22 January 2019

THE COMMON FISHERIES POLICY (AMENDMENT ETC) (EU EXIT) (NO. 2) REGULATIONS 2019

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament to the exercise of powers by UK Ministers under the European Union (Withdrawal) Act 2018 in relation to proposals within the legislative competence of the Scottish Parliament.

As you know, Michael Russell MSP, Cabinet Secretary for Government Business and Constitutional Relations wrote to the Conveners of the Finance & Constitution and Delegated Powers and Law Reform Committees on 11 September 2018 setting out the Scottish Government’s views on EU withdrawal. That letter also said that we must respond to the UK Government’s preparations for a No-Deal scenario as best we can, despite the inevitable widespread damage and disruption that would cause. It is our unwelcome responsibility to ensure that devolved law continues to function on and after EU withdrawal.

I attach a notification which sets out the details of the Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2019 (the “Regulations”) which the UK Government proposes to make and the reasons why I am content that Scottish devolved matters are to be included in these Regulations. Please note, we are yet to have sight of the final version of the Regulations and it is not available in the public domain at this stage. We will, in accordance with the protocol, advise you when the final version of the Regulations is laid and advise you as to whether it is in keeping with the terms of this notification. These Regulations provide technical and legislative corrections to legislation in respect of the sustainable management of sea fisheries and aquaculture.

Tha Ministearan na h-Alba, an luchd-comhairleachaidh sònraichte agus an Rùnair Mairreannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Fàilte www.lobbying.scot

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot
You will wish to be aware that the Common Fisheries Policy (Transfer of Functions) (EU Exit) Regulations 2019, which contained transfer of legislative function provisions for fisheries and were notified to you on 9 January, will now be merged with these Regulations. This does not change the content or substance, and as such the previous notification can still stand in respect of that element of these, combined, Regulations. It follows that this notification for these Regulations does not cover the material covered in the previous notification.

I am satisfied that the Regulations will be effective in addressing the deficiencies that will arise after the UK leaves the EU, furthermore I can assure the Committee that there is no substantial change in policy, that current principles in relation to environmental and animal welfare protection are upheld, and that the devolution settlement is respected.

You will want to be aware that Defra intend to lay these regulations in draft, under the affirmative procedure, on 12 February, and have therefore requested that the Scottish Government gives consent before that point. I regret that this would not allow the Committee the full 28 days given under the protocol to consider this notification. Although we have highlighted the importance of providing space for ful consideration in the Scottish Parliament, I would be grateful if you could consider your response as rapidly as possible to allow the regulations to be in place before 29 March, and this ensure that there are no deficiencies in the statute book in the case of a no deal brexit.

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee.

I look forward to hearing from you.

FERGUS EWING MSP
NOTIFICATION TO THE SCOTTISH PARLIAMENT

The Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2019

1. **Name of the instrument and summary of proposal**

The Common Fisheries Policy (Amendment Etc.) (EU Exit) (No. 2) Regulations 2019 (“the Regulations”) amend directly applicable EU legislation that will form part of domestic law after exit day. The amendments correct deficiencies in the legislation resulting from the withdrawal of the United Kingdom from the European Union and will ensure that the directly applicable EU legislation being amended by these Regulations is operable in the event that the UK leaves the EU without a withdrawal agreement or deal.

The majority of the EU legislation being amended by these Regulations forms part of the body of legislation known as the Common Fisheries Policy (“CFP legislation”). In addition these Regulations also include the transfer of legislative functions related to Regulation (EC) No 708/2007, which relates to aquaculture, and is not part of the Common Fisheries Policy.

