

EXECUTIVE NOTE TO

THE INSHORE FISHING (PROHIBITION ON FISHING) (LAMLASH BAY)
(SCOTLAND) ORDER 2008 (S.S.I. 2008/317)

The above instrument was made in exercise of the powers conferred by sections 1 and 2A of the Inshore Fishing (Scotland) Act 1984 and will come into force on 20 September 2008.

Policy Objectives

The purpose of the instrument is to prohibit all fishing in an area of Lamlash Bay, thus creating a “no take zone”.

The intention of establishing a no take zone in Lamlash Bay is two fold. First, the aim is to protect and enhance biodiversity. The site will be monitored and the data collected analysed with a view to gaining information on the rate and extent of any improvement in biodiversity as a result of the measure. Both Scottish Natural Heritage (SNH) and Fisheries Research Services (FRS) will be involved in this process.

Secondly, the site will become part of wider scallop stock enhancement measures. Monitoring will take place to enable any benefits to scallop stocks adjacent to no take zone to be assessed and measured. Again SNH and FRS will be involved in this work. The information collected will inform scallop enhancement elsewhere around Scotland and contribute to work being undertaken to develop a scallop strategy.

Consultation

The proposed Order has been subject to wide consultation over a three month period, which ended on 5 June 2008. The consultation generated 675 responses. The vast majority of these (670) were in support of the proposals. Since the consultation took place efforts have been made through a series of meetings and discussions to address the concerns of those who were opposed to the proposals. This has resulted in at least some of the concerns being allayed.

A news release is being issued in conjunction with the Order being made to announce the decision to proceed with the no take zone. In addition, the Scottish Fisheries Protection Agency (SFPA) will advise fishermen in the Firth of Clyde of the situation through its network of local Fishery Offices.

Financial Effects

Compliance with the measures which this instrument puts in place will require to be monitored and, if required, enforced. The risk of non-compliance is believed to be low compliance monitoring can, therefore, be met from existing SFPA resources.

The fishing vessels which will be affected by the prohibitions spend very little time in the area covered by the Order. The same cannot be said for scallop divers some of whom fish

more frequently in the area and will therefore experience some economic impact. There is an expectation, however, that scallop fishermen generally and divers, in particular, will benefit in the longer term from the stock enhancement measures brought about through this measure.. The intention is to work with scallop divers to establish whether or not this is the case and possibly to help with the identification of possible alternative grounds. .

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

Scottish Government Marine Directorate
September 2008

REGULATORY IMPACT ASSESSMENT (RIA)

1. Title of proposal

The Inshore Fishing (Prohibition on Fishing) (Lamlash Bay) (Scotland) Order 2008

2. Purpose and intended effect

2.1 Objectives

The Objective of the Order is to prohibit all fishing within the Lamlash Bay No Take Zone .

2.2 Background

Proposals for marine management in Lamlash Bay were further developed by the Lamlash Bay Working Group, following the work of the Community of Arran Seabed Trust (COAST). The Working Group is made up of representatives of COAST, the Clyde Fishermen's Association (CFA) and the Firth of Clyde Partnership. It is supported by Scottish Natural Heritage (SNH), Fisheries Research Services FRS) and the Scottish Government.

The proposals are that part of Lamlash Bay will be a no take zone underpinned by an Order made under the Inshore Fishing (Scotland) Act 1984. The no take zone may be complimented by a fisheries management zone, possibly a Regulating Order, covering the remainder of Lamlash Bay, subject to further consideration by COAST and the soon to be established Clyde Inshore Fisheries Group (IFG). The fisheries management measures are not covered by this RIA.

The purpose of the no take zone is the conservation of biodiversity and to contribute to the enhancement of fish stocks, in particular scallops. .

2.3 Rationale for government intervention

Statutory underpinning of the Lamlash Bay no take zone will provide the maximum protection for the area ensuring, so far as possible, the integrity of the scientific monitoring, which will be undertaken in conjunction with the designation. It will also mean that enforcement of the prohibitions will be undertaken by the Scottish Fisheries Protection Agency (SFPA).

3. Consultation

Section 1 (1) of the Inshore Fishing (Scotland) Act 1984 enables Scottish Ministers to make Orders to regulate fishing for sea fish in any specified area in Scottish inshore waters after consultation with such bodies as are considered appropriate. This RIA formed part of the consultation material. Section 1 (2) (a) enables Scottish Ministers to prohibit all fishing within the specified area.

