

# Final Business and Regulatory Impact Assessment

## Title of Proposal

### THE SHELLFISH (RESTRICTIONS ON TAKING BY UNLICENSED FISHING BOATS) (SCOTLAND) ORDER 2017

## Purpose and intended effect

### Background

There is anecdotal evidence to suggest that some hobby/unlicensed fishermen are illegally selling shellfish which they have taken from within the Scottish zone on a commercial basis. By its very nature this is difficult to measure, however, it is believed there are particular hotspots around the coast and increased activity during spring/summer months.

The fishing industry has requested measures to reduce the incidence of unlicensed commercial fishing activity and ensure fairness in ensuring all commercial fishermen comply with current legislation and licence requirements.

### Objective

To restrict the taking by unlicensed fishing boats in the Scottish zone of a specified description of shellfish, by introducing daily take limits for lobster, Nephrops, scallops and four species of crab. There are currently no limits as to what may be taken by an unlicensed fishing boat or a hobby fisherman.

Proposed limits:

Species	Daily Catch Limit
Lobster	1
Nephrops	10
Crab (any species*)	5
Scallops#	6

\* edible crab, green crab, spinous spider crab or velvet crab

# king scallops or queen scallops

### Rationale for Government intervention

Licensed commercial fishing activity will not be affected by the measures and genuine hobby fishermen will still be able to enjoy their hobby and take a daily amount of specified species of shellfish that the Scottish Government considers reasonable to satisfy that hobby. The biggest impact of the measure will be on illegal unlicensed commercial fishing activity. The fishing industry has requested measures to reduce the incidence of unlicensed commercial fishing activity and ensure fairness in ensuring all commercial fishermen comply with current legislation and licence requirements.

This order will contribute to the Scottish Government's strategic objective to improve Scotland's natural and built environment and the sustainable use and enjoyment of it. It also supports the inshore strategy for local fisheries management.

## **Consultation**

The Scottish Government consulted during the summer of 2016 on the proposed take limits. It was clear from the responses to the consultation that there is support for the principle that fishing boats which are not licensed to fish on a commercial basis should have restrictions in place to limit the number per species of shellfish that they can take. Giving consideration to the reasons for the original proposals and the responses received to those proposals, the take limits set out in the consultation are the same as those contained in the Order. The intention of the take limits is to allow genuine hobby fishermen to pursue their hobby but to prevent unlicensed fishing boats from taking shellfish on a commercial basis, under the guise of hobby fishing activity.

### **Within Government**

Marine Scotland Compliance and Scottish Natural Heritage have been consulted.

### **Public Consultation**

The Scottish Government conducted a public consultation and responses were received from a wide variety of respondents, including licensed commercial fishermen and their representatives, hobby fishermen, recreational users of the marine environment and others.

### **Business**

The consultation was brought to the attention of licensed commercial fishermen and their representatives and there was broad support for restrictions on daily shellfish take limits by unlicensed fishing boats. The proposals will not directly affect licensed commercial fishermen.

## **Options**

Two options have been considered in relation to the proposed Order:

1. do nothing; and
2. make an Order setting daily shellfish take limits for unlicensed fishing boats.

**Option 1** - Do nothing. This option would maintain the status quo.

**Option 2** - To make an Order and bring into force take limits from an unlicensed boat.

### **Sectors and groups affected**

The Order will not directly affect fishing activities from a licensed fishing boat (i.e. a fishing boat registered to a port in Scotland or in any other part of the United Kingdom, or a fishing boat which flies the flag of a country other than the United Kingdom). Hobby fishermen operating from an unlicensed boat will be able to take shellfish within the Scottish zone, subject to the daily limits set for those shellfish specified in the Order. The Scottish Government believes these to be reasonable limits for a hobby. The Order will for the first time set a take limit for unlicensed boats and those fishermen operating from unlicensed boats and illegally selling their catch for profit (whilst falsely claiming to be hobby fishermen) will find it more difficult

to continue their operations.

### **Benefits**

**Option 1** – there are no additional benefits in not making an Order. The status quo will be maintained.

**Option 2** – By its very nature the scale of unlicensed commercial fishing activity is difficult to measure. Making an Order setting daily take limits by unlicensed fishing boats will provide an extra tool for enforcement officers and provide clarity for all fishermen and enforcement agencies. Without daily catch limits unlicensed fishermen can, if questioned, claim to be fishing for a hobby no matter what level of catch they have or the amount of equipment used. Setting daily take limits will remove this loophole for those engaged in unlicensed commercial activity. There is anecdotal evidence that some unlicensed fishermen will disregard regulations on landing sizes and food safety whereas as checks and balances are in place for licensed fishing boats and the fishermen who operate on such boats. The measure may also reduce the supply of illegally sold fish which may have an indirect benefit to licensed commercial fishermen.

### **Costs**

The Order will not place any costs on licensed commercial fishermen or other businesses operating legally. Unlicensed commercial fishermen who take large quantities of shellfish and sell it illegally will face increased pressure to cease activities or become legal licensed operators.

### **Scottish Firms Impact Test**

There will be no impact on licensed commercial fishermen.

### **Competition Assessment**

There will be no impact on licensed commercial fishermen.

### **Test run of business forms**

There are no forms directly introduced by this Order and therefore no requirement for a test run of business forms.

### **Legal Aid Impact Test**

There will be no significant (if any) impact on the Legal Aid Fund.

### **Enforcement, sanctions and monitoring**

Marine Scotland Compliance will remain responsible for enforcement of fishing legislative requirements and will continue to base their activities on a risk-based basis with the additional clarity provided by the Order.

**Implementation and delivery plan**

The proposed Order will come into force on 17 April 2017 in advance of summer when fishing activity traditionally increases.

**Post-implementation review**

The Scottish Government will review the effect of the legislation in Autumn 2018, following 2 peak fishing seasons.

**Summary and recommendation**

To proceed with option 2.

Making an Order setting daily catch limits for hobby/unlicensed fishermen will aid enforcement of existing fisheries legislation and provide clarity as to the quantity of shellfish that unlicensed fishermen can take from the Scottish zone on a daily basis. Hobby fishermen are still able to pursue their hobby but commercial fishermen operating from unlicensed fishing boats will not be able to use a loophole of claiming to be a hobby fishermen whilst catching significant amounts of shellfish.

The Order will have no direct impact on licensed commercial fishermen but may indirectly benefit from the discouragement or removal of unlicensed fishermen illegally selling their catch for profit.

**Summary costs and benefits table**

Option	Total benefits per annum: economic, environmental and social	Total cost per annum: economic, environmental, social, policy and administrative
<b>1</b>	Nil.	Nil direct economic cost to business but there is a risk of losing small market share to any commercial fishermen operating from unlicensed fishing boats who may not be complying with fisheries or food standards regulations. Illegal unlicensed commercial fishing activity may not be carried out in a sustainable manner.
<b>2</b>	Licensed commercial fishing operations may benefit from the removal of shellfish from the commercial market landed by unlicensed fishing boats.	Nil economic cost to licensed fishermen .

**Declaration and publication**

I have read the 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 the businesses in Scotland.

**Signed:****Date:**

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

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