

EXECUTIVE NOTE

THE SHETLAND ISLANDS REGULATED FISHERY (SCOTLAND) ORDER 2009 SSI/2009/443

The above instrument is made in exercise of the powers in section 1 of the Sea Fisheries (Shellfish) Act 1967. The instrument is subject to negative Parliamentary procedure.

Policy Objectives

Regulating Orders allow local communities to apply for the right to manage their local fisheries. The Shetland Islands Regulated Fishery (Scotland) Order 2009 grants the Shetland Shellfish Management Organisation (SSMO) the legal right to regulate (manage) the commercial fisheries for lobsters, crabs, scallops, queens, whelks, mussels, cockles, razor shells and oysters around the Shetland Islands within the area between the low water mark out to the 6 mile limit. The SSMO have carried out this task over the past 10 years under the Shetland Islands Regulated Fishery (Scotland) Order 1999

The new Order will continue the regulatory regime in place under the existing Shetland Islands Regulated Fishery (Scotland) Order 1999 which will expire on 31st January 2010. Failure to make a new Regulating Order would create the potential for a regulatory vacuum and therefore an unstable environment in which to pass management responsibility to the prospective Inshore Fishery Group (IFG). The new Order will effectively maintain the regulatory status quo when it comes into force, for a period of three further years. This period was chosen as a reasonable time to allow the prospective Inshore Fisheries Group for Shetland a period to settle in and decide on a longer term strategy for Shetland's Shellfish sector when the Order expires in 2013.

Consultation

The SSMO consulted extensively with the local community as part of their application process. They held two public meetings where no objections were raised. Their consultation produced 79 responses, of these only 11 expressed doubts.

A draft of the proposed Regulating Order was consulted upon as is required in terms of Schedule 1 to the Sea Fisheries Shellfish Act 1967. Schedule 1 of that Act also requires the proposed Order to be published. Details of the proposed Order were advertised in two newspapers, and a period of one month after advertising was provided for receipt of representations. That period ended on 25th September 2009, but as there was a postal strike during the period, we accepted correspondence up to the 30th of October. No objections were raised.

Financial Effects

Under both the existing 1999 Order and the proposed Order, the grantees (SSMO) may issue licences to vessels to fish, take or dredge. Under the 1999 Order, they could levy a toll of £100. However, in terms of article 6(2) of the 1999 Order, the Scottish Ministers agreed that this toll be increased to £150, and this level of toll is repeated in the proposed Order. The income generated by the tolls is used to fund the management of the fisheries regulated under the Order by the Shetland Shellfish Management Organisation.

Sea Fisheries Policy
Marine Scotland
11 December 2009

FINAL REGULATORY IMPACT ASSESSMENT

1. Title of Proposal

1.1. THE SHETLAND ISLANDS REGULATED FISHERY (SCOTLAND) ORDER 2009 SSI/2009/443

2. Purpose and Intended Effect

Objectives

2.1 The aim of the proposed Regulating Order is to grant the Shetland Shellfish Management Organisation (SSMO) the legal right to manage the commercial fisheries for lobsters, crabs, scallops, queens, whelks, mussels, cockles, razorshells and oysters around the Shetland Islands within the area between the low water mark out to the 6 mile limit. The result of this would be to put the management of these fisheries in local hands, enabling a more targeted management regime and access to high quality local science from the North Atlantic Fisheries College. The SSMO would be able to apply restrictions to the fishing activity and effort in a way that is not possible in the absence of a localised inshore management regime.

Background

2.2 The Shetland Islands Regulated Fishery (Scotland) Order 1999 (“the 1999 Order”) is due to expire at the end of January 2010. A new Regulating Order needs to come into effect to prevent a regulatory vacuum. The Regulating Order is an effective local management tool with the purpose of maintaining sustainable shellfish stocks around Shetland. The proposed order is for 3 years as opposed to the period of 10 years which the current 1999 Order is in force for to allow time for the possible establishment of a local Inshore Fisheries Group (IFG). This will allow an IFG, once established, to help determine how best to manage local stocks upon expiry of the 3 years of the proposed Order.

Rationale for Government intervention

2.3 The Government has already intervened by making the 1999 Order and it is important to maintain the stability provided by that Order whilst consideration is given to the establishment of a local IFG and an agreed way forward to be determined. A further Order to come into force upon the expiry of the 1999 Order to cover the 3 years from January 2010 seems to be the way to achieve that.

3. Consultation

3.1 Within government

The proposed Regulating Order itself has already been the subject of consultation as part of the requirements of Schedule 1 to the Sea Fisheries (Shellfish) Act 1967.

In addition to the Regulating Order consultation, as per the requirements of Schedule 1 to the Sea Fisheries (Shellfish) Act 1967 the following organisations have also been consulted on the terms of this proposed Order:

Scottish Natural Heritage
The Crown Estate
Health and Safety Executive
Shetland Islands Council

3.2 Public Consultation

There was a period of one month of consultation after advertising the Order on 25 September 2009. There was a postal strike during the period and correspondence up to 30 October was therefore accepted. No objections were raised. For the purposes of this assessment, fishing vessel owners affected by the proposed Order have been consulted and can be considered as individual businesses.

