

EXECUTIVE NOTE

THE INSHORE FISHING (PROHIBITED METHODS OF FISHING) (LOCH CRERAN) ORDER 2007

S.S.I. 2007/185

Policy Objectives

The purpose of the instrument is to prohibit fishing in the Loch Creran Marine Special Area of Conservation (SAC).

There is a general policy to offer protection to sites designated as SACs under the EC Habitats Directive. The instrument is intended to address concerns expressed by the European Commission and stakeholders about the possible damage to the biogenic and rocky reefs features for which the site has been designated under the Habitats Directive.

Given the importance and rarity of the features of interest, this instrument will provide for a permanent measure, but since the features are only found round the edge of the loch, a selective has been adopted. The site will be completely closed to scallop dredging and to nephrops trawling by vessels over 10m. Fishing will be prohibited completely in the areas where reefs are present. Nephrops trawling by under 10m vessels and creeling will be able to continue, however, in those areas of the site where there are no reefs.

The instrument will also honour a commitment given to the European Commission in response to infraction proceedings that the Scottish Executive would put measures in place in Loch Creran marine SAC to ensure that the site is fully protected.

Consultation

The proposed Order have been the subject of a number of discussions with a wide range of external stakeholders, including at meetings of the Scottish Inshore Fisheries Advisory Group (SIFAG) and at specifically arranged meetings close to the location of the site, i.e. in Oban and on the Island of Luing. In particular, representatives from Argyle and Bute Council, the Hebridean Partnership and the British Sub-Aqua Club (BSAC) and interested individuals, including fishermen have been involved in detailed discussions with the Scottish Executive.

Within Government the Scottish Executive Environment and Rural Affairs Department had detailed discussions on this matter with:

- Scottish Inshore Fisheries Advisory Group (SIFAG)
- Scottish Fisheries Protection Agency (SFPA)
- Fisheries Research Services (FRS)
- Scottish National Heritage (SNH)
- Office to the solicitor to the Scottish Executive (OSSE)
- Department for Environment, Food and Rural Affairs (DEFRA)

The Scottish Executive issued a news release on 26 June 2006 announcing its intention to introduce these prohibitions.

Financial Effects

The measures which the instrument puts in place will require enforcement. It is anticipated, however, that, given that the likelihood of non compliance is low and the relatively small area covered, the enforcement requirements will be met from the Scottish Fisheries Protection Agency's existing resources.

Given the very limited extent of scallop dredging and nephrops trawling in the site and that nephrops trawling by under 10m vessels and creeling will be able to continue, the instrument will have a minimal on the fishing industry. .

A Regulatory Impact Assessment has been completed in relation to this Order.

Scottish Executive Rural Affairs Department
February 2007

REGULATORY IMPACT ASSESSMENT (RIA)

1. Title of proposal

The Inshore Fishing (Prohibited Methods of Fishing) (Loch Creran) Order 2007. SSI/2007/185

2. Purpose and intended effect

2.1 Objectives

The objective of the Order is to restrict fishing within Loch Creran marine Special Area of Conservation (“SAC”), thus addressing concerns about possible damage from fishing to reef features within the site and providing confirmation that the UK Government is meeting its obligations under Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora (“the Habitats Directive”).

2.2 Background

Loch Creran is a marine SAC designated under the Habitats Directive by virtue of its biogenic reefs, which are unique and particularly sensitive to damage, and its rocky reefs. There are presently no restrictions on fishing within the SAC. Complaints have been made to the European Commission that fishing may be damaging to the reef features and the European Commission has, in turn, expressed concerns about this possibly under infraction proceedings. The situation is compounded by the fact that a recently published commissioned Loch Creran Site Condition Monitoring Report commissioned by SNH has identified some damage to the reef features. Whilst there is no indication of when this damage may have occurred, it is attributed to fishing gear.

Under Article 6.2 of the Habitats Directive, Member States are obliged to take appropriate steps to avoid, in SACs, the deterioration of natural habitats and the habitats of species as well as the disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the obligations of the Directive.

2.3 Rationale for government intervention

Lack of intervention is likely to result in the UK being viewed as having failed to take appropriate steps to avoid deterioration of the biogenic and rocky reefs within the Loch Creran marine SAC and thus as failing to meet its international obligations under the Habitats Directive. In turn, this is likely to result in infraction proceedings being pursued further by the European Commission and ultimately in legal action being taken against the UK Government in the European Court of Justice.

