EXPLANATORY MEMORANDUM TO

THE SEA FISHERIES (AMENDMENT) REGULATIONS 2023

2023 No. 273

1.1 **Introduction**

1.2 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. Purpose of the instrument

2.1 This instrument amends Article 10 of Council Regulation (EU) 2020/123 (EUR 2020/123) fixing for 2020 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters, as it applies in retained EU law and as amended in relation to the management of European seabass ("the Regulation"). The amendment will allow greater flexibility and increased limits for industry as was agreed at UK EU consultations for 2023 fishing opportunities.

2.2 This instrument also removes picked dogfish (*Squalus acanthias*), also referred to as spurdog, under or equal to 100cm in length from prohibited species amending Article 16 of the Regulation, as was agreed at UK EU consultations for 2023 fishing opportunities and adds mako shark to prohibited species legislation, in line with a measure agreed at the International Commission for the Conservation of Atlantic Tunas (ICCAT) in 2021.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales, Scotland, and Northern Ireland.

4.2 The territorial application of this instrument is England and Wales, Scotland, and Northern Ireland.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

6. Legislative Context

6.1 These provisions relating to measures on European seabass and spurdog fisheries and shortfin mako shark protection amend the following legislation:

- Articles 10 and 16 of the Regulation.

7. Policy background

What is being done and why?

7.1 The measures relevant to seabass fisheries listed in Section 6 above have applied in UK law as retained EU legislation since 1 January 2021.

7.2 Seabass fisheries are currently jointly managed by the UK and the EU. The management approach in place since 2015 has successfully brought fishing pressure on the stock down. As the stock begins to recover, management measures are being updated to reflect the small increase in the size of the stock and the reduction in the amount of seabass being wastefully discarded.

7.3 This instrument reflects changes to management measures for seabass as agreed with the EU in annual UK EU consultations for fishing opportunities for 2023.

- The commercial trawl and seine flexibility will be amended from the 760kg cap per two months to a 3.8 tonne (3800kg) cap per vessel per year, within the retained 5% per trip limit.
- The limit for vessels authorised to retain seabass using commercial hook and line will be amended from 5.95 to 6.2 tonnes per vessel per year.
- The limit for vessels authorised to retain seabass using commercial fixed gillnets will be amended from 1.5 to 1.6 tonnes per vessel per year.
- The recreational fishing arrangements will be amended so that the catch-and-release period is aligned with the commercial sector closed season running from 1 February to 31 March. Two fish per day bag limits continue to apply to recreational fishing outside February/March.

7.4 This instrument also amends the list of prohibited species contained in Article 16 of the Regulation to remove spurdog, under or equal to 100cm in length from the list.

7.5 North-east Atlantic spurdog has previously been assessed as vulnerable and depleted, receiving zero catch advice and no targeted fishery advice from the International Council for the Exploration of the Sea (ICES). In October 2022, ICES published advice for North-east Atlantic spurdog, advising that landings of up to 17353 tonnes and 17855 tonnes could be supported in 2023 and 2024 respectively. This follows an ICES benchmarking process to improve the scientific assessment.

7.6 The prohibition on spurdog over 100cm in length will be retained as a precautionary measure to deter the targeting of large, mature females, which are a potential vulnerability in the stock.

7.7 This instrument amends the list of prohibited species contained in Article 16 of the Regulation, to add shortfin mako shark (*Isurus oxyrinchus*) in United Kingdom and international waters of the ICCAT Convention Area.

7.8 This implements a measure agreed at ICCAT in 2021 that Contracting Parties should implement a prohibition on retaining on board, transhipping and landing, whole or in part, North Atlantic shortfin mako caught in association with ICCAT fisheries in 2022 and 2023 as a first step in rebuilding the stock. In 2022, ICCAT adopted a measure for the South Atlantic shortfin mako stock allowing some limited retention for ICCAT members with a history of catching South Atlantic mako only. The UK will not have a catch limit/quota in 2023 and beyond.

Explanations

What did any law do before the changes to be made by this instrument?

7.9 Seabass legislation (a) prohibits commercial fishers from catching or retaining seabass except within gear specific limits, (b) manages recreational fisher bag limits; and (c) sets closed seasons where catching bass is prohibited. This instrument is making minor adjustments to the limits of seabass allowed to be retained as detailed in section 7.3. The closed season for both commercial and recreational fishing will be aligned to 1 February - 31 March for both sectors with two fish per day bag limits continuing to apply to recreational fishers outside February/March.

