EXECUTIVE NOTE

THE SEA FISH (SPECIFIED SEA AREAS) (REGULATION OF NETS AND OTHER FISHING GEAR) (SCOTLAND) AMENDMENT ORDER 2009
SSI/2009/165

Policy Objectives

1. It is necessary to amend Scottish Statutory Instrument **The Sea Fish (Specified Sea Areas) (Regulation of Nets and Other Fishing Gear) (Scotland) Order** to implement extra technical measures on the West of Scotland which were agreed at the December Agriculture and Fisheries Council. These provisions feature in Annex III of Council Regulation (EC) No 43/2009 (annual TAC Regulations) which came into effect on 16 January 2009. There is also revisions to the existing additional measures to further protect cod, haddock and whiting stocks.

2. These changes demonstrate how committed the Scottish Government and its fishing industry are to conservation of stocks in the West Coast whilst at the same time creating a sustainable and viable future for the fishing industry and associated communities. The December Fisheries Council negotiations included a proposal from the Commission to close a significant area of sea around the West Coast of Scotland. The Scottish Government successfully negotiated to keep this area open and instead of prohibitions on fishing there will be derogations for certain fishing methods continued to allow access. These derogations are in the form of changes to gear and mesh sizes as well as catch composition requirements, exclusively in the area to the East of the revised Cod Recovery Line in ICES division VIA.

Consultation

4. As with all December Fisheries Council negotiations the Scottish Government engages with representatives from the fishing federations and producer organisations throughout the run up and during negotiations. Given the particularly challenging nature of the technical changes for the West Coast, Marine Scotland established a task force to assist with the implementation. The task force has a wide membership from the fishing sector and it was industry who approached government with the request to increase the maximum twine

thickness. These technical changes have been supported by industry and show commitment to protecting stocks to ensure future fishing viability

6. Following publication of Commission Regulation (EC) No 43/2009 in the Official Journal of the European Union the Marine Scotland wrote to Fishermen's Organisations, to inform them of the new Regulation. The coming into force date of the SSI has been scheduled to coincide with the availability of the new nets and square mesh panels.

Financial Effects

7. There are financial implications for the fishermen who operate east of the new cod recovery line in the West Coast of Scotland, a Regulatory Impact Assessment has been prepare for this purpose. Additionally through the work of the West Coast Task Force an application for EFF funding can be made to assist fishermen with the costs associated with introducing new SMP and Cod-ends. The EFF application will meet up to 40% of the cost.

Marine Scotland
Scottish Government

FINAL REGULATORY IMPACT ASSESSMENT

1. Title of Proposal

1.1. Introduction of the Sea Fish (Specified Sea Areas) (Regulation of Nets and other Fishing Gear) (Scotland) Amendment Order 2009.

2. Purpose and Intended Effect

Objectives

2.1 Marine Scotland propose to implement changes to fishing gear for vessels operating on the West Coast of Scotland. The SSI revises such existing additional measures to take account of EU Law developments and further protect cod, haddock and whiting stocks. These technical changes form part of Council Regulation 43/2009 fixing for 2009 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks applicable in Community waters and, for Community vessels, in waters where catch limitations are required. The Regulation was agreed by Member States at the December Fisheries Council 2008. These changes demonstrate how committed the Scottish Government and its fishing industry are to conservation of stocks in the West Coast whilst at the same time creating a sustainable and viable future for the fishing industry and associated communities.

Background

2.2 The December Fisheries Council negotiations included a proposal from the Commission to close a significant area of sea around the West Coast of Scotland. The Scottish Government successfully negotiated to keep this area open provided more selective gear was used for fishing east of the revised cod recovery line in ICES division VIA. These are as follows:

- Increase in the minimum mesh size from 70mm to 80mm.
- All vessels operating inside this area must have a 120mm square mesh panel (SMP) fitted at the position 12m-15m, i.e. the rearmost row of meshes of the SMP shall be no more than 12m from the codline. The SMP shall be at least a minimum length of 3 metres. There shall be no more than 2 open diamond meshes between longitudinal side of the windows and the adjacent selvedge.
- Vessels 15m or below and targeting whitefish, may use a 110mm SMP with the same fitting and positioning requirements and can operate with a minimum mesh size of 110mm.
- Minimum mesh size is defined as the minimum mesh size in either the cod-end or extension piece

2.3 The amending SSI relates to the introduction and positioning of the 120 mm SMP in the West Coast cod recovery area and provides for the industry's request for an increase in the maximum twine thickness (explained in 3.2). The introduction of a SMP allows for greater selectivity of whitefish and will contribute to a reduction in mortality delivering no shape distortion, better stock sustainability and general fisheries conservation.

