

Business and Regulatory Impact Assessment

Title of Proposal

The Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2017

Purpose and intended effect

- **Background**

In response to the International Council for Exploration of the Sea (ICES) advice on the poor state of cod stocks, the European Union (EU) introduced a number of temporary closures in 2000 and 2001 to protect adult cod during the spawning season in both the Irish Sea and the Firth of Clyde.

Since 2002, the decision to implement the closure in the Firth of Clyde has rested with Scottish Government and we have implemented the closure every year by means of an SSI.

In addition, Marine Scotland Science has been involved with an industry led programme of work delivering a biannual survey of cod in the closed area. The survey began in March 2016 and is due to last 5 years. Interim reports have confirmed that cod still spawn in the closed area and during the closed period reaffirming that the closure is in the correct place and time to protect spawning cod. The study aims to look at the population of cod in the Clyde and inform future management decisions.

- **Objective**

To protect cod in the Firth of Clyde from fishing mortality during the spawning period in a recognised spawning ground.

- **Rationale for Government intervention**

Since the purpose of the proposed SSI is to conserve cod stocks, it falls within an area of exclusive EU competence (i.e. the conservation of marine biological resources under the Common Fisheries Policy (CFP)). This means that Scottish Ministers can only legislate if they inform the European Commission of their intention and allow the Commission a month to object. The Commission has been notified and has registered no objection to the proposed instrument. By making this proposal to help safeguard cod stocks for the future we are contributing toward our National Outcome "We value and enjoy our built and natural environment and protect it and enhance it for future generations" and our National Indicator to help "improve the state of Scotland's marine environment".

Consultation

- **Within Government**

Colleagues from Marine Scotland Science, Marine Scotland Planning and Policy, Marine Scotland Sea Fisheries and Marine Scotland Compliance have been consulted. No new comments were made on the proposal.

- **Public Consultation**

The Scottish Government consulted with key stakeholders regarding this proposal in August/September 2017. Stakeholders were allowed 5 weeks to comment and the consultation ended on Friday 29th September 2017. There were 3 responses to the consultation from the fishing industry. All of the responses were broadly supportive and agreed that the closure should be introduced for 2018/19 as in previous years, including the derogations hitherto applied.

- **Business**

The circulation list for the public consultation included representatives of the fishermen who would primarily be affected by the closure. They agreed that the Clyde closure should remain in place for 2018/19.

Options

It is difficult to quantify the costs or benefits in this case because the Statutory Instrument has been implemented every year since 2002. Prior to this time fishing conditions were very different than they are today. As a result it becomes difficult to compare and contrast between the time before the closure to the present day to quantify the cost or benefit of not having it in place now. We are clear however that we have a responsibility on many levels to protect cod populations in whichever way is suggested by the evidence.

Option A: Do not maintain a closure

Costs

Under this option there is a potential environmental loss of an iconic fish species. Research has shown that cod from the Clyde are reproductively isolated, and have little detectable biological exchange with spawning aggregations in waters to the north west of Scotland. Genetic evidence also supports this population structure as Clyde cod were found to have a greater affinity to cod from the Irish Sea than those from the northern aggregations. The Irish Sea stock is now assessed by ICES to have a spawning stock biomass above the level consistent with the Maximum Sustainable Yield (MSY) reference point. Recruitment remains low however and if the Clyde population does contribute to the Irish Sea stock then spawning should still be protected in the Firth of Clyde.

Not introducing a closure could be deleterious to the cod stock, particularly given the likelihood of increased fishing pressure displaced by conservation measures in the Irish Sea. The most recent scientific advice from ICES for cod in Division 6a (West of Scotland) – which includes the Clyde - states that recruitment of cod has been low since 2001 and is considered impaired and when the MSY approach is applied there should be zero catches 2018 or 2019.

If the cod stocks become depleted further this would have long term financial costs. Fishermen would be at high risk of losing this valuable resource altogether as would the marine ecosystem.

Benefits

Demersal fishermen would be able to fish unhindered in the specified area all year round, avoiding any potential short-term cash-flow problems that might be caused by temporarily prohibiting activity in the Clyde. In the Campbeltown district the total of demersal fish landings was 33 tonnes in 2016 with a value of £56,000. The shellfish and Norway Lobster sector which are allowed to fish under the derogations in the SSI had total landings of 5,233 tonnes with a value of approximately £14.3 million.

Concern over cod continues to affect fishing opportunities for other, healthier stocks such as haddock, which can be difficult to catch without also catching cod. Measures to help recover cod, such as the proposed Clyde closure, are therefore important among efforts to ensure fishermen are afforded adequate opportunities to fish other demersal species in the long term.

Option B: Status quo during 2018 and 2019

Costs

There are no additional costs associated with continuing the closure for a further 2 years.

The proposed closure areas are within Area 6a, which has a zero total allowable catch (TAC) for cod and a 1.5% bycatch limit, i.e. targeting cod is not permitted in the area of the proposed closure all year round.

