

## **EXECUTIVE NOTE**

### **The Inshore Fishing (Prohibited Methods of Fishing) (Firth of Lorn) (No. 2) Order 2007 S.S.I. 2007/240**

#### **Policy Objectives**

The purpose of the instrument is to prohibit dredging for scallops in the Firth of Lorn Marine Special Area of Conservation (SAC).

There is a general policy to protect 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 by scallop dredging to the rocky reefs features for which the Firth of Lorn has been designated under the Habitats Directive, and to provide an assurance to the European Commission that this site is being fully protected. The area covered by the Order matches the Firth of Lorn Marine SAC boundary.

A research project into the impact of scallop dredging on the rocky reef habitat type is underway. Once this is complete, consideration will be given to whether the provisions should remain in place in the longer term or permanently, or they could be lifted, possibly in conjunction with some other management measures.

The instrument will also honour a commitment given to the European Commission in response to the infraction proceedings that the Scottish Executive will close the Firth of Lorn SAC closed to scallop dredging, at least until the impact of that type of fishing on the site can be assessed.

The instrument supersedes the Inshore Fishing (Prohibited Methods of Fishing) (Firth of Lorn) Order 2007, which contained an error in the coming into force date and is revoked by the Inshore Fishing (Prohibited Methods of Fishing) (Firth of Lorn) Revocation Order 2007.

#### **Consultation**

The prohibition of dredging for scallops in the Firth of Lorn SAC has 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 the Island of Luing. In particular, representatives from Argyle and Bute Council, the Hebridean Partnership and the British Sub-Aqua Club (BSAC) as well as interested individuals, including fishermen, have been involved in detailed discussions with the Scottish Executive about this matter.

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

- Scottish Fisheries Protection Agency (SFPA)
- Fisheries Research Services (FRS)
- Scottish National Heritage (SNH)

- Office to the solicitor to the Scottish Executive (OSSE)
- Department of Environment, Food and Rural Affairs.

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

Most of the fishing vessels which will be affected by the prohibitions spend relatively little time in the Firth of Lorn Marine SAC. There will, however, be significant adverse impact on one vessel which carries out the majority of its fishing in the site. In addition, it is understood that there will be significant adverse impact on the small community of the Island of Luing, where the vessel is based. Measure to address the impact of the prohibitions on this vessel and in turn the Luing community are being pursued.

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

**Scottish Executive Rural Affairs Department**  
**March 2007**

## **REGULATORY IMPACT ASSESSMENT (RIA)**

### **1. Title of proposal**

**The Inshore Fishing (Prohibited Methods of Fishing) (Firth of Lorn) (No.2) Order 2007. S.S.I. 2007/240**

### **2. Purpose and intended effect**

#### **2.1 Objectives**

The Objective of the Order is to prohibit dredging for scallops within the Firth of Lorn marine Special Area of Conservation (“SAC”), thus addressing concerns about possible damage from scallop dredging to the rocky reefs within the Firth of Lorn marine SAC 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**

The Firth of Lorn is a marine SAC designated under the Habitats Directive by virtue of its rocky reefs. There are presently no restrictions on fishing for scallops within the SAC. Complaints, supported by evidence, have been made to the European Commission alleging that scallop dredging may have caused damage to the rocky reefs in the Firth of Lorn. The European Commission has, in turn, drawn this alleged damage to the UK Government’s attention under infraction proceedings. 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 Government being viewed as having failed to take appropriate steps to avoid deterioration of the rocky reefs within the Firth of Lorn 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. That consultation requirement has been met.

The Inshore Fishing (Prohibition of Dredging for Scallops) (Firth of Lorn) (No.2) Order 2007 is a direct replacement for the Inshore Fishing (Prohibition of Dredging for Scallops) Order 2007, which was laid before Parliament on 7 March 2007 and came into force on 12 March 2007, and, for technical reasons, was revoked on 15 March 2007. The comprehensive consultation which was carried out in relation to the Inshore Fishing (Prohibition of Dredging for Scallops) Order 2007 is applicable to this Order. Details of that consultation are set out below. In addition, the Scallop Association/Mallaig and North West Fishermen's Association, and the Clyde Fishermen's Association have been further consulted on this Order.