The Common Fisheries Policy (Amendment) (EU Exit) Regulations 2018 (the “2018 Regulations”), which were notified to the Scottish Parliament on 21 November 2018, contained amendments to other parts of the CFP legislation (for example, the overarching “basic” regulation and the control and enforcement regulations). The provisions containing the transfers of legislative functions relevant to those other parts of the CFP legislation were to be contained in the Common Fisheries Policy (Transfer of Functions) (EU Exit) Regulations 2019, the notification for which was sent to the Scottish Parliament on 9 January 2019. The transfer of legislative functions SI has now been combined with these Regulations (with the title and timing as described in this notification), however the content and substance of the transfer of functions provisions have not changed, and as such the previous notification still stands. The Committee will wish to note that there will only be one instrument for these two notifications.

This notification only covers those parts of the Regulations that were not originally to be included in the transfer of legislative functions SI, to avoid duplication in the notifications.

In addition to the fisheries Transfers of Legislative Functions provisions previously notified, these Regulations amend legislation concerning other aspects of the CFP legislation, specifically legislation concerning regional fisheries management organisations (“RFMOs”), technical conservation measures, and a multiannual plan for North Sea stocks. The Regulations also amend domestic legislation applicable only in other parts of the UK, which is not notifiable to the Scottish Parliament in terms of the protocol notification procedure (hence not detailed in this notification).

Also included in these Regulations are amendments to Regulation (EC) No 708/2007 concerning a legislative transfer of functions regarding Alien and Locally Absent Species in aquaculture. There are a number of instances in which the Scottish Government agrees with the policy intention in a draft SI, but we disagree with the UKG in relation to whether the draft SI, or some of the proposals within it, are devolved. This is arising where the UKG has...
proactively shared an SI that is considers to be reserved, and we consider that aspects of it that are devolved. It can also arise in relation to an SI where the UKG consider includes some devolved provision but also some provisions that they consider to be reserved. This is the case with Regulation (EC) No 708/2007.

This regulation was initially to be included in the Animals and Food (Transfer of Functions) (EU Exit) Regulations 2018 that were notified to the Scottish Parliament on 7 November but instead has been included in this notification. Inclusion of amendments to Regulation (EC) No 708/2007 was delayed whilst Devolved Administrations attempted to resolve a competency dispute. Disagreement arose in respect of the UK Government’s view that the subject matter covered by Annexes 2 and 4 Regulation (EC) No 708/2007 is reserved. The UK Government considers the area to be reserved by virtue of section 29(2)(a) of the Scotland Act 1998. The Scottish Government’s view is that the subject matter covered by these Annexes is not reserved by virtue of that provision and falls within devolved areas by virtue of the exception to section C5, Part II of schedule 5 of the Scotland Act 1998. While policy have taken a pragmatic approach to the drafting, allowing agreement to be reached on the wording of the provision in question, we have made clear to Defra that we still disagree with their legal position (that these areas are reserved). The relevant provision will be included in these Regulations.

We expect that these Regulations will be laid in draft, as an affirmative instrument before the UK Parliament on 12 of February, and will come into force on exit day.

Any further EU legislation forming the Common Fisheries Policy that will become domestic law on exit day and requires amending will be contained in another exit SI to be notified at a later date.

Domestic fisheries legislation applicable across the UK is amended by the Fisheries (Amendment) (EU Exit) Regulations 2019, which were notified to the Scottish Parliament on 2 November 2018. Scottish legislation will be amended in SSIs.

2. **Explanation of law that the proposals amend and summary of proposals**

**The Legislation Being Amended**

The Common Fisheries Policy legislation (“CFP legislation”) comprises around 100 regulations and other instruments and ensures a common approach to the sustainable management of fisheries across the European Union and its waters. These Regulations amend some of those regulations, to ensure that it remains effective and operable after the UK leaves the EU.

In summary, the CFP legislation being amended by these Regulations concerns the following:

- The rules on technical conservation measures relating to certain fisheries or fishing gear. For example, amendments are made to an EU Regulation on the removal of shark fins, to another regulation concerning the fishing for hake, and also to a regulation setting out technical measures (rules on fishing net size, for example) for the protection of juveniles of marine organisms. (Some other technical conservation
The regulations were amended by The Common Fisheries Policy (Amendment) (EU Exit) Regulations 2018, notified to the Scottish Parliament on 21 November 2018.

