

## **Explanatory Memorandum to the Fish Labelling (Wales) Regulations 2010**

This Explanatory Memorandum has been prepared by the Food Standards Agency Wales and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 24.1.

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Fish Labelling (Wales) Regulations 2010. I am satisfied that the benefits outweigh any costs.

*Gwenda Thomas*

**Deputy Minister for Health and Social Services**

**15 March 2010**

## **1. Description**

The Regulations update labelling legislation in respect of newly commercialised fish species and clarify names for some previously commercialised species. This is to ensure that consumers have accurate and reliable information when making purchasing choices.

## **2. Matters of special interest to the Constitutional Affairs Committee**

None

## **3. Legislative Background**

The Fish Labelling (Wales) Regulations 2003 (as amended) provide for the enforcement of Article 4 of Council Regulation 104/2000 and Commission Regulation 2065/2001 in Wales. The list of agreed commercial designations for fish species for the UK was included as a schedule to these Regulations. The UK list of commercial designations was also included as a schedule to equivalent Fish Labelling Regulations in England, Scotland and Northern Ireland.

The Fish Labelling (Amendment) (Wales) Regulations 2006 were adopted to allow for the updating of the Schedule of Commercial Designations. Equivalent amendment Regulations were made in England, Scotland and Northern Ireland.

Regulation (EC) No. 2065/2001 states that newly commercialised species, for which no commercial designation currently exists, may be marketed under a provisional commercial designation, agreed by the competent authority of the Member State (in the UK this is the Food Standards Agency). However, within the subsequent five months, a definitive commercial designation must be decided and added to the established national lists.

The Fish Expert Working Group, membership of which includes representatives from the Food Standards Agency, Seafish, fish and food industry representative organisations and the Natural History Museum, gives specialist advice to the Food Standards Agency in this area. The Working Group has become aware of a number of new fish which have come onto the market and the Agency has also received a number of requests from the fish industry for additions to the Schedules of each of the UK's four countries' Regulations. The Working Group has noted that most of the new fish are imported and are being sold primarily at Billingsgate Fish Market by minority ethnic fish wholesalers, and it is likely that they will then be sold mostly by minority ethnic retailers also. These requests have been considered and an amended Schedule of Commercial Designations drawn up, taking into account reference sources such as the FishBase website and the OECD Multilingual Dictionary of Fish and Fish Products.

## **4. Purpose and Intended effect of the legislation**

The intended effect of The Fish Labelling (Wales) Regulations 2010 is to help consumers by ensuring fish are labelled in a way that is accurate, consistent and not misleading and to ensure that the fish industry can readily comply with its statutory duties to label fish correctly.

## 5. Consultation

The Food Standards Agency Wales carried out 12 week public consultation on the draft Regulations which ran from 9 July to 1 November 2009. Parallel consultations were conducted in England, Scotland and Northern Ireland, and the consultation package was also posted on the Agency's website. Interested parties in Wales, including consumer groups, industry bodies, enforcement bodies and other government departments, were consulted on these draft Regulations. No responses were received to the consultation in Wales. Seven responses to the England consultation were received, from fish businesses, trade associations and enforcement bodies. Of these consultation responses, where most covered a number of topics, one was specifically a request for a further new designation, there was one about the layout of the Schedule and one about the addition of other substances to fish. There were three responses to the Scotland consultation, all of which were taken into account. The consultation responses were fully discussed by the re-convened Fish Expert Working Group following the close of the consultation and consensus decisions were reached on the requested new additions and changes.

## 6. Regulatory Impact Assessment

### Options

9. The options are:

- **Option a.** - Do nothing – no change to legislation
- **Option b.** - Update the Schedule through legislation by adopting the draft Fish Labelling (Wales) Regulations 2010.

### **Option a.**

10. Failure to update the national list of commercial designations contained within the Schedule in respect of certain fish species may leave the UK open to infraction procedures from the Commission.

