

EXPLANATORY MEMORANDUM TO
THE SEA FISHING (MARKING AND IDENTIFICATION OF PASSIVE
FISHING GEAR AND BEAM TRAWLS) (ENGLAND) ORDER 2006

2006 No. 1549

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.

The Memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

Article 5(c) of the EU Control Regulation ((EEC) No. 2847/93 as amended) provides that detailed rules should be adopted as necessary on the marking and identification of fishing vessels and their gear. Article 20a (3) of that Regulation provides for the adoption of provisions for the identification of static gear.

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

The measures set out in Commission Regulation 356/2005, as amended by 1805/2005, will enable each Member State more easily to identify and check fishing gear used by Community fishing vessels operating within the waters under the sovereignty or jurisdiction of that Member State. These measures will also apply to vessels flying the flag of a third country when operating in Community waters.

4. **Legislative Background**

4.1 According to Articles 5(c) and 20a (3) of Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the Common Fisheries Policy, detailed rules for the application of monitoring, inspection and surveillance should be adopted on the marking and identification of passive fishing gears. As a result, Commission Regulation (EC) No 356/2005 of 2 March 2005 laying down detailed rules for the marking and identification of passive fishing gear and beam trawls was adopted. Commission Regulation (EC) No 1805/2005 of 4 November 2005 amended 356/2005 to delay its entry into force until 1 January 2006.

4.2 Since the Commission first proposed these new measures we have had three consultation rounds in November 2001, November 2003 and October 2004 with relevant stakeholders and interested parties.

5. Extent

The requirements in this Regulation will cover English vessels (wherever they may be) and all other vessels including Welsh, Scottish, Northern Irish and foreign vessels in English waters as appropriate.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend any Primary Legislation, no statement is required.

7. Policy Background

7.1 Scientific evidence shows that many of the main fish stocks found in the waters of the European Community are near or at historically low levels caused mainly by overfishing. Without improved fisheries control, conservation and other measures designed to safeguard fish stocks and to ensure their long-term, sustainability will not be fully effective. Certain fish stocks risk collapse and this would have a significant impact on the fishing industry.

7.2 Non-implementation of this EU requirement could leave the UK open to infraction procedures by the Commission. The likelihood of this risk being realised is high, since the Commission is taking a close interest in the implementation of fisheries enforcement requirements by Member States. Effective fisheries management is a key requirement in meeting the goals of sustainable development.

8. Impact

8.1 A Regulatory Impact Assessment has been carried out and is attached.

8.2 The main additional costs imposed by the Regulations concern the requirement for nets and longlines to have marker buoys attached. These must be attached to each end of each gear with intermediate marker buoys at intervals of no more than five nautical miles. The cost of compliance will vary depending on the amount of net and line used. The cost per buoy has been estimated at approximately £50, and the number of buoys required will vary due to the type of fishery and lengths of nets used. However, the cost of purchasing the additional equipment for a typical netter could be between £800 and £1600. There would also be ongoing maintenance costs of around £20 a year in maintaining the equipment, replacing lost parts and batteries etc. For a typical longliner, the cost of purchasing the necessary equipment is estimated at around £120, with ongoing maintenance costs of around £10 a year.

9. Contact

Keith Porter at the Department of Environment, Food and Rural Affairs Tel: 0207 270 8134 or email keith.porter@defra.gsi.gov.uk can answer any queries regarding the instrument.

Final Regulatory Impact Assessment

1. Title of Proposed Measure

The Marking and Identification of Passive Fishing Gear and Beam Trawls Regulations 2006.

2. Purpose and Intended Effect of Measure

(i). Objective

These Regulations implement the provisions of Commission Regulation 356/2005, as amended by Regulation 1805/2005, laying down detailed rules for the marking of passive fishing gear and beam trawls.

(ii). Background

Article 5(c) of the EU Control Regulation ((EEC) No. 2847/93 as amended) provides that detailed rules shall be adopted as necessary, on the marking and identification of fishing vessels and their gear. Article 20a (3) of that Regulation provides for the adoption of provisions for the identification of static gear. The measures set out in Regulation 356/2005, as amended, will enable each Member State more easily to identify and check fishing gear used by Community fishing vessels operating within the waters under its sovereignty or jurisdiction. The measures will also apply to vessels flying the flag of a third country when operating in Community waters.