3. Consultation

Under Section 1 of 1984 Act Scottish Ministers can make Order to regulate sea fishing in Scottish in-shore waters after consultation with such bodies as they consider appropriate. The consultation requirement has been met.

3.1 Within government

The Scottish Executive Environment and Rural Affairs Department had detailed discussions on this matter with:

- Scottish Fisheries Protection Agency (SFPA)
- Fisheries Research Services (FRS)
- Scottish Natural Heritage (SNH)
- Department for Environment, Food and Rural Affairs (DEFRA)

3.2 Public consultation

The proposed Order have been the subject of a number of discussions with a wide range of stakeholders, including at meetings of the Scottish Inshore Fisheries Advisory Group (SIFAG) and at specifically arranged meetings close to the location of the site, i.e. in Oban and on the Island of Luing. In particular, detailed discussions have taken place with representatives of Argyll and Bute Council, the Hebridean Partnership and the British Sub-Aqua Club (BSAC) as well as with interested individuals, including fishermen.

4. Options

Option 1. No Change/Do Nothing:

To do nothing is likely to result in the UK Government being seen as failing as to take meet its international obligations under the Habitats Directive and the European Commission taking further infraction proceedings and, possibly taking legal action.

Option 2. Partial closure of the Loch Creran SAC to scallop dredging

This option would rule out commercial scallop and nephrops trawling by over 10m vessels in the site. It has been possible, however, to identify defined areas of the SAC where trawling by under 10m vessels and creeling could continue without affecting the integrity if the features of interest. This option will enable to meet our international obligations under the Habitats Directive, whilst at the same time allowing certain fishing activities to continue within the SAC.

5. Costs and benefits

5.1 Sectors and groups affected

5.1.1 Fishing industry

The main type of fishing which takes place in the loch is nephrops trawling by small vessels. On the basis that existing levels of nephrops trawling by under 10 m vessels will be able to continue and scallop dredging and trawling by larger vessels is now understood to have all but ceased in the site the impact on the fishing industry will be negligible.

5.1.2 Social Impacts

It is unlikely to be any social adverse implications of this measure.

5.1.3 Environmental Impacts

N/A

5.2 Benefits

The Scottish Executive will be meeting its obligations under the Habitats Directive by ensuring that appropriate steps are taken to avoid deterioration of habitats within the SAC.

5.3 Costs

The prohibitions will require enforcement. On the basis that this will be intelligence-led and that non-compliance is a low risk, little or no intervention will be required. The enforcement activity associated with these prohibitions can be accommodated within existing Scottish Fisheries Protection Agency resources.

6. Small/Micro Firms Impact Test

See 5. 1. 2. above.

7. "Test Run" of business forms

N/A.

8. Competition assessment

N/A.

9. Enforcement, sanctions and monitoring

Compliance monitoring will be carried out by the SFPA. Any non-compliance will be dealt with through formal enforcement action including, where appropriate, the referral of matters to the Procurator Fiscal for possible prosecution.

10. Implementation and delivery plan

The SSI prohibiting scallop dredging in the Loch Creran SAC was laid before the Scottish Parliament on 7 March 2007 and, subject to negative resolution procedure, will come into force on 29th March 2007. No additional implementation measure will be required.

11. Post-implementation review

The Scottish Executive will review the decision on the partial closure of the SAC as and when appropriate. Ongoing monitoring and consideration of any future management measure will be undertaken by SNH and the Argyle Marine Special Areas of Conservation Management Forum.

12. Summary and recommendation

In light of the obligation under Article 6 of the Habitats Directive to take appropriate steps to avoid deterioration of habits within the SAC, the concerns of the European Commission and stakeholders and the possibility of damage, the Scottish Executive is of the view that Loch Creran SAC should be closed to scallop dredging and trawling by over 10 mt vessels. It is also of the view that the site should remain open to under 10 mt vessels and creeling in defined zones of the site.

Accordingly the Scottish Executive recommends the making of the Inshore **Fishing (Prohibited Methods of Fishing) (Loch Creran) Order 2007**.

13. Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits arising from this Order outweigh any negative considerations and justify the costs.

Signed by the responsible Minister.....

(Ross Finnie MSP)

Date