Rationale for government intervention

2.4 The rationale for increasing the twine thickness of the SMP from a maximum of 4mm to a maximum of 6mm is that it makes the nets more robust and less prone to breaking, thus making them more efficient and better value for the fishermen. In addition to the technical changes, Scotland has to achieve a 25% cod morality target. This can only be achieved through a package of measures, one being the introduction of selective gear in the cod recovery zone.

2.5 The Scottish Government is required to meet its EU obligations or it will be subject to potential infraction proceedings. Given the Commission's original proposal was to close the fishery it is important for the Scottish Government to implement these new technical measures to allow fishermen to continue to make a living.

3. Consultation

Within government

3.1 While the proposals are specific to the West Coast of Scotland, colleagues from the other UK Fisheries Administrations (DEFRA, WAG and DARDNI) were involved in the negotiations. As this was primarily a Scottish issue the Scottish Government was able to lead the negotiations to keep the west coast fishery open. Following December Council, colleagues from EFF and Marine Scotland Compliance have been involved in the plan for implementation. Marine Scotland Compliance have been able to provide a valuable link with the coastal offices to help disseminating the new technical changes both internally with British Sea Fisheries Officers.

Public Consultation

3.2 As with all December Fisheries Council negotiations the Scottish Government engages with representatives from the fishing federations and producer organisations throughout the run up to and throughout negotiations. Given the particularly challenging nature of the technical changes for the West Cost, Marine Scotland established a task force to assist with the implementation. The task force has a wide membership from the fishing sector and it was industry who approached government with the request to increase the maximum twine thickness. These technical changes have been supported by industry and show commitment to protecting stocks to ensure future fishing viability.

3.3 In order to comply with the new gear requirements fishing vessels need to be able to source nets that comply with the new specifications. Policy officials have held lengthy discussions with net manufacturers to ensure that they will be able to supply the new gear. The coming into force date of the SSI has been scheduled to coincide with the availability of the new nets and panels.

4. Options

4.1 Two options have been considered in implementing this Regulation: Option1: Do nothing and Option 2: Application of the 120mm SMP and increase of its twine thickness from a maximum of 4mm to a maximum of 6mm

Option 1

4.2 Do nothing. Failure to amend existing rules regarding the position and mesh size of SMPs would leave the Scottish Government open to infraction proceedings for failure to implement the Council Regulation and could potentially lead to a closure of the fishery. The technical changes are necessary as a means to keep the fishery open to Scottish fishermen and communities. In addition if the twine thickness of the SMP was not increased fishermen may have problems with the strength of the new 120mm SMP.

Option 2

4.3 The introduction of more selective gear and specifically the SMP has been scientifically proven by the Fisheries Research Services to contribute to stock sustainability and the reduction of mortality. There are times where the introduction of radical technical measures is the only way for maintaining a fishery at all. Failure to introduce technical measures will contribute to further stock depletion, increased discards and threaten the longevity of a future viable West Coast fishery. The SMP will contribute to increased selectivity and reduced mortality assisting with compliance of the 30%catch composition requirement allowing vessels to continue fishing and catching other species such as monkfish and megrims.

5. Costs and benefits

5.1 Sectors and groups affected

This SSI applies mainly to those members of the fleet who fish on the West Coast East of the revised cod recovery line Cod Recovery Line. Approximately 250 vessels operate in this area It will also have an impact on the Compliance section of Marine Scotland who will be responsible for enforcing the new provisions. The availability of nets is crucial to the successful implementation of this new SSI. Marine Scotland has liaised with net manufacturers on the availability of new fishing gear. As outlined in 3.3 Marine Scotland established a task force to take these technical changes forward in discussions with the sectors affected.

5.2 Benefits

Option 1 –By doing nothing it is expected that the Commission would close this are of the West Coast of Scotland. Either putting the fishing vessels out of business or reallocating the vessels to other fishing grounds which could increase effort in other fishing grounds and taking effort and catch away from those who have traditionally fished there. Furthermore, failure to implement these new measure will potentially lead to infraction proceedings from the EU.

Option 2 –Vessels are able to continue to fish. The introduction of more selective gear allows for better stock conservation by reducing discards but at the same time allows vessels to continue to make a living from fishing and for the communities and related fishing services to continue to receive an income.

