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Consultation on amending the Fish Labelling (England) Regulations 2010

Amendment to the list of Commercial Designations for Fish

September 2012



Department
for Environment
Food & Rural Affairs

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This document/publication is also available on our website at:

www.defra.gov.uk/consult

Any enquiries regarding this document/publication should be sent to us at:

Department for Environment, Food and Rural Affairs
Area 7E 9 Millbank
Nobel House
17 Smith Square
London
SW1P 3JR

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Part I - Introduction

1. Purpose of this Consultation

The purpose of this consultation is to seek the views of those involved in the trade of fishery products and other stakeholders in the fish industry on the draft Fish Labelling (England) Regulations 2012.

This consultation focuses on two main proposals relating to fish labelling.

- A) A proposal to change the way the list of Commercial Designations for Fish are updated and maintained, including the addition of new Commercial Designations
- B) Options to amend the current Statutory Instrument for England to take account of new requirements introduced by the EU Fisheries Control Regulation

The consultation aim is to check that the preferred option for implementing the new requirements for fish labelling makes sense and is the least burdensome for those affected. It will also provide an opportunity for those who operate in this sector to express their views on the proposed change to how the list of commercial designations for fish will be maintained on an ongoing basis and comment on the proposed additions to the list.

The objective is to update UK domestic fish labelling regulations to take account of new consumer information requirements so as to improve information provided to consumers and to comply with EU Regulation. The aim is to set out the new consumer information requirements in the clearest possible way by incorporating all the rules relating to consumer information under one set of Regulations.

2. Geographical extent

This consultation covers the amended Fish Labelling Regulations Statutory Instrument for England. Governments in other parts of the UK will be making any necessary changes within their own jurisdictions.

Comments on the proposed additions to the Commercial Designation list which is for the UK as a whole are welcomed from all those operating in the sector throughout the UK.

3. Impact Assessment

A consultation stage Impact Assessment has been prepared and can be found at www.defra.gov.uk/consult/open

4. Audience

The Consultation is primarily aimed at those who are involved in the trade of fishery products but is open to all for comment.

Those likely to have the greatest interest are:

- Fish processors and manufacturers
- Retailers who sell fishery products
- Trade representation organisations in the food industry
- Enforcement officers

5. Responding to this Consultation

Enquiries and responses may be directed to:

Fish Labelling Regulations Consultation

Food Policy Unit

7E Millbank

c/o 17 Smith Square

London SW1P 3JR

Email: foodpolicyunit@defra.gsi.gov.uk

6. Duration

Consultation **opens** on 18th September 2012

Consultation **closes** 13th November 2012

7. After the consultation

When this consultation ends we intend to put a copy of the responses in the Defra library at Ergon House, London. This is in line with Defra's policy of openness, so that the public may see them. Members of the public can ask for a copy of responses under freedom of information legislation. Copies of the consultation responses to personal callers or in response to telephone or email requests will be supplied by the Defra Information Resource Centre (020 7238 6575), defra/library@defra.gsi.gov.uk. Wherever possible, personal callers should give the centre 24 hours notice of their requirements. An administrative charge will be made to cover any photocopying and postage costs.

A summary of the responses to this consultation will also be published and placed on our website at www.defra.gov.uk/consult. This summary will include a list of names and organisations that responded but not peoples personal names, addresses or other contact details.

If you do not want your response- including your name, contact details and any other personal information to be publicly available, please say so clearly in writing when you send your response to the consultation. Please note, if your computer automatically includes a confidentiality disclaimer, that won't count as a confidentiality request.

Please explain why you need to keep details confidential. We will take your reasons into account if someone asks for this information under freedom of information legislation. But, because of the law, **we cannot promise that we will always be able to keep those details confidential.**

8. Compliance with the Code of Practice on Consultation

This consultation is being conducted in line with the "Code of practice on Consultations" as set out in the Better Regulation Executive guidance which can be found at <http://www.berr.gov.uk/files/file47158.pdf>.

If you have any comments or complaints about the consultation process please address them to:

Defra Consultation Co-ordinator

Nobel House

17 Smith Square

London SW1P 3JR

Email: consultation.coordinator@defra.gsi.gov.uk

Part II

9. Background

The proposed Fish Labelling (England) Regulations 2012 will incorporate two main changes. Firstly, as agreed under the [Red Tape Challenge initiative](#), they will remove the need to lay a new Statutory Instrument (SI) each time an amendment to the UK's Commercial Designation List for Fish (approved names) is required. Secondly, they will implement new EU consumer information requirements for fishery products, including making the scientific name and previously frozen declarations available to consumers at the point of retail. In line with Red Tape Challenge commitments made under the 'Hospitality, Food and Drink' theme, we are also taking the opportunity to simplify the regulatory landscape by incorporating all rules relating to consumer information for fishery products into one set of Regulations, and by minimising the creation of new SIs by improving the way that UK Commercial Designations are granted.

