

REGULATORY APPRAISAL

SEA FISHERIES, WALES

THE SEA FISHING (ENFORCEMENT OF COMMUNITY SATELLITE MONITORING MEASURES) (WALES) ORDER 2006

Background

1. Since 1 January 2000, vessels over 24 metres fishing in Community waters have had to report their position by satellite every two hours to their flag state and the coastal state in whose waters they are fishing (affecting some 322 UK vessels). Vessels fishing exclusively within territorial waters (12 mile limits) and those at sea for less than 24 hours were exempt.
2. Under the provisions of Council Regulation (EC) 2371/2002 on the conservation and sustainable exploitation of fisheries resources satellite monitoring has been extended to vessels between 18 and 24 metres from 1 January 2004 (affecting around 306 UK vessels) and to vessels between 15 and 18 metres from 1 January 2005 (affecting a further 250 UK vessels). To date, these provisions have affected 13 Welsh vessels.
3. Further rules were adopted on 18 December 2003 in Commission Regulation 2244/2003 laying down detailed provisions regarding satellite-based vessel monitoring systems. In view of the delay in the implementation of these provisions, the Commission recognises that Member States may not be able to comply with the dates mentioned in paragraph 2.
4. The December 2003 rules contain the following provisions:
 - fishing vessels used exclusively for exploitation of aquaculture (fish farming) and operating exclusively inside the baselines (low tide water marks) of Member States are exempted;
 - vessels not permitted to leave port without an operating terminal (unless prior approval has been granted by the authorities, for example in order for a vessel to return to a home port for terminal repair/replacement);
 - terminals to be tamper-proof so that position data cannot be altered;
 - position reports to be extended to include data on the vessel's course and speed; and
 - Fisheries Monitoring Centres to take action if reports are not received from a vessel for 12 hours.
5. The adoption of satellite monitoring has assisted fisheries enforcement, improving surveillance of the activities of vessels over 24 metres and enabling the better deployment of fisheries patrol vessels and surveillance aircraft. By extending the requirement to smaller vessels and removing exemptions (see para 4), the measures will further assist monitoring, control and surveillance activity and with the conservation of fish stocks. This proposed Order will implement these enforcement measures, while the Fishing Boats (Satellite-Tracking Devices) (Wales) Scheme 2006 will enable the Assembly to provide grants to fishermen to reimburse the cost

of fitting satellite tracking devices on board their fishing vessels. The two Statutory Instruments are proposed to come into force in tandem.

Purpose and intended effect of measure

6. This Order implements Commission Regulation (EC) No. 2244/2003 laying down detailed provisions regarding satellite-based Vessel Monitoring Systems. It will aid the enforcement of measures supporting the conservation and sustainable exploitation of fisheries resources by extending the existing provisions relating to the satellite monitoring of fishing vessels to smaller vessels, additionally requiring the provision of course and speed in each report and increasing the security and integrity of data capture and transmission.
7. The proposed Order applies to all fishing boats in Wales. It creates offences for contravening requirements relating to:
 - the installation of a satellite-tracking device;
 - the switching off of a satellite-tracking device in port without prior notification;
 - the information to be transmitted by the satellite-tracking device;
 - the responsibilities relating to a satellite-tracking device; and
 - the technical failure or non-functioning of a satellite-tracking device.

The Order also confers powers of enforcement upon British Sea-Fishery Officers and enables the Assembly to enforce a fine not exceeding £50,000 on anyone guilty of an offence.

8. This Order will revoke the Sea Fishing (Enforcement of Community Satellite Monitoring Measures) (Wales) Order 2000 and the Sea Fishing (Enforcement of Community Satellite Monitoring Measures) (Wales) Order 2000 Amendment Regulations 2002.
9. A separate Scheme, namely The Fishing Boats (Satellite-Tracking Devices) (Wales) Scheme 2006, which is due to come into force at the same time as this Order, introduces provisions for the payment of grants to vessel owners who have installed these devices.