5.3 Costs

5.3 The following table below sets out the costs of the new gear. Apart from the SMP there is a range of costs as it depends on the material and type of net that the fisherman chooses to use. The approximate costs per net are outlined below. Fishing vessels vary in the amount of spare nets that they carry, vessels can be expected to carry between 1 and 3.

Gear	Cost
SMP 120 mm	£40
Codend and extension 80mm	£340-£440
Codend and extension 120mm	£550-£750

5.4 Fishing vessels are able to apply for EFF funding for new gear. Applications are being prepared and skippers are able to apply for up to 40% of the costs. Applications forms have been simplified and also can be made on behalf as a group of vessels. All eligible applications for new cod-ends and SMP will be highly likely to be successful.

6. Small/Micro firms

6.1 The majority of businesses affected will be small or micro businesses. Discussions with producer associations and fishing organisations have been held to make them aware of the new requirements. EFF funding will be available to the smaller and less profitable vessels. These measures apply to all vessels that operate east of the cod recovery line equally.

7. Legal Aid Impact test

7.1 The proposals will not have any impact upon legally compliant fishing vessels. Persistent failure to comply with that requirement undermines the credibility of the Scottish fishing fleet and stock sustainability. It is then the responsibility of Marine Scotland to investigate whether the failure to fit a SMP and use legal twine thickness In the event of that the marine Directorate will still be able to refer cases to the COPFS for prosecution but this does not alter or undermine an individual's access to the justice system. It does, in the majority of cases, allow them to accept and pay an administrative penalty without venturing into the court system should they elect to do so.

8. Test run of business forms

8.1 The introduction of more selective gear will not lead to any new forms.

9. Competition Assessment

9.1 This proposal would impact directly on the fish catching sector and those enforcing it (Marine Scotland Compliance).

9.2 The proposal will affect all vessels who fish East of the revised cod recovery zone on the West Coast. The technical changes are applied to a level playing field and therefore vessels will not be put at an unfair disadvantage. Marine Scotland has timed the introduction of the SSI to ensure that there is sufficient supply and access to the new fishing gear.

9.3 It is unlikely that there will be an impact on competition and therefore no requirement to undertake a detailed competition assessment is necessary. The competitive position for legitimate operators may improve as they are more likely to able to operate on a level playing field.

10. Enforcement, sanctions and monitoring

10.1 The Compliance section of Marine Scotland is responsible for enforcing this SSI. Fishery officers have been provided with the same briefing to advise fishermen of the changes. Fishery officers carry out routine checks at least once a year of nets at the port and at sea. However, enforcement action can only be taken against vessels that are fishing at sea with illegal nets. If a vessel is checked at port and found to have an illegal net then he is advised not to use it. Marine Scotland Compliance will use risk based analysis to monitor vessels. Vessels found fishing with illegal nets could potentially be subject to a maximun fine of £5,000.

11. Implementation and delivery plan

11.1 Marine Scotland propose to enforce the new technical changes from 1 May 2009. However, since the publication of the Council Regulation on 16 January 2009 it has been carrying out a period of education allowing net manufacturers and Fishermen have had sufficient time to implement the new changes.

12. Post-implementation review

12.1 Marine Scotland will closely monitor the implementation of this Order. Marine Scotland will report annually on the number of prosecutions referred to the COPFS and administrative penalties through its normal reporting cycle to the Scottish Ministers. We will review the implementation of the Order within 3 years of it being fully commenced. Additionally, we will continue our close links with fishermen and net manufacturers on the uptake of these new technical measures. The scientific research into the conservation into the stocks will also continue to inform policy making.

13. Summary and recommendation

13.1 To proceed with option 2.

Summary costs and benefits table

Option	Total benefits per annum: economic, environmental and social	Total cost per annum: economic, environmental, social, policy and administrative
1	Nil – no introduction of more selective gear and failure to deliver cod recovery targets	Approximately is 26,000 tonnes of whitefish plus nephrops are landed from ICES areas Via, VIb, VIIa and the small section of EU waters within Vb. costing £62 million landed For area Via alone, this is still 23,000 tonnes, worth £57 million
2	Introduction of more selective gear contributes to stock sustainability and allows the West Coast fishery to remain open -	£380-£790 per net for each vessel fishing east of the cod recovery line. 40% of the costs are eligible to be met through EFF

12. Regulatory Quality Declaration

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

Signed……
Date……

Richard Lochhead
Cabinet Secretary for Rural Affairs and the Environment
Scottish Government