### **Option b.**

11. The Fish Labelling (Wales) Regulations 2010 would contain an updated list of commercial designations as a schedule to the Regulations. This will achieve the intended objective of establishing appropriate commercial designations for newly commercialised fish species and amending existing commercial designations, where appropriate.

## Costs and Benefits

### Sectors and Groups Affected

*Market size*

12. The analysis of costs and benefits covers all devolved administrations and is done on a UK-wide basis. The UK fish retail market (excluding shellfish) was valued at approximately £1.8 billion by Mintel in 2007.<sup>1</sup> The majority of fish and seafood sales (85%) were through supermarkets (multiples and discounters) and 11% were through fishmongers or specialists.

### *Fish retail, wholesalers and manufacturing*

*Number of businesses by activity, split by country*

SIC Code 2003: 5223, 5138, 1520, 5211	England	Scotland	Wales	Northern Ireland	TOTAL UK
Retail - fish, crustaceans & molluscs	1,050	270	50	20	1,390
Wholesale of other food including fish, crustaceans and molluscs	1,610	285	70	90	2,055
Processing and preserving of fish and fish products	200	185	5	25	415
Retail general	35,370	4,610	2,305	1,545	43,830

13. The business sectors potentially affected by this proposal would be a proportion of retail fishmongers (of which there are 1,390), fish product manufacturers (of which there are approximately 415) and wholesale fish suppliers (approximately 2,055).<sup>2</sup> General retailers with wet fish counters may also be affected and this would represent a fraction of the general retail figure in the table above.
14. These businesses must already provide the labelling information (including the commercial designation) required by the Fish Labelling (Wales) Regulations 2003 (as amended) on all products at retail sale to the final consumer. In most cases this will be on pre-packed products, where new labels will have to be designed and printed for the newly commercialised species. It is assumed that only a very small number of labels will need to be re-designed and re-printed where the commercial designations of existing species have been changed. For products sold loose, i.e. at wet fish counters, the labelling information required is often provided by point of sale displays which will be cheaper and easier to amend.

### *Fishing vessels*

#### **Registered fishing vessels by nationality**

	ENGLISH	SCOTLAND	WALES	N IRELAND	All total
Vessels	3015	2149	544	228	5936
Auctions	25	3	3	1	32

<sup>1</sup> Mintel: Fish and seafood, September 2008

<sup>2</sup> IBDR ONS: VAT/PAYE registered local units 2008

Vessels Source: Marine and Fisheries Agency<sup>3</sup>

Auctions Source: Marine and Fisheries Agency<sup>4</sup>

15. Fish auctions (of which there are 28)<sup>5</sup>, fish vessels (of which there are 5,936)<sup>6</sup> and other businesses at the first stage of the supply chain (of which there are about 20) would also be affected by this proposal. The commercial designation for each species is needed under the traceability requirements of the Regulations at each stage of marketing prior to final retail sale. This information may be given by labelling, packaging or on commercial documents accompanying the fish which will need to reflect the new or amended commercial designations added to the Schedule.

#### *Consumers*

16. Consumers will benefit from clear and informative provisions in which there are specified designations for new fish which have come onto the market and some amendments to existing designations which describe certain fish more accurately. The purpose of these is more consistent labelling. Consumers from minority ethnic groups in particular are likely to benefit from this, as many of the new fish are likely to be marketed mostly to them.

#### *Enforcers*

17. Enforcement bodies will benefit from having clearer, up-to-date information located in one place, i.e. in the amended Schedule.

#### *Exceptions*

18. Catering establishments and processed fish products sold at retail will not be affected by these proposals because s.3(1) of the Fish Labelling (Wales) Regulations 2003 (as amended) applies to retail sales only, and processed fish products are not subject to the labelling requirements of Article 4 of Regulation (EC) 104/2000.