10. (A) Commercial Designation List of Fish

It is important that fish are labelled correctly and consistently at the point of sale so that purchasers know exactly what they are buying. Commercial Designations help consumers by ensuring fish are labelled in a way that is accurate, consistent and not misleading and ensure that the fish industry can readily comply with its statutory duties to label fish correctly. Regulations (EC) Nos. 104/2000, on the common organisation of the markets in fisheries and aquaculture products (CMO), and (EC) 2065/2001, the detailed rules, require that certain fish and fish products are labelled for retail with an accepted name of the species, and that Member States establish commercial designations for fish species that must then be used in the labelling of fish.

The current process for amending the Commercial Designation List of Fish names in the UK is time consuming and burdensome and does not give us the flexibility to make changes quickly enough in response to market demands. Granting a new designation takes too long because a new SI has to be laid each time. We are therefore proposing to separate the Commercial Designation list from the SI and maintain a live up-to-date list of accepted names on the internet.

The plan is to publish the Commercial Designation List as a stand-alone document instead of being an annex within the Regulations. The list would be available on the internet which makes it easier to maintain and amend in response to any requests. The list will be available on the Defra website but in line with Government plans for centralising information it is likely that it will move to a page on the gov.uk website. Separating the list from the SI in this way will benefit industry as it would remove the need to grant temporary designations while a new SI is prepared. It would also prevent the existence of an incomplete list which occurs at present as temporary designations do not feature in the list attached to the SI.

This simplification will also reduce the burden of frequently amending the Regulations each time a new commercial designation is agreed resulting in efficiency and cost savings to Government and was agreed as part of the Red Tape Challenge initiative.

Separating the Commercial Designation List from the SI will not alter the assessment process that exists at present in order to agree any new additions to the list. When a proposal to amend this list is received, Defra will still consult the Fish Experts group for advice and recommendations on the suitability and accuracy of any changes. If agreed, the internet based list would be updated accordingly, highlighting any new additions or changes. The Fish Expert Working Group, membership of which includes representatives from Defra, FSA, Seafish, fish and food industry representative organisations and the Natural History Museum, gives specialist advice to Defra in this area.

11. Amendments to the Commercial Designation List for Fish

In addition to separating the list from the SI, now is also a good time to ensure that the current list is up to date before the new SI is laid and the list is published online. Since the last update to the Regulations was carried out in 2010 there have been a number of temporary commercial designations granted and additional proposals received that can now be incorporated into the list.

Proposed new additions the Commercial Designation list

Commercial Designation	Species
Crepidula or Slipper Limpet	Crepidula Fornicata
Argentinean Red Shrimp	Pleoticus muelleri
Clam or Hard Shell Clam	Meretrix Lyrata
Yellow Clam or Baby Clam	Paphia Undulte
Red Drum	Sciaenops ocellatus

Other changes:

Replace *Ommastrephes Sagittatus* with an entry *All species of Ommastrephidae*

Consultation Question	Are there any other changes to the Commercial Designation List that should be considered?
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12. (B) New EU Consumer Information Requirements for Fishery Products

New requirements to provide the consumer with additional information on fish and fishery products at the retail stage have been introduced throughout the EU. These requirements are set out in the Common Fisheries Policy (CFP) Control Regulation (EU) 404/2011, which was agreed in 2010 and is now in the implementation phase. Provision must be made within domestic legislation to implement the new consumer information requirements, including providing the scientific name of fish at the point of retail and previously frozen declarations. Intervention is required to ensure that the market supplies the consumer with the required information, and to maintain consistency in how this is applied throughout the industry.

The requirements to provide information on fishery products contained within the CFP Control Regulation that are not already provided for by the existing version of the CMO 104/2000, i.e. the new requirements, are:

- ***the scientific name***
- ***whether the fisheries products have been previously frozen or not***

Minimum EU requirements have not been exceeded. We have taken advantage of the derogation available to allow retailers to display the scientific name on a billboard or poster instead of labelling it on the product itself.

13. Options for setting out the requirements in UK legislation

Additional details on the background to the options can be found in the Impact Assessment. There is a baseline position of not implementing the requirements that is used as a basis for assessing the costs and benefits.

Option 1 – Requirements to be set out under one domestic statutory instrument

This is the preferred option. It presents a simpler and more straightforward way of setting out the domestic legislation as all requirements for the labelling of fishery products will be captured under the same piece of legislation. This will ensure that it is easier for those who operate in the fishery sector to understand all the relevant labelling requirements and not have to piece together requirements from multiple statutory instruments. This option also implements the proposed changes to improve the process for amending UK Commercial Designations. It will also ensure that the UK will meet its obligation to implement agreed EU Regulation.

