EXECUTIVE NOTE

The Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures and Restriction on Days at Sea) (Scotland) Order 2008 S.S. I 2008/151

1. The above instrument was made in exercise of the powers conferred by Section 30(2) of the Fisheries Act 1981 ("the 1981 Act") and section 25(2)(b) of the Aquaculture and Fisheries (Scotland) Act 2007. The instrument is laid before the Scottish Parliament under Section 30(4) of the 1981 Act and section 43(2) of the 2007 Act after being made and is subject to annulment in pursuance of a resolution of the Scottish Parliament.

Policy Objective

2. The Order fully implements Council Regulation (EC) No.40/2008 ("the TACs and Quotas Regulation") which was published in the Official Journal on 16 January 2008. Annex IIa and IIc of the TACs and Quotas Regulation replace the arrangements introduced in February 2007 through Annex IIa and IIc of Council Regulation (EC) No. 41/2007. In order to protect cod stocks Annex IIa and IIc imposed a regime of highly restricted fishing, based on the days per month on which fishing vessels carrying particular types of gear could lawfully be absent from port. This year a similarly restrictive regime has been implemented until the end of January 2009 under the provisions set out in Annexes IIa and IIc to Council Regulation (EC) 40/2008. These provisions apply from 1st February 2008 to 31 January 2009. Since the Council Regulation came into force the main provisions of the Annex have been directly applicable from 1st February by virtue of section 30(1) of the 1981 Act. However:-

(a) certain provisions are incomplete in the absence of national measures, and

(b) certain relaxations, potentially beneficial to fishermen, could only apply if they were permitted by national measures.

The order also implements other measures in the TACs and Quotas Regulation, in particular the technical conservation measures in Annex III. Most of these measures were in last years Regulations, however there are some modifications increasing the extent of closed areas protecting coral reef and some clarifications relating to technical conservation.

The Order also revokes the Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2007 and the Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures) (Scotland) Order 2007.

3. The Scottish Government takes the view that the approach should be based on maximum flexibility consistent with compliance and responsible administration. The instrument therefore makes provision for:

- Scottish Ministers to determine the length of effort management period and to allow industry to indicate their preference for the length of effort management period;
- Scottish Ministers to determine the number of days for which a vessel may be present with the cod and sole recovery zones with regulated gear during a management period;

- the transfer of days from one vessel to another;
- a day to be counted as any continuous period of 24 hours.

Consultation

4. Given the timescale between the EU measure being agreed, on 20 December 2007, and the TACs and Quotas Regulation coming into force, on 16 January 2008, it was not possible to conduct a formal written consultation. However, leading up to Fisheries Council in December 2007 and since the EU measure was agreed, there have been discussions with industry representative bodies during which a number of issues relevant to this instrument were discussed. The details of the new Scottish Conservation Credits Scheme (CCS) were to a large degree based on proposals put forward by industry through a working group set up for that very purpose, and their input has been fundamental throughout the scheme's creation. While this increased ownership of effort control has been generally welcomed by industry, some elements remain opposed to the principal and to some of the detail of the EU limits on days at sea.

Financial Effects

5. The costs incurred due to vessels having to reduce their effective time at sea are largely mitigated this year by the fact that the vast majority of vessels are operating within the CCS scheme and will have therefore avoided the cuts in days at sea imposed by the Commission. In addition, it is envisaged that the CCS scheme will lower the cost of buying days at sea. The extent to which individual vessels can adjust their practices (including operating outwith the Cod and Sole Recovery Zones) will vary and the overall impact cannot be quantified.

With regards to the other measures in the TACs and Quotas Regulations relating to this order the financial implications will be minimal as these are similar to last year. The order simply implements enforcement of TACs and Quotas and other ongoing control and technical measures.

A Regulatory Impact Assessment has been prepared – copies of which may be obtained from Marine Directorate, Room 511, Pentland House, 47 Robbs Loan Edinburgh EH14 1TY. Telephone 0131 244 4766..

Scottish Government, Marine Directorate
Sea Fisheries Division
April 2008

REGULATORY IMPACT ASSESSMENT

l. Title

The Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures and Restriction on Days at Sea) (Scotland) Order 2008 S.S.I. 2008/151

2. Purpose and Intended Effect of Measure

Issue: This SSI brings fully into effect in Scotland the provisions of Council Regulation (EC) No.40/2008 ("the TACs and Quotas Regulation") which was published in the Official Journal on 16 January 2008. In particular, it fully implements Annexes IIa and IIc to Council Regulation 40/2008 restricting, from 1 February 2008, days at sea by Scottish fishing vessels in certain areas of the North Sea, the Irish Sea, the Eastern Channel, the west coast of Scotland, (collectively 'the Cod Recovery Zone'), and the Western Channel in respect of sole, when carrying certain fishing gear types.

The order also implements other measures in the TACs and Quotas Regulation, in particular the technical conservation measures in Annex III. Most of these measures were in last years Regulations, however there are some modifications increasing the extent of closed areas protecting coral reef and some clarifications relating to technical conservation.

