

POLICY NOTE

THE AQUACULTURE AND FISHERIES (SCOTLAND) ACT 2013 (SPECIFICATION OF COMMERCIALY DAMAGING SPECIES) ORDER 2014

SSI 2014/176

The Aquaculture and Fisheries (Scotland) Act 2013 (Specification of Commercially Damaging Species) Order 2014 (“the Order”) is made in exercise of the power conferred by section 11(1) of the Aquaculture and Fisheries (Scotland) Act 2013 (“the Act”). It specifies *Mytilus trossulus*, a type of mussel, as a commercially damaging species.

Policy Objectives

1. The purpose of the Order is to identify *Mytilus trossulus* as a commercially damaging species so that its presence in Scotland may be monitored and, where necessary, controlled. *Mytilus trossulus* is a form of mussel which has no commercial value in aquaculture but its presence has been shown to have a far reaching negative impact on commercial mussel farming. It is specified as a commercially damaging species for the purposes of chapter 3 of Part 1 of the Act. Chapter 3 of Part 1 of the Act makes provision concerning the notification and control of such species. Failure to notify the presence of a commercially damaging species in accordance with section 15(1) or (2) of the Act is an offence. Other powers of control and enforcement may also be applied under Chapter 3 of Part 1.

2. *Mytilus trossulus* has been identified as commercially damaging as it has a low market value and its presence has had a significant negative impact on mussel production in Scotland. Section 11(2) of the Act allows a species to be specified as a commercially damaging species where the Scottish Ministers consider that the species, if not controlled, would be likely to have a significant adverse impact on the economic or commercial interests of a person who carries on a business of fish farming or shellfish farming and the species is itself of little or no commercial value.

3. The impact of the presence of *Mytilus trossulus* in Loch Etive, which resulted in the cessation of mussel farming in the Loch, is discussed in greater detail at paragraphs 7-9 below. At its peak (2001) approximately 786 tonnes of *Mytilus edulis* (blue mussels) were produced in Loch Etive. Estimated annual profits are estimated at £300 per tonne (revenues £1000 per tonne (2010 Shellfish Production Survey) and costs £700 per tonne), providing total annual profits of £235,800. The adverse impacts on the economic and commercial interests of mussel farmers is therefore significant. *Mytilus trossulus* itself is of little or no commercial value due to the poor meat yield, short shelf life and thin shells. The farming of *Mytilus trossulus* is not a viable option.

Legislative Context

4. Chapter 3, Part 1 of the Act makes provision for the specification, control and monitoring of commercially damaging species. When *Mytilus trossulus* is suspected it must be notified to the Scottish Ministers as soon as reasonably practicable (section 15). Once the Scottish Ministers are satisfied that *Mytilus trossulus* is present on a shellfish farm the Order will enable the emergency control measures at sections 16 to 21 of the Act to be used if

required. Section 16 allows Ministers to secure a control agreement with those affected which will specify the measures which will be taken in relation to the species. A control scheme (section 17) may be applied, after serving notice, where a control agreement cannot be secured or the measures are not being carried out. In addition emergency action notices are available where urgent action is required. Failure to comply with a requirement imposed by a control agreement or a control scheme is an offence.

5. The provisions contained in the Act are therefore designed to assist in protecting the wider aquaculture industry from commercially damaging species. The provisions provide the powers to limit the potential impacts of commercially damaging species on both a local and a national level. Such species may make a particular remote and rural area a no-go zone for commercial aquaculture, leading to the loss of jobs, decreased production and reduced economic performance. The provisions allow for action to be taken before there is any significant impact, maximising the potential for new developments and restarting existing operations.

Policy Background

6. There are 142 authorised and active shellfish businesses in Scotland, with the Scottish shellfish farming industry estimated to be worth £8.9 million at first sale value. Mussels represent the largest output by the shellfish industry, with 6,757 tonnes produced for the table market (2013).

7. The provisions in the Act, and the need for this Order, have been informed by the experience of dealing with *Mytilus trossulus* in Loch Etive. Loch Etive was one of the three highest mussel producing lochs in the country until *Mytilus trossulus* became dominant on mussel farms in the area. As a result of the low market value of this species (due to lower meat yields, thin shells and poor shelf life) mussel farming in the loch became unviable.

8. Control work that has been undertaken by voluntary agreement in Loch Etive has demonstrated how important it is to obtain early agreement and cooperation between operators. Successful control work is important to reduce future impact on new areas. The new control provisions will enable control schemes to be implemented where a voluntary control agreement has been refused or has not been complied with. It will also enable emergency work to be undertaken where there is thought to be an immediate and significant adverse impact likely on aquaculture interests.

9. European Fisheries Fund grant aid provided for the shellfish farming facilities in Loch Etive to be synchronously cleared of stocks. This is an on-going process which should allow the commercially viable culture of blue mussels, *Mytilus edulis*, to restart.

Consultation

10. There has been consultation and discussion with the shellfish industry through the Shellfish Working Group (formerly Shellfish Forum) and individual businesses including those impacted upon by the presence of *Mytilus trossulus* in Loch Etive. This covers a wide range of stakeholder, including representatives from the shellfish industry, shellfish processors, science/research community and regulators. In these discussion and the responses

received there was no objections to the Order and some notes of support towards the provisions.

11. There has been extensive consultation and discussion with the shellfish industry during passage of the Act, which used the experience with *Mytilus trossulus* at Loch Etive to inform its provisions. During this time the Scottish Government facilitated Shellfish Forum which provided the opportunity for industry and government to discuss the issue of commercially damaging species and specifically the issue of *Mytilus trossulus*, with some responses to the consultation noting support of the use of powers for identified problems such as *Mytilus trossulus*.

12. A Scottish Aquaculture Research Forum project¹ sought to develop national and regional scale controls (using Loch Etive as a case study) to identify the appropriate management actions to prevent the species increasing in abundance where it is present and to avoid transfer of the species to areas where it is not already present. Following initial consultation with industry to identify their concerns, a draft code was prepared. This was informed by a literature review of existing legislation and existing codes of practice and guidance on invasive species. The provisions in the Act now provide legislative backing to the measures outlined in the draft code of practice including vigilance in detection, control actions and the avoidance of movement to help prevent spread.

Impact Assessments

13. The effects on equal opportunities, human rights, island communities, local government and sustainable development were considered in relation to the Act. Where *Mytilus trossulus* has been identified and specified, provisions such as movement restrictions could be introduced that could impact on individual aquaculture operators. As provisions aim to deliver protection to the wider aquaculture industry, they should safeguard jobs in those island communities more generally. The provisions are expected to have a largely positive effect on sustainable development, as they deliver protection from commercially damaging species to the wider aquaculture industry, enabling it to grow.

Financial Effects

14. A Business and Regulatory Impact Assessment (BRIA) was produced in relation to the Act. An BRIA has been prepared for the Order and is attached. The impact of this policy on business, including compliance and other costs, would be low. The powers in respect of control agreements, control schemes and emergency action notices only apply when the Scottish Ministers are satisfied that *Mytilus trossulus* is present on a fish farm or shellfish farm. The benefits of action being taken before there is significant impact, maximising the potential for new development and restarting existing operations in Scotland, would be great.

Scottish Government
Marine Scotland Directorate

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¹ <http://www.sarf.org.uk/cms-assets/documents/48901-352547.sarf064.pdf>