**POLICY NOTE**

**THE FISHING BOATS DESIGNATION (SCOTLAND) ORDER 2019**

**SSI 2019/345**

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 2(1) and (4) and 6(2) of the Fishery Limits Act 1976 and all other powers enabling them to do so. The instrument is subject to the negative procedure.

**Purpose of the Order:** This Order revokes the existing statutory instruments listed in schedule 3 and consolidates, and updates their provisions. The Order also designates additional countries for the purposes of section 2(1) of the Fishery Limits Act 1976 ("the Act") and specifies how gear for fisheries that are not designated is to be stowed on a vessel for the purposes of section 2(4) of the Act.

Article 3 designates the countries specified in schedule 1 for the purposes of section 2(1) of the Act; the areas within the Scottish zone in which fishing boats registered in each of those countries may fish; and the descriptions of sea fish for which vessels from those countries can fish.

Article 4 prescribes how, in the circumstances specified in section 2(4) of the Act, fishing gear is to be stowed on foreign fishing boats while within British fishery limits. Section 2(5) of the Act makes the master of a fishing boat guilty of an offence in the case of any contravention of section 2(2) to (4) of the Act, including any such contravention by virtue of a failure to comply with the requirements of article 3.

Article 5 revokes the instruments listed in schedule 3 so far as they apply to Scotland and the Scottish zone.

**Policy Objectives**

This Order is made on a contingency basis in the event of the UK leaving the EU with no deal or withdrawal agreement in place. In this event a regime will be required to manage any fishing activity being undertaken by foreign vessels in UK waters, including the Scottish zone.

Regulation (EU) No 1380/2013 sets out the objectives for the conservation and sustainable exploitation of European fisheries resources under the CFP.

Article 5 of Regulation (EU) No 1380/2013 sets out general rules on access to EU waters. EU vessels have equal access to all waters and resources from 12-200 nautical miles of Member State baselines.

When the UK leaves the EU and the CFP, Article 5 of Regulation (EU) No 1380/2013 will not apply in relation to UK waters, meaning non-UK vessels will not have automatic access rights to fish. New provisions are required to control and manage access by foreign vessels within UK waters after the UK leaves the EU

Section 2(1) of the Fishery Limits Act 1976, as amended by the Scotland Act 1998 (Consequential Modifications) (No.2) Order 1999 (SI 1998/1820) gives the Scottish Ministers power to designate any country outside the United Kingdom, the Channel Islands

and the Isle of Man and, in relation to it, areas within the Scottish zone in which, and descriptions of sea fish for which, fishing boats registered in that country may fish. The other fisheries administrations have the same power in respect of their own waters.

These powers are currently superseded by Article 5 of Regulation (EU) No 1380/2013, but upon leaving the EU the UK will need to specify any additional countries it wishes to grant access to or they will be prohibited from fishing in UK waters. The need to designate countries was to have been removed and replaced by provision in the UK Government's Fisheries Bill, which fell on prorogation of the UK Parliament earlier this month and has not yet been introduced in this session of the UK Parliament.

Designation under section 2(1) of the Act does not in itself allow foreign vessels to access Scottish waters. In order to access and fish in Scottish waters, a vessel will require an authorisation under Regulation (EU) 2017/2403 on the Sustainable Management of External Fishing Fleets (which will form part of retained EU law by virtue of the European Union (Withdrawal) Act 2018) and a licence under the Sea Fish Licensing (Foreign Vessels) (EU Exit) (Scotland) Order 2019, which comes into force on exit day (the authorisation and the licence may be the same document). The form of a licence and the means by which it may be communicated are set out in the Sea Fishing (Licences and Notices) (Scotland) Regulations 2011 (as amended). Designation essentially sets out the parameters for an authorisation/licence in terms of the countries whose vessels may be given an authorisation/licence, in which parts of our waters they may fish, and for which types of fish. Designation is a prerequisite for an authorisation or licence to be issued. The authorisation or licence may provide further restrictions on a vessel's right to fish within the designated areas.

The policy intent is for the Scottish Minsters to have broad scope to negotiate future access arrangements. This includes enabling the Scottish Ministers to allow continuity of the current access arrangements for vessels from the EU, Norway and Faroe Islands, which are governed by the Common Fisheries Policy (CFP) or existing agreements between the EU and third countries (Norway, and the Faroe Islands).

This Order consolidates the existing designation orders made under section 2(1) of the Act, all of which preceded devolution, into a single designation order for Scotland. The Order revokes those existing orders, and further to their consolidation makes a number of changes and additions reflecting the changed context.

In respect of EU Member States, designation is extended to all current member states, in line with their rights of mutual access provided in article 5 of the Basic Regulation of the CFP[1]. Also in-keeping with these existing access rights and the approach taken by previous orders to EU member states designation is for all areas within the Scottish zone (outwith 12nm), and for all descriptions of sea fish.

The Order also maintains the historical rights for certain countries (all of which are EU member states) to fish in the 6-12nm portion of Scottish territorial waters, as provided for in the existing designation orders, and listed in Annex 1 to the Basic Regulation of the CFP. Designation for Norway and Faroe Islands is also maintained, and the approach of previous orders of identifying certain areas and descriptions of sea fish. The types of fish for which Norwegian and Faroese vessels may fish in certain areas has been updated to reflect existing agreements between the EU and these countries, to ensure that existing practice may be

**1** Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC

continued. For example, existing designation orders designate certain species of fish which are no longer species that may be fished (for conservation reasons).

Article 4 of the Order makes provision in relation to the stowage of gear. These provide for how, where a vessel is not permitted to fish, or where only certain fisheries are permitted, gear (or gear not relevant to a permitted fishery) should be stowed.

Similar provisions had been in force between 1970 and 2015, where they were revoked (see SI 1970/318 and SSI 2015/320). The stowage of gear is currently dealt with in license conditions for British vessels and there are specific provisions relating to stowage of gear in relation to certain Marine Protected Areas, however, it was not considered necessary to maintain a general provision whilst the UK was a party to the EU's Common Fishing Policy. It is now considered necessary to reinstate these provisions to allow effective enforcement of fishing regulations once the UK is an independent coastal state. This change also brings Scotland into line with other Fishing Administrations

Although this Order is being made to prepare for EU Exit it is not being made under the European Union (Withdrawal) Act 2018. Therefore, the SSI protocol between the Scottish Ministers and the Scottish Parliament does not apply so the SSI is not subject to the requirement for sifting by committee to determine the appropriate procedure (the procedure applying to the Order is set out in the Fishery Limits Act 1976), nor are the written statements made under the terms of EUWA or the SSI protocol considered appropriate.

## Further information

### Consultation

This instrument is a contingency required in the event that the UK leaves the EU without a deal or withdrawal agreement in place. It does not amount to any change in policy, and does not in itself grant any rights of access. There has been no formal public consultation regarding this instrument.

### Impact Assessments

This instrument is a contingency required in the event that the UK leaves the EU without a deal or withdrawal agreement in place, and it does not amount to any change in policy, nor in itself grant any rights of access. as such no impact assessment has been prepared for this instrument. The instrument does not alter Scottish Government's current environmental policies and priorities and, therefore, do not have a significant impact on the environment. The impact on business, charities or voluntary bodies is expected to be minimal.

### Financial Effects

The Cabinet Secretary for Rural Economy, Mr Fergus Ewing, confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Marine Scotland Directorate

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