

**EXPLANATORY MEMORANDUM TO
THE SOUTH-WEST TERRITORIAL WATERS (PROHIBITION OF PAIR
TRAWLING) ORDER 2004**

2004 No. 3397

1. 1.1 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.

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

2. Description

2.1 This Statutory Instrument prohibits the use of specified pair trawl nets within 12 miles of the south-west coast of England. The aim of the measure is to reduce the bycatch of common dolphins. Pair trawling of the type prohibited has been identified as a fishery with a high level of bycatch of common dolphins, and research into possible mitigation measures has shown that there is no early technical solution to reducing the bycatch in this fishery through the use of mitigation devices.

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

3.1 Because of the unrestricted nature of the pair trawling and the immediate resulting damage to common dolphins from this activity, the Department is of a view that the specified form of pair trawling needs to be prohibited urgently. The specified form of pair trawling starts each year around November and continues until the end of Spring. The fishery stopped for the Christmas period but will resume in early January. It was necessary therefore to bring the prohibition into force as soon as the necessary period for consideration of responses to consultation had been completed. In the circumstances we regret that compliance with the 21 day convention was not possible.

3.2 The effect of the Order is to prohibit only that form of pair trawling which has been identified to date as having an incidental bycatch of common dolphins. Other trawling gear is not affected.

4. Legislative Background

4.1 The Statutory Instrument has been made to comply with commitments set out in the Ministerial Declaration of the Fifth International Conference on the Protection of the North Sea (the "Bergen Declaration") in 2002 to minimise incidental catches and/or damage of non-target organisms, and in line with ASCOBANS' (the Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas) general aim, agreed at the 2nd Meeting of the Parties, to ultimately reduce to zero all anthropogenic removals.

5. Extent

5.1 This instrument applies to England.

5.2 This instrument only affects British fishing boats in the south west territorial sea as defined at article 2 (2).

6. European Convention on Human Rights

6.1 Not applicable

7. Policy background

7.1 The Department for Environment, Food and Rural Affairs' objective to protect and improve the rural, urban, marine and global environment is being met by introducing measures to reduce bycatch in a fishery identified as having high levels of cetacean bycatch.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum .

8.2 There will be no impact on the public sector.

9. Contact

Anthony Hynes at the Department for Environment, Food and Rural Affairs Tel: 0207 270 8307 or e-mail: Anthony.Hynes@defra.gsi.gov.uk can answer any queries regarding the instrument.

REGULATORY IMPACT ASSESSMENT

Purpose and intended effect of the proposals

1. The incidental capture of non-target species, known as bycatch, is widely recognised as one of the most serious environmental impacts of modern commercial fishing. Bycatch may affect the structure and function of marine systems at the population, community and ecosystem levels. Long-lived vertebrate species with low reproductive rates, such as small cetaceans (dolphins and porpoises), are particularly vulnerable to depletion from bycatch.
2. The UK Government is committed to taking all necessary measures to minimise the bycatch of dolphins in UK territorial waters in line with both ASCOBANS' general aim, agreed at the 2nd Meeting of the Parties, to ultimately reduce to zero all anthropogenic removals, and with the Ministerial declaration of the Fifth International conference on the Protection of the North Sea (the "Bergen Declaration") in 2002 to take all necessary measures to minimise incidental catches and/or damage of non-target organisms.
3. The UK Government has therefore been concerned for a number of years about levels of bycatch, particularly of common dolphins in the bass pair trawl fishery prosecuted off the south and south west coasts of the UK. Considerable research has been funded in order to identify the fisheries concerned and to seek mitigating measures which would allow those fisheries to continue whilst at the same time protecting this species.
4. The bass offshore pair trawl fishery was identified in 2002 as having a high level of cetacean bycatch, and work by the Sea Mammal Research Unit, funded by Defra, started in 2003 looking at the possible use of an exclusion grid. Last year's research demonstrated that the grid had a minimum effect on the levels of bass entering the net, but that dolphins should be able to escape the net.
5. In this year's trial various designs of grids were tested, but bycatch remained high throughout. In particular 15% of observed hauls in the inshore fishery bycaught at least one animal. The trial has demonstrated clearly that there is no easy, or early, technical solution to reducing the bycatch in this fishery through the use of mitigation devices.
6. The Common Fisheries Policy (CFP) provides the means to regulate fishing activities within EU waters with the aim of sustainable exploitation of living aquatic resources. Under the CFP Member States can extend unilateral measures to other Member States' vessels. In July 2004, the UK put a case to the European Commission for the use of emergency powers under Article 7 of Council Regulation 2371/2002 (the CFP framework regulation) for the closure of the offshore pair trawl fishery for bass. The Commission did not accept that an emergency closure was justified and the current measures are being considered in the light of that response.
7. New evidence has indicated that common dolphin population numbers are almost certainly several times the previously accepted figure of 120,000. Although this population figure is higher than that understood at the time of the UK's request to the Commission, the UK government must take measures to minimise as far as possible the bycatch of dolphins within UK territorial waters in line with the precautionary approach.
8. The Government intends therefore take a stepwise approach to the issue of cetacean bycatch in this fishery by prohibiting the use of pair trawl gear targeting bass within 12 miles of the UK south west coast (ICES Area VIIe) followed by a request to the European Commission, under Article 9 of Council Regulation 2371/2002, for this measure to be