- The rules relating to certain areas of the sea or certain species which are managed by regional fisheries management organisations (“RFMOs”). At present, it is the EU which is the contracting party to these RFMOs and the RFMO legislation reflects the conditions of the EU’s membership of these organisations. This legislation is being brought into domestic law in anticipation of the UK becoming a contracting party to these RFMOs after exit day, and these Regulations amend it to ensure it works in that new context.

- The multi-annual 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.

The full list of CFP legislation being amended by these Regulations, not including the transfer of legislative functions previously notified on 7 January, is given at Annex A.

The Regulations also revoke some CFP legislation that would otherwise become part of domestic law on exit day but is no longer required or is not relevant to the UK. For example, Council Regulation (EC) No 2187/2005 of 21 December 2005 for the conservation of fishery resources through technical measures in the Baltic Sea, the Belts and the Sound is being repealed because it has no application in UK waters, nor with UK fishing vessels have access to those waters after exit day (in the absence of a relevant agreement). Annex B gives a full list of the CFP legislation being revoked by these Regulations.

In addition, the Regulations contain a transfer of a legislative functions contained in Regulation (EC) No 708/2007, relevant to aquaculture. All other amendments relating to Regulation (EC) No 708/2007 are contained in the Aquatic Animal Health and Alien and Locally Absent Species in Aquaculture (Amendment) (EU Exit) Regulations 2019.

**The amendments**

Many of the amendments are technical operability changes, for example replacing EU-specific terms, such as “Union fishing vessels” or “Union waters”, with an equivalent term (e.g. “United Kingdom fishing vessels” and “United Kingdom waters”). References to Member States (in the context that obligations are put on Member States to do something) are, generally speaking, changed to “a fisheries administration”, which is a new defined term that applies to all the CFP legislation being retained in domestic law. The definition of “fisheries administration” is therefore of critical importance in ensuring that devolution is being respected and the definition does indeed respect devolution.

The definition ensures that “fisheries administration” means the Scottish Ministers in relation to any powers or obligations that it would be within the legislative competence of the Scottish Parliament to include in Act of the Scottish Parliament. “Fisheries Administration” means the Secretary of State or the Marine Maritime Organisation in relation to reserved matters.
The definition of fisheries administration provides that in applying the legislative competence test there is provision equivalent to article 5 of the Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 1999 (SI 1999/1748). This means that when determining the meaning of “fisheries administration” the element of the legislative competence test which considers whether a function is exercisable “in or as regards Scotland” extends to the Scottish zone in relation to fishing and aquaculture in the Scottish zone and to Scottish fishing boats where there are any.

In relation to fishing there are a number of functions which both the Scottish Ministers and the SoS can exercise concurrently (set out in the Scotland Act 1998 (Concurrent Functions) Order 1999 (SI 1999/1592)). The definition of “fisheries administration” takes account of this and provides that the Secretary of State as well as the Scottish Ministers may be the “fisheries administration” in relation to concurrent functions. Where the definition of “fisheries administration” in relation to an obligation means both the Scottish Ministers and the Secretary of State then if the Scottish Ministers meet that the obligation then the Secretary of State does not need to and vice versa.

Legislative and non-legislative functions of the European Commission or other EU entities are also transferred to the relevant fisheries administration. An example of a non-legislative function is the reporting of information to an RFMO: this is currently carried out by the Commission but the function is transferred to a fisheries administration. As for legislative functions, those that are being transferred are not numerous: only five regulation-making powers are being retained, all of which relate to technical conservation measures. These are set out in more detail in the relevant section below.

The RFMO regulations

The Northwest Atlantic Fisheries Organisation ("NAFO")

Two pieces of legislation regarding NAFO are amended by these Regulations. The first sets out general conservation and enforcement measures applicable in the NAFO regulatory area. The second specifically concerns the fishing of halibut in the NAFO regulatory area.