Parallel legislation is also being made in the Westminster Parliament to cover England and separate secondary legislation will establish equivalent arrangements in Wales and Northern Ireland.

Background: An EU measure introduced last year and enforced in Scotland by The Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2007 limited until 31 January 2008, the number of days that vessels carrying particular gears could spend at sea in certain areas. These restrictions were agreed at an EU Fisheries and Agriculture Council in December 2007 as part of various measures to aid the recovery of cod stocks. The new EU measure has now been agreed and will result in some changes to the previous arrangements.

Objective: The instrument provides for the enforcement of EU Regulations, in particular those which set limits on the days spent at sea in the cod and sole recovery zones by fishing vessels in 2008 and January 2009. It also determines how some management options available to Member States in that measure shall be used.

3. Risk Assessment

Cod

The EU measure reflects scientific evidence that cod stocks remain at critically low levels, that quota controls have failed adequately to control fishing mortality and that controls over time spent by vessels at sea are necessary to aid stock recovery to sustainable levels. The measure aims to reduce cod mortality as part of a strategy to restore cod stocks to a sustainable level over the coming decade. Failure to act at EU level could have resulted in cod (and other) stock collapse, with greater detrimental socio-economic effects. Failure to implement in the UK/Scotland would have the same potential effect and leave us open to EC infraction proceedings.

Sole

The measure continues a relatively light regime designed to achieve stock recovery with the minimum of pain for the industry, but if at the end of the year the Commission consider the necessary targets have not been achieved, they will consider proposing more stringent controls for the future.

4. Options

Member States have a legal obligation to implement and enforce the measures. The EU measures permit some flexibility and discretion in application. Three implementation options have been identified:

Option 1 - implement the measure but do not provide any of the flexibility provided for at the discretion of Member States.

Option 2 - implement the measure and make provision for:

- Scottish Ministers to determine the length of effort management period and to allow industry to indicate their preference for the length of period;
- additional days to be granted to vessels continuing to limit their catches of cod or using more sustainable gears;
- some flexibility of the track record requirement relating to the ability to fish in the restricted areas;
- the transfer of days from one vessel to another within the same gear category; and
- a day to be counted as any continuous period of 24 hours.
- development of the Conservation Credits Scheme (CCS), under which vessels will avoid cuts in days imposed by the Commission and operate under "hours at sea" in return for operating in accordance with initiatives designed to protect fish stocks

Option 3 - implement the measure with no restrictions or safeguards to protect cod stocks and allow additional effort on whitefish to be artificially generated. This will inevitably undermine the purpose and effects of the regulation.

5. Issues of Equity or Fairness

This RIA relates to the SSI implementing the EU measure, not to the EU measure itself. It does not therefore address the detail of the EU measure, such as the variation in numbers of permitted days per month between vessels carrying different categories of gear. The provisions made by the SSI apply equivalently across all vessels that are subject to the restrictions set out in the EU measure therefore no one group will be disproportionately affected.

6. Identify the Benefits

The SSI provides for management options, including those elements where Member States have discretion, to be available to fishermen, subject to some limitations on transfers between vessels in order to respect the aims of the EU measure. Elements of the EC Regulation have direct effect in the UK under Section 30(1) of the Sea Fisheries Act 1981, but enforcement

powers are required. This SSI also creates the necessary offences and penalties to ensure compliance.

7. Quantifying and valuing the benefits

Of the three options outlined above:

Option 1 - there are no obvious benefits to this Option. It is likely to increase industry hostility to the EU measure, thereby raising the risk of non-compliance or threats of non-compliance.

Option 2 - this Option allows greater flexibility to vessel masters, owners and agents in the way they choose to operate their vessels under the days at sea arrangements. It may therefore lessen the impact of the restrictions upon them. The flexibilities introduced through this option do not adversely affect the ability of the relevant authorities to enforce the measure.

Option 3 - this would provide further short-term benefits to the industry, enabling the total number of days available to the fleet to be increased in ways contrary to the spirit of the EU measure. However it is likely also to mean that there is little effective cut in fishing effort and thus no added protection of fish stocks. Consequently, in the medium to long term there would be an added risk of total stock collapse with the attendant greater socio-economic impact.

8. Competition Assessment

The intention and effect of the EU measures are to impose tighter limits on vessels which fish specifically for cod and sole than on those that take these stocks as a limited bycatch. In respect of cod there were in 2007 some 120 vessels falling within his category, and we expect a similar number to fall within the scope of these measures in 2008. We do not expect the sole restrictions to impact significantly on the Scottish fleet. The options considered above for the SI would not create significant distorting effects. All indications are that other Member States intend to implement the flexibilities in the EU measure in a similar way to that intended by UK Fisheries Departments, apart from the additional flexibility provided by the CCS, where Scotland is one of only a few countries leading the way in utilising this flexibility.