(iii). Rationale for Government Intervention

Scientific evidence shows that many of the main fish stocks found in the waters of the European Community are near or at historically low levels caused mainly by overfishing.

Over exploitation of fish stocks results in detrimental impacts on marine ecology. In addition, in some fisheries activities, controls may be required to limit the environmental impact of over fishing on the marine environment, such as restricting or improving the type of fishing gear permitted in some areas.

Without improved fisheries control, conservation and other measures designed to safeguard fish stocks and to ensure their long-term, sustainability will not be fully effective. Certain fish stocks risk collapse and this would have a significant impact on the fishing industry.

Non-implementation of the EU requirement could leave the UK open to infraction procedures by the Commission. The likelihood of this risk being realised is high, since the Commission is taking a close interest in the implementation of fisheries enforcement requirements by Member States. Effective fisheries management is a key requirement in meeting the goals of sustainable development.

3. Consultation

Within Government

Defra and other Fisheries Administrations in the UK have agreed the UK policy in relation to the adoption and implementation of this scheme. The Small Business

Service and the Better Regulation Executive have been consulted in the preparation of this RIA.

Public Consultation

All fishing vessel owners were informed of the Commission's intention to introduce these measures in three rounds of written consultation with relevant stakeholders, in November 2001, November 2003 and October 2004.

Once the regulation had been adopted we wrote to relevant industry stakeholders in September 2005 explaining the Regulation and asking them for comments on the implication of the anticipated costs for purchasing the gear

A range of replies was received from stakeholders. Some, particularly industry-based groups, opposed the proposal in its entirety on grounds of cost, impracticality, and the additional regulatory burden. Others were in favour, recognising that it would aid enforcement procedures, but still expressed concerns about the financial burdens it would place on small inshore boats for the purchase and maintenance of these gears.

4. Options

The original Commission proposal was for all passive gear to be labelled and marked and for mobile gear to be labelled as well. During discussions in Brussels the UK proposed that the objectives of the proposed regulation could be met by a voluntary code of conduct. The Commission and other Member States did not agree with this approach. Subsequently the UK and some other Member States expressed their concerns about the practical and safety issues connected with the difficulties for small vessels in storing, deploying and recovering marker buoys at sea and about the practical difficulties of permanently fixing labels to mobile gear. These issues were addressed in the final version of the regulation, which does not apply to gear deployed within the 12-mile limit and does not require the labelling of mobile gear.

Two options have been identified for this proposal:

Option 1

Do nothing: Continue to apply existing arrangements set out in Commission Regulation 1381/87, establishing detailed rules concerning the marking and documentation of fishing vessels. This does not require nets to be marked with buoys but requires any buoys that are used to carry the PLN of the vessels to which they belong.

Option 2

Implement the proposed Commission Regulation in full, requiring those fishing with passive gear and beam trawls to have their gears marked in accordance with the Regulation.

5. Costs and Benefits

i) Sectors and groups affected

Businesses affected by the new measures would be those whose fishing vessels use passive gear and beam trawls and operates outside the 12-mile limit. It is estimated that there are approximately 600 of such English vessels.

ii) Benefits

Economic

Option 1 – Continue to apply the existing arrangements

This would not add any additional financial burdens to industry. However it would provide no benefits in terms of improving control measures and the conservation of fish stocks. In addition, this option would mean that the UK would not be complying with its obligations under the Common Fisheries Policy.

Option 2 – Implement the Commission Regulation in full, requiring those fishing with passive gear and beam trawls to have their gear marked in accordance with the Regulation.

This would ensure easier identification of gear and would encourage compliance with technical conservation measures and the recovery of lost gear, thereby assisting in the effective conservation of fish stocks. Proper application of the Commission Regulation would also enable the UK to avoid the risk of infraction proceedings.

Social

Proper marking and identification of passive fishing gear would improve the procedure for safety at sea and orderly conduct of fishing operations in areas where several types of gear are used.