applied to all Member States' vessels. A licensing scheme for the fishery outside 12 miles will also be drawn up. The prohibition would be targeted solely at pelagic pair trawling for bass. Other methods of fishing for bass such as gillnetting and hand lining, along with other pelagic fisheries, would be unaffected by these measures.

Devolution

9. This proposal will apply to all UK vessels.

Risk Assessment

10. In 2003 the fishing industry in the UK comprised around 6,700 fishing vessels and some 630 thousand tonnes of sea fish were landed into the UK and abroad by the UK fleet with a total value of £520 million.

11. The number of UK vessels in the offshore fishery increased in the 2003/04 season to approximately 7 pairs.. The UK fishery was valued at £790,000 in the 2003/4 season. Pair trawl nets for the bass fishery are believed to cost approximately £35,000,

12. Bycatch levels in the UK bass pair trawl fishery have been observed at 91 mortalities for each of 2000/1 and 2001/2 seasons, 113 for 2002/3 and 131 for 2003/4. The total mortality for the total UK bass pair trawl fishery for the 2003/4 season is estimated to have risen to 439 animals. This is based on observations of 169 mortalities in 131 hauls. It should be noted that there will be some annual fluctuations in observed bycatch rate. What is clear, though, is that bycatch rates in this fishery have increased for the past 2 years (from 3 years ago).

Options

13. Three options have been examined;

- Option (i) do nothing – i.e. allow the fishery to continue without further restrictions whilst continuing funding research into the exclusion grid
- Option (ii) take action on a UK only basis
- Option (iii) take action on UK basis, then approach the Commission to make the prohibition applicable to all member states.

Benefits

14. Option (i) **Do nothing**. This year's trial has demonstrated that there is no prospect of an early technical solution to reducing the bycatch in this fishery. This year the bycatch for the UK element of the fishery is estimated at 439 animals. Ministers have agreed through the Bergen Declaration that bycatch should be minimised and are committed under ASCOBANS to reduce it. The Habitats Directive also requires measures to be taken to establish systems of strict protection for cetaceans. To allow this fishery to continue in its present form with open access, even with further trialling of mitigation devices, but without seeking to minimise bycatch is therefore not recommended.

