EXPLANATORY MEMORANDUM TO

THE FISHERIES (AMENDMENT) (EU EXIT) 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 makes minor technical corrections to primary and secondary domestic legislation which gives effect to EU measures forming part of the Common Fisheries Policy (CFP). This will ensure that the legislation continues to operate effectively, so that fishing continues to be regulated in a sustainable manner after the UK leaves the EU. This instrument is linked with The Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2019.

Explanations

What did any relevant EU law do before exit day?

2.2 This instrument does not amend EU law itself, but amends domestic laws which give effect to and enable enforcement of certain CFP and marine management measures.

2.3 The domestic laws being amended are as follows.

(i) The Sea Fish (Conservation) Act 1967: the relevant provision relates to proceedings in Scotland for offences relating to licensing requirements for fishing boats.

(ii) The Fisheries Act 1981: the relevant provisions are in Part 1 concerning the duties of the Sea Fish Industry Authority in relation to the sea fish industries of member States, Part III concerning the enforcement of EU restrictions or obligations under the CFP, and Part IV concerning financial assistance for fish farming.

(iii) The Marine and Coastal Access Act 2009: the relevant provisions are in Part 1 concerning the transfer of functions to and the continuation of prosecutions by the Marine Management Organisation (MMO) in respect of sea fishing offences, and the power of the Secretary of State to give directions to the MMO in relation to the implementation of international obligations. These functions were transferred to the MMO at the time the legislation was made, in 2009. No powers or functions are transferred by this instrument. Relevant provisions are also in Part 8 concerning the enforcement powers of Marine Enforcement Officers in relation to EU restrictions or obligations under the CFP, and rules regarding forfeiture of fish or fishing gear following a conviction for a sea fishing offence.

(iv) The Merchant Shipping (Registration of Ships) Regulations 1993: the relevant provision is in paragraph 5 of Schedule 4 which sets out the details which must be recorded for fishing boats on the register of British ships.

(v) The Sea Fisheries (Northern Ireland) Order 2002 transfers functions relating to sea fishing in the Northern Ireland zone, and sea fishing by Northern Ireland fishing boats to the Northern Ireland Department of Agriculture, Environment and Rural Affairs (DAERA). The relevant parts relate to powers, concurrently held by DAERA and UK Ministers, to make provision for the enforcement of EU restrictions or obligations under the Fisheries Act 1981 and the Sea Fisheries Act 1968. These powers were transferred to DAERA at the time the legislation was made, in 2002. No powers or functions are created or transferred by this instrument.

(vi) The Tope (Prohibition of Fishing) Order 2008 prohibits the development of a directed fishery for tope.

(vii) The Eels (England and Wales) Regulations 2009 implement Council Regulation (EC) No 1100/2007 establishing measures for the recovery of the stock of European eel.

(viii) The Sea Fishing (Illegal, Unreported and Unregulated Fishing) Order 2009 provides for the enforcement of Council Regulation (EC) No 1005/2008 and Commission Regulation (EC) 1010/2009 establishing restrictions and obligations relating to illegal, unreported and unregulated fishing.

(ix) The Fish Labelling Regulations 2013 designate the Secretary of State to draw up and publish the list of commercial designations of fish species accepted in the UK and provide for the enforcement of the consumer information requirements in Chapter IV of Regulation (EC) No 1379/2013 of the European Parliament and of the Council on the common organisation of the markets in fishery and aquaculture products.

(x) The Sea Fishing (Points for Masters of Fishing Boats) Regulations 2014 implement provisions of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with CFP rules, and set up a system for the allocation of points to UK masters of fishing boats who have committed serious infringements of CFP measures.

(xi) The Sea Fishing (Enforcement and Miscellaneous Provisions) Order 2015 designates certain UK entities as the competent authorities for various purposes (under Regulation (EC) No 1224/2009), makes amendments to instruments relating to the enforcement of CFP measures and revokes obsolete fisheries legislation.