### **Option a. – Do nothing**

#### **Benefits**

19. There are no additional benefits to continuing with the current list as it is now outdated.

#### **Costs**

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<sup>3</sup> Marines and Fisheries Agency 2008, <http://www.mfa.gov.uk/statistics/vessellists.htm>

<sup>4</sup> [www.fishregister.co.uk](http://www.fishregister.co.uk)

<sup>5</sup> [www.fishregister.co.uk](http://www.fishregister.co.uk)

<sup>6</sup> Marines and Fisheries Agency 2008, <http://www.mfa.gov.uk/statistics/vessellists.htm>

20. There are potential costs in terms of consumer choice in that fish businesses may be reluctant to sell fish which have come onto the market which are not listed in the Schedule and to enforcement bodies from not having clear, consolidated enforcement information.

## Option b. – Legislative change

### Benefits

21. The new fish species added to the list will ensure accurate and consistent commercial designations in Wales, in the other countries within the United Kingdom and in other Member States where the common commercial name for the same species is in English. This may expand the range of fish and fish products available at all stages of marketing.
22. Consistent labelling of fish products in accordance with the 2010 Regulations will benefit the consumer via clarity and help prevent potential misdescription of the wider choice of fish and fish products available to the consumer. In addition, it may also help deter mislabelling that passes off inferior fish as different “premium” species.
23. There are no significant environmental benefits associated with this option.
24. There may be some advantages to UK businesses in terms of facilitating trade and the ability to place a wider range of fish on the market.

### Costs

#### *i) Familiarisation costs*

25. There will be a one-off familiarisation cost to industry and the enforcement authorities in terms of reading and familiarising themselves with the new Regulations and the new Schedule.

#### *Local Authorities*

Area	Number of LAs	Familiarisation cost (£'00s)
England	389	£2,684
Scotland	32	£221
Wales	22	£152
Northern Ireland	26	£179
UK total	469	£3,236
UK rounded to nearest £1000	469	£3,000

*Note: All figures rounded*

26. It is estimated by the Agency that it would take one local authority officer, in each of the 469 local authorities in the UK, 20 minutes to read the Schedule. With an average hourly pay rate for environmental health practitioners<sup>7</sup> of approximately £15.92<sup>8</sup> which, in line with the standard cost model, is then up-rated by 30% to account for overheads, this provides an hourly cost of £20.70, which equates to £6.90 per 20 minutes. This would be equivalent to a one-off familiarisation cost of around £3,000 for the UK (rounded) assuming that one officer can then disseminate this information to colleagues<sup>9</sup>.

### Businesses

No of Businesses/Costs	England	Scotland	Wales	N.Ireland	UK
Retail - fish, crustaceans & molluscs	1050	270	50	20	1390
Wholesale of other food including fish, crustaceans and molluscs	1610	285	70	90	2055
Processing and preserving of fish and fish products	200	185	5	25	415
Fishing Vessels	3040	2152	547	229	5968
<b>Total specialist</b>	<b>5900</b>	<b>2892</b>	<b>672</b>	<b>364</b>	<b>9828</b>
<b>Cost Specialist (£5.77)</b>	<b>£ 34,043</b>	<b>£ 16,687</b>	<b>£ 3,877</b>	<b>£ 2,100</b>	<b>£ 56,708</b>
<b>Rounded</b>					<b>£57,000</b>
Retail	35,370	4,610	2,305	1,545	43,830
<b>Cost Retail (£5.16)</b>	<b>£ 182,509</b>	<b>£ 23,788</b>	<b>£ 11,894</b>	<b>£ 7,972</b>	<b>£ 226,163</b>
<b>Total Cost</b>	<b>£ 216,552</b>	<b>£ 40,474</b>	<b>£ 15,771</b>	<b>£ 10,072</b>	<b>£ 282,870</b>
<b>Rounded</b>					<b>£283,000</b>