3.1 Within government

The Scottish Government Marine Directorate has had detailed discussions on the proposed Order with:

- Scottish Fisheries Protection Agency (SFPA)
- Fisheries Research Services (FRS)
- Scottish Natural Heritage (SNH)
- Various policy officials within Marine Directorate.

3.2 **Public Consultation**

The proposed Order was subject to discussion with stakeholders at an open public meeting on Arran on 21 January. The proposals for marine management in Lamlash Bay have also been considered by the Scottish Parliament Public Petitions and Rural Affairs and Environment Committees.

The proposals have also been subject to a 12 week public consultation.

4. **Options**

Option 1. No Change/Do Nothing

The intention of the no take zone is to maintain and enhance marine biodiversity. To do nothing, i.e. to not seek to make the proposed Order, would mean that the no take zone would not be given the maximum possible protection and, in this case, could result in the integrity of the associated scientific monitoring being compromised.

Option 2. Statutorily underpinned prohibition on fishing activity in the area covered by the Marine Reserve

Statutory underpinning would mean the maximum protection was being given to the site and, therefore, ensure every confidence in the management of the site and the monitoring outputs. The implementation of the proposal would provide scientific evidence base and help to inform future thinking on designations and closed areas and on the use of spatial planning in relevant fisheries. There would also be recognition of the roles of the stakeholders involved in the development of management for Lamlash Bay.

5. **Cost and benefits**

5.1 **Sectors and groups affected**

5.1.1 **Fishing Industry**

The closure of the area covered by the no take zone will have very little impact on the scallop vessel fishing industry as, proportionately, there is very little effort by this sector in the area concerned. It is likely, however, some scallop divers who fish more frequently in the area will experience some economic impact. There is an expectation, however, that scallop fishing generally and divers, in particular, will benefit in the longer term as a result of the measures.

5.1.2 **Social Impacts**

The establishment of the no take zone is likely to have positive social/scientific impacts. The Reserve is likely to present opportunities to study and better understand the marine environment in the area, possibly by means of remote cameras located on the sea bed, and to help to raise awareness of Scottish Marine Biodiversity more widely. There are also likely to be benefits from increased environmental tourism and recreational diving

5.1.3 **Environmental Impacts**

The intention is that the statutory underpinning of the no take zone would help to protect and enhance biodiversity in the area.

5.2 **Benefits**

See social impacts above.

5.3 **Costs**

Statutorily underpinning the no take zone will not result in any additional costs being incurred.

6. **Small/Micro Firms Impact Test**

N/A

7. **“Test Run” of business forms**

N/A

8. **Competition assessment**

N/A

9. **Enforcement, sanctions and monitoring**

Compliance with the measures which this instrument puts in place will require to be monitored and, if required, enforced. The risk of non-compliance is believed to be low. Any non-compliance would, however, be dealt with through formal enforcement action including, where appropriate, the referral of matters to the Procurator Fiscal for possible prosecution.

The cost of compliance monitoring will be met from existing SFPA resources.

It is intended that a programme of monitoring will be undertaken at the site, taking account of both biodiversity and scallop stocks. This will be developed and undertaken through a partnership involving the parties referred to at 2.2. above, with FRS and SNH contributing advice and resources towards the programme.

10. **Implementation and delivery plan**

The Order prohibiting fishing in the no take zone would be laid before the Scottish Parliament under the negative resolution procedure. Given the need, however, to protect the site as soon as possible after the Order is laid, article 10(2) of the Scotland Act 1998 (Transitional Provisions) (Statutory Instruments) Order 1999 will not be complied with.

11. Post-implementation review

The Scottish Government would review the impact of the closure of the area concerned to inform consideration of whether the measures should continue to remain in place. As stated above a monitoring regime, to include systematic reviewing procedures, will be developed with the help of SNH and FRS and implemented by COAST representatives.

12. Summary and recommendation

On the basis of a very positive response to the consultation exercise and that efforts have been made to allay the concerns of those who were opposed to the proposal, it is recommended that the Order should be made. This section of RIA will be completed after the public consultation exercise is complete.

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 Cabinet Secretary.....