Risk Assessment

10. The enabling provisions implement Commission Regulation (EC) No. 2244/2003 laying down detailed provisions regarding satellite-based Vessel Monitoring Systems. The provisions provide UK enforcement bodies with explicit powers to take action against those contravening the conservation and control provisions laid down at Community level in the Common Fisheries Policy (CFP) Regulations. Failure to implement and enforce the arrangements properly would run the risk of breaching EU law and infraction proceedings being taken against the UK.

Options

11. In respect of this legislation the “Do Nothing option” is not an option as it would lead ultimately to infraction proceedings against the National Assembly for Wales by the European Commission. Therefore, the “Make the legislation” option to implement the changes required to comply with European legislation, is being recommended.

Benefits

12. The measures contained in this Order will improve the monitoring, control and surveillance of fishing activity and contribute to the conservation and sustainable exploitation of fish stocks in the long term interests of the fishing industry. They will also:

- yield better quality information on fishing activity for both enforcement and scientific purposes; and
- lead to greater compliance with both Community and national fisheries Regulations.

Costs

13. There are no financial implications for the Assembly as a result of this Order as any enforcement or monitoring work related to this legislation will be met from the Defra budget for the Marine Fisheries Agency (MFA), which acts on behalf of the Assembly.

14. Under EU Regulations, which will be implemented by this Order, there are 13 vessels in Wales that are required to have satellite tracking devices installed. They have all been installed at a cost of £2,364.50 per vessel. Vessel owners have covered these costs, however, they will be reimbursed by the Assembly under the Fishing Boats (Satellite-Tracking Devices) (Wales) Scheme 2006. The owners of any new vessels entering the fleet after 30 December 2004, or any vessels installed after 30 November 2005 will have to cover this cost themselves. However, as a result of implementing this Order the industry will also be required to bear the cost of communicating position reports by satellite to Defra. This cost should not exceed £400 per vessel per annum. Provisional figures for 2003 published by the Sea Fish Industry Authority (Seafish), a Non Departmental Public Body which supports and promotes the UK Sea Food industry, in December 2003 put the typical estimated cost of operating vessels in the whitefish sector as between £265,000 and £650,000.

Issues of equity and fairness

15. Extension of the EU requirement to vessels below 24 metres provides a more even and equitable approach to enforcement, as does the extension of the enhanced provisions. The application of the requirement to non-EU vessels when in EU waters also prevents discrimination against EU vessels.

Small Firms Impact Test

16. Almost all businesses in the fish catching industry are small businesses and have been informed of this proposal.

Competition assessment

Fishing industry

17. The application of the requirement to all EU and non-EU vessels over 15 metres operating in EU waters eliminates the scope for adverse impacts upon competitiveness.

Manufacturers and providers of satellite terminals

18. Defra has canvassed manufacturers to ensure that the capability to supply satellite terminals satisfying tamper-proof and other requirements exists. A public procurement exercise to ensure the supply of such terminals to the UK fishing industry was undertaken and a contract was awarded to Applied Satellite Technology Ltd (AST) in August 2004. No restrictions are being placed on satellite communication providers, other than that their systems must be capable of interfacing with Defra's fisheries monitoring centre, of covering all sea areas in which UK vessels fish and meeting EU reporting frequency requirements. AST demonstrated that their satellite communication providers are capable of meeting UK and Community requirements with regards to the coverage of sea areas and frequency of transmission.

Consultation

With Stakeholders

19. No formal consultation has been undertaken in relation to this Order as stakeholders would not be able to influence the drafting of this Order as Member States are legally bound to abide by the Commission Decisions. However, in March 2004, Defra, at the request of the Welsh Assembly Government, issued letters, on an England and Wales basis, to owners of over 15 metre vessels and interested organisations. These letters explained the provisions of Commission Regulation 2244/2003 laying down detailed provisions regarding satellite-based vessel monitoring systems. A list of the organisations contacted is included at Annex 1. Fishermen and their respective organisations welcomed the new measures, but pressed for the cost of fitting tamper-proof terminals to be met from public funds. Based on these responses, all the fisheries departments in the UK decided to fund the installation of these devices.