The amendments to the first piece of legislation, concerning general conservation and enforcement measures applicable in the NAFO regulatory area, include (for example) the substitution of references to “Community fishing vessels” to “United Kingdom fishing vessels”; and “Member States” with either “the United Kingdom” or “a fisheries administration”, depending on the context. Reporting requirements are amended so that a fisheries administration sends reports directly to NAFO, rather than to the Commission, which would then forward reports to NAFO. The amendments also provide for fisheries administrations (rather than “Member States”) to enforce measures as required by NAFO, such as limiting the types of fishing gear that can be deployed, rules on reporting of catches, limits on the volume of bycatch vessels can take and protection of vulnerable marine ecosystems.

The second piece of legislation transfers the responsibility for taking forward NAFO’s Greenland halibut recovery plan from the European Commission to a fisheries administration. Amendments are of a very similar nature to those detailed in the above paragraph.
The Regulations ensure that the NAFO regulations will be operable and effective once the UK is a contracting party.

The North-East Atlantic Fisheries Convention (“NEAFC”)

Two pieces of legislation regarding NEAFC are amended by these Regulations. The first sets out control and enforcement measures applicable in the NEAFC regulatory area. The second sets out more detailed and specific rules on control and enforcement of rules in the NEAFC area.

The amendments to the first piece of legislation, concerning general conservation and enforcement measures applicable in the NEAFC regulatory area, are technical changes to ensure that the legislation works in a UK context. For example, references to the “EU” or “Union” (or Union waters) as a geographical area are changed to “the United Kingdom” (or United Kingdom waters); and references to “Member States” are changed to “a fisheries administration”.

The amendments provide for fisheries administrations to enforce measures as required by NEAFC, such as limiting the types of fishing gear that can be deployed, rules on reporting of catches, limits on the volume of bycatch vessels can take and protection of vulnerable marine ecosystems.

The amendments in the second piece of legislation, concerning the more detailed rules around control and enforcement of fishing activity in the NEAFC regulatory area, are of a very similar nature.

The Regulations ensure that the NEAFC regulations will be operable and effective once the UK is a contracting party.

The International Commission for the Conservation of Atlantic Tunas (“ICCAT”)

Three EU Regulations regarding ICCAT are amended by these Regulations: one concerns the control and enforcement measures applicable in the ICCAT Convention area (the “ICCAT control regulation”); another lays down rules for the adoption of the bluefin tuna recovery plan as agreed by ICCAT (the “bluefin tuna regulation”); and a third provides details regarding catch documentation for bluefin tuna (the “bluefin tuna catch documentation regulation”).

The amendments to all three regulations are minor and technical changes that are necessary to ensure that the regulations work if it is the UK, not the EU, that is the contracting party. They also ensure that IUU fishing (illegal, unreported and unregulated fishing) rules continue to apply and be enforceable after exit day. Examples of the amendments include changes to reporting requirements so that fisheries administrations report directly to ICCAT rather than reporting via the Commission. The amendments provide for fisheries administrations to enforce measures as required by ICCAT, such as limiting the types of fishing gear that can be deployed, the number of vessels which can fish in the area at any one time, rules on reporting of catches, and protection of vulnerable marine ecosystems.

In the bluefin tuna regulation, the amendments ensure that responsibility for ICCAT’s bluefin tuna recovery plan are transferred from the Commission or Member States to fisheries
administrations. Certain provisions that have no application in the UK, due to the UK not having any tuna farms or, more importantly, any bluefin tuna quota, are omitted. “M the first two pieces of legislation, concerning general conservation and enforcement measures applicable in the ICCAT convention area, substitute references to the European Union and associated institutions to the United Kingdom and a fisheries administration.

The bluefin tuna catch documentation regulation is being rolled over to maintain existing requirements for catch documentation, the purpose of which is to prevent illegally caught Bluefin tuna from entering the market. Responsibility to ensure enforce and create a catch documentation programme is being transferred from the Commission to a fisheries administration. For Scottish ports, that responsibility would fall on Scottish Ministers.