9. Business Sectors Affected

Fishing vessels which carry the fishing gears specified in the EU measures and which operate in the North Sea, Irish Sea, Eastern Channel, Western Channel and West of Scotland are directly affected. In 2007 the cod recovery measures applied to some 500 vessels. It is likely that a similar number will fall within the scope of the Regulations in 2008. To the extent that the operations of these vessels will be constrained, a reduction in numbers of vessels in a port may affect related businesses, including vessel suppliers, fish merchants, fish processors and other support industries. These will generally be small businesses. However, the scheme for 2008 is in fact very similar in effect to that of 2007 and the CCS may prove to provide better opportunities for vessels with associated benefits to the related businesses.

10. Compliance Costs for a Typical Business

The vast majority of costs will depend on the extent to which a vessel has to reduce its effective time at sea. The extent to which individual vessels can adjust their practices to operate around the measures will vary and the overall impact cannot be quantified. It is clear however that under options 2 and 3 the flexibility for adaptation is greater and the potential costs therefore appreciably reduced.

11. Total Compliance Costs

The days at sea restrictions, particularly those relating to cod recovery, may cause difficulty for some Scottish vessels. However, it is not possible to quantify exactly the impact they will have and it is hoped that the introduction of CCS will help mitigate some of these costs. Vessel owners will adjust their fishing practices in order to make most efficient use of their permitted days in the cod and sole recovery zones. The profitability of individual vessels and their scope for adjustment of fishing activity varies greatly depending on a range of factors.

There is provision in the EU measure for derogations from the restrictions for certain vessels based on their historic fishing activity in 2002 and on the gears they use. In particular, vessels using a specific gear type whose total landings in 2002 were made up of less than 5 % of each cod, sole and plaice may benefit from additional days at sea. Vessels whose landings were made up of less than 5% of cod (but more than 5% sole or plaice) may also benefit, to a lesser degree. Vessels which benefit from either of these derogations must continue to land less than 5% of the specified species. It is estimated that over 300 Scottish registered vessels will be eligible to apply to benefit in some way from one of these derogations. These are predominantly in the nephrops sector.

The EU measure lasts until the end of January 2009, unless replaced. Negotiations within the EU on long-term successor arrangements will continue to take place throughout 2008.

12. Consultation

Because the full EU texts did not appear in the Official Journal until 16 January and the fact that the terms of the EU legislation came into effect on 1 February, there has been no opportunity for a further industry-wide consultation exercise. The Scottish Government have, however, been in close discussion with various representatives of the Scottish fishing industry in the run up to the December Council of EU Ministers, and in the on-going development of management procedures contained within the CCS.

13. Consultation with Small Business

Most businesses in the fish catching industry are small businesses. In the run-up to the December Council of Ministers, and since the regulation was agreed on 20 December 2007, there have been discussions with industry representative bodies during which a number of issues relevant to this Order were discussed. There have also been correspondence and telephone discussions with interested parties. While the arrangements which operated throughout 2002, 2003, 2004, 2005, 2006 and 2007 mean that industry is now more accustomed to the principle of effort controls, some remain opposed to it and to some of the detail of the EU limits on days at sea.

14. Other Costs

Under all three options the master, owner or agent of affected vessels will be required to notify the Scottish Government of the length of management period they wish to adopt and the fishing gears they intend to carry during that period. The cost of this notification will depend on the method chosen, that is, fax, e-mail or by hand at their local fishery office and on the length of management period chosen, since notifications must be submitted again prior to the start of their next management period. A management period may range from 1 month to 12 months in length.

Under options 2 and 3, vessel owners will need to report transfers of days on a simple form to enable each vessel's entitlement to days to be monitored. This is not a new cost as it existed under the previous (2007) arrangements.

The Scottish Government will, in addition to existing duties, advise the industry and monitor activity related to the controls. Use of options 2 and 3 will require some additional effort in the Scottish Government to allocate effort and monitor uptake and to arrange transfers.

15. Summary and Recommendations

Although the SSI essentially implements an EU measure there is scope to decide whether to take up the options provided by the measure. These provide flexibility for industry and help to reduce the costs to them of the EU measure. There are some marginal costs for the Executive. The Executive must however ensure that flexibility provided remains within the intention of the EU measure.

On that basis it would be unreasonable to refuse the industry access to the benefits (option 1) and inconsistent with policy, and legal propriety, to allow the width of interpretation of the Flexibility permitted by the EU measure implied by option 3. The Scottish Government therefore intends that option 2 be adopted.

16. Enforcement, Sanctions, Monitoring and Review

The SSI sets out offences for contraventions of Council Regulation 40/2008 along standard lines for equivalent fisheries legislation and will be enforced in Scotland by the Scottish Fisheries Protection Agency.

The EU Regulation and the implementing instrument apply until the end of January 2009. The Executive will be monitoring the effects of the measure and will feed into European Commission discussions on the form that replacement effort management measures should take.

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 responsible Minister **…….**

Date **…….**

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