EXPLANATORY MEMORANDUM TO

THE FISH LABELLING REGULATIONS

2013 No. 1768

1. This explanatory memorandum has been prepared by Defra and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of the instrument is twofold, firstly it will remove the need to lay a new Statutory Instrument each time a revision is required to the UK's Commercial Designation List (approved fish names) as the list will be maintained online. Secondly it provides a means of enforcing the EU legislation that requires consumers of fishery products to be provided with the scientific name and previously frozen declarations at the point of retail.

3. Matters of special interest to the [Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments]

3.1 None

4. Legislative Context

4.1 The Fish Labelling Regulations 2013 will revoke the Fish Labelling (England) Regulations 2010. The criminal sanctions for breaching the Regulations have been replaced in all cases with civil sanctions except for record keeping and production of records which remain criminal offences. The civil sanction route as applied in these Regulations introduces an improvement notice approach consistent with other similar Regulations for food.

4.2 The changes are being made in the context of the Red Tape Challenge (RTC) to address the Department's legislation, including making it easier for businesses to navigate, and Government policy on criminal and civil sanctions.

5. Territorial Extent and Application

5.1 This instrument extends to the United Kingdom in particular for the United Kingdom commercial designation of species. Part 3 of the instrument which enforces the EU fishery products consumer information and traceability requirements applies in relation to England only.

5.2 Scotland, Wales and Northern Ireland will implement the consumer information and traceability requirements through their own SIs in a way that delivers consistency at a UK level.

6. European Convention on Human Rights

6.1 As the instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

7.1 The Fish Labelling Regulations 2013 will incorporate two main changes. Firstly, as agreed under the Red Tape Challenge initiative, they will remove the need to lay a new Statutory Instrument (SI) each time an amendment to the UK's Commercial Designation List for Fish (approved names) is required. Secondly, they will enforce in England new EU consumer information requirements for fishery products, including making the scientific name and previously frozen declarations available to consumers at the point of retail. In line with Red Tape Challenge commitments made under the 'Hospitality, Food and Drink' theme, we are also taking the opportunity to simplify the regulatory landscape by incorporating all rules relating to consumer information for fishery products into one set of Regulations, and by minimising the creation of new SIs by improving the way that UK Commercial Designations are granted.

7.2 The current process for amending the Commercial Designation List of Fish names in the UK is time consuming and burdensome and does not give us the flexibility to make changes quickly enough in response to market demands. Granting a new designation takes too long because a new SI has to be laid each time. We are therefore proposing to separate the Commercial Designation list from the SI and maintain a live up-to-date list of accepted names on the internet. Separating the list would benefit industry as it would remove the need to grant temporary designations while a new SI is prepared. It would also prevent the existence of an incomplete list which occurs at present as temporary designations do not feature in the list attached to the SI. This simplification will also reduce the burden of frequently amending the Regulations each time a new commercial designation is agreed resulting in efficiency and cost savings to Government and was agreed as part of the Red Tape Challenge initiative.

7.3 New requirements to provide the consumer with additional information on fish and fishery products at the retail stage have been introduced throughout the EU. These requirements are set out in the Common Fisheries Policy (CFP) Control Regulation, which was agreed in 2010 and is now in the implementation phase. Provision must be made within domestic legislation to enforce the new consumer information requirements, including providing the scientific name of fish at the point of retail and previously frozen declarations. Intervention is required to ensure that the market supplies the consumer with the required information, and to maintain consistency in how this is applied throughout the industry. Minimum EU requirements have not been exceeded. We have taken

advantage of the derogation available to allow retailers to display the scientific name on a billboard or poster instead of labelling it on the product itself.

8. Consultation outcome

8.1 The Consultation ran for an 8 week period and closed on 13 November 2012. The Consultation resulted in 5 detailed responses being received covering a number of aspects in the consultation. Responses were received from public sector enforcement, trade representation organisation, government agency and the industry. The overall view of the respondents was that they were satisfied that the preferred option was the most sensible way of implementing the changes and welcome the benefits that will arise from improving the process for maintaining the commercial designation list. There was endorsement of the estimates made to assess the time saving benefit to enforcement officers from having one Statutory Instrument instead of two.

9. Guidance

9.1 An updated guidance note was prepared as part of the Consultation and will be made available online to accompany the Regulations. The majority of requirements remain unchanged; there are principally only two major introductions, the need to provide the scientific name and the previously frozen declaration. The other change concerns the management and process for amending the UK Commercial Designation List.

10. Impact

10.1 The impact and cost on business has been estimated and assessed as part of the consultation and is low. Some businesses may need to make labelling changes but in the vast majority of cases they will be able to do this as part of the standard product lifecycle changes. Some companies may need to improve their document management practices to ensure that product information flows along the supply chain so that the required information is available at the point of retail. The changes to the way the UK commercial designation list will be managed in the future will benefit business and ensuring that an additional SI is not created helps to maintain a more straightforward legislative environment.

10.2 The impact on the public sector is beneficial in the move towards greater use of civil as opposed to criminal sanctions. This is viewed as a more proportionate approach for less serious regulatory infringements such as labelling. The change will also benefit the court system by reducing the number of cases that would be heard in a Magistrates Court.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The rules have to be applied to all businesses trading in fishery products in order for the benefits of traceability to be realised.

12. Monitoring & review

12.1 A report to review these Regulations must be published before the end of the period of 5 years beginning on the day which these Regulations come into force.

13. Contact

Paul Riches at the Department for Environment, Food and Rural Affairs Tel 020 7238 5354or email: paul.riches@defra.gsi.gov.uk can answer any queries regarding the instrument.