EXPLANATORY MEMORANDUM TO THE

THE SOLENT EUROPEAN MARINE SITE (PROHIBITION OF METHOD OF DREDGING) ORDER 2004

2004 No.2696

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 This Order prohibits a type of dredging which involves the injection of water into a dredge enabling it to dredge for shellfish in an environmentally aggressive manner. This activity has recently been undertaken by commercial fishermen in the Solent European Marine Site area ("the Site").

2.2 The Site consists of a combination of a Special Area of Conservation ("SAC") under Council Directive 92/43/EEC and Special Protected Areas ("SPAs") under Council Directive 79/409/EEC. The UK is obliged under Community Law to protect the Site from damage. The dredging in question has damaged Eelgrass beds which are a feature of the SAC as well as providing an important food source for Brent Geese – one of the reasons for the classification of the SPAs.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Because of the on going unrestricted nature of the dredging and its immediate resulting damage to the Site, the Department is of the view that the specified form of dredging must be prohibited without delay.

3.2 The effect of the Order is to prohibit only that dredging which has caused the damage, other gear used in commercial dredging which does not harm the Site is not affected. In the circumstances we regret that compliance with the 21 day convention was not possible.

4. Legislative Background

Community obligations falling as a result of the Birds and Habitats Directives (Council Directives 92/43/EEC and 79/409/EEC) necessitate urgent action at domestic level to ensure that the site is not damaged further. The Order is made under sections 3 and 15(3) of the Sea Fish (Conservation) Act 1967.

5. Extent

This instrument applies to England.

6. European Convention on Human Rights

The Parliamentary Under Secretary of State has made the following statement regarding Human Rights:

In my view the provisions of the Solent European Marine Site (Prohibition of Method of Dredging) Order 2004 are compatible with the Convention rights .

7. Policy background

7.1 The Sea Fish (Conservation) Act 1967 provides extensive powers to regulate fisheries for the purposes of fisheries conservation and the protection of the marine environment from the impact of fishing. Using these powers, the present Order regulates a type of fishing method, pump scoop dredging, for the purposes of protecting a marine habitat from damage.

7.2 The requirement to protect the marine environment in this case stems from UK obligations under the Birds and Habitats Directives (Council Directives 92/43/EEC and 79/409/EEC). This requires Member States to take steps to avoid any deterioration in the natural habitat and species for which a European Marine Site has been designated. English Nature, as the statutory advisor on nature conservation, made a formal request to Defra that an Order be put in place to protect Eelgrass beds - a habitat for which the Site has been designated - from the impact of dredging for cockles. English Nature presented evidence that the recent low level use of pump scoop dredges has already caused damage to beds.

7.3 The prohibition will affect around 5 vessels using pump scoop dredges. Until the recent classification under shellfish hygiene regulations of one of the Eelgrass beds within the Site, commercial cockling should not have been taking place. There are also other classified beds outside the scope of the Order, which remain open to those affected by these restrictions. It has not been possible to consult formally on the proposals, due to the need to put in place these measures as soon as possible.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this Memorandum.

8.2 There is no impact on the public sector; implementation would be achieved through the use of existing resources.

9. Contact

Ruth Thirkettle at the Department for Environment, Food and Rural Affairs, Tel: 020 7270 8256 or e-mail: ruth.thirkettle@defra.gsi.gov.uk can answer any queries regarding the instrument.

REGULATORY IMPACT ASSESSMENT

TITLE OF PROPOSAL: THE SOLENT EUROPEAN MARINE SITE (PROHIBITION OF METHOD OF DREDGING) ORDER

Purpose and intended effect of the proposals

Objective

1. To protect the Solent European Marine Site (EMS) from damage by permanently prohibiting the use of pump scoop dredges throughout the area.

Background

2. Prior to 8 September, the Ryde Sand beds in the Isle of Wight had not been classified by the Food Standards Agency (FSA) under The Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998 and were therefore closed to commercial harvesting of cockles. However, cockle fishing by several inshore vessels has taken place this summer on Ryde Sands using a type of dredge which had been developed relatively recently, known as a pump scoop dredge.

