

Final Business and Regulatory Impact Assessment

Title of Proposal

The Inshore Fishing (Prohibition of Fishing and Fishing Methods) (Outer Hebrides) Order 2017

Purpose and intended effect

- **Background**

The Outer Hebrides' inshore waters contain closed areas where mobile and/or static gear fishing is prohibited on either a seasonal or annual basis.

These inshore fishing prohibitions have been introduced using the powers of the Inshore Fishing (Scotland) Act 1984, and have been reviewed on a regular basis by government.

The Outer Hebrides Regional Inshore Fisheries Group (OH RIFG), as part of its fisheries management plan, developed proposals to update the prohibitions in its area, in order to protect shellfish stocks and reflect changes to the local fishing industry that have taken place since the prohibitions were introduced.

Following local consultation, the OH RIFG submitted these proposals to Marine Scotland for its consideration. Marine Scotland subsequently held a formal consultation on these proposals, which took place from 4 December 2015 to 26 February 2016.

As a result of this consultation exercise, Marine Scotland is introducing new secondary legislation to update the Outer Hebrides' closed areas in line with the OH RIFG's proposals through The Inshore Fishing (Prohibition of Fishing and Fishing Methods) (Outer Hebrides) Order 2017.

- **Objective**

The objective of updating the Outer Hebrides' inshore fishing prohibitions is to improve the protection of local shellfish stocks and better complement current fishing practices.

- **Rationale for Government intervention**

Shellfish account for the vast majority of commercial landings into the Outer Hebrides', constituting 96% of landings by weight and 95% by value in 2015, totalling £9.95 million.

By updating the inshore fishing prohibitions in the Outer Hebrides, the Scottish Government will be supporting local management initiatives which can contribute positively to the management and economic returns of the local shellfish stocks.

This contributes to the Scottish Government's National Performance Framework objective of valuing and enjoying our built and natural environment and protecting it and enhancing it for future generations.

Consultation

- **Within Government**

As part of the internal pre-consultation process, discussions took place with Marine Scotland Compliance and Marine Scotland Science.

- **Public Consultation**

A formal public consultation on the OH RIFG's management proposals took place from 4 December 2015 to 26 February 2016. A total of 10 responses were received, consisting of three individuals and seven organisations. A majority of respondents supported each of the proposals.

The consultation document and outcome report are both available on the Scottish Government website:

- Consultation: www.gov.scot/Publications/2015/12/1143
- Outcome report: www.gov.scot/Publications/2016/12/1587

- **Business**

The new management arrangements were developed by the OH RIFG, who reached consensus within its membership before formally submitting them to Marine Scotland for consideration.

The membership of the OH RIFG includes:

- Clyde Fishermen's Association
- Mallaig & North West Fishermen's Association
- Orkney Fisheries Association
- Scallop Association
- Scottish Pelagic Fishermen's Association Ltd
- Scottish White Fish Producer's Association Ltd
- Western Isles Fishermen's Association

With advice from:

- Comhairle nan Eilean Siar
- Marine Scotland Compliance
- Marine Scotland Science
- Scottish Environment LINK
- Scottish Environment Protection Agency
- Scottish Natural Heritage

Options

- **Option 1 – Do Nothing**

Maintain the current management arrangements for the inshore fishing prohibitions in the Outer Hebrides.

- **Option 2 – Introduce new management arrangements for the inshore fishing prohibitions in the Outer Hebrides**

- Change the prohibition period for static gear fishing in the Bragar to Dell area from 1 July – 30 September to 1 November – 31 March.
- Remove the prohibition on mobile gear fishing in the Sound of Harris area.
- Expand the seasonal prohibition that restricts scallop dredging in the Loch Maddy to Stuley Island area to include all methods of fishing for scallops.
- Extend southwards the prohibition on static gear fishing in the Northern Barra, South Uist, Benbecula, North Uist and Harris area.
- Introduce a seasonal prohibition on static gear fishing for shellfish in the Loch Roag area from 1 May – 31 July

Sectors and groups affected

Licensed fishermen operating in the Outer Hebrides' inshore waters will be those most directly affected by the introduction of new management arrangements.

Marine Scotland Compliance, who will be responsible for the enforcement of the new management arrangements, will also be directly affected.

Costs and Benefits

- **Option 1 – Do Nothing**

Benefits

Fishermen can continue to operate in the Outer Hebrides in accordance with the inshore fishing prohibitions currently in force.