(xii) The Grants for Fishing and Aquaculture Industries Regulations 2015 enact procedures for the management of the European Maritime and Fisheries Fund (established under Regulation (EU) No 508/2014) in England.

(xiii) The Sea Fishing (Enforcement) Regulations 2018 give Inshore Fisheries Conservation Officers powers to enforce certain specified EU technical and conservation fisheries measures.

Why is it being changed?

2.4 This instrument makes minor and technical changes which are necessary to ensure that the domestic laws which give effect to and provide for the enforcement of certain CFP measures, marine management measures and related measures will continue to operate effectively after the UK leaves the EU.

What will it now do?

2.5 This instrument makes the minimum necessary technical fixes to address deficiencies in domestic fisheries legislation arising from withdrawal of the United Kingdom from the European Union. This will ensure that controls over fishing activities remain fully operable, and that other aspects of fisheries management, such as grant aid for fishing activities, continue to operate on EU exit. Amending the legislation will also help to ensure that international obligations are met, and the marine environment and public health are protected. There are no substantive changes to policy.

2.6 The fixes include the removal or replacement of references to "Community", "member States" or "another member State" where necessary, and the replacement of references to "Community" or "EU" "restrictions" or "obligations" with references to "retained EU restrictions" and "retained EU obligations". The changes also ensure that cross references to CFP measures will continue to work after EU exit.

2.7 A summary of the amendments made by this instrument can be found in Annex B to this explanatory memorandum.

2.8 This instrument respects the existing devolution settlements.

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 varies between provisions.

4. Extent and Territorial Application

4.1 The territorial extent and application of the amendments made by this instrument varies as it is dependent on the extent and application of the legislation that is being amended.

4.2 The amendments to legislation extend and apply to the United Kingdom except as summarised below:

(i) The amendment to the Sea Fish Conservation Act applies to Scotland.

(ii) The Fisheries Act 1981 mainly extends and applies to the United Kingdom but one of the provisions being amended extends and applies to England, Wales and Scotland.

(iii) The territorial application of the provisions of the Marine and Coastal Access Act 2009 that are being amended varies as between provisions.[1]

(iv) The Tope (Prohibition of Fishing) Order extends to the United Kingdom and applies within British Fishery Limits.

(v) The Eels (England and Wales) Regulations 2009 extend and apply to England and Wales.

[1] The Explanatory Notes to the Marine and Coastal Access Act 2009, Section 323: Extent (paragraphs 830 to 842), comment on the application of the relevant Parts of the Act.

(vi) The Sea Fishing (Illegal, Unreported and Unregulated Fishing) Order 2009 mainly extends and applies to England and Wales but some of the provisions that are being amended also extend and apply to Scotland and Northern Ireland.

(vii) The Fish Labelling Regulations extend to the United Kingdom and mainly apply to England but some of the provisions that are being amended apply to the United Kingdom.

(viii) The Sea Fishing (Points for Masters of Fishing Boats) Regulations 2014 extend mainly to England and Wales, and Northern Ireland but some of the provisions being amended also extend to Scotland.

(ix) The Sea Fishing (Enforcement and Miscellaneous Provisions) Order 2015 mainly extends and applies to England, Wales and Northern Ireland, but some of the amendments do not extend to Northern Ireland.

(x) The Sea Fishing (Enforcement) Regulations 2018 extend to England and Wales, and Scotland and apply mainly in England.

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 Fisheries (Amendment) (EU Exit) 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. This 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.

6.3 The key legislative context is set out at paragraphs 2.2 and 2.3 above.

6.4 In addition to this instrument, the Department will introduce several other instruments as part of the exit process, which will also amend CFP measures and interact with the legislation amended by this instrument. These include the instruments described in paragraphs 6.5 to 6.7.

6.5 In particular, this instrument is linked to and can be read in conjunction with The Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2019 which amend CFP measures to ensure that they will operate effectively on EU exit. Some of the amendments in those Regulations affect references to CFP measures and other provisions in domestic law. This instrument corrects those references and provisions to ensure operability and consistency with those Regulations.

