

Explanatory Memorandum to the Tope (Prohibition of Fishing) (Wales) Order 2008.

This Explanatory Memorandum has been prepared by Fisheries Policy Branch of the Department for Rural Affairs and is laid before the National Assembly for Wales in accordance with Standing Order 24.1.

- (i) **Description** - This Statutory Instrument will prohibit the development of a directed fishery for Tope (a shark species with low commercial value but high conservation and recreational value). Recreational rod and line fishing for tope will be allowed, but Tope taken by rod and line may not be landed to shore. The instrument recognises that commercial fishermen will unintentionally catch small quantities of Tope when fishing for other species and specifies that they are allowed to retain and land only 45 kg per day.
- (ii) **Matters of special interest to the Subordinate Legislation Committee** – None.
- (iii) **Legislative Background** – The Order will be made under sections 5(1), 5(6), 6(1), 6(1A), and 15(3) of the Sea Fish (Conservation) Act 1967. Functions under those sections have been transferred to the Welsh Ministers (by the National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672) and section 162 of and para. 30 of Schedule 11 to the Government of Wales Act 2006). This SI is being made under the negative resolution procedure.
- (iv) **Purpose and intended effect of the legislation** -

Tope populations exist in many oceans of the world; they are listed as “vulnerable” by the World Conservation Union (IUCN) because wherever directed fisheries have taken place their populations have seriously declined. Tope has a long life span, takes up to 12 years to reach maturity and has a low fecundity, these factors make Tope extremely vulnerable to exploitation.

There are no targeted commercial fisheries for Tope in Wales; however Tope is a highly prized target fish for recreational sea anglers. A targeted commercial fishery would seriously damage the sustainability of these recreational fisheries.

Tope caught with rod and line will not be retained on board, transhipped nor landed.

This instrument will allow the catch and release recreational fisheries to continue using rod and line, while avoiding wasteful discards in the commercial fleet by permitting a 45kg/day 'by-catch'.

(v) **Implementation** – Should this Instrument be annulled the shark species Tope will have no protection from possible exploitation. Should a fishery develop this could lead to collapse of the stock in Welsh waters.

(vi) **Consultation** – Details of the consultation undertaken are included in the Regulatory Impact Assessment below.

(VII) **Regulatory Impact Assessment –**

**Options -**

1. Do nothing - Risk the development of a commercial fishery and collapse of the species in Welsh waters.
2. Proposed Option - Allow fishing for Tope by rod and line but prevent unsustainable exploitation. This option will prohibit the landing of rod and line caught Tope and prohibit all other fishing for Tope whilst allowing a 45kg per day by-catch in commercial fisheries for other species.

a) **Benefits** - This Order will benefit the recreational fisheries that target Tope. Sea angling has recently begun to be recognised for the economic benefits that it can bring to the UK economy.

b) **Costs** - As there are no target fisheries for Tope in Wales there should not be any cost to the Welsh commercial fishing fleets particularly as they will still be allowed to land 45kg of Tope/ day. As recreational fishermen already practice catch and release there should be no extra cost to them.

This Order will be enforced by fisheries officers and so the cost will be met using existing budgets as enforcement will be undertaken during their normal working routine.

c) **Competition Assessment** – There are no targeted Tope fisheries.

d) **Consultation** – A public consultation was carried out to engage the stakeholders of Wales in the decision making process.

The three options offered were:

- 1) Do nothing and risk the development of a targeted commercial fishery;
- 2) Only permit the fishing for Tope by rod and line whilst prohibiting the transshipment, retention on board and landing of Tope.
- 3) Prohibit all fishing for, retention on board, transshipment and landings of Tope.

Stakeholders included individuals, associations and federations as well as sea fisheries committees and statutory bodies.

In all there were 76 responses to the consultation with the majority supporting option number 2.

Summary;

The majority of replies were from recreational anglers who supported Option 2 – ‘prohibit fishing for tope by all methods other than rod and line and prohibit retention, transshipment and landing’. Most of these said that commercial fishing should not be allowed as it will decimate the species as happened with Spurdog. Most say that taking of these fish for their fins should be banned. The benefit to the local economy of recreational sea angling is pointed out in most replies. It was pointed out that Tope is an important ‘by-catch’.

Following consultation option two was amended to allow 45kg/day by-catch and prevent wasteful discards.

- e) **Post implementation review** – The effects of catch and release and ‘by-catch’ provisions of this Order will be reviewed in 2010, and if necessary further measures will be implemented to conserve Tope in Welsh waters.
- f) **Summary** – This order will benefit the recreational sea anglers who practice catch and release of the shark species Tope. There should be no significant cost to any sector as there are no commercial fisheries that target Tope in Welsh waters. This order pre-empts the potential exploitation of a species with a high conservation and recreational status but low commercial value.