Costs

There would be no additional policy or administrative costs in maintaining the current management arrangements.

- **Option 2 – Introduce new management arrangements for the inshore fishing prohibitions in the Outer Hebrides**

Benefits

In general, these proposals better complement current fishing practices, offer better protection to shellfish stocks and should help to improve the yield and economic returns from the fisheries.

- *Bragar to Dell*
This closure currently prohibits static gear fishing during the three months from 1 July – 30 September.

Changing the duration and timing of the prohibition to the five months from

1 November – 31 March will extend the period during which fishing is restricted helping to protect shellfish stocks in the area.

- *Northern Barra, South Uist, Benbecula, North Uist and Harris*
This closure currently prohibits static gear fishing during the five months from 1 November – 31 March.

Extending the prohibition further south will help to protect the area's shellfish stocks.

- *Loch Roag*
This is a new closure that will prohibit static gear fishing for shellfish in the inner east and west Loch Roag area during the three months from 1 May – 31 July.

The closure will be of benefit by helping to protect the area's shellfish stocks during the summer months when they are moulting and soft-shelled.

- *Loch Maddy to Stuley Island*
This closure currently prohibits scallop dredging from 1 March – 30 April and 25 August – 31 October.

Expanding the prohibition to include all methods of fishing for scallops will be of benefit by helping to conserve the local scallop stocks by ensuring that they are not exploited by other fishing methods whilst the prohibition is in effect.

- *Sound of Harris*
This closure currently prohibits mobile gear fishing during the three months from 1 March – 30 September, with suction dredging prohibited all year round. Scallop dredging is exempt from the prohibition.

Revoking the prohibition on mobile gear fishing (excluding suction dredging) will be of benefit by removing confusion from a closure where dredging is already permitted.

Costs

The potential cost of changing the inshore fishing prohibitions in the Outer Hebrides is difficult to calculate.

Up until July 2016, fishing vessels under 10 metres in length were only required to submit the ICES statistical rectangle from which their catch was taken in landing declaration forms.

While each inshore prohibition lies within one or more ICES rectangles, for the most part they only occupy a small portion of this total area, as ICES rectangles are 30 nm² in size. The Bragar to Dell closed area, lying within ICES rectangle 45E3, provides an example of this situation:



It is relevant to note that for only one proposal were any concerns raised relating to the possible financial impacts (the proposed change in the Loch Maddy to Stuley Island closure) and for that proposal additional analysis has been included.

- *Bragar to Dell*

The area covered by the Bragar to Dell closure lies within ICES rectangle 45E3. The average landings from this rectangle during revised closed period (1 November to 31 March) are as follows:

Species	Tonnage	% of annual landings from 45E3
Brown Crab	307.05	44%
Velvet Crab	21.58	48%
Nephrops	15.64	45%
Lobster	2.60	15%
Other Shellfish	2.57	31%
Total	349.44	43%

(Figures averaged from 2010-15 landings data)

- *Northern Barra, South Uist, Benbecula, North Uist and Harris*

The area covered by the extension to the Northern Barra, South Uist, Benbecula, North Uist and Harris closure lies within ICES rectangle 42E2. The average landings from this rectangle during the closed period (1 November to 31 March) are as follows:

Species	Tonnage	% of annual landings from 42E2
Brown Crab	66.89	28%
Velvet Crab	23.69	44%
Lobster	5.49	23%
Nephrops	4.66	37%
Other Shellfish	1.10	33%
Total	101.84	31%

(Figures averaged from 2010-15 landings data)

○ *Loch Roag*

The area covered by the new Loch Roag closure lies within ICES rectangle 42E2. The average landings from this rectangle during the closed period (1 May to 31 July) are as follows:

Species	Tonnage	% of annual landings from 42E2
Brown Crab	123.53	18%
Velvet Crab	7.89	17%
Nephrops	7.54	22%
Lobster	4.52	26%
Other Shellfish	3.63	43%
Total	147.11	18%

(Figures averaged from 2010-15 landings data)

○ *Loch Maddy to Stuley Island*

The area covered by the Loch Maddy to Stuley Island closure lies within both ICES rectangles 43E2 and 44E2, with the majority lying within 43E2.

During consultation, some concerns were raised on the potential impact of this amendment.