4. Options

4.1 Two options have been considered in relation to the proposed Regulating Order:

- (1) do nothing; and
- (2) make a new Regulating Order to come into force upon the expiry of the existing 1999 Order.

Option 1

4.2 Do nothing. This option would raise the potential for a regulatory vacuum which might destabilise the local inshore sector. Without a Regulating Order there is potential for overfishing and oversupply, thus upsetting the delicate balance of the local market and leading to a fall in prices.

Option 2

4.3 It would be preferable for any prospective IFG to take over the management of a stable, regulated sector and, with that in mind, the second option is to bring in a 3 year Regulating Order which will maintain the status quo.

5. Costs and benefits

5.1 Sectors and groups affected

The affected group will mainly be the shellfish catching and processing sector in Shetland. The Order is unlikely to have an effect beyond Shetland as the shellfish sector tends to be locally based and the small vessels involved in inshore fisheries elsewhere would be unlikely to sail to Shetland to fish or to sell to processors on the Shetland Islands.

5.2 Benefits

Option 1 – there are no benefits in allowing the existing 1999 Order to lapse without making a new Regulating Order to follow on from the 1999 Order at this time. As mentioned above, there may be serious repercussions for the local industry and economy. Longer term, the ongoing sustainability of the fishery may be compromised.

Option 2 – The benefit of bringing into force a new Order is the stability it provides for the local market and catchers. It will allow time for a potential IFG to become established in a stable environment.

5.3 Costs

5.3 Under the proposed Regulating Order, the grantee, SSMO, may issue vessels licences to fish, take or dredge in the area covered by the Order. A toll of £150 is payable to SSMO in respect of the issue of such a licence. The income generated from these tolls funds the management of the fishery. Under Article 6.2 of the 1999 Order the level of toll was increased by £50.00 from the £100.00 toll previously paid and has not increased since. Enforcement provision are provided by Marine Scotland Compliance from within existing resources and priorities.

6. Small/Micro firms

6.1 The impact on small businesses should be positive as it allows them to continue to operate as they have done over the past 10 years. With effective local management, the sustainability of the stocks in the longer term guarantees their future. Scottish Government officials met with local fisheries interests, including fishing vessel owners, who are effectively small businesses. These fishermen support the introduction of the Order, which will allow them to continue to fish in a sustainable environment.

7. Legal Aid Impact test

7.1 The proposals will not have any impact upon legally compliant licence holders. It remains the responsibility of Marine Scotland Compliance to investigate whether there has been a breach of licence conditions. In that event, Marine Scotland Compliance will still be able to refer cases to the Crown Office Procurator Fiscal Service for prosecution, but this does not alter or undermine an individual's access to the justice system. It does, in the majority of cases, allow them to accept and pay an administrative penalty without venturing into the court system should they elect to do so. The Scottish Government's Legal Aid Team has cleared this approach.

8. Test run of business forms

8.1 Forms used are the ones used by the SSMO for the life of the previous Order, i.e. those provided for by the Several and Regulated (Form of Application) Regulation 1997. There are no forms involved therefore no requirement for a test run of business forms

9. Competition Assessment

9.1 The Sea Fisheries (Shellfish) Act 1967 gives the grantee - in this case the Shetland Shellfish Management Organisation (SSMO) - the right to regulate the fishery prescribed in the Regulating Order. The Regulating Order is in place to allow the fishery to be locally managed on a sustainable footing, which in turn allows fishermen to make a living. The absence of the management regime could lead to overfishing and result in the collapse of the stocks to the detriment of the local fishing community. The SSMO operates a transparent licensing regime, and applicants are all scored on a standard set of criteria. This creates a level playing field and equal competition within the fishery.

10. Enforcement, sanctions and monitoring

10.1 Marine Scotland Compliance is empowered to enforce the proposed Order, in terms of sections 4A to 4D of the Sea Fisheries (Shellfish) Act 1967 (which provisions were inserted by section 98(1) of the Police, Public Order and Criminal Justice (Scotland) Act 2006) British Sea Fishery Officers are empowered to monitor, and enforce the fisheries regulated by the proposed Order. A person who commits an offence under the Order may, on conviction, be liable to a fine of up to the statutory maximum (currently £5,000).

11. Implementation and delivery plan

11.1 The proposed Regulating Order will come into force on 31st January 2010 which will enable the Shetland Shellfish Management Organisation to continue to manage the fishery as it has done over the past 10 years.

12. Post-implementation review

12.1 As the proposed Order will only run for 3 years, a review is not deemed necessary. The prospective IFG should be established by that point and may wish to promote a new order.

13. Summary and recommendation

13.1 To proceed with option 2.

Summary costs and benefits table

Option	Total benefits per annum: economic, environmental and social	Total cost per annum: economic, environmental, social, policy and administrative
1	Nil – danger of destabilisation of local markets.	Nil.
2	Maintaining a stable environment for the sector to operate in. The SSMO is able to access excellent local science from the North Atlantic Fisheries College on the islands and can use that science to make informed management decisions.	Nil – self funding. The SSMO charge £150.00 annual fee for a fishing licence and that income covers their costs.

14. Regulatory Quality Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed.....

Date.....

Richard Lochhead
Cabinet Secretary for Rural Affairs and the Environment
Scottish Government