EXPLANATORY MEMORANDUM TO THE

THE FAL AND HELFORD (PROHIBITION OF SCALLOP DREDGING) ORDER 2004

2004 No. 2567

1. 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. Description

2.1 This Statutory Instrument prohibits the use of scallop dredges in the estuaries of the Rivers Fal and Helford. The aim of the measure is to protect an area which is a candidate Special Area of Conservation under the Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the "Habitats" Directive). An important component of the site are areas of live and dead maerl. The smothering of the maerl beds by scalloping activity and dredge scars in the sediments do irreparable and long term harm.

2.2. A Statutory Instrument was put in place last year to protect the cSAC, following a request from English Nature, as the statutory advisor on nature conservation. The Environment Agency have been working on a byelaw to tackle this problem but have not been able to put them in place quickly enough to provide a continuity in the necessary protection.

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

3.1. None.

4. Legislative Background

4.1 The Statutory Instrument has been made to comply with Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the "Habitats" Directive) to take appropriate steps to avoid any deterioration of natural habitats and the habitats of natural species for which this site has been designated.

5. Extent

5.1 This instrument applies to all UK registered vessels within a particular English site.

6. European Convention on Human Rights

Not applicable

7. Policy background

7.1 The Department of Environment, Food and Rural Affairs' objective to protect and improve the rural, urban, marine and global environment is being met by

protecting those areas of maerl from dredging that causes habitat degradation. Protection.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum .

8.2 There will be no impact on the public sector.

9. Contact

Ruth Thirkettle at the Department of Environment, Food and Rural Affairs Tel: 0207 270 8256 or e-mail: ruth.thirkettle@defra.gsi.gov.uk can answer any queries regarding the instrument.

REGULATORY IMPACT ASSESSMENT

TITLE OF PROPOSAL: THE FAL AND HELFORD (PROHIBITION OF SCALLOP DREDGING) ORDER

Purpose and intended effect of the proposals

Objective

1. To protect the candidate Special Area of Conservation (cSAC) in the Fal and Helford estuaries from damage caused by scallop dredging.

Background

2. The 12 Sea Fisheries Committees (SFCs) regulate local sea fisheries around the coast of England and Wales out to 6 miles. The Environment Agency (EA) acts as a SFC in certain estuaries and in particular for the Fal and Helford estuaries where they have a byelaw in place to prevent trawling.

3. In February 2003 a small group of Cornish fishermen took advantage of a loophole in the EA's byelaw to dredge for scallops in the Mawes Bank area within the Fal estuary. This is an area which is both a European Marine Site and a cSAC, an important component of which are areas of live and dead maerl. The smothering of the maerl beds by scalloping activity and dredge scars in the sediments do irreparable and long term harm. The UK government was therefore obliged by Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora ('the Habitats Directive') to take appropriate steps to avoid any deterioration of natural habitats and the habitats of natural species for which this site has been designated. The management scheme for the cSAC also recommends that management of scalloping in the area is needed to protect sensitive areas.

4. An SI was put in place last year to protect the cSAC, following a request from English Nature, as the statutory advisor on nature conservation. The EA have been drafting an amendment to their byelaw in consultation with the scallopers, but have been unable to ensure it would be put in place quickly enough to provide a continuity in the necessary protection.

Devolution

5. This proposal will apply to all UK vessels fishing in the specified area. In practice only English vessels fish within the affected area.

Risk Assessment

6. A maximum of 6 vessels took advantage of the loophole in the EA's byelaw. Although this fishery has been targeted in the past this has not been on a regular basis and indeed has not been targeted for more than 5 years and even then on an irregular basis. Fishermen only targeted the fishery due to bad weather in their usual areas. There is also an oyster fishery within the areas, but as this is conducted using traditional sail-power, no power equipment is permitted and no damage to the site has been caused, this fishery will not be curtailed

Options

7. **Option 1;** do nothing

8. **Option 2;** extend the SI for a further 6 months to ensure continuity of protection for the cSAC.

Benefits

9. **Option 1** presents no benefits to the environment, and does not meet the UK's obligations under the Habitat Directive. This would lead to Infraction proceedings against the UK.

10. **Option 2** meets the obligations under Article 6(2) of the Habitats Directive, for the duration of the byelaw, to avoid the deterioration of the areas of live and dead maerl, listed as some of the natural species for which the area has been designated a cSAC. Option 2 gives further time to the EA to meet their responsibilities as local sea fisheries managers to amend its own byelaw in consultation with all stakeholders.

Business sectors affected

11. The proposals will only affect scallopers using dredges. However, there has been no scallop dredging in the areas for between 5 and 16 years, and certainly not of the scale that recently occurred, the affect will be minimal.

Issues of equity and fairness

12. The impact of the proposed regulations will fall on the local scallopers. Although it is recognised that this potential fishery will be closed temporarily this is a method of fishing known to damage those features for which the cSAC has been designated. Other fishing methods which have the potential to damage the site have already been restricted. It would be unfair and inappropriate to target similar measures at fisheries which are not known to create similar damage.

Compliance costs for business

13. There would be no additional costs under Option 1.

14. It is difficult to quantify costs under Options 2 given the limited fishery that took place. We understand that vessels were earning up to £1,500 gross in this fishery. However, it should be noted that this is not a fishery that they habitually target and other opportunities remain open for these fishermen.

Impact on small businesses

15. Approximately 10% of those fishing for scallops work from vessels of 10m or less, however there have been no additional costs highlighted for small businesses.

Other costs

16. The measures would not give rise to further costs to Government. Enforcement of the legislation will be carried out by the Environment Agency.

Competition Assessment

17. There will be no negative competitive impact arising from this regulation. This regulation neither restricts the ability of firms to choose the price, quality, range or location of their

products, nor will it lead to a differentiation in costs between new and existing fishermen. The regulation is unlikely to affect the market structure. No company has more than 10% share of the English market.

Enforcement, sanctions, monitoring and review

18. The measures would not give rise to further costs to Government. Enforcement of the legislation will be been carried out by the Environment Agency. Penalties are consistent with other measures taken to restrict fishing activities in order to protect the marine environment.

Results of consultation

19. Defra consulted originally with English Nature who gave their support for the measures. It has not been possible to consult more widely on this Order due to the need to extend the protection the cSAC as soon as possible. However, these measures are limited to six months from date of coming into force, and the EA is currently consulting with fisherman in the drawing up of their own byelaw

Summary and Recommendations

20. On the basis of the analysis presented here, it is recommended that legislation be extended for a further 6 months to temporarily ban scallopers from using dredges in the cSAC while EA prepares to amend its present byelaw under consultation with stakeholders as set out in option 2.

Declaration:

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed by the responsible Minister: **Ben Bradshaw**

Date:**29th September 2004**

Department for Environment, Food and Rural Affairs

Contact:
Ruth Thirkettle, SFCD (Fish III) B, Defra, 10 Whitehall Place, London SW1A 2HH. Tel. 0207 270 8256 - Fax 0207 270 8310
E-mail; ruth.thirkettle@defra.gsi.gov.uk