EXECUTIVE NOTE

THE SEA FISH (PROHIBITED METHODS OF FISHING) (FIRTH OF CLYDE) ORDER 2009 (SSI 2009/38)

1. This Order was made in exercise of the powers conferred by sections 5(1)(c) and 15(3) of the Sea Fish (Conservation) Act 1967. The instrument is subject to negative resolution procedure.

Policy Objectives

2. The purpose of the instrument is to protect cod stocks in the Firth of Clyde at a crucial time in their life cycle by prohibiting fishing effort during the spawning season (from mid February until the end of April).

3. This temporary prohibition of fishing in the Firth of Clyde is intended to coincide with a closure of the Irish Sea, imposed by the European Union, which will come into effect from 14 February 2009. Fishing boats displaced by the Irish Sea closure could increase fishing pressure in the Firth of Clyde. Accordingly, this Order imposes a temporary closure of the Firth of Clyde in order to preserve cod stocks in that area throughout the spawning season.

4. The Order provides that fishing for sea fish is prohibited in a fixed area of the Firth of Clyde from 14 February 2009 until 30 April 2009, with derogations for certain types of fishing activity. The closed area is split into two zones. In the larger and more easterly zone, known in the Order as Area 1, scallop dredging, creel fishing and trawls for nephrops are permitted throughout the closure period. In the smaller zone, which is a strip of water at the mouth of the Clyde, known as Area 2, there is no such derogation for nephrops trawls, although scallop dredging and creeling are permitted.

5. The Order will apply to all Scottish or other British fishing boats that fish in the area.

Consultation

6. The Scottish Government consulted the fishing industry in January 2009. Identical provisions for such a closure have been set in place annually since 2002 and the fishing industry have been consulted each year.

7. A broader consultation process, aimed at reaching consensus between stakeholders as to the future of the closure from 2008 onwards, began during 2006. The results from the consultation were inconclusive with no strong arguments being made for changing the timings or the boundaries of the closure.

Financial Effects

8. The Order has no bearing on quota, which remains unchanged, and the closure should not prevent skippers from catching their full quota over the duration of the year. At most, the proposed closure may lead to a reduction in fish landings for its duration and, therefore, incomes on a temporary basis. The fishermen should not be financially disadvantaged overall. In addition, this closure should lead to a bigger stock in future years to the

benefit of all fishermen. Due to the complex and varied nature of the mixed fishery it has not proved possible to calculate exact figures for any possible catch changes.

9. The proposals would not give rise to further costs to the Scottish Government. Enforcement of the proposed measures would be achieved within the existing provision for the Scottish Fisheries Protection Agency.

Scottish Government
09 February 2009

REGULATORY IMPACT ASSESSMENT

The Sea Fish (Prohibition of Fishing) (Firth of Clyde) (Scotland) Order 2009

Purpose and intended effect of measures

1. The International Council for the Exploration of the Sea (ICES) has repeatedly advised for a number of years that cod stocks in EU waters are at serious risk of collapse. The EU responded by introducing a number of temporary closures in 2000 and 2001 to protect adult cod during the spawning season, as this should lead to bigger stocks in future years. As part of this response, the European Commission introduced a closed area in the Irish Sea to protect adult spawning cod during the spawning season of 2000 (14 February to 30 April). This was followed by a similar closure in the Irish Sea during 2001, as well as an additional closure in the Clyde, which was acknowledged as a key spawning ground. Since 2002 however, the Commission has considered it inappropriate to provide for a closure in the Clyde because the area in question is the responsibility of just one Member State. It has fallen to the Scottish Government to decide whether or not to introduce similar closures since 2002.

2. The ICES advice on West of Scotland cod given in 2008 is similar to that of previous years, suggesting that the stock remains outside safe biological limits. This Order would therefore again establish a temporary closure in the Clyde, during the 2009 cod spring spawning period (14 February to 30 April), prohibiting fishing activity by any British Fishing Boat with derogations for certain gear types which do not impact on the cod stocks.

Risk Assessment

3. The mouth of the Clyde is an area where it is known that cod spawning takes place at a known time, and where it is widely acknowledged that fish concentrate to spawn. The immediate objective must be to allow as many cod to spawn as possible until 30 April in order to protect the stock for the benefit of fishermen in future years. In addition, effort displaced by cod recovery measures in the Irish Sea could increase fishing pressure in the Clyde if no closure were introduced. The closure coincides with the spring spawning period of local cod stocks, to reduce the targeting or catch of mature cod by fishing boats at a critical period in their lifecycle. The closure will not affect fishermen's ability to catch their quota across the year as a whole, but may affect cash flow during the closure period.

Options

4. In considering the options, two competing interests had to be balanced; the need to help preserve the vulnerable cod stock for the long term, and the needs of fishermen to earn a living in the short-term. Discussions with the fishing industry were held during 2004 and a wider consultation exercise was held in 2007 about whether and how the closure might be operated in the future. The Government considers that consensus has not yet been reached believes that in these circumstances the previous closure should be rolled over.

