

Final Business and Regulatory Impact Assessment

1. Title of Proposal

The Razor Clams (Prohibition on Fishing and Landing) (Scotland) Order 2017.

2. Purpose and intended effect

2.1 Background

Razor clams (*Ensis* spp.) are a valuable shellfish stock that live burrowed in some Scottish inshore waters.

Razor clams can be legally harvested by hand, by divers or by different types of licensed dredges. In recent years it has become clear that the majority of razor clams caught in Scottish waters have been caught by fishing with electricity, an illegal method under the Technical Conservation Regime, Council Regulation (EC) No 850/98.

'Electrofishing' has become the preferred method of harvesting razor clams because it is highly efficient method and produces fewer damaged clams, thus making the fishery highly profitable. There are currently 25-30 Scottish administered vessels and 8-10 English administered vessels targeting razor clams in Scottish waters.

Measures introduced by the Government to limit unlicensed activity have had limited success because enforcement of the EU electrofishing ban is very difficult, vessels need to be caught 'in the act' with gear deployed. Vessels can generally evade detection by dumping electrofishing equipment overboard when Marine Protection Vessels (MPV) come into view.

However, there is also scientific evidence that suggests electrofishing for razor clams is likely to be more environmentally benign than most of the legal alternative methods. A 2014 Marine Scotland Science study, "[Electrofishing for Razor Clams \(*Ensis siliqua* and *E. arcuatus*\): Effects on Survival and Recovery of Target and Non-Target Species](#)" concluded that:

- a) there was limited short term impact from the gear on target and non-target species;
- b) the gear produced almost no impact on the physical environment, unlike legal dredge methods;
- c) the method of capture is highly selective, producing high quality product with little damage or waste and zero bycatch;
- d) further research on longer-term impacts of the gear is required; and,
- e) surveys are required to assess size and magnitude of razor clam populations.

Therefore, alongside activity to deter and combat illegal fishing, the Government has also been considering whether electrofishing for razor clams can be safe and sustainable, if it is properly regulated and catches are monitored and controlled.

2.2 Objective

The title SSI restricts fishing for razor clams in Scottish waters and the landing of razor clams in Scotland. The SSI will help to combat current illegal practices prevalent in the commercial razor clam fishery in Scotland.

The SSI prohibits fishing for razor clams in Scottish waters and the landing of razor clams in Scotland except in two specified situations:

- i. for scientific investigation authorised by Scottish Ministers; and,
- ii. for the traditional hand gathering of razor clams from the shore, a person carrying out such harvesting is allowed to take up to 30 razor clams per day.

In April 2017, the Scottish Government announced that it will authorise a scientific trial of electrofishing for razor clams. The Order will ensure the integrity of the trial and provide it with a sound enforcement basis.

The legislation will apply only in Scotland, it is not part of joint approach with other UK Fisheries Administrations where illegal electrofishing is not reported to be a significant problem.

2.3 Rationale for Government intervention

The Scottish Government seeks to ensure that all inshore fisheries, regardless of species prosecuted, remain sustainable and bring long-term economic benefit to fishers and their local communities. Fishing with electricity can be very efficient, with the risk that too many fish are caught, potentially damaging stocks.

The Scottish Government has allocated significant resources to deter and detect illegal activity in the razor clam fishery:

- legislation was introduced in 2013 (The Aquaculture and Fisheries (Scotland) Act 2013) to provide Fishery Officers with new powers to seize objects suspected to be used from commercial sea fishing, including generators, cables and probes potentially being used from electrofishing.
- new licensing arrangements were also introduced in August 2014 that required vessels to apply for a specific additional permit to fish for razor clams. Permits were granted subject to a physical inspection of the vessel to seek to ensure that the boat is not equipped for electrofishing.
- combatting illegal electrofishing has been an operational priority for Marine Scotland Compliance. MPVs and other resources are deployed into inshore areas where the illegal activity takes place. By way of example, in 2016 MPV *Minna* expended approximately 60% of her time, roughly 190 days, on this task. When the *Minna* is present in particular areas, landings of razor clams fall significantly, but resume when the vessel departs for other tasks or to resupply.

These measures have had some effect on illegal activity. Recorded landings of razor clams fell from 915 tonnes in 2013 to 350 tonnes in 2015. However it remains the case that almost all razor clams caught in Scotland are harvested by fishing illegally with electricity as alternative methods available are either far less efficient or yield a poorer quality, less valuable product.

Table 1. Quantity and value of all reported landings of razor clams in Scotland

Year	Quantity (tonnes)	Value (£'000)
2012	903	2,567
2013	915	3,139
2014	429	1,597
2015	350	1,616
2016	461	2,296

The Government is also committed to promoting the use of environmentally friendly fishing methods and reducing waste (by-catch), and recognises that whilst scientific research (see 2.1) has demonstrated that electrofishing for razor clams causes less physical habitat damage than methods such as dredging and has limited short term impact on target and non-target species, the research also notes the need for stock assessments and further research.