27. It is estimated that again it will take each business 20 minutes to read the Schedule. Assuming an average hourly wage of £13.31 in 2009 for managers in fishing, this was taken and up-rated by 30% to £17.30 or £5.77 per 20 minutes, in-line with the standard cost model.<sup>10</sup> Using the above IBDR data, it is estimated there are approximately 9828 specialist businesses (vessels, auctions and specific fish-related businesses in the fish sector that would be affected by the 2010 Regulations<sup>11</sup>. This equates to a one-off familiarisation cost of approximately £57,000 for the UK.
28. The above figure does not include general food retailers, some of which may be affected by the 2010 Regulations. As there are no data on the proportion of general food retailers who will be affected, all are included to produce an upper bound estimate, which will equate to 43,830 local business units. Assuming an average hourly wage for managers in distribution, storage and retailing of £11.90, up-rated to £15.47 in line with the standard cost model and a 20 minutes familiarisation cost of £5.16, this equates to an upper estimate

<sup>7</sup> The wage rate of Inspectors of factories, utilities and trading standards was found to be £15.58 according to the ASHE 2009 table and so the higher wage for enforcement officers was used to be cautious.

<sup>8</sup> ONS – Annual Survey of Hours and Earnings 2009  
<http://www.statistics.gov.uk/statBase/product.asp?vlnk=13101>

<sup>9</sup> Standard practice to ensure consistency across regulation familiarization costs.

<sup>10</sup> Ibid.

<sup>11</sup> Obtained from DEFRA and Seafish statistics in the Fish Labelling (Amendment) (England) Regulations 2006 IA: <http://www.food.gov.uk/multimedia/pdfs/fishlabellingria2006.pdf>

familiarisation cost of approximately £283,000. As the general food retail category includes many businesses which will not be affected by the legislation, the familiarisation cost will be closer to £57,000 than £283,000 for the UK.

29. Adding the Local Authority costs and rounding gives the range of £60,000 to £286,000 total familiarisation costs for the UK.

#### *ii) Ongoing costs*

##### *Businesses*

30. As under the requirements of the Food Labelling Regulations 1996 (as amended), businesses are still required to label a fish even in the absence of a current commercial designation, i.e. prior to it being listed in the Commercial Designations Schedule, it is assumed that the classification of new species will not add any ongoing costs to businesses.

#### *iii) Other costs*

##### *Sustainability*

31. Whilst we recognise that there may be some environmental impacts associated with the amendments, in that they allow a wider range of fish to be legitimately placed on the market in the UK, there is other legislation and agreements in place to control the sustainability of fish stocks. The Fish Labelling (Wales) Regulations 2010 would not override any other restrictions that may exist, for instance, on the fishing of endangered species. Therefore, we do not consider there to be any significant environmental costs associated with this option.
32. There are no significant social costs associated with this option.

##### *Labelling*

33. Almost all currently permitted commercial designations will still be allowed under the new Regulations, as all except two of the changes made to the existing Schedule add alternative names or new species. Therefore, there will be minimal administrative cost for industry for re-printing labels/documentation (including promotional material) unless it wishes to take advantage of an alternative commercial designation or to market new species under an existing commercial designation.
34. For the new fish species added to the list there are unlikely to be any significant administrative costs to industry as these products are mostly newly commercialised species which are not currently being sold. The only re-



labelling costs will be in respect of new species which have come onto the market which have up to now been labelled differently or inconsistently prior to their listing within the Schedule.

### **Enforcement**

40. The provisions regarding enforcement and sanctions in the existing Fish Labelling (Wales) Regulations 2003 will remain untouched. Enforcement of the Regulations will continue to be the responsibility of Local Authority Trading Standards and Environmental Health Departments.

### **Simplification**

41. We consider that there will be a simplification for businesses in having all permissible current names of commercially available fish in an up-to-date schedule, without needing to refer to the original 2003 Regulations. The presentation of the Schedule has been revised with the aim of making it more user-friendly. These proposed new consolidating Regulations would be simpler for businesses rather further amendments to the 2003 Regulations would be.