15. Option (ii) **take action on a UK only basis.** The UK Government would take action under Article 9 of Council Regulation 2371/2002 (which may be used to “take measures for the conservation and management of stocks in waters under their sovereignty or jurisdiction”). A controlled licensing scheme for the offshore fishery would also be developed.
16. French effort is responsible for approximately 5 times more bass landings than the UK element of the fishery. In the absence of data to the contrary, it could be assumed that overall bycatch levels are higher than that seen in the UK element of the fishery. Under Annex 1 of Council Regulation 2371/2002 France has access rights to fish within the 6 – 12 mile zone off the south coast of the UK for all demersal species. A limited number of French vessels make use of these rights but there remains the potential to make greater use of them. An approach which seeks to include other member states’ vessels would be preferable. **Option (ii)** is therefore not recommended.
17. Option (iii) **take action on a UK basis, then approach the Commission to make prohibition applicable to all member states.** The UK Government would take action to ban the UK fishery within 12 miles, and then under Article 9 of Council Regulation 2371/2002 submit the Order to the Commission for consultation with other Member States in order that the measures may apply to all vessels involved in the fishery. A controlled licensing scheme for the offshore fishery would then be developed.
18. The offshore fishery is prosecuted by a significantly larger number of vessels from another member state, France. This is why the UK has for many years, in the light of our research findings, pressed for action at an EU level to address the problems identified. Although there is limited French activity within the 6-12 mile zone, it would be preferable for the measures to apply equally to all vessels operating in this area. **Option (iii)** is therefore recommended. However, if the Commission do not accept the case for action applying to other vessels in the 12 mile zone, given the low level of activity in this area on the part of member states, we would continue with the introduction of measures to apply to UK vessels only.

Business sectors affected

19. The proposals will directly affect those taking part in the bass pair trawl fishery, and fish agents which handle the bass caught in this fishery. If other methods of fishing for bass do not increase in place of pair trawling, recreational anglers may see an increase in the numbers of bass available, although an improvement in the quality and size of the catch may be of more concern to this interested party than the quantity available. There may also be a benefit to such elements of the tourism sector in the south west which are involved in dolphin watching as a result of any increase in dolphin numbers.

Issues of equity and fairness

20. It is recognised that the main burden of the proposals will be borne by those taking part in this fishery. However, this year’s research in the offshore bass pair trawl fishery has demonstrated that levels of bycatch in this fishery have been increasing and have reached a level to cause some concern, and that no effective short term mitigation method has been identified. For these reasons this fishery is targeted by these proposals. Those affected would still in theory be able to fish for bass using other methods and be able to pursue other fishing opportunities, although the majority of these would be subject to any quota restrictions that might apply.

Compliance costs for business

21. **Option (i)** No costs to those involved in the fishery.
22. **Options (ii) and (iii)** Both proposals will primarily affect those taking part in the bass pair trawl fishery. They will, however, in theory be able to target bass using other fishing gear. Nets for use in the bass pair trawl fishery cost approximately £35,000.
23. Fish merchants have indicated that approximately 7% (by value) of their business each year is made up from the bass pair trawl fishery. This figure relates to the whole UK fishery, however, and does not distinguish between the inshore and offshore component parts.

Costs to charities and voluntary organisations

24. It is not expected that there will be any compliance costs under any of the proposed options to charities or voluntary organisations. Whilst the UK Government is aware that the Wildlife Trust co-ordinates data on strandings of small cetaceans in the south west the closure of this fishery will not entail compliance costs to the charity. There may be some reduction in strandings as a result of this ban, but not all strandings are due to bycatch and not all cetaceans bycaught in fisheries result in strandings on beaches.

Impact on small businesses

25. None of the vessels currently taking part in this fishery are under 10m. There have been no additional costs highlighted for small businesses.

Other costs

26. **Options (ii) and (iii)** The measures may give rise to some cost and resource implications for Government. It is envisaged that enforcing the closure would be carried out as part of existing enforcement responsibilities.

Competition Assessment

27. There will be no negative competitive impact arising from this proposal. This proposal will not lead to a differentiation in costs between new and existing fishermen. Whilst fishermen would be prohibited from targeting bass through pair trawling, other methods, such as single trawling or gill netting, remain available for targeted bass fisheries. No company has more than 10% share of the English/Welsh market.

