

REGULATORY IMPACT ASSESSMENT

1. Title

The Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2003

2.1 The Issue and Objective

Issue: Restricting days at sea by Scottish fishing vessels in certain areas (Cod Recovery Zones) of the North Sea and off the west coast of Scotland, when carrying certain gear types.

Parallel legislation is also being made in the Westminster Parliament to cover England and Wales and separately for Northern Ireland.

Objective: The instrument provides for the enforcement of an EU measure which limits days at sea in the cod recovery zones by fishing vessels in 2003. It also determines how some management options available to Member States in that measure shall be used.

2.2 Risk Assessment

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, together with quota cuts, aims to reduce fish mortality by 65% 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.

3.1 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:

- a 2 month rather than a 1 month management period to minimise bureaucracy and allow industry greater flexibility;
- the ability for vessels to carry forward up to 20% of their eligible days to the next management period; and
- the transfer of days from one vessel to another.

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

3.2 Issues of Equity or Fairness

This RIA relates to the SI implementing the EU measure, not to the EU measure itself. It does not therefore address issues such as the variation in numbers of permitted days per month between vessels with different categories of gear. However, looking broadly at the effects of the new controls, the issue of whether the benefits of the measure will accrue to those subject to the control can be addressed. The benefits of avoiding the collapse of cod stocks, and their recovery in the long term, will be reaped by the fishing fleet which is subject to the EU controls; and by fisheries-dependent businesses and communities on the basis of more sustainable fisheries activity.

The provisions made by the SI apply equivalently across the sectors of the fleet, with one exception. The right to have extra days transferred to a vessel from another is curtailed in the case of a vessel using demersal trawls with a mesh size of 100mm or more (vessels targeting cod), to ensure that the total number of days spent targeting cod is not unduly elevated – at the risk of damaging stocks – by transfers of days from vessels which would only catch limited amounts of cod as a bycatch. Vessels using other regulated gears catching cod as a bycatch are not subject to this restriction.

4.1 Identify the Benefits

The SI 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, and this SI also creates the necessary offences and penalties to ensure compliance.

4.2 Quantifying and valuing the benefits

Of the three options outlined above:

Option 1 – the benefit would lie in reduced costs of administration and enforcement of the transfer arrangements. This saving could be several years of SEERAD staff time, but which would be offset by the loss of flexibility for the industry.

Option 2 – powers to transfer days provides flexibility to the industry to enable it to use all the available days, and to use them in the most economic way. It could reduce the number of vessels which became unviable, thereby reducing the potential economic impacts.

Option 3 – this would provide further 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, but it could mean that there was little effective cut in fishing effort and thus no added protection of fish stocks: and there would be an added risk of stock collapse with attendant greater socio-economic impacts.

5.1 Business Sectors Affected

Directly affected are fishing vessels which operate in the Cod Recovery Zones in the North Sea and west of Scotland. To the extent that vessel operations will be constrained, a

reduction in numbers of vessels in a port may affect related businesses, including vessel suppliers, Fish Merchants/Processors and other support industries. These will generally be small businesses.

5.2 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 (including operating outwith the Cod Recovery Zones) 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.

5.3 Total Compliance Costs

This RIA relates to the implementing SI, not the EU measure itself. However, as background to this RIA, the effect of the measure is to reduce considerably the number of days at sea permitted for certain types of vessels in the Cod Recovery Zones. Vessels targeting cod or undertaking beam trawling are eligible for 15 days per month, before transfers take place. 161 Scottish vessels (inc 150 targeting cod) of these categories spent significantly more than that time at sea in the designated zones in 2001, of which 93 (inc 89 targeting cod) spent 250 or more days at sea there, and 44 vessels targeting cod spent 300 or more. Other categories of vessels are permitted higher limits and will be less affected.

The limits may cause considerable difficulty for some Scottish vessels. It is not possible to quantify the impact of the EU limits. Vessel owners will adjust their fishing practices in order to make most efficient use of their permitted days in the zones, and outside. The profitability of individual vessels, and their scope for adjustment of fishing activity, varies greatly depending on a range of factors.

The Executive has announced a £50m package to assist industry to adjust to new fisheries management measures. This includes a decommissioning scheme under which vessel owners can receive grants to scrap their vessels and cancel the vessel licence. This allows those who wish to do so an option for leaving the industry; and makes prosecution of available quotas more viable for those who remain. Transitional support grants will also be available to those affected who wish to remain in the industry. Together, these schemes will reduce both the number of vessels affected by the limits on days at sea and the impact on those affected.

The options for flexibility under this SI can be seen against that background. None of the options impose additional costs on the industry (though options 2 and 3 would reduce them).

The EU measure lasts until the end of 2003, unless replaced. Negotiations within the EU on successor arrangements are due to begin soon. The Executive considers that if a further controls on fishing effort are to be agreed it should provide more flexibility to enable vessels remaining in the industry to operate efficiently.

6. Consultation with Small Business: ‘The Litmus Test’

Most businesses in the fish catching industry are small businesses. Since the regulation was agreed on 20 December 2002 there have been intense discussions with industry, including 2 rounds of direct consultation meetings. There have also been correspondence and telephone

discussions with interested parties. Industry disagree with the principle and some of the detail of the EU limits on days at sea, but have constructively suggested issues for resolution in implementing the scheme. They have pressed for option 2 or 3 to be made available. Implementing and operating guidance from the Fisheries Departments to affected fishermen reflect those concerns where possible and consistent with the spirit of the EU regulations.

7. **Other Costs**

Under options 2 and 3 fishermen will need to report transfers of days on a simple form to enable each vessel's entitlement to days to be monitored.

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 monitor transfers.

8. **Summary and Recommendations**

Although the SI essentially implements an EU measure there is scope to decide whether to take up the options provided by the measure. These provide flexibility for fishermen 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.

9. **Enforcement, sanctions, Monitoring and Review**

The SI sets out offences for contraventions of Annex XVII of the EU Regulation, 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 2003. The Executive will be monitoring the effects of the measure and will feed into the European Commission views on the form 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

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Date

...31..JANUARY..2003.....

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