3. Ryde Sands falls within the Solent EMS, which consists of a combination of a Special Area of Conservation (SAC) and Special Protection Areas (SPAs) established under the EC Habitats and EC Wild Birds Directives. Eelgrass (*Zostrea)* beds are a subfeature in their own right in the SAC (three nationally scarce species of Eelgrass are found on Ryde Sands) and serve as an important food resource for the internationally important wintering population of Brent Geese, one of the reasons for the classification of the SPA.

4. There is evidence that the recent use of pump scoop dredges has caused damage to the Eelgrass beds. Now that the cockle beds have hygiene classification the activity has the potential to increase, with the likelihood that there will be irreparable damage to the Eelgrass beds. This method of fishing can also be used for other fisheries such as clams and oysters. It is therefore imperative that this activity be prohibited urgently.

5. The UK Government is obliged by Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora ('the Habitats Directive') to take appropriate steps to avoid any deterioration of natural habitats and the habitats of natural species for which this site has been designated.

6. English Nature (EN), as the statutory advisor on nature conservation, have made a formal request to Defra that an Order be put in place to protect Eelgrass beds throughout the Solent EMS from the impact of any further dredging for cockles. EN have also provided evidence of the damage already caused by the relatively low levels of cockle dredging on Eelgrass beds on Ryde Sands.

7. The 12 Sea Fisheries Committees (SFCs) regulate local sea fisheries around the coast of England and Wales out to 6 miles. The Solent EMS falls within the boundaries of 2 SFCs, Southern and Sussex. This type of dredging is currently permitted within the district of the Southern SFC but not Sussex SFC.

8. Although Southern SFC are responsible for managing inshore fisheries in this area, the byelaw process usually takes approximately 1 year to complete, and any byelaw could not be in place quickly enough to provide the necessary protection.

Devolution

9. This proposal will apply to all UK vessels fishing in the specified area. In practice only English vessels fish within the affected area.

Risk Assessment

10. Fishermen may only exploit on a commercial basis those shellfish from areas which have the appropriate FSA hygiene classification. Prior to 8 September 2004 the Ryde Sand beds had no hygiene classification and were therefore closed to commercial harvesting. Five vessels are believed to have been involved prior to this date. Prohibiting cockle fishing activity by the pump scoop dredge on these beds will therefore not affect the income of the small number of fishermen involved. It should also be noted that the pump scoop gear may still be used in other local fully classified beds but which lie outside of the Solent EMS.

11. Previous damage caused to the Eelgrass beds was due to low level activity. Full scale commercial fishing made possible by the FSA hygiene classification for the beds, can only increase the damage, and is likely to destroy the beds completely. The UK government is obliged by the Habitats Directive to take appropriate steps to avoid any deterioration of natural habitats and the habitats of natural species for which this site has been designated. To not take action to prevent further deterioration to the Eelgrass beds would put the Government in breech of the Directive and could lead to infraction proceedings.

Options

12. **Option 1;** do nothing

13. **Option 2;** prohibit pump scoop dredging only in those areas of the Solent EMS containing Eelgrass beds.

14. **Option 3;** permanently prohibit the use of pump scoop dredges in an area encompassing the Solent EMS.

15. **Option 4;** restrict the prohibition on the use of pump scoop dredges in an area encompassing the Solent EMS to 1 year to give Southern SFC time to develop own byelaw.

Benefits

16. **Option 1** presents no benefits to the environment, and does not meet the UK's obligations under Article 6(2) of the Habitats Directive, to avoid the deterioration of the Eelgrass beds, listed as some of the natural species for which the area has been designated an EMS. This would be in breech of the Directive.

17. **Option 2** EN requested a minimum prohibition of cockle dredging on any Eelgrass bed within the EMS, as a closure on Ryde Sands alone would cause possible displacement of effort to other areas containing Eelgrass beds within the Solent EMS. However, it is not possible to define satisfactorily the exact location of individual eel grass beds within the EMS and such a piecemeal approach would be complex for fishermen to comply with and would pose enforcement problems.

