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Finlay Carson MSP
Convener of Rural Affairs and Islands Committee
Scottish Parliament

13 November 2023

Dear Finlay,

THE SEA FISHERIES (INTERNATIONAL COMMISSION FOR THE CONSERVATION OF ATLANTIC TUNAS) (AMENDMENT) REGULATIONS 202[3]

PROTOCOL NOTIFICATION TO SCOTTISH PARLIAMENT

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament for proposals by the Scottish Ministers to consent to the making of UK secondary legislation affecting devolved areas.

That protocol, as agreed between the Scottish Government and the Parliament, accompanied the letter from the Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell MSP, to the Conveners of the Finance & Constitution and Delegated Powers and Law Reform Committees on 4 November 2020 and replaced the previous protocol that was put in place in 2018.

I attach a Type 1 notification which sets out the details of the SI that the UK Government propose to make and the reasons why I am content that Scottish devolved matters are to be included in this SI. Please note, we are yet to have sight of the final SI and it is not available in the public domain at this stage. We will, in accordance with the protocol, advise you when the final SI is laid and advise you as to whether the final SI is in keeping with the terms of this notification.

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

I look forward to hearing from you by 11 December 2023

Yours sincerely,



MAIRI GOUGEON

Annex A

NOTIFICATION TO THE SCOTTISH PARLIAMENT

Name of the SI(s)

The Sea Fisheries (International Commission for the Conservation of Atlantic Tunas) (Amendment) Regulations 2023

Is the notification Type 1 or Type 2

This is a Type 1 notification.

Brief overview of the SI (including reserved provision):

The primary purpose of this instrument is to amend UK legislation to ensure that the UK is compliant with its obligations under the Convention. Some of the provisions amend retained EU law where the original EU legislation had not been updated prior to the Implementation Period completion day to reflect new obligations on contracting parties to the Convention. In this regard, amendments were not made at the point of EU exit because the deficiency correction powers under the Withdrawal Act were not designed to be wide enough to change EU law that was out of date at the point of exit. Some of the provisions amend retained EU law which was up to date on the Implementation Period completion day to reflect new obligations which have been adopted under the Convention since the UK left the EU and joined the Convention as an independent contracting party.

Whilst updating the relevant retained EU law, amendments have also been made to remove unnecessary provisions. In particular, provisions which served a purpose as EU law, but which are obsolete as retained EU law, such as requirements on member States to submit information to the European Commission to ensure the Commission had the necessary information to submit to the Convention Secretariat. Furthermore, amendments have also been made to the relevant retained EU law to ensure clarity and enforceability of the relevant provisions. This is particularly the case in relation to provisions regulating the fishing of bluefin tuna and reflects the fact that at the point of EU exit, the UK did not have an allocation of quota for bluefin tuna but since joining the Convention as an independent contracting party the UK has established an allocation of quota for this stock in line with the UK-EU Trade and Cooperation Agreement. As such, the opportunity has been taken to redraft some provisions to remove potential ambiguities and clarify how requirements will apply to UK fishing vessels fishing for, or incidentally catching, bluefin tuna in the Convention area. For completeness, offence, penalty, and enforcement provisions have been added directly to relevant retained EU law to avoid any potential ambiguity as to whether existing enforcement provisions would apply to the newly amended provisions.

Laying and coming into force dates

This SI is due to be laid before the UK Parliament on 12 December 2023 and will come into force on 22 February 2023.

Details of the provisions that Scottish Ministers are being asked to consent to.

Summary of the proposals

Given the devolved nature of fisheries, this SI relates to matters in the competence of Scottish Ministers to the extent that it applies to sea fishing activities in the

Scottish zone or to the sea fishing activities of Scottish fishing vessels outwith that zone.

The instrument does not confer powers to legislate on either UK or Scottish Ministers.