### **Small Firms Impact Test**

42. The new Regulations would be likely to impact in a positive way on small firms, since we believe that the new fish being marketed are most likely to be sold in small, minority ethnic fishmongers who will obtain maximum benefit from the economic gain realised from being able to sell these. Small businesses may have some initial extra labelling costs from having to change labels on fish which had yet to obtain a commercial designation and which were previously being marketed under a different name. There were no comments in the responses to the consultation on the financial effect of the Regulations on small businesses.

### **Competition Assessment**

43. Since there are only two fish (*Aphanopus Carbo* and *Lepidopus Caudatus*) for which existing names are being disallowed under the new Regulations, and these have alternative designations which can be used, there should be no significant impact on competition in the industry.

### **Post Implementation Review**

44. It is anticipated that the new Regulations will come into force on 6 April 2010.
45. The publication of the new Regulations will be communicated to stakeholders through the Agency's website at [www.food.gov.uk](http://www.food.gov.uk) and in FSA News; the

revised Schedule will also be posted on the Agency website. It will be made available to local enforcement agencies via the Agency's enforcement portal.

46. The Agency will review the 2010 Regulations two years after their implementation, with the assistance of the Fish Expert Working Group, unless the Agency becomes aware that any amendment to them is needed earlier than this.

## Annex 1

### **Fish Labelling Regulations 2010 – Additional Species and Amendments to Species**

#### New species

##### i) Sea Fish

African sole	<i>Solea senegalensis</i>
Alaska plaice	<i>Pleuronectes quadrituberculatus</i>
Black bream or Black seabream	<i>Spondyllosoma cantharus</i>
Black oreo or Oreo	<i>Allocyttus niger</i>
Bombay duck	<i>Harpadon nehereus</i>
Doctor fish, Surgeon fish or Tang	All species of the family <i>Acanthuridae</i>
Flathead	All species of the family <i>Platycephalidae</i>
Flathead sole	<i>Hippoglossoides elassodon</i>
Halfbeak	All species of the family <i>Hemiramphidae</i>
Indian halibut	<i>Psettodes erumei</i>
Leatherjacket or Unicorn fish	<i>Aluterus monoceros</i>
Longfin codling	<i>Laemonema longipes</i>
Northern rock sole	<i>Lepidopsetta polyxystra</i>
Patagonian icefish	<i>Patagonotothen ramsayi</i>
Ponyfish or Thirali	All species of the family <i>Leiognathidae</i>
Rabbitfish	All species of the family <i>Siganidae</i>
Sillago	All species of the family <i>Sillaginidae</i>
Smooth oreo or Oreo	<i>Pseudocyttus maculatus</i>
Soldier fish or Squirrel fish	All species of the family <i>Holocentridae</i>
Spadefish	All species of the family <i>Ephippidae</i>
Spottail spiny turbot or Spottail turbot	<i>Psettodes belcheri</i>
Striped bass	<i>Morone saxatilis</i>
Threadfin	<i>Polynemus tetradactylum</i>
Wolf herring	<i>Chirocentrus dorab</i>
Yellowstripe scad	<i>Sellaroides leptolepis</i>

##### ii) Freshwater Fish

Snakehead	All species of the family <i>Channidae</i>
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#### Additional designations

##### i) Sea Fish

Bonito  
All species of *Auxis*  
All species of *Euthynnus*, with the exception of *Euthynnus (Katsuwonus) pelamis*  
All species of *Sarda*

The following commercial designations may also be used in relation to fish of the species listed against them in Column 2:

Bullet tuna or Melva                      *Auxis rochei*

(Bullet tuna or Melva is a new alternative)

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Cutlassfish or Ribbonfish or Scabbard fish                      All species of the family *Trichiuridae*

The following commercial designations may also be used in relation to fish of the species listed against them in Column 2:

Black sabre or Black scabbard fish    *Aphanopus carbo*  
Sabre or Sabre fish                      *Lepidopus caudatus*  
or Silver sabre

(Cutlassfish and Ribbonfish are new designations, Scabbard fish was previously *Lepidopus caudatus* or *Aphanopus carbo* only; Black sabre was previously allowed for *Lepidopus caudatus*.)

