EXPLANATORY MEMORANDUM TO

THE SEA FISHERIES (AMENDMENT) (NO. 2) REGULATIONS 2024

2024 No. 1028

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs ("Defra") and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Daniel Zeichner, Minister of State at the Department for Environment Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

2.2 Anne Freeman, Deputy Director for Domestic Fisheries and Reform, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Eleanor Pettitt-Fergusson at the Department for Environment Food and Rural Affairs Telephone: 07710885964 or email: eleanor.pettitt-fergusson@defra.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 Under the Fisheries Act 2020, the UK fisheries policy authorities (Defra, and the devolved governments in Northern Ireland, Scotland and Wales) are required to prepare and publish fisheries management plans (FMPs) that set out the policies and actions required to deliver sustainable fisheries.

4.2 This instrument introduces a number of the short-term fisheries management measures set out in three of the first FMPs, published on 14 December 2023 (the Channel demersal non-quota species (NQS) FMP, the crab and lobster FMP, and the seabass (or "bass") FMP).

4.3 This instrument will introduce a minimum conservation reference size (MCRS) for lemon sole, turbot, and brill in the English waters of the International Council for the Exploration of the Seas (ICES) designated areas 7d and 7e (the Channel Sea) and increase the existing MCRS for crawfish in all English waters to protect the juveniles of these stocks from being landed before they have matured and had chance to reproduce.

4.4 This instrument will introduce a requirement that all flyseining (fishing with an encircling and towed net, operated from a boat by means of two long ropes (seine ropes) designed to herd the fish towards the opening of the net) vessels use a larger mesh as standard in the English waters of ICES divisions 7d and 7e so that smaller, juvenile fish can escape from the nets And have chance to reproduce. It will also restrict the engine power of vessels using flyseining gear in the English territorial

waters of these areas to help manage fishing pressures on demersal NQS in inshore fishing grounds (the more powerful an engine, the bigger the boat and ability to fish in adverse weather).

4.5 Finally the instrument will remove the UK-EU annually negotiated catch limits for commercially caught bass from secondary legislation so that they can be effected through fishing licence conditions. Licence conditions are generally quick to introduce and would allow the commercial bass catch limits to be updated promptly following international negotiations, so they are in line with evolving evidence and can be implemented in similar time-scales as for the EU.

Where does the legislation extend to, and apply?

4.6 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland.

4.7 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, Scotland and Northern Ireland.

5. Policy Context

What is being done and why?

5.1 FMPs are evidence-based action plans, developed in close collaboration with relevant stakeholders, that set out the actions and policies required to restore or maintain stocks at sustainable levels.

5.2 This instrument introduces a range of the short-term management measures that were included in three of the first FMPs. These FMPs were prioritised for development as the stocks in the areas covered are commercially valuable, data poor and there are concerns that these fisheries are at risk of over exploitation.

5.3 For lemon sole, turbot, and brill, there are concerns that these fish are being targeted during the juvenile stage of their development. Evidence gathered on these species suggest that brill stocks are exhibiting signs of initial overexploitation and turbot stocks in the North Sea in particular have recently exhibited reduced recruitment, leading to a decrease in advised landings of 33%. The introduction of the MCRS for these species, which prohibits landings of immature fish, will provide greater protection for juveniles, allowing them to reproduce before being caught therefore improving the health of these stocks. A range of similar measures exist within Cornwall, and Southern Inshore Fisheries and Conservation Authorities' (IFCAs')[1] districts.

5.4 Also increasing the MCRS for crawfish, in line with the species' size of maturity for females, will help address concerns about the recent increase in landings of this species which has been driven by a growing market for crawfish. The amended MCRS which applies in all English waters will also align with the existing MCRS set in byelaws in the Cornwall and Devon and Severn IFCAs' jurisdictions and in a Marine Management Organisation (MMO[2]) fishing licence condition in area ICES 7. As well as proving increased protection, the amended national MCRS will simplify

[1] The 10 Inshore Fisheries Conservation Authorities (IFCAs) are Local Authority Committees formally classified as Local Government Bodies. They are statutory regulators responsible for sustainably managing inshore sea fisheries resources and protecting the marine environment within the English 0-6nm.
[2] The Marine Management Organisation (MMO) is an executive non-departmental public body in the United Kingdom established under the Marine and Coastal Access Act 2009. The MMO license and regulate marine activities so that they're carried out in a sustainable way in 0-200nm in England and Wales.

the management landscape, improve compliance and enable more effective enforcement.