The UK as a contracting party of the ICCAT has an obligation to implement measures (known as 'recommendations') adopted under the Convention. This instrument amends retained EU law to implement provisions of recommendations adopted under the Convention which were not reflected in the relevant legislation to ensure the UK is meeting its international obligations. Additionally, this instrument also makes amendments to retained EU law to remove provisions which are unnecessary or to remove ambiguity in legislation which was not comprehensively updated at the point of EU exit.

This instrument makes amendments to the following retained EU law:

- a. Council Regulation (EC) No 1936/2001 laying down control measures applicable to fishing for certain stocks of highly migratory fish ("Regulation 1936/2001"). These measures include regulation of the Convention area and regulating the farming of bluefin tuna.
- b. Council Regulation (EC) No 1984/2003 introducing a system for the statistical monitoring of trade in swordfish and bigeye tuna within the Community ("Regulation 1984/2003"). This includes the requirement for statistical documentation to accompany imports, exports and re-exports of swordfish and bigeye tuna. Additionally, amendments are made to descriptions of fish captured by the regulation in particular updating TARIC codes. Furthermore it includes offences, penalty and enforcement provisions which provide fine limits for offences, and enforcement powers including seizure of fish caught in contravention of this regulation.
- c. Regulation (EU) No 640/2010 of the European Parliament and of the Council establishing a catch documentation programme for bluefin tuna *Thunnus thynnus* ("Regulation 640/2010"). This updates the regulation to make use of the electronic Bluefin Tuna Catch Documentation scheme mandatory and includes circumstance which paper documentation may be used. As with Regulation 1984/2003 descriptions of fish captured by the regulation are updated along with TARIC codes. The regulation also provides offence, penalty and enforcement provisions, these include fine limits and powers of seizure of fish caught in contravention of this regulation.
- d. Commission Delegated Regulation (EU) No 2015/98 on the implementation of the Union's international obligations under the International Commission for the Conservation of Atlantic Tunas and the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries ("Regulation 2015/98"). This is to remove duplication with the amendments made by this instrument to Regulation 2016/1627.
- e. Regulation (EU) 2016/1627 of the European Parliament and of the Council on a multiannual recovery plan for bluefin tuna in the eastern Atlantic and the Mediterranean ("Regulation 2016/1627"). The update ensures that it correctly reflects the UK's obligations under the latest Convention recommendations and takes account of the UK's allocation of bluefin tuna catch quota (previously the UK was not allocated any bluefin tuna catch

quota under the Convention). The amendments ensure that relevant Convention requirements will be applied to UK fishing boats fishing for bluefin tuna under the new quota allocation. Provisions relating to bluefin tuna farming, including the use of bluefin tuna traps and cage transportation between traps and farms, are removed as this type of activity will not form part of the UK's approach to bluefin tuna. The amendments prohibit farming and the use of traps in UK waters or by UK vessels in the Convention area. Further amendments relate to annual fishing and fishing capacity plans, requirements for catch reports, monitoring and surveillance. The regulation also provides offence, penalty, and enforcement provisions, which includes fine limits and powers of seizure of fish.

- f. Regulation (EU) 2019/1154 of the European Parliament and of the Council on a multiannual recovery plan for Mediterranean swordfish ("Regulation 2019/1154"). Regulation 7 of this instrument revokes the substantive provisions of Regulation 2019/1154 as these relate to swordfish in the Mediterranean.
- g. Regulation (EU) 2019/1241 of the European Parliament and of the Council on the conservation of fisheries resources and the protection of marine ecosystems through technical measures ("Regulation 2019/1241"). Regulation 8 of this instrument amends Regulation 2019/1241 to insert the minimum conservation reference sizes for bluefin tuna specified under the Convention as it is clearer and more logical for all minimum conservation reference sizes to be specific in one Regulation rather than contained in individual items of retained EU law.
- h. In addition to amending retained EU law, this instrument also amends the Common Fisheries Policy and Aquaculture (Amendment etc) (EU Exit) Regulations 2019. The amendments remove provisions which are currently of no effect (the provisions in question made amendments to retained EU law which had been previously revoked) and are therefore deleted to avoid any confusion.

