

## NOTIFICATION TO THE SCOTTISH PARLIAMENT

The Sea Fisheries (Amendment etc.) (No. 2) Regulations 2021

### Is the notification Type 1 or Type 2

This is a Type 1 notification.

### Brief overview of the SI (including reserved provision):

This instrument will extend certain current discard exemptions relating to certain pelagic and demersal fisheries concerning the North Sea and North-Western waters from the end of 31 December 2021 to the end of 31 December 2024, as all exemptions outlined in the 2019 – 2021 retained EU law versions of the North Sea and North-Western Waters Delegated Regulations for certain pelagic and demersal fisheries (as amended) would otherwise expire at the end of 31 December 2021. It will also amend certain current exemptions, introduce new exemptions, and some current exemptions will be discontinued and not extended from the end of 31 December 2021.

This instrument extends the duration of the Multiannual Programme for the collection and management of data in the fisheries sector by extending the application of the retained EU law versions of the Commission Implementing Decision (EU) 2019/909 and Commission Delegated Decision (EU) 2019/910 (as amended) from 1 January 2022 until the end of 31 December 2024. This extension will ensure that correct legislation is in place for the coming years, whilst not preventing any potential overhaul of the legislative framework in future, should this be considered necessary.

This instrument amends the retained EU law version of *Council Regulation (EU) 2020/123 fixing for 2020 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters* (“the retained TQR”) by extending an increase in the level of European seabass that may be caught as bycatch in the Scottish and Northern Irish zones within the British fishery limits. It also updates the dates in the retained TQR to prevent seabass management measures expiring. These measures will instead run indefinitely until amended or revoked. This instrument aims to reduce the amount of seabass which is wastefully discarded by making adjustments to the legislation to remove the requirement for trawls and seines to have a track record in order to land seabass bycatch. Content relevant specifically to this aspect within this document is set out under the subheading ‘Measures on European seabass fisheries’.

This instrument revokes the now expired Article 12a of the retained TQR, relating to the closed season for sandeel fishing in parts of UK waters.

### UK IUU Vessel List

The UK Illegal, Unreported and Unregulated (“IUU”) fishing vessel list is a way for the UK to tackle IUU fishing and reduce the risk of fishery products obtained from IUU fishing being imported into the UK. If a vessel is added to the UK’s IUU list, then a number of restrictions are placed on that vessel, including preventing the vessel from fishing in UK waters, or the import into the UK of fishery products caught by that vessel.

Regional Fisheries Management Organisations (“RFMOs”) also have their own vessel lists for IUU fishing activity in the areas they manage. As a contracting party to RFMOs, the UK has an obligation to list vessels according to decisions made by these organisations. This instrument updates the UK’s IUU vessel list (which is contained in Part B of the Annex of the retained EU law version of *Commission Regulation (EU) No 468/2010 establishing the EU list of vessels engaged in illegal, unreported and unregulated fishing*) in line with the decisions by all RFMOs, not only those of which the UK is a member. This comprehensive approach ensures the UK contributes to the global effort to tackle IUU fishing. This amendment is outwith devolved legislative competence and therefore the Scottish Ministers are not being asked to consent to this amendment to Part B of the Annex to the retained Regulation 468/2010.

#### The new Tech Con Regulation

This instrument also changes the minimum mesh size requirements specified in Part B of Annex 6 of the retained EU law version of *Regulation (EU) 2019/1241 of the European Parliament and of the Council on the conservation of fisheries resources and the protection of marine ecosystems through technical measures* for retaining and landing seabass with fixed gillnets in ICES area 7d in the English Channel. The minimum mesh size will be increased from 90mm to 100mm which brings the area in line with the rest of the UK and is a more appropriate mesh size to ensure smaller seabass, below the minimum conservation reference size (“MCRS”), are less likely to be caught. As the measures being amended in this retained EU legislation do not relate to Scottish waters, this amendment is outwith devolved legislative competence and the Scottish Ministers are not being asked to consent to this amendment.

#### Laying and coming into force dates

This SI is due to be laid before the UK Parliament on 9 December 2021 and will come into force on 31 December 2021.

### **Details of the provisions that Scottish Ministers are being asked to consent to. Summary of the proposals**

#### Measures on European seabass fisheries

Amendments are made to Article 10 of the retained TQR in relation to measures on European seabass fisheries and which fall within devolved legislative competence to the extent that these amendments apply to Scottish waters.

These measures relevant to seabass fisheries have applied in UK law as retained EU legislation since 23:00 on 31 December 2020. The amendments made through this instrument will be applied from 31 December 2021.

Seabass fisheries are jointly managed by the UK and the EU and the management approach in place since 2015 that both parties provisionally continue to share has, this year, brought the fishing pressure on the stock down to within sustainable limits. As seabass has not been managed as a quota species, the landing obligation imposed by Article 15 of the retained *Regulation (EU) 1380/2013 on the Common Fisheries Policy* has not applied. The UK’s objectives, therefore, are to further rebalance the

discarding/ landing ratio of the existing level of fishing mortality occurring under the current commercial fishing measures under fixed vessel landing limits, in favour of landing. The UK, in agreement with the EU, previously increased the cap for trawls and seines on how much seabass can be cumulatively landed under the current 5% of seabass in the total species retained on board and landed per fishing trip, from 520kg per two months, to 380kg per month. This was implemented in the English and Welsh zones of the British fishery limits by *The Sea Fisheries (Amendment etc.) Regulations 2021* (SI 2021/698) and is here being extended to include specified parts of the Scottish and Northern Irish zones.

