EXECUTIVE NOTE

The Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2007 SSI/2007/40

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

Policy Objective

2. The Order supplements Annexes IIa and IIc to Council Regulation (EC) No.41/2006 ("the TACs and Quotas Regulation") which was published in the Official Journal on 20 January 2007 and Council Regulation (EC) No.423/2004 ("the Cod Recovery Regulation"), which was published in the Official Journal on 9 March 2004. Annex IIa and IIc replace the arrangements introduced in February 2006 through Annex IIa and IIc of Council Regulation (EC) No. 51/2006 (enforced under the Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2006 SSI No. 341/2006). 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. Under Annex IIa and IIc a similarly restrictive regime is now to be implemented until the end of January 2008.

As the TACS and Quotas Regulation contains no separate monitoring and control arrangements in respect of cod recovery in the way that was provided for under Annex V of the 2004 Regulation, it is now necessary to transpose the arrangements set out in Regulation 423/2004 as they apply to Annex IIa of Regulation 41/2006. The provisions of Annexes IIa and IIc to Council Regulation (EC) 41/2006 apply from 1st February 2007 to 31 January 2008. By virtue of section 30(1) of the 1981 Act the main provisions of the Annex are directly enforceable from 1st February. 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.

3. The Executive 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 21 December 2006, and the TACs and Quotas Regulation coming into force, on 20 January 2007, it was not possible to conduct a formal written consultation. However since the EU measure was agreed on 21 December 2006 there have been discussions with industry representative bodies during which a number of issues relevant to this instrument were discussed. There has also been correspondence and telephone discussions with interested parties. While the arrangements which operated throughout 2006 mean that industry is now more accustomed to the principle of effort controls, some elements remain opposed to it and to some of the detail of the EU limits on days at sea.

Financial Effects

5. 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 (including operating outwith the Cod and Sole Recovery Zones) will vary and the overall impact cannot be quantified. A Regulatory Impact Assessment has been prepared – copies of which may be obtained from SEERAD, Room 511, Pentland House, 47 Robbs Loan Edinburgh EH14 1TY. Telephone 0131 244 4766.

Scottish Executive Environment and Rural Affairs Department
Sea Fisheries Division

REGULATORY IMPACT ASSESSMENT

l. Title

The Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2007

2. Purpose and Intended Effect of Measure

Issue: This SSI allows for the enforcement in Scotland of the provisions of Annexes IIa and IIc to Council Regulation 41/2007 restricting, from 1 February 2007, 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. It also provides for the enforcement of the monitoring, inspection and surveillance provisions set out in Council Regulation 423/2004.

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 2006 limited until 31 January 2006, 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 2005 as part of various measures to aid the recovery of cod stocks. The new EU measure has now been agreed and will result in a number of changes to the previous arrangements.

Objective: The instrument provides for the enforcement of EU Regulations which set limits on the days spent at sea in the cod and sole recovery zones by fishing vessels in 2007 and January 2008 and provides for the enforcement of the provisions set out in Council Regulation 423/2004. 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 have reached 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 new measure creates 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.

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 slightly 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 2006 some 120 vessels falling within his category, and we expect a similar number to fall within the scope of these measures in 2007. 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.

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 2006 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 2007. 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.

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. 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 unrestricted fishing. Vessels whose landings were made up of less than 5% of cod (but more than 5% sole or plaice) may benefit from up to 5 additional days at sea. 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. Three additional days per annum may also be available for any gear type and in any area of the Cod recovery Zone for which the UK is able to agree with the Commission an enhanced program of observer coverage in partnership between scientists and the fishing industry.

The EU measure lasts until the end of January 2008, unless replaced. Negotiations within the EU on long-term successor arrangements will continue to take place throughout 2007.

12. Consultation

Because the full EU texts did not appear in the Official Journal until 20 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. We have however been in close discussion with various representatives of the Scottish fishermen about the content of the final Order.

13. Consultation with Small Business

Most businesses in the fish catching industry are small businesses. Since the regulation was agreed on 21 December 2006 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 and 2006 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.

The main concerns raised to us throughout our discussions have been the 7%, 10% and 8% reduction in the days at sea for vessels using whitefish, prawn and beam trawl gears respectively.

14. Other Costs

Under all three options the master, owner or agent of affected vessels will be required to notify SEERAD 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 (2006) arrangements.

SEERAD 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 SEERAD 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 Executive therefore intends that option 2 be adopted.

16. Enforcement, Sanctions, Monitoring and Review

The SSI sets out offences for contraventions of Annexes IIa and IIc of Council Regulation 41/2007 and Council Regulation 423/2004, 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 2008. 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 **Ross Finnie….**

Date **1st February 2007…….**

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