A regulated electro-fishery for razor clams has the potential to provide sustainable economic growth in the rural economy but given the growth in demand for this product, it is imperative that its harvesting is regulated properly and that the effects on stocks are monitored.

Following public consultation in 2016, the Government announced that it will authorise a limited scientific trial of electrofishing for razor clams. The trial, carried out under Article 43 of EC 850/98 and the title SSI, will be conducted in a restricted number of areas in Scottish inshore waters and will be designed to further our knowledge of the electrofishing method and explore the potential of a commercial razor clam electro-fishery within sustainable limits.

The Order contributes to the Scottish Government’s National Performance Framework objective *‘we value and enjoy our built and natural environment and protect it and enhance it for future generations’*.

3. Consultation

3.1 Within Government

Marine Scotland works with a range of partner Agencies to detect and deter illegal fishing with electricity including the Health and Safety Executive, HM Revenue and Customs, Food Standards Scotland, Police Scotland and the Maritime & Coastguard Agency. There has been extensive consultation on this issue; the scientific trial and the conditions in which it will operate are being developed by a range of divisions in Marine Scotland (Fisheries, Compliance, Science, Planning) and in collaboration with a number of public sector partners including Scottish Natural Heritage, the Health and Safety Executive and Food Standards Scotland.

3.2 Public Consultation

On 30 March 2015, Marine Scotland hosted a consultative workshop with public bodies, fishermen and businesses to discuss scientific evidence and consider whether the Government should seek a further limited derogation from the EU prohibition to allow for a regulated electro-fishery for razor clams. There was support for a public consultation on the issue. Minutes of the meeting are available online (<http://www.gov.scot/Resource/0047/00475246.pdf>). The consultation was also supported by key environmental non-governmental organisations.

In August 2016 the Scottish Government launched a consultation on whether electrofishing should be a permitted method of fishing for razor clams. The consultation ran for 6 weeks and concluded on 30 September 2016, with 104 responses received. The consultation document, published responses, consultation analysis and the Government's response are published online (<https://consult.scotland.gov.uk/marine-scotland/electrofishing-for-razor-clams/>)

As anticipated, the 2016 public consultation generated a mix of views both for and against the regulated use of electricity in the razor clam fishery. The Government considers that many of the concerns raised in the consultation relate to the novelty of the electrofishing method, the current lack of data on sustainable harvest rates and longer term impacts of the electrofishing method. The title SSI therefore provides for a scientific trial of the electrofishing method to address many of these concerns.

In June 2017 two meetings were held with fishermen, industry representatives and processing/export businesses to discuss the most useful and practicable locations for the trial to take place. In July 2017, Marine Scotland organised a meeting for key environmental non-governmental organisations to discuss the trial. The notes of all these meetings are published online (<http://www.gov.scot/Topics/marine/Sea-Fisheries/management/razors/notes>)

3.3 Business

As provided in section 3.2 consultation with interested businesses has been key in the development of the approach being adopted to manage the razor clam fishery.

The 2016 public consultation generated 5 responses from commercial businesses. These businesses all felt that electrofishing should be a permitted method of catching razor clams. At consultation workshops, in Oban and Glasgow, June 2017, the businesses in attendance and supportive of the approach being adopted were:

Orkney Dived Scallops	West Loch Shellfish Ltd
Lochleven Shellfish	Easdale Seafoods Ltd
Loch Fyne Langoustines	Cumbrae Oysters
Trawlpac International	Coastal Diving
Scotwest Shellfish Ltd	Bute Diving
Western Isles Fishermen's Association	Clyde Fishermen's Association
18 x fishermen (outwith the above businesses)	

Notes of the workshops are available online (<http://www.gov.scot/Topics/marine/Sea-Fisheries/management/razors/notes>)

4. Options

4.1 Option 1 – Do Nothing

Option 2 – Prohibit fishing for and the landing of razor clams in Scotland with the exceptions of such activity for scientific investigation authorised by Scottish Ministers and traditional hand gathering from the shore.

4.2 Sectors and groups affected

Those affected in the fishing industry by the options set out above will be:

- Inshore fishermen. There are currently 25-30 Scottish vessels and 8-10 English vessels actively involved in the razor clam fishery in Scottish waters
- Businesses that trade and transport razor clams
- Industry representatives e.g. Fishermen's Associations

Those responsible for enforcement of the fishery will be affected by the options set out above:

- Marine Scotland
- Health and Safety Executive
- HM Revenue and Customs
- Food Standards Scotland
- Police Scotland
- Maritime & Coastguard Agency
- Local authorities

4.3 Cost and Benefits

- Option 1 – Do Nothing

Benefits: None.