Benefits

The closure protects spawning areas, and as such provides a higher chance of stock recovery and future fishing opportunities. In fact recent scientific advice for the Irish Sea cod stock with which the spawning stock in the Clyde has a higher genetic affinity has noted improvements in the health of the stock since 2007. Although this cannot be directly attributed to the closure, recent improvements in the stock are likely to be due to decreases in fishing mortality in that area.

Retaining the closure provisions introduced in previous years provides a degree of consistency that will help to avoid disruption to fishing patterns established since 2001, and will help ensure fishermen comply with the restrictions. This is evident in that there is almost 100% compliance within the closed areas.

Scottish Ministers have committed to a programme of research and practical measures called 'Clyde 2020' to contribute to restoration of the Clyde marine ecosystem. The work will be overseen by a sub-group of the Clyde Marine Planning Partnership. We consider that the continuation of the closure will contribute to the aims of Clyde 2020. Clyde 2020 will implement a programme of work to enhance the Clyde marine ecosystem; as part of this work it will consider what further management may be needed.

The present closure area, and the derogation for Norway Lobster trawls in part of the area, offer fishermen alternative opportunities to catch Norway Lobster during the closure period. In the Campbeltown district the total of demersal fish landings was 33 tonnes in 2016 with a value of £56,000. The shellfish and Norway Lobster sector which are allowed to fish under the derogations in the SSI had total landings of 5,233 tonnes with a value of approximately £14.3 million.

Scottish Firms Impact Test

All fishing vessels affected can be considered small businesses. These businesses have been consulted in the development of the proposed legislation via their fisheries associations. In particular the Clyde Fishermen's Association, whose fishermen predominantly work in and around the area affected, were consulted. They, on behalf of their members, agreed that the Clyde Closure should remain in place for 2018 and 2019.

The subordinate legislation will not affect quota levels and should not prevent fishermen catching their full quota over the course of the year, although there may be some short term effects on cash flow during the closure.

Competition Assessment

There will be no negative competitive impact arising from this regulation. The regulation will not lead to a differentiation in costs between new and existing fishermen. The regulation is unlikely to affect the market structure. The measures will apply to all British vessels in the specified areas of Scottish waters.

Legal Aid Impact Test

Maintaining a closure in 2018 and 2019 would not give rise to increased use of legal processes or create new rights or responsibilities and should therefore have no new impact on the legal aid fund.

Enforcement, sanctions and monitoring

Enforcement and sanctions

Enforcement would be undertaken predominantly by Marine Scotland Compliance, operating under Scottish legislation. If the measures are found to have been contravened, a fine not exceeding £50,000 may be levied. The court can also order the forfeiture of any fish in respect of which the offence was committed and of any net or gear used in the commission of the offence. On summary conviction, if the court does not order the forfeiture of fish, it may impose an additional fine not exceeding the value of the fish.

Monitoring and review

Marine Scotland Science is responsible for monitoring levels of fishing activity and the effect of particular fishing methods on stocks in Scottish waters, within the framework of a strategic work programme determined by the Scottish Government. It will be possible to review the effect of these measures by assessing landings data from before and after their introduction.

In addition, Marine Scotland Science has been involved with an industry led programme of work delivering a biannual survey of cod in the closed area. The survey began in March 2016 and is due to last 5 years. Interim reports have confirmed that cod still spawn in the closed area and during the closed period reaffirming that the closure is in the correct place and time to protect spawning cod.

Implementation and delivery plan

The Order received ministerial agreement after consideration of the responses from the stakeholder consultation. It is proposed to lay the Order in mid-December 2017 and it is expected to come into force on 14th February 2018.

Post Implementation Review

The work of the Clyde 2020 programme, along with further scientific advice and the views of stakeholders, will be considered by the Scottish Government while deciding if any alternative or complementary measures could be considered longer-term following the 2018/19 Order.

Summary and recommendation

The potential medium term biological improvements to the stock and the potential economic gains in terms of larger catches in the future outweigh the short-term and temporary costs of restrictions on catching during the 11-week closure. Given the continued poor state of the cod stock (ICES advises no directed fishing) even a small potential benefit is likely to be worth maintaining the current closure. Although there may be a reduction in demersal catches during the closure, the quota remains unchanged. The total amount of cod or other species that fishermen are able to land during 2018 and 2019 is unaffected by the closure. The Scottish Government therefore intends to legislate for a spawning season closure as per option B.

• Summary costs and benefits table

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
A	Demersal fishing (albeit a small proportion of boats in the West of Scotland) would be able to fish unhindered all year long. Although a zero TAC and by-catch restriction limits cod catches all year round,	Potential environmental loss of an iconic fish species. If the cod stock is further depleted it may have longer term financial impacts.
B	Promoting west of Scotland cod stock recovery, for future stock conservation and potential fishing opportunities.	Short-term revenue loss but no loss over the course of a year. Zero TAC and by-catch restrictions limit cod catches all year round anyway.

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:

**Fergus Ewing
Cabinet Secretary for the Rural Economy and Connectivity**

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