument to amend retained EU law on each occasion that it was necessary. This would not deliver the flexibility that industry currently enjoys. • In the absence of an agreement with the EU on fishing opportunities, the UK would require the flexibility to set its own fishing opportunities and to amend them should agreement be reached, or to cater for quota swaps and other adjustments, for example those arising from changes to conservation requirements, or the latest scientific advice. Article 7 imposes conditions for the landing of catches and by-catches, and would be amended by this instrument so that the conditions continue to apply to UK vessels. Article 10 provides for specific measures for European seabass fisheries in certain areas. This would be amended so that the prohibition continues to apply to UK fishing vessels in certain areas, but during certain times, these

	UK vessels can fish for European seabass with certain conditions. The final sentence of paragraph 3 has been removed because the UK will no longer be required to report to the European Commission. Article 11, which sets measures for European eel fisheries, would be amended by the instrument so that it prohibits fishing for European eel in UK waters of the ICES areas, for a consecutive three-month period to be determined by a fisheries administration. The requirement to communicate the selected period to the European Commission has been removed. Article 15 concerns submission to the European Commission of data relating to quantities of stocks caught. We will no longer be required to do this after EU Exit, therefore this Article would be omitted. Chapter 2, which sets the maximum number of fishing authorisations for Union vessels fishing in waters of a third country, would be omitted by the instrument because access to third country waters will be the subject of negotiations after EU Exit. Chapter 3 concerns fishing opportunities in waters of specific RFMOs. Article 17 would be omitted by the instrument because the UK will no longer be subject to EU rules on quota transfers or exchanges between Member States and other Contracting Parties to the RFMOs. Any transfers or exchanges will be the subject of new arrangements when the UK is no longer a Member State. The instrument would amend Article 18 paragraph 7 so that the maximum number of UK fishing vessels authorised to fish for northern albacore as a target species is limited as set out in Annex IV. The remainder of Article 18, and Articles 19 and 20 would be retained unamended. Sections 2 and 3 are two short sections on international fisheries agreements (The Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR) and The International Commission for the Conservation of Atlantic Tunas (ICCAT)), which relate to provisions that do not currently apply to the UK. These will be retained unamended so that the UK has the ability to amend them at a later date, should the terms of the UK's membership change. The instrument also omits several Articles (27-44) which cover waters in which the UK has no fishing interests, or organisations of which we will no longer be members immediately after EU Exit.

	Title 3 makes provisions for fishing opportunities for third country vessels in Union waters, which shall not apply to the UK after EU Exit, and therefore would be omitted by the instrument. The instrument would retain only the Annexes that are applicable to the Regulation as amended.
Council Regulation (EU) **2018/2025** of 17 December 2018 fixing for 2019 and 2020 the fishing opportunities for Union fishing vessels for certain deep-sea fish stocks	Articles 3 to 5, on TACs, TACs to be determined by Member States, and special provisions on allocations, would be omitted by the instrument for the same reasons as stated for Regulation 2019/124. The instrument would amend Article 6 on the conditions for landing catches and by-catches, and Article 7 on prohibitions on fishing for certain species, including deep-sea sharks, so that both continue to operate effectively after EU Exit. The exception in Article 7(2) relating to bycatches of black scabbardfish would be omitted because it does not apply to the UK. Article 8 on submission of data to the European Commission would be omitted because it will no longer be appropriate for the UK to do so.
Discard Plan Regulations	
All discard plan Regulations	The exemptions from the landing obligation apply to certain species in the NWW or NS, subject to catch limits, that are proven to have a good chance of survival in certain fisheries (survivability exemptions) or where it is accepted that unwanted catches of certain species in certain fisheries are unavoidable and disproportionately costly to handle - then a certain (small) percentage of the catch is permitted to be discarded (*de minimis* exemptions). The instrument would make minor technical amendments to ensure that the exemptions to the landing obligation would continue to apply, so that the UK can continue to implement the landing obligation and work towards eliminating discards in these areas.
Commission Delegated Regulation (EU) **2018/2034** of 18 October 2018 establishing a discard plan for certain demersal fisheries in	This Regulation also includes specific technical measures in the Celtic Sea Protection Zone and the Irish Sea, which are intended to help improve selectivity. Some exemptions in this Regulation are time-limited and/or contain requirements for the provision of further scientific information. In the case of the latter, where a

North-Western waters for the period 2019-2021	fisheries administration has a direct management interest in any of the exempted species, the instrument requires that the fisheries administrations must assess the appropriateness of the exemption on the basis of scientific information. This would happen as soon as possible after EU Exit if the exemption is limited to one year (Article 5(3), 6 and 8), or annually if the exemption applies until 2021 (Article 5(2)).
Commission Delegated Regulation (EU) **2018/2035** of 18 October 2018 specifying details of implementation of the landing obligation for certain demersal fisheries in the North Sea for the period 2019-2021	The Regulation also includes specific technical measures in the Skagerrak, which are intended to help improve selectivity. Some exemptions in this Regulation are time-limited and/or contain requirements for the provision of further scientific information. In the case of the latter, where a fisheries administration has a direct management interest in any of the exempted species, the instrument requires that the fisheries administrations must assess the appropriateness of the exemption on the basis of scientific information. This would happen as soon as possible after EU Exit if the exemption is limited to one year (Articles 7(2), 8(3) and 9(f)(j)(m)(n)), or annually if the exemption applies until 2021 (Articles 3(3), 8(2) and 9(l)).
Commission Delegated Regulation (EU) No **1395/2014** of 20 October 2014 establishing a discard plan for certain small pelagic fisheries and fisheries for industrial purposes in the North Sea	Minor amendments are made to ensure that paragraph 3 of the Annex accounts for changes made to the Common Fisheries Policy Regulation (1380/2013) by the Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2019 and that paragraph 4 of the Annex refers to UK waters of ICES areas 3a and 4, rather than to EU waters.