18. **Option 3** meets the obligations under Article 6(2) of the Habitats Directive whilst addressing the problems of enforcing a piecemeal closure. The boundaries have been drawn around the Solent EMS in as simple a way as possible for ease of understanding by the fishermen involved and enforcement by the Inspectorate. This extended closure would not have a disproportionate effect on local fishermen as beds outside the protected areas where most of the activity has taken place this year will still be available for fishing using the pump scoop dredges. It should also be noted that it is possible for these particular dredges to be used for other species such as clams and oysters, and there are FSA classified beds for these species within the protected area. This option will therefore prohibit the use of this method of fishing for any species within this area.

19. **Option 4** meets the obligations under Article 6(2) of the Habitats Directive but allows time for Southern SFC to develop its own byelaw. Southern SFC have already indicated, however, that a local byelaw would mirror the SI as they would not seek to refine it to meet local circumstances, and in addition the penalties for non observance would be significantly less than that imposed by national legislation. This option would therefore not add any benefits to those in Option 3

Business sectors affected

20. The proposals will only affect cocklers using pump scoop dredges, which is believed to be approximately 5 vessels. However, until the recent classification, the gear has been used within the Solent EMS only on beds for which there has been no hygiene classification. Commercial harvesting was illegal and should not therefore have been taking place.

Issues of equity and fairness

21. The impact of the proposed regulations will fall on the local cocklers. Although it is recognised that this potential fishery will be closed permanently, this is a method of fishing known to damage the subfeature for which the Solent EMS has been designated. Other fishing methods which have the potential to damage the site have already been restricted. It would be unfair and inappropriate to target similar measures at fisheries which are not known to create similar damage.

Compliance costs for business

22. There would be no additional costs under Option 1.

23. Until the recent FSA classification, the gear has been used within the Solent EMS only on beds for which there has been no hygiene classification and where commercial harvesting should not have been taking place. Other local beds with the appropriate classification that these fishermen have previously targeted, remain open to this method of fishing. There will, therefore, be no significant loss of income under Options 2, 3 or 4 to either the small number of fishermen involved in the current fishery, or to other fishermen who fish for the same species in those other areas than remain open.

Impact on small businesses

24. This prohibition will apply to all UK vessels. Approximately 50% of those fishing for cockles work from vessels of 10m or less, however there have been no additional costs highlighted for small businesses.

Other costs

25. The measures would not give rise to further costs to Government. Enforcement of the legislation would be undertaken through a joint agency approach between the Sea Fisheries Inspectorate and the local Sea Fisheries Committee. This would be achieved through existing budgets.

Competition Assessment

26. There will be no negative competitive impact arising from this regulation. This regulation neither restricts the ability of firms to choose the price, quality, range or location of their products, nor will it lead to a differentiation in costs between new and existing fishermen. The regulation is unlikely to affect the market structure. No company has more than a 10% share of the English market.

Enforcement, sanctions, monitoring and review

27. Enforcement of the legislation would be undertaken through a joint agency approach by the Sea Fisheries Inspectorate and the local Sea Fisheries Committee. Penalties, fines, are consistent with other measures taken to restrict fishing activities in order to protect the marine environment.

Results of consultation

28. Local informal consultation with some of the fishermen involved has given support to the measures as three out of the four classified beds are outside the scope of the Order, and further beds to be worked in the future are also outside the defined area. It has not been possible to consult more widely on the proposals, due to the need to put in place these measures to protect the Solent EMS as soon as possible.

Summary and Recommendations

29. On the basis of the analysis presented here, it is recommended that permanent legislation be introduced to ban cocklers from using pump scoop dredges throughout the defined area in order to properly protect the Eelgrass beds as set out in option 3.

Declaration:

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

Signed by the responsible Minister: **Ben Bradshaw**

Date: **19th October 2004**

Department for Environment, Food and Rural Affairs

Contact:
Ruth Thirkettle, SFCD (Fish III) B, Defra, 10 Whitehall Place, London SW1A 2HH. Tel. 0207 270 8256 - Fax 0207 270 8310
E-mail; ruth.thirkettle@defra.gsi.gov.uk