## **Consultation on the Inshore Fishing (Prohibition of Dredging for Scallops) (Firth of Lorn) Order 2007**

### **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

### **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 Argyle and Bute Council, the Hebridean Partnership and the British Sub-Aqua Club (BSAC) as well as with and interested individuals, including fishermen.

## **4. Options**

### **Option 1. No Change/Do Nothing:**

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

### **Option 2. Partial closure of the Firth of Lorn SAC to scallop dredging**

The fishing industry has consistently called for a partial closure of the SAC to scallop dredging as opposed to a full closure. This would only be appropriate, however, if areas of the SAC could be identified in which no rocky reefs were present and where dredging could continue without possible damage to such reefs. The advice received from SNH is that it is not possible to identify such areas. Accordingly, it is unlikely

that a partial closure would provide sufficient protection to the reef features and, therefore, meet requirements of the Habitats Directive.

### **Option 3. Complete Closure of the Firth of Lorn SAC to scallop dredging**

This approach ensures, so far as possible, the protection of the marine SAC's features of interest pending the outcome of a research project into the impact of scallop dredging on the site.

## **5. Costs and benefits**

### **5.1 Sectors and groups affected**

#### **5.1.1 Fishing industry**

The closure of the Firth of Lorn SAC will have some adverse impact on the scallop fishing industry. Most vessels which fish in the area do so only on a limited basis. One particular vessel, however, spends the majority of its fishing time there and so the impact on it will be severe. Consideration is presently being given to possible mitigation measures in the case of this vessel. Industry representatives cite the Firth of Lorn as a 'safe heaven' for fishing in bad weather. Once the prohibitions are in place, skippers may choose to tie-up their vessels in adverse weather or explore the possibility of fishing in other areas.

#### **5.1.2 Social Impacts**

It is possible that the Island of Luing, where the vessel which spends most of its fishing time in the SAC is based, may experience adverse social impact. This should also be addressed, however, by the mitigation measures aimed at the vessel concerned.

#### **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. The associated research will aim to establish definitively whether scallop dredging is damaging to the reef features, including as a result of sediment deposition.

### **5.3 Costs**

The prohibitions will require enforcement. On the basis that this will intelligence-led and that non-compliance remains a low risk, little or no intervention will be required. of the enforcement activity associated with these prohibitions can be accommodated within existing Sea 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 Inshore Fishing (Prohibition of Dredging for Scallops) (Firth Of Lorn) (No.2) Order was laid before the Scottish Parliament on 15 March 2007 and, subject to negative resolution procedure, will come into force on 29 March 2007. A letter has been sent to the presiding Officer explaining why the 21 day rule was broken in this case. No additional implementation measure will be required.

**11. Post-implementation review**

The Scottish Executive will review the decision on the closure of the SAC following the completion of the research study on the impact of scallop dredging on the site. At this stage a decision will be made as to whether the site should remain closed or could be re-opened. In advance of that, consideration will also be given to a staggered reopening of the site depending on the nature of the outputs from the research as these become available. Ongoing monitoring and consideration of any future management measure will be undertaken by SNH and the Argyll and Bute 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, and given the advice that it is not possible on the basis of present knowledge to identify areas within the SAC in which dredging may be allowed to continue without the risk of such deterioration, the Scottish Executive is of the view that the Firth of Lorn SAC should be closed to scallop dredging until the outputs of the research project into whether this type of fishing are available and can be assessed.

Accordingly the Scottish Executive recommends the making of the Inshore **Fishing (Prohibition of Dredging for Scallops) (Firth of Lorn) (No.2) 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 .....**

\*\*\*\*\*