**Exemption from the Landing Obligation for certain stocks caught in ICCAT and NAFO waters**

This piece of legislation grants vessels a limited exemption from the landing obligation allowing them to discard certain species in ICCAT and NAFO waters as required by these RFMOs. The Regulations include amendments to ensure that the legislation continues to be operable and applicable to United Kingdom vessels, once the UK is a member of one or both of the RFMOs.

The amendments provide for fisheries administrations to allow their vessels to discard certain stocks as required by ICCAT and NAFO. Example amendments include: references to “a legally binding Union act” are amended to “applicable laws”; and “Union” is amended to “United Kingdom”.

**The Convention on the conservation of Antarctic marine living resources (“CCAMLR”)**

There are two pieces of EU legislation regarding CCAMLR that are amended by these Regulations. They set out detailed technical conservation measures applicable to fishing activities in the CCAMLR regulatory area and the associated control measures.

The amendments to the two pieces of legislation substitute references to the European Union and associated institutions to the United Kingdom and a fisheries administration. The amendments provide for fisheries administrations to enforce measures as required by CCAMLR, such as limiting the types of fishing gear that can be deployed, rules on reporting of catches, limits on the volume of bycatch vessels can take and protection of vulnerable marine ecosystems.

In the RFMO regulations, no legislative functions are being transferred, whether to fisheries administrations or the Secretary of State. The Fisheries Bill makes provision that will allow for regulations to be made to give effect to agreements with RFMOs, hence the view was taken that such powers in the RFMO regulations would be duplication of powers but more limited than those being established by the Fisheries Bill. As drafted, the regulation-making power in the Fisheries Bill is exercisable by the Secretary of State but requires the consent of the Scottish Ministers if it would be within the legislative competence of the Scottish Parliament. We are satisfied that this respects the devolution settlement, particularly in the context of international agreements where a UK-wide approach is desirable. These Regulations therefore omit provisions containing legislative functions of the Commission or other EU entities.
The Technical Conservation regulations

There are 15 pieces of EU legislation concerning technical conservation that are amended by these Regulations. These specify the technical and conservation measures that fishing vessels must take when undertaking fishing activities. This includes rules governing gear size and design, minimum mesh sizes, by-catch limits, and other measures for the conservation of resources and ecosystems. The legislation concerns the following matters:

- Conservation of juveniles of marine organisms
- Monitoring of trade in swordfish and bigeye tuna
- Removal of shark fins
- Conservation of certain stocks of highly migratory species of fish
- Attachment of devices to certain types of nets
- Recovery of stocks of hake
- Protection of certain stocks in the Celtic Sea
- Incidental catches of cetaceans in fisheries
- Use of beam trawls
- Conservation of fishery resources
- Recovery of stocks of cod in the Irish Sea
- Mesh sizes when fishing for blue whiting in the NEAFC convention area
- Recovery of stocks of cod in North Sea and to the West of Scotland
- Minimum mesh size for fishing capelin in areas beyond fisheries jurisdiction of the NEAFC Convention
- Mesh size and assessing the thickness of twine of fishing nets

The amendments to the Technical Conservation regulations are generally technical in nature and make minor amendments to ensure that the legislation continues to work after exit day. For example, “Member States shall” is often amended to “A fisheries administration must”; “Union” or “Community” is often amended to “United Kingdom”; and “flying their flag” (referring to a vessel being flagged to a certain Member State) is amended to “in its [a fisheries administration’s] fleet”, to reflect the port in which a UK vessel is registered.

The amendments provide for fisheries administrations to enforce measures as on the types of fishing gear that can be deployed in certain areas, rules on reporting of catches, prohibition on removing shark fins, provisions on catches of cetaceans and measures to recover stocks.

Five legislative functions (regulation-making powers) are transferred from the Commission to fisheries administrations / the Secretary of State. They all relate to the first piece of legislation listed above, relating to technical measures for the conservation of juveniles of marine organisms. The regulation-making powers are detailed in the table below.