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Garfish or Needlefish                      All seafish species of the family *Belonidae*

(Needlefish is new designation; Garfish was previously *Belone belone* only)

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Kingfish or Spanish mackerel                      All species of *Scomberomorus*  
Alternatively:  
King mackerel                      *Scomberomorus cavalla*  
Pacific sierra or Sierra mackerel    *Scomberomorus sierra*

(Kingfish was previously *Scomberomorus cavalla* only, Spanish mackerel is a new designation)

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ii) Salmon and Freshwater Fish

Basa, or Panga(s) or Pangasius or River cobbler or any of these together with the additional word 'catfish' All species in the family *Pangasiidae*

The following commercial designation may also be used in relation to fish of the species listed against it in Column 2:

Royal basa *Pangasianodon Bocourti*

(Previously Basa etc. could be applied to all species of *Pangasius* rather than *Pangasiidae*;  
Royal Basa is a new designation)

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Carp All species of the family *Cyprinidae*

Alternatively, the following may be used

Banspata	<i>Danio devario</i>
Barbel	<i>Barbus barbus</i>
Bata	<i>Labeo bata</i>
Chelapata	<i>Salmostoma bacaila</i>
Freshwater bream	<i>Abramis brama</i>
Ghania	<i>Labeo gonius</i>
Kalibous	<i>Labeo calbasu</i>
Mowrala	<i>Amblypharyngodon mola</i>
Punti	<i>Puntius sarana</i>
Roach	<i>Rutilus rutilus</i>
Rohu or Ruhi	<i>Labeo rohita</i>
Tench	<i>Tinca tinca</i>

(Rohu is a new alternative designation for *Labeo rohita*).

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Dry star baim or Largebaim or Patabaim All species in the family *Mastacembelidae*

(Previously Largebaim was allowed as a designation for *Mastacembelus armatus* and Patabaim for *Macrognathus aculeatus*)

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Pacific salmon *Oncorhynchus gorbuscha*

*Oncorhynchus keta*  
*Oncorhynchus kisutch*  
*Oncorhynchus masou masou*  
*Oncorhynchus nerka*  
*Oncorhynchus tshawytscha*

The following commercial designations may also be used in relation to fish of the species listed against them in Column 2:

Cherry salmon	<i>Oncorhynchus masou masou</i>
Chinook salmon <i>or</i> King salmon <i>Or</i> Spring salmon	<i>Oncorhynchus tshawytscha</i>
Chum salmon <i>or</i> Keta salmon	<i>Oncorhynchus keta</i>
Coho salmon <i>or</i> Medium red salmon <i>or</i> Silver salmon	<i>Oncorhynchus kisutch</i>
Pink salmon	<i>Oncorhynchus gorbuscha</i>
Red salmon <i>or</i> Sockeye salmon	<i>Oncorhynchus nerka</i>

(Pacific salmon is a new designation for *Oncorhynchus gorbuscha*, *Oncorhynchus keta*, *Oncorhynchus kisutch* and *Oncorhynchus nerka*).

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## **Deletions**

### **Sea Fish**

Scabbard fish, Sabre, Sabre fish or Silver sabre are no longer permitted designations for *Aphanopus carbo*.

Black sabre is no longer a permitted designation for *Lepidopus caudatus*.

## Annex 2

### Stakeholders consulted:

Consumer Focus Wales  
Countryside Council for Wales  
Environment Agency Wales  
Farmers' Union of Wales  
Federation of Small Businesses, Wales  
National Farmers Union Cymru  
North Western & North Wales Sea Fisheries Committee  
South and West Wales Fishing Communities Ltd  
Welsh Assembly Government (Food & Market Development)  
Welsh Fishermen's Association