EXPLANATORY MEMORANDUM TO

THE SCALLOP FISHING (ENGLAND) ORDER 2012

2012 No. 2283

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. Purpose of the instrument

2.1 This instrument contains technical measures designed to manage commercial scallop dredging, the most common method used to catch King scallops (*Pecten maximums*) by British fishing vessels off the English coastline. It specifies the gear that can be used and includes measures to improve the enforceability of existing fishery management measures (e.g. scallop minimum landing sizes). The new measures come into force on 1 October 2012 and replace those contained within the current English Scallop Order 2004. The Order, will provide greater protection to scallop stocks and to the English small scale fleet which makes an important contribution to regional economies in line with the UK Government localism agenda and commitment to sustainable coastal communities.

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

3.1 None

4. Legislative Context

4.1 This instrument addresses current issues associated with the displacement of fishing effort from other parts of the UK, resulting from the introduction of different measures in different regions. It also aims to reduce gear conflict issues arising between different sized scallopers and between scallopers and non scalloping fishermen (e.g. those using more static gear such as pots) and will improve compliance with existing scallop minimum landing sizes in the English Channel set by Europe.

5. Territorial Extent and Application

5.1 This instrument applies in England and within British fishery limits (the area of sea to a distance of 200 nautical miles from the United Kingdom) but not the Northern Ireland, Scottish or Welsh zones or the territorial seas adjacent to Guernsey, the Isle of Man or Jersey.

5. 2 Similar instruments currently exist in Scotland, Wales and Northern Ireland.

6. European Convention on Human Rights

6.1 As the instrument is not subject to affirmative resolution and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The King scallop is important to the UK fishing industry, consistently being the third most valuable fish species in terms of first sales. The vessels targeting this fishery range from large vessels fishing all around the UK coast, seeking out high concentrations of scallops, to smaller vessels only able to fish in the locality in which they are based. The larger vessels are capable of reducing levels of scallops to commercially unviable levels on a regional basis, leaving the local small scale fleet with nothing to fish. This can force smaller vessels out of business, reducing the viability of the infrastructure which serves the fleet as a whole.

7.2 In England, this effect on the small scale fleet has intensified over the past decade as a number of different scallop measures have been introduced elsewhere in the UK, each affecting a different region and introducing slightly different restrictions. This has had the effect of displacing effort, particularly larger sized scallopers, who have been effectively prohibited or restricted in many areas of the UK and can now only fish to full capacity in the waters around England, where the fewest restrictions currently apply.

7.3 The objective of this instrument is to create a sustainable fishery on both a local and national level, with access to healthy stocks all year round, for both the small scale fleet and larger vessels which fish all around the UK. This can be achieved by providing protection for the smaller scale fleet; better safeguarding scallop stocks by reducing catching capacity in certain areas; improving the enforceability of existing fishery management measures; and putting the waters around England on a similar footing to other parts of the UK, reducing the impact of displacement of scalloping activity between areas. A parallel objective, achievable through the same means, is to reduce gear conflict between different sized scalloping vessels, and conflict between non scalloper (primarily static gear fishermen e.g. using pots) and scalloping vessels.

8. Consultation outcome

8.1 Two short non-formal consultations on the proposals and the evidence base were carried out between February and October 2011. The consultations were posted on the Department's website and 55 fishermen's associations, organisations, scallop businesses and interested stakeholders were consulted. Copies of the consultation were placed in the Department's library. Other Fisheries Administrations in the UK including the Inshore Fisheries and Conservation Authorities (IFCAs) were also consulted.

8.2 The consultation responses were overwhelmingly in favour of the key aims of the proposals, however, there was some difference of opinion on the management measures which should be used to achieve these aims.

8.3 A total of 40 responses from a wide variety of respondents were received. Nearly half of the individual responses were from small scale fishermen, with the larger vessels mainly feeding in their views via organisations such as the UK Scallop Association, Producer Organisations or other industry bodies. Responses were also received from environmental non government organisations, independent scientific and academic experts on scalloping. In addition to written responses, Defra officials met with a number of scalloping organisations to discuss their views in greater depth. Defra is pleased with the level of response to this consultation and is satisfied that all that wished to provide their views were able to do so.

9. Guidance

9.1 Defra are not planning to publish guidance on this instrument.

10. Impact

10.1 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 This instrument applies to small business.

11.2 More than 99% of businesses in the fishing sector consist of individual vessel owners and small fishing companies employing less than 10 employees.

11.3 Defra sought and obtained agreement of the Economic Affairs Committee and Reducing Regulation Committee to an exemption from the micro-business and start ups moratorium to make this instrument, on the grounds that it is aimed at protecting the smallest of scalloping businesses.

12. Monitoring & review

12.1 This instrument aims at putting the waters off the English coast on a similar footing to other parts of the UK in terms of scallop management, which will have the effect of reducing the impact of displacement of scalloping activity between areas. This will in turn provide greater protection to the English small scale fleet and a reduction in gear conflict issues arising between different sized scalloping vessels, and conflict between non scalloping and scalloping vessels.

12.2 This instrument will also result in increased compliance with existing fishery management measures, for example, the scallop minimum landing sizes in the English Channel, and allow for the safe emptying of scallop dredges with the aid of attachments to the dredge not currently permitted.

12.3 Whilst there is no review or sunset clause in this instrument (as there were no powers to include one), the Department has committed to reviewing it within five years of implementation, in line with Department of Business, Innovation and Skills (BIS) requirements on sun-setting regulations. The Department also plans, along with the Scottish Government, to review parts of this instrument to ensure consistency on both sides of the border in 24 months time.

13. Contact

Matthew Whittles at the Department for Environment, Food and Rural Affairs Tel: 0207 238 5204 or email: matthew.whittles @defra.gsi.gov.uk can answer any queries regarding the instrument.