Two of the regulation-making powers will be exercisable only by a fisheries administration. This means that for devolved matters in or as regards Scotland, it is only the Scottish Ministers who can carry out the function. This is “approach 1” in the table below.
The other two regulation-making powers will be exercisable by the devolved administrations but, if administrations agree that a UK-wide approach is preferable, the Secretary of State can make regulations on behalf of all four administrations. In order for the Secretary of State to do so, consent from the Scottish Ministers (and the other devolved administrations) will be required. (“Approach 2” in the table below)

<table>
<thead>
<tr>
<th>Article number</th>
<th>Description of the power</th>
<th>Approach</th>
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<tbody>
<tr>
<td>29d(7)</td>
<td>Power to make regulations determining gears with equivalent high selectivity for the purposes of fishing for Norway lobster</td>
<td>1</td>
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<tr>
<td>29d(10)</td>
<td>Power to make regulations amending restrictions on fishing for cod, haddock and whiting in ICES sub-area 6.</td>
<td>1</td>
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<tr>
<td>45</td>
<td>Power to make regulations taking emergency measures necessary for the conservation of fish stocks or grounds</td>
<td>2</td>
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<tr>
<td>46</td>
<td>Power to make regulations taking measures for the conservation and management of stocks</td>
<td>2</td>
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<tr>
<td>48</td>
<td>Power to make regulations setting out detailed rules for the implementation of this regulation (including, for example, technical rules for the determination of twine thickness, technical rules for the determination of mesh size and rules for sampling.)</td>
<td>2</td>
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Regulations made under these powers will be subject to the negative procedure.
The North Sea Multiannual Plan

This EU Regulation was adopted in 2018. It concerns demersal stocks in the North Sea and the fisheries exploiting those stocks. It also specifies certain details of the implementation of the landing obligation in the North Sea. It establishes long-term plans for the recovery, conservation or management of fish stocks, including an option for managing how much time fleets can spend at sea within the North Sea. It is being amended so as to apply only in United Kingdom waters of the North Sea.

Amendments include changing references to “the Union” to “a fisheries administration” and references to “Union legal acts” to “enactments”. A new definition for “enactment” is also inserted to ensure that it is given the definition given to it in the European Union (Withdrawal) Act 2018 (thus includes ASPs).

One provision (Article 4) of this EU Regulation concerns the determination of fishing opportunities of north sea stocks. There is an ongoing competency dispute between the Scottish Government and the UK Government regarding the determination of fishing opportunities, in the context of the Fisheries Bill. The amendment to this provision is worded neutrally so as not to attribute the determining of fishing opportunities to any particular person. This means that the North Sea Multiannual Plan regulation will continue to be effective regardless of who determines the fishing opportunities.

As with the RFMO regulations, no legislative functions are being transferred, whether to fisheries administrations or the Secretary of State. The Fisheries Bill provides for equivalent regulations to be made, hence the view was taken that such powers in the north sea multiannual plan regulation would be duplication of powers but more limited than those being established by the Fisheries Bill. As drafted, the regulation-making power in the Fisheries Bill is exercisable by the Secretary of State but requires the consent of the Scottish Ministers if it would be within the legislative competence of the Scottish Parliament. We are satisfied that this respects the devolution settlement, particularly in this context where a UK-wide approach is desirable. These Regulations therefore omit provisions containing legislative functions of the Commission or other EU entities.


Council Regulation (EC) No. 708/2007, concerning the use of alien and locally absent species in aquaculture, establishes an EU-wide framework governing aquaculture practices to assess and minimise their possible impact and to contribute to the sustainable development of the aquaculture sector.