6.6 This instrument is also linked to and can be read in conjunction with The Marine Environment (Amendment) (EU Exit) 2018 Regulations which also amend the Marine and Coastal Access Act 2009. Those Regulations amend EU and domestic law relating to the marine environment, in particular marine strategy.

6.7 This instrument does not create or transfer any powers or functions, it merely makes technical corrections to the legislation (of the kind mentioned in paragraph 2.6) so that powers that were previously created or transferred (as in sub-paragraphs (iii) and (v) of paragraph 2.3) continue to functions as intended as retained EU law. The Department will also introduce an instrument which will transfer functions of the European Commission under the CFP to the appropriate UK authority, where appropriate.

7. Policy background

What is being done and why?

7.1 This instrument is essential for the UK to have an operable legislative framework for the sustainable management of fisheries as an independent coastal state. It amends legislation related to sea fisheries, inland fisheries, marine management and food, ensuring that, after the UK leaves the EU, there is immediate continuity in regulation, enabling the maintenance of sustainable fisheries management.

7.2 The amendments do not constitute a substantive change of policy, but are technical and minor corrections ensuring operability.

7.3 We do not consider any other policy options in this explanatory memorandum, because the deadline of the UK's departure from the EU means that the priority is to ensure essential legislation operates in UK law in time for EU exit, so that the UK is not left with a legislative deficit upon exit. The CFP is the main body of law which regulates fishing activities and enforcement in UK waters and the domestic legislation amended in this instrument helps to give effect to CFP and related EU measures.

7.4 A summary of the amendments made by this instrument can be found in Annex B to this explanatory memorandum.

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

8.1 This instrument is being made using the power in section 8 of, and paragraph 21 of Schedule 7 to, 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 (Scottish Government, Department of Agriculture, Environment and Rural Affairs in Northern Ireland, and 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 environmental 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 there are no changes to what the public sector, or business, will have to do under the regulations.

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 substantially 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 their standard policy-making procedures.

14.2 As this instrument is made under the EU 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	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising 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 Fisheries (Amendment) (EU Exit) Regulations 2019 does no more than is appropriate".

This is the case because: this instrument corrects deficiencies in legislation that arise from withdrawal from the EU, to ensure the UK has functional and operable fisheries legislation after EU Exit, as further described in paragraphs 2.2, 2.3 and 2.4 of the main part of this explanatory memorandum.

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".

These are: correcting deficiencies as necessary to ensure we continue to have operable fisheries legislation after EU exit and provisions for the enforcement of regulations, as further detailed in paragraphs 2.2, 2.3 and 2.4 of the main part of this explanatory memorandum, so as to maintain a sustainable approach to fisheries management.

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 part of this explanatory memorandum.

Annex B to the Explanatory Memorandum

Summary of amendments

Domestic legislation being amended	Summary
Sea Fish Conservation Act 1967 section 4C	**Technical amendments:** Section 4C(2)(a) (admissibility in evidence in Scottish proceedings of an entry in a logbook kept under an EU obligation): A reference to "an enforceable EU obligation" is amended to "a retained EU obligation".
Fisheries Act 1981 (This legislation created powers to make Regulations)	**Technical amendments:** Part 1 section 2A (Seafish levy): the provision that Seafish will confer benefits on the sea fish industries of "member states other than the United Kingdom" commensurate with any levy on fish products paid by those sea fish industries is deleted. Following EU exit, sea fish industries of member states will be in the same position as other third countries so this provision is redundant. There is a consequential amendment in section 14(2) to remove the reference to section 2A. Part III, section 30 (provisions for the enforcement of Community/EU rules): references to "Community" or "EU" "restrictions" or "obligations" are replaced with references to "retained EU restrictions" and "retained EU obligations" to ensure continued operability of these provisions once the EU rules become retained EU law. Part IV section 31(3) (financial assistance for fish farming): this provides that Ministers can make grant schemes which enable people to access EU matched-funding. This is deleted because it is redundant on EU exit.
Marine and Coastal Access Act 2009 (This legislation transferred powers to make Regulations)	**Technical amendments:** Part 1 Section 30 (continuation by the MMO of existing prosecutions for offences under fisheries legislation): in the definition of "the fisheries legislation", references to "enforceable EU restrictions and enforceable EU obligations" are replaced with "retained EU restriction or retained EU obligation". Section 37(2) (directions to the MMO by the Secretary of State in respect of international obligations): references to "obligations under EU Treaties" and international agreements to which "the European Union" is a party are removed as they are redundant. Part 8 (enforcement of fisheries legislation): in the definition of "The fisheries legislation", references to