Cost: Present levels of illegal activity would likely continue. Razor clams are a non-TAC species, it is not possible to speculate whether current harvesting levels constitutes a sustainable activity. There would be no additional policy or administrative cost in maintaining the current arrangements.

- Option 2 – Prohibit fishing for and the landing of razor clams in Scotland with the exceptions of such activity for scientific investigation authorised by Scottish Ministers and traditional hand gathering from the shore.

Benefits: In general there will be considerable resource savings for many of the agencies involved enforcing the fishery e.g. the Order will negate the need for MPV Minna to dedicate 60% of her time at sea to the razor clam fishery.

An opportunity to investigate the potential of the electrofishing method in a

sustainable razor clam fishery. A regulated electro-fishery has the potential to provide legitimate sustainable economic growth in the rural economy. In the last few years the recorded value of razor clams landed in Scotland has averaged £1.6 million.

Costs: There are currently 25-30 Scottish administered vessels in the fishery and 8-10 English administered vessels. The potential cost of introducing the Order is difficult to calculate due to the current illegal practices prevalent in the commercial razor clam fishery. The landings data available is of limited use, it is considered likely that some of those involved in the fishery try to disguise the amount of razor clams being landed because landing significant catches suggests that electricity was used during harvesting.

With regard to the agencies involved in enforcing the fishery, there will be no additional costs incurred (see benefits section above).

In terms of the trial electro-fishery for razor clams, it is not possible to speculate what a sustainable harvesting rate will be for the boats participating or how the market will respond. As a precaution a daily catch limit will be applied for those vessels participating in the trial.

5. Scottish Firms Impact Test

There has been extensive consultation, including face-to-face discussions with commercial businesses, individuals, non-profit organisations in the fishing industry, non-profit organisations outwith the fishing industry and public sector agencies to inform Marine Scotland on the most appropriate approach to manage the razor clam fishery. This engagement and how it fed into the policy development is fully documented online:

<http://www.gov.scot/Topics/marine/Sea-Fisheries/management/razors>

<http://www.gov.scot/Topics/archive/razorworkshopminutes>

5.1 Competition Assessment

These measures will apply to all Scottish and other British fishing boats and are therefore unlikely to have any major impact on the ability of operators to compete against each other. The provisions within this new Regulation will help to ensure that all vessels comply with technical and conservation measures aimed at the sustainable development of the industry.

5.2 Test run of business forms

There will be an application process for fishermen to participate in the electrofishing for razor clams trial. Marine Scotland will test run the forms to ensure that they are easy to use. Fishermen already have operational experience in completing an application form for current razor fish licences.

6. Legal Aid Impact Test

The Scottish Legal Aid Board have confirmed that there will be no impact on the legal aid fund.

7. Enforcement, sanctions and monitoring

The Compliance unit within Marine Scotland is responsible for monitoring and enforcing fisheries rules and regulations. Marine Scotland is required to annually report all enforcement action taken on serious fisheries infringements to the European Commission.

The electrofishing for razor clams scientific investigation will also be monitored by Marine Scotland Science.

8. Implementation and delivery plan

Marine Scotland will monitor the application of the new legislative provisions and review in advance of the annual report to the European Commission.

8.1 Post-implementation review

Marine Scotland will undertake a review of the new legislation within the specified 10 year period.

9. Summary and recommendation

Marine Scotland recommends Option 2. The title SSI will:

- help to combat current illegal practices prevalent in the commercial razor clam fishery by restricting fishing for razor clams in Scottish waters and the landing of razor clams in Scotland;
- provide for further scientific investigation when authorised by Scottish Ministers. The Scottish Government has announced that it will authorise a scientific trial of electrofishing for razor clams, the Order will ensure the integrity of the trial and provide it with a sound enforcement basis; and,
- provide for the traditional hand gathering of razor clams from the shore, a person undertaking such activity is allowed up to 30 razor clams per day.

• Summary costs and benefits table

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	None.	<p>Present levels of illegal activity would likely continue.</p> <p>It is not possible to speculate whether current harvesting levels constitutes a sustainable activity.</p> <p>There would be no additional policy or administrative cost.</p>
2	<p>Considerable resource savings for many of the enforcement agencies involved in detecting illegal activity.</p> <p>The SSI will help to protect razor clam stocks.</p> <p>The SSI provides opportunity to investigate the electrofishing method. A regulated electro-fishery for razor clams has the potential to provide economic growth in the rural economy.</p>	<p>There are currently 25-30 Scottish administered vessels and 8-10 English administered vessels targeting razor clams in Scottish waters. Current illegal practices prevalent in the commercial razor clam fishery make it difficult to calculate the likely economic costs to those currently profiting from the illegal fishing method.</p>

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:**Date:**

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