The main amendments being made transfer powers currently held by the Commission to amend the Annexes to Council Regulation (EC) No. 708/2007. Amendments to Annexes are required infrequently. Changes can be summarised as:

- The power to amend Annexes 1 (indicative guidelines for a dossier to be completed in a permit application) and 3 (quarantine requirements) of the Regulation are to sit with the Scottish Ministers in relation to Scotland.
• The power to amend Annex 2 (Procedures and Minimum elements to be addressed in a formal risk assessment) and Annex 4 (Species to which the regulations do not apply) will sit with the Secretary of State. Such amendments will apply in relation to the whole of the United Kingdom. However, the Secretary of State cannot make regulations without the consent of the relevant authority which is the Scottish Ministers in relation to Scotland. Joint working in the field of aquatic animal health and alien and locally absent species is essential.

3. **Why are these changes necessary?**

These changes are required to ensure the continuity of the existing fisheries management regime on withdrawal from the EU. The majority of fisheries management legislation is dependent on the CFP, and failure to address these deficiencies would render the legislation inoperable or ineffective on exit day. Inoperable or ineffective legislation would risk severe environmental damage and overfishing as there would be no effective means to control activities of fishermen. The UK would find itself in contravention of international obligations and risk its global reputation as sound managers of marine resources. Negative market impacts would also result as many export destinations for seafood would not accept produce from unsustainably managed fisheries.

The RFMO regulations will not, generally speaking, take effect until the United Kingdom becomes a member of the RFMOs. It is unknown when that will happen but having these regulations as part of domestic law will ensure that appropriate legislation is in place and that the United Kingdom’s fishing vessels can return to fishing in RFMO convention areas / for RFMO species as soon as possible after the UK joins the organisations. Certain provisions of the RFMO regulations, notably those relating to the prevention of illegal, unreported and unregulated fishing, will continue to be relevant to the United Kingdom even prior to joining the RFMOs. It is important that deficiencies are corrected to ensure that this legislation is effective immediately upon leaving the EU.

4. **Scottish Government categorisation of significance of proposals**

The proposed amendments within the Regulations fall within categories A and B. The majority of the amendments are technical in nature and do not represent a significant change in policy. However there are also five regulation-making provisions where legislative functions are being transferred to a fisheries administration, which is the Scottish Ministers for devolved matters. Given the significance of these provisions we consider that it is appropriate that these are classed as category B.

5. **Impact on devolved areas**

The approaches taken to legislative functions transferred by the Regulations respect the devolved settlement. In the first instance transferring powers to “fisheries administrations”, ensures that functions are transferred in line with devolved areas of responsibility. This is consistent to the approach taken by the Common Fisheries Policy (Amendment) (EU Exit) Regulations 2018. It has been agreed in some areas a UK wide approach will or might be required, and in these cases whilst the Secretary of State may act in devolved areas consent
will be required from all devolved administrations. This respects the devolution settlement while allowing a consistent pan-UK approach to these powers where it is sensible to do so.

6. **Stakeholder engagement/consultation**

The Department for Environment, Food and Rural Affairs (DEFRA) has consulted with the devolved administrations of Scotland, Wales and Northern Ireland regarding this instrument. Defra has also conducted some targeted engagement involving key stakeholders from the fisheries sector, food industry and environment non-governmental bodies. In addition, a ten-week consultation was conducted through the Fisheries White Paper which described future fisheries policy. Stakeholders were broadly supportive of the approach being taken in the White Paper.

The Regulations ensure that good management and adequate transfer of functions of those aspects of sea fisheries covered by these Regulations can continue uninterrupted in the event of EU Exit in March 2019 without a transitional period. As such Scottish Government has not undertaken any separate stakeholder engagement. Engagement with stakeholders over the long term future of fisheries management in Scotland is ongoing with a view to Scottish Ministers legislating in future.

7. **Any other impact assessments?**

On the basis that these amendments do not result in any policy changes, no impact assessment has been prepared.

8. **Summary of reasons for Scottish Ministers’ proposing to consent to UK Ministers legislation**

The provisions were made at the UK level to reflect the mix of reserved and devolved responsibilities and the UK wide approach taken in the subject matter dealt with in the Regulations. Scottish Ministers consider that consenting to the Regulations is the most effective and transparent way to make changes to address deficiencies at the same level. Officials have worked with UKG to ensure the drafting delivers for our interests and respects devolved competence in Scotland.