Environmental

Adopting this Regulation will improve enforcement of the technical conservation rules and have a beneficial impact upon the health of the fish stocks. It may also assist the retrieval of lost fishing gear and thereby help to combat ghost fishing.

iii) Costs

Economic

The measures will have different impacts on different businesses, depending on the type of gear they use.

For those using beam trawls, the requirement to clearly display on the beam the external registration letters and numbers of the vessel will affect no more than 200 vessels and could be met relatively easily at a minimal cost.

For those using longlines and nets, the requirement to attach a label displaying the external registration letters and numbers at intervals no greater than 1 nautical mile (1nm) will affect a maximum of 400 vessels and could also be met relatively easily and at a little cost.

The main additional costs imposed by the Regulation concern the requirement for nets and longlines to have marker buoys attached. These must be attached to each end of each gear with intermediate marker buoys at intervals of no more than five nautical miles. The costs of compliance will vary depending on the amount of net and line used. The cost per buoy has been estimated at approximately £50, with the number of buoys required varying depending on the type of fishery and length of nets or lines used. For a typical netter, the cost of purchasing the necessary additional equipment could be between £800 and £1600. Due to normal wear and tear, it may be necessary to replace marker buoys every 18 months. There will also be ongoing maintenance costs of around £20 a year in maintaining the equipment, replacing batteries and lost parts etc. For a typical longliner, the cost of purchasing necessary equipment is estimated at around £120, with ongoing maintenance costs of around £10 a year. A maximum of 250 netters and 150 longliners could be affected by this Regulation although not all of these will operate outside the 12-mile limit. This gives total capital costs for purchase of the necessary equipment of between £218,000 and £418, 000, with annual costs of around £6,500.

Social

No costs have been anticipated for these measures.

Environmental

No environmental costs have been anticipated.

6. Small Firms Impact Test

Costs of this Regulation to businesses have been outlined above. The majority of businesses affected will be small or micro businesses involved in the fish catching sector. This would include individual vessel owners and small companies, each employing a modest number of staff.

Indications from the industry are that they would be able to absorb these costs in order to continue fishing legally with only one fisherman indicating so far that he would not be able to meet the costs.

7. Competition Assessment

This Regulation would impact on the fish catching sector. No one in this sector has more than a 10% market share.

The Regulation is likely to have a significant impact on some firms depending on the gear they use.

The Regulation is unlikely directly to affect the market structure or change the number or the size of firms and should not lead to higher set-up costs for new or potential firms that existing firms do not have to meet. We also need to be aware that the catching sector is not characterised by rapid technological changes.

The competition filter has been applied to this Regulation and only two of the answers were positive. In view of this, it is unlikely that there will be an impact on competition and therefore no requirement to undertake a detailed competition assessment is necessary.

8. Enforcement, Sanctions and Monitoring

Enforcement of these measures would be undertaken by the Marine Fisheries Agency in England. Powers for enforcement officers and penalties for infringements are laid down in the Regulation.

9. Implementation and Delivery plan

The Regulation came into force on 1 January 2006. From this date all affected gear carried and used by fishing vessels outside the 12-mile limit must comply with the new requirements. We have sent out guidance notes on the marking and identification of these gears and publicised on flyers and on the Fisheries Administrations' web pages the need to comply with the new Regulations. We have also written to the owners of all licensed fishing vessels with a record of fishing with the relevant gears to inform them of the new requirements and to ensure that those affected by the regime are given enough opportunity to comply.

10. Post Implementation Review

The Department will keep industry compliance with the operation of the Marking and Identification of Passive Fishing Gear and Beam Trawls Regulation 2005 under review.

11. Summary and Recommendations

To proceed with the adoption of the new scheme for the marking and identification of passive fishing gear and beam trawls as described in option 2 above.

12. Declaration and Publication

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

Signed **Ben Bradshaw**

Date **13th June 2006**

Minister's name, title and Department

Ben Bradshaw
Parliamentary Under Secretary of State
Local Environment, Marine and Animal Welfare

Contact point for enquiries and comments:

Keith Porter
Defra
Enforcement Policy Team
Fishing Industry Management Division
Area 7E

3-8 Whitehall Place
London
SW1A 2HH

0207 270 8134