7.10 Article 16 of the Regulation prohibits UK vessels to fish for, to retain on board, to tranship or to land specified species. When accidentally caught, these shall not be harmed, and specimens shall be promptly released. This list currently includes spurdog in UK waters of ICES subareas 2, 4, 5, 6, 7 and 8. This list does not currently include shortfin mako shark (*Isurus oxyrinchus*).

Why is it being changed?

7.11 The changes being implemented through this instrument for seabass management aim to enact the agreed positions with the EU on this stock as detailed in section 7.3. The changes to all gear types are consistent with International Council for the Exploration of the Seas (ICES) advice, which is not expected to see any increased pressure on the stock and seeks to reduce the amount of seabass being wastefully discarded.

7.12 The changes being implemented through this instrument for spurdog aim to enact the agreed position with the EU to remove spurdog from the prohibited species list given the latest ICES advice. This will allow for a fishery within UK waters in 2023, in line with the agreed Total Allowable Catch, following legislative procedures.

7.13 The changes being implemented through this instrument for shortfin mako shark aim to implement a measure agreed at ICCAT in 2021 and reflect scientific evidence on shortfin mako stocks as detailed in Section 7.8.

What will it now do?

7.14 For the most part the legislation in relation to management of seabass stocks will remain in place with minor adjustments, which increase flexibility for commercial fishers using specific gear types. The recreational fishing catch-and-release period is aligned with the commercial sector closed season running from 1 February to 31 March. These adjustments are detailed in section 7.3.

7.15 Removal of spurdog from the prohibited species list will allow for a fishery within UK waters for individuals equal to or less than 100cm in length. Fishing for, retaining on board, transhipping or landing of individuals of spurdog greater than 100cm in length will continue to be prohibited, with the length measured in accordance with the referenced legislation.

7.16 By adding shortfin mako shark to the prohibited species list, the effect is that UK vessels are prohibited from fishing for mako shark, retaining them on board, transhipping or landing mako shark in United Kingdom and international waters of the ICCAT Convention Area. The same prohibition will also apply to foreign vessels in UK waters. When accidentally caught, these shall not be harmed, and specimens shall be promptly released.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act.

8.2 This instrument does however relate 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 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 UK waters and allow time for comment before this instrument is laid. The seabass measures agreed between the UK/EU apply equally to UK and EU vessels. It is the responsibility of the UK and EU fisheries administrations to ensure compliance of their fleets. Both the spurdog measures and the mako shark prohibition in UK waters will apply equally to EU vessels through licence conditions.

9. Consolidation

9.1 There are no plans to consolidate legislation amended by this instrument.

10. Consultation outcome

10.1 Representatives from the commercial sector and Environmental NGOs were consulted and given regular updates during the bilateral negotiations with the EU and as such they are sighted on the forthcoming changes to seabass management measures and changes to the prohibited list with respect to spurdog. Recreational fishers also have a particular interest in seabass and relevant stakeholders have been consulted and kept up to date.

10.2 The Devolved Administrations were involved in discussions with the EU during these negotiations and were involved in the preparation of this instrument from an early drafting stage.

11. Guidance

11.1 As these are technical changes to existing legislation there is no associated guidance. The Marine Management Organisation issues online seabass fishing guidance for industry and recreational information on compliance which will be updated to reflect the amendments in this instrument. The MMO will issue relevant guidance on spurdog detailing the relevant changes and timelines to industry.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 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.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is that a note from the Marine Management Organisation,

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.

13.3 The basis for the final decision on what action to take to assist small businesses is that by releasing a note from the Marine Management Organisation the information would reach the relevant businesses in good time.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that Defra, as well as the Devolved Administrations in relation to devolved matters, will monitor and review the impact of the instrument as part of their standard policy-making procedures.

14.2 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.

15. Contact

15.1 Phil McBryde at the Department for Environment, Food and Rural Affairs (telephone: 020 8026 5426 or email: Phil.Mcbryde@defra.gov.uk) can be contacted with any queries regarding the seabass management elements in this instrument.

15.2 Ellen Colebrook at the Department for Environment, Food and Rural Affairs (telephone: 07469 913 297 or email: ellen.colebrook@defra.gov.uk) can be contacted with any queries regarding the spurdog management elements in this instrument.

15.3 Cat Bell at the Department for Environment, Food and Rural Affairs (telephone: 07796 336 021 or email: Catherine.Bell@defra.gov.uk) can be contacted with any queries regarding the shortfin mako shark management elements in this instrument.

15.4 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.

15.5 Mark Spencer MP, Parliamentary Minister of State at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.