Enforcement, sanctions, monitoring and review

28. Enforcement would be undertaken predominantly by British Sea Fisheries Officers operating under UK legislation. Penalties and fines are consistent with other measures taken to restrict fishing activities. Alongside this closure, the Government will continue to monitor cetacean bycatch elsewhere in the pair trawl fishery and in other fisheries to

identify whether further restrictions are necessary, and to identify and test mitigation measures that might be introduced.

Results of consultation

29. Consultation with interested parties took place in October – November on the terms of the prohibition outlines in the draft Statutory Instrument. The consultation period was limited to 3 weeks in order that the measure could be put in place during the current season.. 18 responses were received, from fisheries organisations, environmental groups and two merchants. Their responses are summarised below;

- Concerns that vessels under 221kw are capable of pair trawling for bass have led to the removal of that derogation.

- The main vessels involved in this fishery dispute that other fisheries are open to them, and maintain that this prohibition would place their viability in doubt. Being forced by the closure to work outside 12 miles during bad weather would also raise safety concerns for these vessels.

- Concerns that the derogation for vessels using nets with mesh size of 80mm is too narrow to entirely prohibit pair trawling in the fishery have been noted. However, the Council Regulation 850/98 (laying down technical measures for the protection of marine juveniles) sets the mesh size for the targeted bass fishery at 80mm or above. Other fisheries have not to date been shown to have a cetacean bycatch problem and, whilst bass may be taken in other fisheries as a bycatch, it is not the intention of this Order to ban the taking of bass, but to prohibit the use of those nets implicated to date in small cetacean bycatch.

- Complaints that inshore trawlers who use mesh in the opening of the net that is greater than 300mm, and will therefore be caught by the ban have misunderstood the proposals. Single trawls will not be prohibited; vessels will only be impacted if they are part of a pair trawl team targeting bass.

- Some respondents stressed that all pair trawling should be banned, not just that for bass. Defra research so far has shown that only pelagic pair trawling for bass within ICES area VIIe (where the majority of the fishery takes place) has a recorded bycatch. However, Council Regulation 812/2004 requires that observers be placed on vessels in a range of pelagic fisheries, which will improve knowledge. If the monitoring shows that other pair trawl fisheries have a high level of bycatch the UK government does not rule out taking further measures.

- Many stakeholders are concerned that these measures are discriminatory as French and offshore fishery will continue where most cetacean bycatch is seen. The prohibition on the use of pelagic pair trawl nets for bass is part of a stepwise process. Once the SI is in place the Government shall approach the Commission for the measure to be applied to all Member States who are permitted to fish within the 12 miles of the English coast in ICES area VIIe. A licensing scheme for the offshore bass pair trawl fishery shall also be introduced.

- The Sea Mammal Research Unit have highlighted that recent abundance estimates made from pre-existing survey data, coupled with recent information on population structure of common dolphins in the Atlantic, common dolphin population numbers are almost certainly several times the quoted figure of 120,000.

- One respondent asked that future research include a benign experimental protocol. In the event of any future research, this will be explored by the Sea Mammal Research Unit.

- Some respondents raised concerns that pair trawling for bass takes place during the spawning period and damages the stock, and that a closure, together with the proposed licence scheme ignores the Strategy Unit's "Net Benefits" Report recommendation that consideration should be given to designating bass as a recreational fish. These issues have not been considered here as this Statutory Instrument is concerned with reducing cetacean bycatch within a fishery identified with a high level of bycatch. They are, however, being taken forward under discussions between fisheries managers and stakeholders, and decisions have not been prejudged by action taken here.

Summary and Recommendations

- 30.** On the basis of the analysis presented here and considering the need to fulfil UK commitments under ASCOBANS and the Bergen Declaration by minimising the bycatch of small cetaceans in its territorial waters, **option (iii) is recommended**; that is, take action on a UK basis, then approach the Commission to make prohibition applicable to all Member States.

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: 22nd December 2004

Department for Environment, Food and Rural Affairs

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