5.5 Flyseining is an efficient fishing method targeting demersal NQS living or feeding near the seabed, such as red mullet, gurnards, and squid. Whilst flyseining is not new, concerns have been raised about the increased capacity of the newer fleet who are fishing in new areas for species not previously targeted. Unlike in other sectors, in fisheries, greater efficiency and capacity can have negative impacts, particularly on fish stocks but also to the marine ecosystem. There are also concerns about these vessels targeting data poor demersal NQS. This instrument will introduce two new technical measures to manage flyseining activity. The first is a requirement that all vessels using flyseining gear fishing in English waters of ICES areas 7d and 7e use nets with a minimum mesh size of 100mm. By increasing the mesh size to 100 mm, the smaller juvenile fish are able to escape from the net and therefore more likely to reproduce and replenish the stocks. The second measure introduces a 221kW restriction for the engine power of flyseining vessels fishing in the 0-12nm of the English waters in ICES areas 7d and 7e. Restricting engine power should help manage effort on demersal NQS in inshore fishing grounds by protecting stocks in that zone. These restrictions would align with the current 221kw beam trawl restriction, which was introduced as a precautionary measure to protect inshore fishing grounds against a powerful and highly efficient method of fishing.

5.6 Since 2015, UK and EU bass catch limits have been discussed and agreed at annual fishing negotiations. Since Exiting the EU, in the UK, the changes to the catch limits agreed at the negotiations are made via a statutory instrument which can take at least 4 months to introduce. In contrast, the EU is able to introduce any changes quickly. In the 2023 bass FMP consultation, commercial stakeholders called for prompt implementation of any changes to bass catch limits to allow them to benefit from more favourable terms or to introduce changes to protect stocks if agreed. The instrument will remove the catch limits for commercial bass from secondary legislation and the catch limits will be added to MMO fishing licence conditions which are easier and quicker to update which can be actioned 30 days after the UK and EU negotiations have completed and the EU have been formally notified of the change.

What was the previous policy, how is this different?

5.7 As an EU member state, the UK was part of the EU Common Fisheries Policy which established the rules for sustainably managed fishing fleets and the conservation fish stocks. As an independent coastal state, two pieces of assimilated law will be amended to update or introduce technical conservation measures, as set out in our FMPs. These measures are tailored to the needs of the UK fishing industry ensuring UK fish stocks are managed sustainably.

6. Legislative and Legal Context

How has the law changed?

6.1 The Fisheries Act 2020 sets out the legal framework for governing fisheries (both commercial and recreational) in the UK. To support the management of UK fisheries the Act places a duty on fisheries policy authorities to prepare and publish FMPs that set out policies to restore stocks and maintain them at sustainable levels. The Joint Fisheries Statement (JFS), published in November 2022, sets out further details of the policies the UK fisheries policy authorities will follow to achieve, or contribute to achieving, the fisheries objectives in the Act. The JFS includes a list of the stocks and

areas that should be managed under the umbrella of an FMP. The FMPs support the introduction of new, evidence-based management that has been tailored to the needs of the UK fishing industry and marine environment.

6.2 The majority of the measures being introduced require amendments to assimilated law, Regulation (EU) 2019/1241 which contains a range of technical measures to promote sustainable fishing. Regulation (EU) 2019/1241 contains a list of MCRS for a number of fish including the current national crawfish (*Palinurus spp*) MCRS of 95mm. This instrument will amend the MCRS to 110mm for all English waters. This instrument will also introduce new MCRS for lemon sole (*Microstomus kitt*) of 250 mm), turbot (*Scophthalmus maximus*) of 300 mm, and brill (*Scophthalmus rhombus*) of 300 mm in the English waters of ICES divisions 7d and 7e.

6.3 Regulation (EU) 2019/1241 also contains requirements regarding fishing mesh sizes and engine restrictions for some forms of fishing but not for the flyseining measures being introduced. This instrument will introduce a new requirement that all vessels using flyseining gear in the 0-12nm zone of English in ICES areas 7d and 7e restrict their engine power to 221kW, and that all vessels using flyseining gear increase their mesh size to 100mm as a minimum in all the English waters of ICES divisions 7d and 7e.

6.4 The catch limits for commercial bass (*Dicentrarchus labrax*) are currently included in Article 10 of assimilated law Regulation (EU) 2020/123, which lists the fishing opportunities for a number of fish species. This instrument will remove the catch limits for commercial bass from Regulation (EU) 2020/123 and these catch limits will be added to MMO fishing licence conditions.

Why was this approach taken to change the law?

6.5 This is the only possible approach to change the existing national MCRS for crawfish and to remove the bass catch limits from secondary legislation. Consideration was given to introducing the other measures by stakeholder led voluntary agreements, but concerns were raised from the commercial, recreational and processing sectors in particular that voluntary approaches to management are not as effective as enforced legislation and would not provide the required level of protection for the stocks. The Trade and Cooperation Agreement requires that there is no discrimination between how fishing vessels fishing in each of the Parties' waters are treated. To ensure that the measures apply to all vessels, legislation is required.

6.6 Defra is committed to implementing the policies and actions contained in the FMPs. The management measures introduced via this instrument have been identified as a priority to be introduced within the short-term and not implementing these new management measures risks stocks being overexploited/unsustainable fishing. This instrument also demonstrates Defra complying with commitments under the Fisheries Act 2020.