To further rebalance the discarding/ landing ratio in favour of landings, the requirement for trawls and seines to have a track record in order to land seabass bycatch will be removed. Currently, newer vessels are unable to retain their seabass bycatch which leads to large amounts of discarding. As this is purely a bycatch fishery, not allowing these vessels to retain the seabass bycatch does not decrease seabass fishing mortality.

To ensure the stock remains protected, reference to the year in which the measures are applicable is being removed from the legislation, which will guarantee that the prohibition on fishing for seabass, which is subject to derogations provided for in the retained TQR, will continue on indefinitely unless and until the prohibition is amended or revoked by subsequent legislation.

#### *Revocation of sandeel measures in the TQR*

Amendments are made to the retained TQR to revoke the now expired Article 12a of that Regulation which concerns sandeel measures. To the extent that Article 12a applied Scottish waters, this amendment is within devolved legislative competence. This Article has applied in UK law as retained EU legislation since 23:00 on 31 December 2020. Article 12a relates to the closed season for fishing sandeels in the UK waters in ICES divisions 2a and ICES subarea 4 from 1 January to 31 March 2021.

By revoking these expired measures, UK and Scottish Ministers will be able to reintroduce the closure as a non-legislative measure allowing more flexible management of sandeel stocks in UK and Scottish waters.

#### *Discard exemptions for certain pelagic and demersal fisheries in the North Sea and North-Western Waters in the Scottish Zone*

The retained EU law North Sea and North-Western Waters Delegated Regulations are as follows:-

- *Commission Delegated Regulation (EU) No 1393/2014 establishing a discard plan for certain pelagic fisheries in north-western waters;*
- *Commission Delegated Regulation (EU) No 1395/2014 establishing a discard plan for small pelagic fisheries and fisheries for industrial purposes in the North Sea;*
- *Commission Delegated Regulation (EU) 2019/2238 specifying details of implementation of the landing obligation for certain demersal fisheries in the North Sea for the period 2020-2021;*
- *Commission Delegated Regulation (EU) 2019/2239 specifying details of the landing obligation for certain demersal fisheries in North-Western waters for the period 2020-2021.*

The 2019 – 2021 versions of these retained EU North Sea and North-Western Waters Delegated Regulations (and all of the discard exemptions and technical measures outlined therein) will expire at the end of 31 December 2021. To address the choke risk, and to support fishers to comply with the landing obligation imposed by Article 15 of the retained *Regulation (EU) 1380/2013 on the Common Fisheries Policy*, these discard exemptions allow a limited level of discarding, for certain stocks, in certain fisheries, under the landing obligation.

This instrument will extend these current exemptions from the end of 31 December 2021 to the end of 31 December 2024. It will also amend certain current exemptions by making them conditional upon selective fishing gear or fishing practices in order to reduce the incidence of unwanted bycatch. In addition, the instrument will introduce 3 new exemptions to support fishers to comply with the landing obligation.

Four current exemptions will also be discontinued and will not be extended from the end of 31 December 2021, to safeguard the sustainability of stocks, because there is insufficient supporting evidence to justify their extension or because there is very limited use of these exemptions (if any) by the UK fleet in UK waters.

To the extent that these amendments to the retained EU North Sea and North-Western Waters Delegated Regulations apply to Scottish waters, these amendments are within devolved legislative competence.

All exemptions which will be in force in 2022 have been scientifically reviewed.

#### *Extending the Multiannual Programme for collection and management of fisheries data*

The current Multiannual Programme (“MAP”) expires at the end of December 2021. The MAP refers to a UK (non-legislative) national Work Plan for detail of data collection and management activities.

The UK Work Plan ensures coordination of activities across the UK Fisheries Administrations to enable the UK to meet international commitments for fisheries data management and collection, as well as domestic monitoring needs. Extending the MAP ensures that the UK Work Plan for 2022 onwards will have legislative underpinning (referring back to a current MAP), therefore providing assurance that the UK collectively will meet its international obligations.

This instrument extends the application of the retained EU law versions of the *Commission Implementing Decision (EU) 2019/909 establishing the list of mandatory research surveys and thresholds for the purposes of the multiannual Union programme for the collection and management of data in the fisheries and aquaculture sectors* and *Commission Delegated Decision (EU) 2019/910 establishing the multiannual Union programme for the collection and management of biological, environmental, technical and socioeconomic data in the fisheries and aquaculture sectors* from 1 January 2022 until the end of 31 December 2024.

This instrument does not confer powers to legislate on either UK or Scottish Ministers.

#### **Does the SI relate to a common framework or other scheme?**

N/A

#### **Summary of stakeholder engagement / consultation**

The amendments in this SI are largely technical in nature, so no public consultation has been undertaken.