20. In August and October 2004, Defra issued letters to owners of over 15 metre vessels and relevant organisations. The organisations contacted, relevant to Wales, were the National Federation of Fishermen's Organisations and the Wales and West Coast Producers Organisation Ltd. These letters included detailed guidance about satellite monitoring devices, the contract with AST, state aid, registration and application forms.

21. On 29 April 2005, the Welsh Assembly Government's officials sent letters to the owners of the 17 applicable vessels in Wales, reminding them of the previous letters, and informing them that the Assembly had identified funds for the installation of devices, but would have to bring into force new legislation before these funds could be released. The letters stated that vessel owners would have to bear the cost themselves, and be entitled to reimbursement once new legislation is in force.

22. Reminder letters were also sent on 14 June 2005 to owners of all vessels who had not yet had devices installed. (At this stage there were eight vessels without devices). By June 2005, there were 13 vessels in Wales that were affected by these proposals. By November 2005, all of these vessels had tamper proof satellite tracking devices installed on board.

With Subject Committee

23. This Order was notified to the Environment, Planning and Countryside Committee, via the list of forthcoming legislation on 2 February 2005 EPC(2)02-05 (p.3, Part 2)) and has remained on the list ever since. However, the year in the title of the Order notified has changed from 2005 to 2006. The Order was identified for scrutiny, which took place on 13 July 2006 (EPC(2)-11-06(p.6)). The Committee approved the Order without amendment. A copy of the transcript is attached at Annex 2.

Enforcement, Sanctions, Monitoring and Review

24. The Fisheries Departments in the UK and the Scottish Fisheries Protection Agency currently spend some £25 million per year on the enforcement of fisheries regulations. Enforcement takes place on land, in the air and at sea with a high level of integration. The number of land-based inspectors, fisheries patrol vessels and aircraft deployed on fisheries control and enforcement work in 2002 was:

	No of inspectors	No of patrol vessels	No of aircraft
England & Wales	66	9	2
Scotland	79	5	2
Northern Ireland	12	2	0
Total	157	16	4

In total carrying out some 50,902 inspections on land, 2,450 boardings at sea and 25,145 sightings of fishing vessels by surveillance aircraft.

25. Satellite position reports are used to:

- i. assist with the efficient and effective deployment of fisheries enforcement resources;
- ii. verify information provided by fishermen in logbooks and landing declarations; and
- iii. enforce areas closed to particular types of fishing and/or all fishing vessels.

26. In addition satellite position data contribute towards scientific research in stocks and fish stock assessment and can be provided to the Maritime Coastguard Agency for safety at sea purposes.

27. Penalties of up to £50,000 can be enforced for non-compliance with the satellite monitoring requirements. This is the normal maximum fine applicable to fisheries offences.

28. All enforcement and monitoring work will be carried out and reviewed by Sea Fishery Officers in the Marine Fisheries Agency, which is funded by Defra.

Summary

29. This Order transposes EU Regulations into Welsh legislation and will improve the monitoring, control and surveillance of fishing activity. These Regulations have already been transposed in England, Scotland and Northern Ireland, and although vessel owners in Wales have complied with these measures until now, it is essential that this legislation comes into force to enable effective enforcement in Wales of the EU Regulations.

ANNEX 1

List of Organisations Contacted

Anglo Northern Irish Fish Producers Organisation
Anglo Scottish Fish Producers Organisation Ltd
Cornish Fish Producers Organisation Ltd
Eastern England Fish Producers Organisation Ltd
Fleetwood Fish Producers Organisation Ltd
Lowestoft Fish Producers Organisation
National Federation of Fishermen's Organisations
North Sea Fish Producers Organisation
Northern Fish Producers Organisation Ltd
South Western Fish Producers Organisation Ltd
The Fish Producers Organisation Ltd
Wales and West Coast Fish Producers Organisation Ltd

ANNEX 2

Extract from the EPC Committee Meeting on 13 July 2006

Glyn Davies: We have two items on the surveillance regulations. Does anyone want to ask a question on the fishing boats scheme? Everyone is happy with that then. Am I right in thinking that the regulations are there to allow payments to be made?

Carwyn Jones: Yes.

Glyn Davies: So, we are happy with those then. Is everyone happy with the regulations on sea fishing? I see that you are.