7. Consultation

Summary of consultation outcome and methodology

7.1 FMPs have been developed in close collaboration with the fishing industry, through informal engagement during early drafting and development stages. Between July and October 2023, Defra ran formal public consultations on the Channel demersal NQS FMP, the crab and lobster FMP, and the bass FMP. These consultations sought views on a range of management measures including the MCRS changes, amendments to bass catch limits and additional flyseining management proposals that will be

introduced through this instrument. Defra previously ran a public consultation from August to November 2022 to seek views on additional management of flyseiners.

7.2 The consultations sought views from a wide range of stakeholders. In total 255 responses were received for the bass FMP consultation, 93 responses for the crab and lobster FMP consultation, 78 responses for the Channel demersal NQS FMP consultation, and 45 responses to the flyseining consultation.[3] In addition to the consultations, there was also extensive face to face engagement and informal consultation. Defra held 23 in-person engagement events and a series of online meetings where views of over 300 individuals were noted and fed into the analysis process. These events covered the wide range of interested sectors and stakeholders including a diverse catching sector, the wider supply chain, eNGOs, scientists, academia, EU Commission and Member States, and others interested in fisheries management. During the consultations, stakeholders expressed considerable support for the measures included in this instrument.

7.3 The MCRS and flyseining provisions apply to English waters only. The devolved governments were able to review the FMPs prior to the consultation and their respective industries were given the opportunity to respond to all the consultations. The bass FMP, including the recommendation to move the commercial bass catch limits into fishing licence conditions was developed in collaboration with Welsh Government. Scotland and Northern Ireland has also directly consulted relevant fishers on this bass proposal. Consent has been received from Scottish Government, Welsh Government, and DAERA to introduce the changes to the catch limits for commercially caught bass.

8. Applicable Guidance

8.1 As these are technical changes to amend existing legislation the MMO will update relevant guidance, detailing the changes to the legislation.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because of the predicted low-level impact on business and the low economic effects of the changes being applied. The net cost to businesses per year is anticipated to be approximately £2.6m.

[3] Further information can be found in the consultation government responses:

- Bass: https://www.gov.uk/government/consultations/bass-proposed-fisheries-management-plan-consultation/outcome/summary-of-responses-and-government-response
- Channel Demersal NQS: https://www.gov.uk/government/consultations/channel-demersal-non-quota-species-proposed-fisheries-management-plan-consultation/outcome/summary-of-responses-and-government-response
- Crab and Lobster: https://www.gov.uk/government/consultations/crab-and-lobster-proposed-fisheries-management-plan-consultation/outcome/summary-of-responses-and-government-response#:~:text=Overall%2C%20there%20was%20broad%20support,and%20crawfish%20in%20certain%20areas
- Flyseining: https://www.gov.uk/government/consultations/fisheries-managing-flyseine-vessel-pressure-on-demersal-non-quota-fish-stocks/outcome/summary-of-responses-and-government-response#:~:text=The%20responses%20to%20the%20consultation,stocks%20in%20the%20short%2Dterm.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because this instrument applies only to commercial fishing businesses and because of the predicted low-level impact on business and the low economic effects of the changes being applied.

9.3 The legislation does impact small or micro businesses.

9.4 To minimise the impact of the requirements on small businesses (employing up to 50 people), updated guidance from the MMO, detailing the relevant changes and timelines, will be released in sufficient time to allow industry to take any practical steps required to meet the new standards.

9.5 There is no, or no significant, impact on the public sector because the number of technical changes are limited and any compliance will be factored into MMO and IFCAs existing risk-based work plans. In addition, the transfer of the commercial bass catch limits into licence conditions could positively impact public sector resources.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that the Fisheries Act 2020 requires all fisheries policy authorities, acting jointly, to prepare and publish a report, on a three-year cycle, on the extent to which the policies in the JFS have been implemented, their impact. The report must include an assessment of the extent to which the policies contained in a relevant FMP have been implemented and these measures have affected sea fish stock levels. In addition, the Act requires the FMPs to be reviewed at least every 6 years to assess the extent to which the policies in the plan have been implemented and how the stock has been affected. Depending upon the outcome of the review, the FMPs could be revoked, amended, replaced or remain the same.

10.2 The instrument does not include a statutory review clause as a requirement for a review would be disproportionate when considering the economic impact of the regulatory provision on the qualifying activity.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 Daniel Zeichner Minister of State has made the following statement regarding Human Rights:

"In my view the provisions of the Sea Fisheries (Amendment) (No. 2) Regulations 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts"). It does however relate to the withdrawal of the United Kingdom from the European Union because it relates to

the implementation of the Trade and Cooperation Agreement 2020, whereby either party making changes to legislation which will have an effect on vessels of the other party should notify ahead of the legislative changes coming into force. Considering this, the UK will notify the EU of the measures in this instrument which will affect EU vessels fishing in English waters and allow time for comment before this instrument is laid. This measure will apply equally to UK and EU vessels. It is the responsibility of the UK and EU fisheries administrations to ensure compliance of their fleets.