Details of the provisions that Scottish Ministers are being asked to consent to.

Summary of the proposals

Does the SI relate to a common framework or other scheme?

This SI will implement a new requirement for the electronic sharing of data on tuna catch certificates. The UK became an independent contracting party of the International Convention for the Conservation of Atlantic Tunas (ICCAT) on 1 January 2021 and is now responsible for updating its laws and regulations in line with any recommendations agreed at the ICCAT Annual General Meeting by the contracting parties.

Summary of stakeholder engagement/consultation

A targeted consultation took place on the mandatory use of the electronic Bluefin Tuna Catch Documentation system by traders of Bluefin Tuna. The consultation lasted for 4 weeks and the Department for Environment, Food and Rural Affairs ("the Department") consulted the registered users of this system. The response from those consulted was that the mandatory use of the electronic Bluefin Tuna Catch

Document system was a good step towards increasing the traceability of bluefin tuna.

The targeted consultation can be found on the Defra consultation website here.

In addition, the Department has consulted with the devolved administrations and the Marine Management Organisation regarding the amendments made by this instrument.

A note of other impact assessments (if available)

There is no, or no significant, impact on businesses, charities or voluntary bodies.

There is no, or no significant, impact on the public sector.

A full Impact Assessment has not been prepared for this instrument because of the predicted low-level impact on business and the low economic effects of the changes being applied.

Summary of reasons for Scottish Ministers proposing to consent to UK Ministers' legislation

This instrument updates and amends retained EU law to account for further requirements under the Convention and to remove ambiguity and unnecessary provisions. Legislating in a UK SI brings the revised provisions into force on the same day across the UK to avoid the risk of delay or inconsistent implementation of the international agreement reached with the EU.

The Scottish Ministers therefore consider that it is appropriate for the instrument to be made by the UK Government. The approach set out in the proposed UK SI is realistic, achievable and minimises immediate disruption.

The intended laying date (if known) of instruments likely to arise

N/A

If the Scottish Parliament does not have 28 days to scrutinise the Scottish Minister's proposal to consent, why not?

N/A

Information about any time dependency associated with the proposal

N/A

Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?

N/A

Any significant financial implications?

None identified.

SI NOTIFICATION: SUMMARY

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| Title of Instrument |
| The Sea Fisheries (International Commission for the Conservation of Atlantic Tunas) (Amendment) Regulations 2023 |
| Proposed laying date at Westminster |
| 12 December 2023 |
| Date by which Committee has been asked to respond |
| 11 December 2023 |
| Power(s) under which SI is to be made |
| Section 36(1)(b) and (c) and 51 (1)(a) of <i>the Fisheries Act 2020</i> , and In accordance with section 40 of the Fisheries Act 2020, the Secretary of State is seeking the consent of the Scottish Ministers to the making of this SI, having consulted with the Scottish Ministers in accordance with section 41(1). |
| Categorisation under SI Protocol |
| Type 1 |
| Purpose |
| <p>This instrument makes provision in relation to the International Commission for the Conservation of Atlantic Tunas (“the Convention”), to which the United Kingdom is a contracting party.</p> <p>The UK has an obligation under the United Nations Convention on the Law of the Sea (“UNCLOS”) to cooperate on the management of shared stocks through appropriate regional or sub-regional organisations. Tuna and tuna-like species are managed globally through Regional Fisheries Management Organisations; the Convention is one such example (“RFMOs”).</p> <p>The United Kingdom was formerly subject to the requirements of the Convention as a member State of the European Union. Following the EU exit, the UK has become a contracting party to the Convention as an independent coastal State. This instrument updates and amends retained EU law to account for further requirements under the Convention and to remove ambiguity and unnecessary provisions.</p> |
| Other information |
| N/A |
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| Marta Machut Marta.Machut@gov.scot |