

# Business and Regulatory Impact Assessment

## Title of Proposal

**The Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2019**

## 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 in ICES area 6a (west of Scotland) and ICES area 7a (Irish Sea), 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 a Scottish Statutory Instrument (SSI).

More recently the Scottish Government has been supporting an industry led survey which aims to study the population of cod in the Firth of Clyde and inform future management decisions. This study began in March 2016 and is due to last 5 years. The Scottish Government will review the outputs of the survey on completion.

- **Objective**

To protect cod in the Firth of Clyde from being fished during the spawning period on a recognised spawning ground.

- **Rationale for Government intervention**

Since the proposed SSI's purpose 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). Scottish Ministers therefore need to rely on a procedure under EU law to adopt the SSI. The SSI is made in accordance with the procedure under Article 19 of Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy (CFP Regulation). Pursuant to Article 19 of the CFP Regulation, Marine Scotland will inform other Member States about the adoption of this SSI and will make publicly available appropriate information concerning the adoption of the measures under the SSI.

By adopting this SSI the Scottish Government helps safeguard cod stocks for the future and contributes towards objectives under the National Performance Framework, in particular the National Outcome "*We value, enjoy, protect and enhance our environment*" and the National Indicator measuring the "*Sustainability of fish stocks*".

## Consultation

- **Within Government**

Colleagues from Marine Scotland Science, Marine Scotland Planning and Policy, Marine Scotland Sea Fisheries and Marine Scotland Compliance have been consulted.

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- **Public Consultation**

The Scottish Government consulted with key stakeholders regarding this proposal. Stakeholders were given 3 weeks to provide comments between 30<sup>th</sup> August and 20<sup>th</sup> September 2019. Thirteen responses were received. Only one of the respondents, a member of the fishing industry, felt that the seasonal closure should not continue. The remaining respondents - a mixture of fishing industry and conservation bodies - agreed that the seasonal closure should continue. Some of the responses called for a wider review of the closure and exemptions, along with consideration for a wider package of measures.

- **Business**

The circulation list for the public consultation included representatives of the fishermen who would primarily be affected by the closure. Apart from one individual, they agreed that the Clyde closure should remain in place for 2020 and 2021.

### Options

It is difficult to quantify the costs or benefits in this case because the SSI has been implemented every year since 2002. Prior to this time fishing conditions were very different. As a result it becomes difficult to compare and contrast between the time before the closure and 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.

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 ICES area 6a (west of Scotland) – which includes the Firth of Clyde - states that recruitment of cod has been very low since 2001. The current spawning stock biomass is extremely low and when the Maximum Sustainable Yield (MSY) approach is applied there should be zero catches during both 2020 and 2021.

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. West of Scotland cod landed by Scottish vessels in 2018 had a value of £488,000.

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 Firth of Clyde closure, are therefore important among efforts to ensure fishermen are afforded adequate opportunities to fish other demersal species in the long term.

##### Benefits

Demersal fishermen would be able to fish unhindered in the specified area all year round,

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avoiding any potential short-term cash-flow problems that might be caused by temporarily prohibiting activity in the Firth of Clyde. In the Campbeltown district the total of demersal fish landings was 21 tonnes in 2018 with a value of £144,000. The shellfish and Norway Lobster sector which are allowed to fish under the derogations in the SSI had total landings in to Campbeltown of 3,776 tonnes with a value of approximately £13,093 million in 2018.

### **Option B: *Status quo* during 2020 and 2021**

#### Costs

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

The proposed closure areas are within the wider ICES area 6a, which for 2019 has a total allowable catch (TAC) of 1735 tonnes and currently a 25% bycatch limit for cod.

#### Benefits

The closure protects spawning areas, and as such provides a higher chance of stock recovery and future fishing opportunities.

Retaining the existing 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. Clyde 2020 will implement a programme of work to enhance the Clyde marine ecosystem and as part of this work it will consider what further management may be needed.

The present closure area, and the exemption 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 21 tonnes in 2018 with a value of £144,000. The shellfish and Norway Lobster sector which are allowed to fish under the derogations in the SSI had total landings in to Campbeltown of 3,776 tonnes with a value of approximately £13,093 million in 2018.

### **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 Firth of Clyde closure should remain in place for 2020 and 2021.

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 effect on cash flow during the closure.

### **Competition Assessment**

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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 2020 and 2021 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, Clyde Fishermen's Association has been involved with a 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 2019 and it is expected to come into force on 14th February 2020.

### 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 2020/21 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 costs of restrictions on catching during the annual 11 week closure. Given the continued poor state of the cod stock in ICES area 6 (ICES advises no directed fishing) even a small potential benefit is likely to justify retaining 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 2020 and 2021 is unaffected by the closure. The

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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.	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.

### 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: Fergus Ewing**

**Date: 10/12/2019**

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

**Scottish Government Contact point:  
Rosanne Dinsdale  
Marine Scotland, Sea Fisheries  
0131 244 2519**