Option 2 – Requirements to be set out in more than one domestic statutory instrument

This option would allow for the various requirements set out under the separate pieces of EU legislation to be implemented at the different times they come into force. This would however not present such a clear and easy to understand legal regime as the rules on information to the consumer relating to fish labelling would be contained in more than one domestic statutory instrument. This has the potential to cause confusion as operators have to piece together the various elements of fish labelling requirements to ensure they meet all of their obligations. This option implements the proposed changes to improve the process for amending UK Commercial Designations. It will also ensure that the UK will meet its obligation to implement agreed EU Regulation.

14. Consultation Questions

The following list of consultation questions are set out in the **Impact Assessment** next to the subject matter they refer to.

Subject Matter	IA Page No.	Question
Size of the market	9	<p>Consultation Question 1 Stakeholders are invited to comment on whether we have captured all firms in the market, including in the devolved administrations, that might be affected by the proposal?</p>

Familiarisation costs	12	Consultation Question 2 Stakeholders are invited to comment on whether the assumption of 1 hour for micro and small businesses and 2 hours for medium and large businesses is reasonable?
Traceability costs	14	Consultation Question 3 Stakeholders are invited to comment on whether the assumptions above are realistic?
Micro-businesses	15	Consultation Question 4 We are keen to seek views from micro businesses on the degree of impact from any labelling changes.
Labelling Costs	16	Consultation Question 5 Stakeholders are invited to comment on whether the assumptions above are reasonable.
Benefits – Time saving	18	Consultation question 6 Do these estimates seem reasonable?
Commercial Designations	18	Consultation question 7: Commercial Designation list On average, how often do you consult the existing SI to check Commercial Designations per year? What time saving do you estimate as a result of placing a 'live' Commercial Designation list on a webpage?
Commercial Designation – timesaving benefit	19	Consultation question 8 Do these hours seem reasonable?
Enforcement regime - business	19	Consultation question 9 In what way would a Compliance Notice approach benefit your business and/or the sector in general? Can you quantify any savings that may be realised?
Enforcement regime - Government	20	Consultation question 10 In what way would a Compliance Notice approach benefit enforcement officers in general? Can you quantify any savings that may be realised?

15. Enforcement Regime

In line with the Government's objective to ensure that sanctions are proportionate to the offence committed, the Fish Labelling Regulations will be making use of civil as opposed to criminal sanctions for labelling offences. The enforcement regime will consist of a compliance notice approach for dealing with breaches of the Regulations. This change will require the introduction of an appeals mechanism to provide a means of recourse if someone believes they have been issued with a compliance notice in error.

Appeals mechanism - First-tier Tribunal

How would someone go about making an appeal?

In the first instance representations can be made against the provisional designation notice which must be served by the relevant authority before the designation is made. There will be information contained in the notice that will direct the recipient to the relevant information on the First-tier Tribunal website. Appeals can also be made against a decision to cancel a designation, a refusal of consent or conditions related to designated structures or features and against enforcement notices. The mechanism for appeals will also be clearly set out in guidance.

Appeals to the First-tier Tribunal

Appeals will be made to the General Regulatory Chamber of the First-tier Tribunal. The tribunal is empowered to deal with a wide range of issues which might form the substance of appeals, and to ensure cases are dealt with in the interest of justice and minimising parties' costs. The composition of a tribunal is a matter for the Senior President of Tribunals to decide, and may include non legal members with suitable expertise or experience in the issues in an appeal in addition to Tribunal Judiciary.

The General Regulatory Chamber operates under the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 which provide flexibility for dealing with individual cases. Rule 2 of the General Regulatory Chamber Rules states its overriding objective as being to deal with a case fairly and justly. This includes dealing with a case in ways which are proportionate to the importance of the case, the complexity of the issues and the anticipated costs and resources of the parties. The Rules give the tribunal judge wide case management powers in order to achieve these objectives.

Onward appeal from the tribunal

Any party to a case has a right to appeal to the Upper Tribunal on points of law arising from a decision of the First-tier Tribunal. The right may only be exercised with the permission of the First-tier Tribunal or the Upper Tribunal. Where permission is given, the further appeal would be made to the Upper Tribunal.

Consultation Question	Are you satisfied with the proposed procedures for appeals? If not, why not?
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Consultation Question	(Asked on behalf of the Tribunal Procedure Committee) Do you consider that the General Regulatory Chamber Rules will suit the handling of appeals against designations and the associated circumstances? If not, why not?
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1. The General Regulatory Chamber rules can be found at:
<http://www.justice.gov.uk/downloads/guidance/courts-and-tribunals/tribunals/tribunals-rules-2009-at010411.pdf>