Option A: Do not introduce a closure

Costs

5. There is little doubt that not introducing a closure would be deleterious to the cod stock, particularly given the likelihood of increased fishing pressure displaced by conservation measures in the Irish Sea.

6. The most recent scientific advice on both West of Scotland and Irish Sea cod suggests that these stocks remain vulnerable. Concern over cod continues to affect fishing opportunities for other, healthier stocks such as haddock, which can be difficult to catch without also catching cod. Measures to help recover cod, such as the proposed Clyde closure, are therefore important to efforts to ensure fishermen are afforded adequate opportunities to fish other demersal species in the medium-term.

Benefits

6. Fishermen would be able to fish unhindered in the area all year round, avoiding any potential cash-flow problems that might be caused by temporarily prohibiting activity in the Clyde.

Option B: Status Quo

Costs

7. Critics of the closure that has been introduced annually since 2001 have suggested that it denies fishermen access to important grounds for species other than cod and thereby incurs a revenue loss and disrupts fishing patterns.

8. It has been suggested that the closure area and the agreed derogations for certain types of fishing activity do not afford optimal protection for the spawning cod stock, both because the geographical boundaries may not precisely match the distribution of the stock and because cod is still being caught within the area during the closure period.

Benefits

9. Retaining the closure provisions introduced in previous years provides a degree of consistency that will help to avoid disruption to fishing patterns established since 2001, and will help ensure fishermen comply with the restrictions.

10. The present closure area, and the derogation for nephrops trawls in part of the area, offer fishermen alternative opportunities to catch nephrops during the closure period.

Costs for a typical business

11. The Order has no bearing on the available cod quota, which remains unchanged, and the closure should not prevent skippers from catching their full quota over the duration of the year. At most, the proposed closure may lead to a reduction in fish landings for its duration, and therefore a reduction in incomes on a temporary basis. Fishermen should not be financially disadvantaged overall. In addition, this closure should lead to a bigger stock in

future years to the benefit of all fishermen. Due to the complex and varied nature of the mixed fishery it has not proved possible to calculate exact figures for any possible catch changes. However, it is suggested that the longer-term benefits will outweigh any short-term costs related to possible cash flow difficulties during the closure. The volume of supply to processors of species caught in the area may be affected during the period of the closure, although these species can be caught in other grounds in the West of Scotland.

12. The proposals would not give rise to further costs to the Scottish Government. In particular, the Scottish Government's enforcement of the proposed measures would be achieved within the existing provision for the Scottish Fisheries Protection Agency.

Small/Micro Firms Impact Test

13. All fishing vessels affected can be considered small businesses. These businesses have been consulted in the development of the proposed legislation via the Scottish fisheries associations whose members could potentially be affected by the measures. The legislation will not affect quota levels and should not prevent fishermen catching their full quota over the course of the year, although there may be some effect on cash flow during the duration of the closure.

Competition Assessment

14. There will be no negative competitive impact arising from this regulation. The regulation will not lead to a differentiation in costs between new and existing fishermen. The regulation is unlikely to affect the market structure. The measures will apply to all Scottish vessels and to all other UK vessels in Scottish waters.

Results of consultation

15. Other UK Fisheries Departments along with fishing industry bodies and other stakeholders were consulted over the closure.

Enforcement and sanctions

16. Enforcement would be undertaken predominantly by the Scottish Fisheries Protection Agency, operating under Scottish legislation. If the measures are found to have been contravened, a fine not exceeding £50,000 may be levied. The court may also impose an additional fine not exceeding the value of the fish caught with the net or order the forfeiture of the net.

Monitoring and review

17. The Fisheries Research Service is responsible for monitoring levels of fishing activity and the effect of particular fishing methods on stocks in Scottish waters, within the framework of a strategic work programme determined by the Scottish Government. It will be possible to review the effect of these measures by assessing landings data from before and after their introduction.

Equity and Fairness

18. Given the diverse fishing techniques used by the various sectors of the fishing industry it is not possible to be assured that the measures will not impact more on some than on others. However, the Order applies equally to all British fishing boats. The measures in the Order are based on methods of fishing, not on geography and discriminate against methods of fishing that target or generate a bycatch of cod, which is the objectively justified point of the legislation. The Government has tried to ensure as far as possible that the measures are balanced in their effect on all sectors of the industry, and has worked hard to avoid discrimination.

Summary and Recommendations

19. The medium term biological improvements to the stock and the economic gains in terms of larger catches in the future outweigh the short-term costs of restrictions on catching during the 10-week closure. Although there may be a reduction in catches during the closure, the quota remains unchanged and so the total amount of cod or other species that fishermen are able to land during 2009 is unaffected. The Government therefore intends to legislate for a spawning season closure.

DECLARATION:

I have read the Regulatory Impact Assessment and I am satisfied that the balance between cost and benefit is the right one in the circumstances.

Signed by the
A member of staff of the Scottish Ministers: _____

Date:

Date of Regulatory Impact Assessment: February 2009