#### **A note of other impact assessments (if available)**

An impact assessment has not been carried out on each individual policy area as:

- The SI makes amendments which are necessary to achieve its objectives.
- There is no, or no significant, impact on business, charities or voluntary bodies.
- There is no, or no significant, impact on the public sector.

#### **Summary of reasons for Scottish Ministers proposing to consent to UK Ministers' legislation**

Legislating in a UK SI brings the revised provisions into force on the same day across the UK avoiding the risk of industry confusion and simplifying administrative efficiency.

The Scottish Ministers therefore consider that it is appropriate for the instrument to be made by the UK Government.

The approach set out in the proposed UK SI is realistic, achievable and minimises immediate disruption.

In relation to the discard exemptions, these are largely technical in nature. The Scottish Government intends to consult later this year on some adjustments to the

landing obligation to help improve its effectiveness, however, in advance of such adjustments being made, these exemptions are required to help fishers to comply with the landing obligation. Whilst Scottish Ministers have devolved responsibility for discards policy, in this case there is agreement across all UK administrations on the exemptions required.

**Intended laying date (if known) of instruments likely to arise**

N/A

**If the Scottish Parliament does not have 28 days to scrutinise Scottish Minister's proposal to consent, why not?**

N/A

**Information about any time dependency associated with the proposal**

The measures relating to sea bass, MAP decisions and discard exemptions outlined above are due to expire on or before the end of 31 December 2021, unless they are extended or amended (as appropriate) by this SI.

**Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?**

N/A

**Any significant financial implications?**

None identified.

## SI NOTIFICATION: SUMMARY

<b>Title of Instrument</b> The Sea Fisheries (Amendment etc.) (No. 2) Regulations 2021
<b>Proposed laying date at Westminster</b> 9 December 2021 (draft affirmative procedure, Defra content for timescale for debate to allow for consent process agreed with the Scottish Parliament)
<b>Date by which Committee has been asked to respond</b> 3 December
<b>Power(s) under which SI is to be made</b> <p>Article 27(1A)(a) of the retained EU law version of the <i>Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing</i>;</p> <p>Article 15(6A) of the retained EU law version of the <i>Regulation (EU) No 1380/2013 of the European Parliament and of the Council on the Common Fisheries Policy</i>;</p> <p>Article 4(2) of the retained EU law version of the <i>Regulation (EU) 2017/1004 of the European Parliament and of the Council on the establishment of a Union framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the common fisheries policy</i>;</p> <p>Article 11(1A) of the retained EU law version of the <i>Regulation (EU) 2018/973 of the European Parliament and of the Council establishing a multiannual plan for demersal stocks in the North Sea and the fisheries exploiting those stocks, specifying details of the implementation of the landing obligation in the North Sea</i>;</p> <p>Article 13(1A) of the retained EU law version of the <i>Regulation (EU) 2019/472 of the European Parliament and of the Council establishing a multiannual plan for stocks fished in the Western Waters and adjacent waters, and for fisheries exploiting those stocks</i>;</p> <p>Article 15(2A) of the retained EU law version of the <i>Regulation (EU) 2019/1241 of the European Parliament and of the Council on the conservation of fishery resources and the protection of marine ecosystems through technical measures</i>; and</p> <p>section 36(1)(b) and (c) of the <i>Fisheries Act 2020</i>.</p> <p>Where necessary, the Secretary of State is obtaining the consent of the Scottish Ministers to the making of this SI in accordance with the relevant provisions in retained EU legislation and the <i>Fisheries Act 2020</i>.</p>
<b>Categorisation under SI Protocol</b> Type 1
<b>Purpose</b> The draft Regulations modify a number of different provisions in retained EU legislation. The Regulations will extend certain existing discard exemptions under the landing obligations in Scottish waters from the end of 31 December 2021 to the end of 31 December 2024, as these exemptions would otherwise expire at the end of 31 December 2021. It will also amend

certain current exemptions, introduce new exemptions, and some current exemptions will be discontinued and not extended from the end of 31 December 2021.

The Regulations will extend the duration of the Multiannual Programme for the collection and management of data in the fisheries sector from 1 January 2022 until the end of 31 December 2024. This extension will ensure that correct legislation is in place for the coming years, whilst not preventing any potential overhaul of the legislative framework in future, should this be considered necessary.

The Regulations will also increase the level of European seabass that may be caught as bycatch in the Scottish and Northern Irish zones within the British fishery limits and prevent seabass management measures expiring. These measures will instead run indefinitely until amended or revoked. This instrument aims to reduce the amount of seabass which is wastefully discarded by making adjustments to the legislation to remove the requirement for trawls and seines to have a track record in order to land seabass bycatch.

The Regulations also change the minimum mesh size requirements for retaining and landing seabass with fixed gillnets in a part of the English Channel.

The Regulations revoke the now expired Article 12a of the retained TAC and Quota Regulation, relating to the closed season for sandeel fishing in parts of UK waters.

The Regulations update the UK Illegal, Unreported and Unregulated fishing vessel list in line with the decisions by all Regional Fisheries Management Organisations, not only those of which the UK is a member.

**Other information**

N/A

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