	"enforceable EU restrictions and enforceable EU obligations" are replaced with "retained EU restriction or retained EU obligation".
Merchant Shipping (Registration of Ships) Regulations 1993	**Technical amendments:** The reference to "EC Number" in the list of details to be recorded in the register of British fishing vessels is deleted.
Sea Fisheries (Northern Ireland) Order 2002 (This legislation transferred powers to make Regulations)	**Technical amendments:** In relation to provision for the enforcement of EU restrictions or obligations, references to an "enforceable Community restriction or other obligation" and "an obligation under EU law" are replaced with a "retained EU restriction or retained EU obligation".
Tope (Prohibition of Fishing) Order 2008	**Technical amendments:** This Order does not apply to fishing vessels registered in "another member State or third country". The reference to "another member State" is removed, as on EU exit, a member State will be categorised as a third country.
Eels (England and Wales) Regulations 2009	**Technical amendments:** Cross references to provisions in Council Regulation (EC) 1100/2007 have been amended/deleted to bring them into line with corresponding amendments in The Common Fisheries Policy (Amendment Etc.) (EU Exit) Regulations 2018 (the CFP Regulations).
Sea Fishing (Illegal, Unreported and Unregulated Fishing) Order 2009	**Technical amendments:** The definition of "third country fishing vessel" has been amended to include fishing vessels of a member State. References to a "fishing vessel flying the flag of a member State" have been replaced with "United Kingdom fishing vessels". References to the "Community IUU vessel list" are replaced with "United Kingdom IUU vessel list" and references to a "Community vessel" are replaced with "United Kingdom vessel"
Fish Labelling Regulations 2013	**Technical amendments:** The defined term "the EU Regulations" is replaced with "the specified Regulations". The designation of the Secretary of State to draw up the list of commercial designations of species is deleted as this is now provided for in Council Regulation (EC) 1379/2013 as amended by the CFP Regulations. A reference to 50 euros is converted to £45.
Sea Fishing (Points for Masters of Fishing Boats) Regulations 2014	**Technical amendments:** References to "another member State" are removed, and the definition of "third country" is amended so that it includes member States. A cross-reference to Council Regulation (EC) 1224/2009 is

	amended to bring it into line with the technical amendments made to that Regulation in the CFP Regulations.
Sea Fishing (Enforcement and Miscellaneous Provisions) Order 2015	**Technical amendments:** References to "EU and third country fishing boats" are amended to remove the references to "EU". A cross reference Council Regulation (EC) 1224/2009 is amended to bring it into line with the technical amendments made to that Regulation in the CFP Regulations. A reference in a heading to "Community rules" is deleted.
Grants for Fishing and Aquaculture Industries Regulations 2015	**Technical amendments:** References to Regulation (EU) 1303/2013 are amended to bring them into line with the technical amendments made to that Regulation in the CFP Regulations.
Sea Fishing (Enforcement) Regulations 2018	**Technical amendments:** References to Council Regulation (EC) 1224/2009 and Council Regulation 2016/1627 are amended to bring them into line with the technical amendments made to those Regulations in the CFP Regulations.