9. **Do the proposed changes adhere to the environment and animal welfare principles?**

Yes. The guiding principles on the environment as set out in Articles 13 and 191(2) in Titles II and XX respectively of the Treaty on the Functioning of the European Union are relevant to these proposals. The legislation modified by the Regulations is already in line with these principles, and as no policy changes are being introduced, it is considered that these amendments are in adherence with these principles.
10. **Intended UK laying date**

Our current understanding is that Defra intend to lay the SI on 12 February 2019 but this may be brought forward, in which case an update will be provided. The instrument will be laid in draft as the proposed regulations are subject to affirmative procedure.

11. **Does the Scottish Parliament have 28 days to scrutinise Scottish Ministers’ proposal to consent?**

If the instrument is to be laid on 12 February, Parliament has 20 days ahead of the instrument being laid.

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

It is essential that the legislation being amended is operable in the event that the UK leaves the EU with no deal or no transition period in March 2019. Consequently, the Regulations must be introduced to the UK Parliament in good time in order to ensure they pass through UK parliamentary procedure by this date.

13. **Any significant financial implications**

We have discussed the need for an impact assessment with the UK Government and on the basis that these amendments do not infer any policy changes we have concluded that there is not a requirement to undertake an impact assessment. It is the intention that Scottish Ministers will legislate and implement measures in the future to establish a world class fisheries management system in Scottish waters.
Annex A

Legislation being amended by these Regulations

**Regional Fisheries Management Organisations Regulations**


7. Commission Delegated Regulation (EU) No 2015/98 on the implementation of the Union’s international obligations under the International Convention for the Conservation of Atlantic Tunas and the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries


Technical Conservation Regulations

10. Council Regulation (EC) No 850/98 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms


14. Commission Regulation (EEC) No 3440/84 on the attachment of devices to trawls, Danish seines and similar nets

15. Commission Regulation (EC) No 494/2002 establishing additional technical measures for the recovery of the stock of hake in ICES sub-areas III, IV, V, VI and VII and ICES divisions VII a, b, d, e

16. Commission Implementing Regulation (EU) No 737/2012 on the protection of certain stocks in the Celtic Sea


18. Commission Regulation (EC) No 1922/1999 laying down detailed rules for the application of Council Regulation (EC) No 850/98 as regards conditions under which vessels exceeding eight metres length overall shall be permitted to use beam trawls within certain waters of the Community

19. Council Regulation (EC) No 894/97 laying down certain technical measures for the conservation of fishery resources


21. Council Regulation (EEC) No 1638/87 fixing the minimum mesh size for the pelagic trawls used in fishing for blue whiting in that part of the area covered by the Convention on Future Multilateral Cooperation in the North East Atlantic Fisheries which extends beyond the maritime waters falling with in the fisheries jurisdiction of Contracting Parties to the Convention

22. Commission Regulation (EC) No 2056/2001 establishing additional technical measures for the recovery of the stocks of cod in the North Sea and to the West of Scotland
23. Council Regulation (EEC) No 1899/85 establishing a minimum mesh size for nets used when fishing for capelin in that part of the zone of the Convention on future multilateral cooperation in the north-east Atlantic fisheries which extends beyond the maritime waters falling within the fisheries jurisdiction of Contracting Parties to the Convention.


**The North Sea Multiannual Plan**


**Alien And Locally Absent Species**

Annex B

Legislation being revoked by these Regulations

1. Council Regulation (EU) 2018/120 of 23 January 2018 fixing for 2018 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, and amending Regulation (EU) 2017/127

2. Commission Implementing Decision of 19 March 2014 establishing a specific control and inspection programme for fisheries exploiting stocks of bluefin tuna in the Eastern Atlantic and the Mediterranean, swordfish in the Mediterranean and for fisheries exploiting stocks of sardine and anchovy in the Northern Adriatic Sea