Landings data for 2010-15 shows that six vessels recorded landings of diver scallops from these ICES rectangles during the period 1 March – 30 April and 25 August – 31 October, with the tonnage landed fluctuating throughout the period.

Year	Tonnage
2010	4.93
2011	0.73
2012	0.18
2013	0.99
2014	1.97
2015	2.89

(Figures totaled from 2010-15 landings data)

The table below shows the value of scallops landed from 43E2 and 44E2 during the proposed closure period as a percentage of the total yearly value of scallops landed by these 6 vessels across all statistical rectangles. The relative importance of these two statistical rectangles to the six vessels varies over time. In 2010, over 5 % of the combined total landings by value were taken in these statistical rectangles during the proposed closure period while this fell to less than half a percent in 2012. Last year the percentage value of the landings from these two ICES rectangles during the closed period was 4.85%.

Year	Tonnage
2010	5.12%
2011	0.89%
2012	0.24%
2013	1.08%
2014	3.24%
2015	4.85%

(Value of yearly landings from ICES rectangles 43E2 AND 44E2 during proposed closed period as a percentage of total yearly landings (2010-2015))

Marine Scotland contacted those who had recorded landings within the relevant ICES rectangles but had not responded to the consultation and as a result of this established that there was no broader opposition to the proposal from these scallop divers. Points worth noting are:

- Vessels did not operate in the closed area (although they did operate in the broader ICES rectangles)
 - For some, commercial scallop diving supplemented other income and some were not targeting the fishery at this time.
 - Vessels had moved out of the area
 - One respondent highlighted concerns over scallop stocks in the area
 - Another supported the principle of closed areas.
- *Sound of Harris*
As this will involve the removal of a prohibition on mobile gear fishing (excluding suction dredging), there should be no additional costs involved.

Scottish Firms Impact Test

The new management arrangements were developed by the OH RIFG which represents local fishing operators and processors active in the area. The proposals underwent considerable local consultation before consensus was reached within the OH RIFG's membership. The management measures were then submitted to Marine Scotland for consideration and formal consultation. To inform the consultation process Marine Scotland engaged with fishermen to better understand any potential impacts upon their businesses.

Competition Assessment

The management measures are not expected to result in any negative impact on competition. The measures will apply to all Scottish and other British fishing boats that operate in the Outer Hebrides' inshore waters.

Test run of business forms

No new business forms will be introduced.

Legal Aid Impact Test

The proposed new management measures have been discussed with the Scottish Government Access to Justice Team, who have agreed that they should have no impact on the legal aid fund.

Enforcement, sanctions and monitoring

Marine Scotland Compliance is responsible for the monitoring and enforcement of marine and fishing laws. Fishery Officers have the power to perform inspections of fishing vessels at sea or in ports, fish markets and processing factories, in order to ensure compliance with legislation. Where a breach of fisheries regulations has been detected, it will be reported as appropriate to the prosecuting authorities. This can result in the imposition of a fine in the event of conviction.

Implementation and delivery plan

The management measures will be introduced through new secondary legislation, using the powers conferred by the Inshore Fishing (Scotland) Act 1984.

The Inshore Fishing (Prohibition of Fishing and Fishing Methods) (Outer Hebrides) Order 2017 will come into force from 1 April 2017.

- **Post-implementation review**

Marine Scotland will monitor the impact of the new management measures and consider any practical or unforeseen consequences should they arise.

Any areas of concern are likely to become quickly apparent through representations made by local fishing interests – either individually or through the OH RIFG – or Marine Scotland Compliance.

Summary and recommendation

Marine Scotland recommends Option 2. Changing the inshore fishing prohibitions in the Outer Hebrides will modernise current management arrangements, therefore better complementing current fishing practices and helping to improve the protection of local shellfish stocks

- **Summary costs and benefits table**

Option 1 – Do Nothing	
Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
Fishermen will be able to continue operating in the Outer Hebrides in accordance with the inshore fishing prohibitions currently in force.	Existing legislative provision would not complement current fishing practices to the same degree as they would under Option 2.

Option 2 – Introduce new management arrangements for the inshore fishing prohibitions in the Outer Hebrides	
Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
Will better complement current fishing practices Will help to protect local shellfish stocks Will help to improve the yield and long term economic returns Will help to ensure shellfish is harvested when most suitable for market conditions	Loss of access to fishing grounds during periods when fishing is prohibited.

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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