

EXECUTIVE NOTE

THE SEA FISHING (RESTRICTION ON DAYS AT SEA) (SCOTLAND) ORDER 2010

SSI 2010/238

1. The above instrument was made in exercise of the powers conferred by Section 30(2) of the Fisheries Act 1981 ("the 1981 Act") and is subject to negative resolution procedure.

Background

2. General provisions for fishing effort (days at sea) for vessels in the context of the recovery of cod stocks under Council Regulation (EC) No. 1342/2008 as amended by Annex IIA of Council Regulation (EU) No 23/2010 of 14 January 2010 are implemented by Administrative arrangements under the Conservation Credits Scheme (Annex 1 shows scheme rules). This Order provides for the enforcement in Scotland of and creates offences and details penalties associated with the number of days that certain fishing boats can spend at sea and the use of gear permitted within the cod recovery zone in accordance with Articles 27 and 30 of the Council regulation (EC) No. 1224/2009

Policy Objective

3. The Order ensures the Scottish Government has the legal backstop to discharge its regulatory obligations. The Order will create offences to underpin the Conservation Credits Scheme (CCS) which is the method by which the allocation of effort to Scottish fishing vessels is managed. Although the scheme contains its own administrative sanctions, it is considered necessary to create offences to allow the imposition of legal sanctions upon those who do not observe effort rules. This directly benefits the entire Scottish fishing industry by operating the CCS on a level playing field. In addition, this ensures responsible fisheries management where Scottish vessels and other vessels operating in Scottish zone are expected to adhere to provisions for fishing effort to ensure sustainability of fisheries stocks. Marine Scotland Compliance have the responsibility for enforcement of the Order. Sanctions can include, on summary conviction, to a fine not exceeding £50,000; and the forfeiture of any fish and net or other fishing gear in respect of which the offence was committed.

Consultation

4. The Scottish Government has ongoing and regular (monthly) consultation with industry representatives via the Conservation Credits Steering Group (CCSG) which have become paramount to the implementation of and industry participation with the CCS. The CCSG is a co-management group, comprising of Scottish Government, environmental NGOs and the full spectrum of the Scottish Fishing industry representatives including individual fishing vessel businesses, that develops, considers and proposes fishing effort policy recommendations for Scottish Ministers. The CCSG fully support the need for the Order to deliver full compliance capability to protect against irresponsible fishing activity.

Financial Effects

5. There are no additional regulatory costs associated with the Order. The administrative arrangements of fisheries management measures are already in place and therefore the Order will pose no additional cost if vessels remain fishing responsibly and within the law.

6. A Business & Regulatory Impact Assessment has been prepared and placed in SPICE. Copies are available from Marine Scotland, 1B South, Victoria Quay, Edinburgh EH6 6QQ, telephone 0131 244 8274.

Scottish Government, Marine Scotland
Sea Fisheries Policy
June 2010

Annex 1 Conservation Credits Scheme Rules

Scottish Government Conservation Credits scheme

Scheme rules

Version 1.3

Contents

1. Purpose and revision
2. Status
3. Eligibility to carry regulated gears
4. Notification of intention to carry regulated gears: management periods
5. Carriage of regulated gears of one category
6. Allocation of basic days at sea: flat rate and track record options
7. Allocation of basic days at sea to vessels catching less than 5 per cent cod
8. Conditions of basic days at sea allocation
9. Allocation of additional days at sea (Conservation Credits ‘buy backs’)
10. Transfer of days at sea
11. Recording of time at sea: time at sea not counting against vessels’ allocations
12. Penalties

Annexes

- A Allocations of days at sea 2010
- B Definition of ‘Farn Deeps’
- C Definitions of specified selective gears
- D Co-ordinates of French Line
- E Vessels exempted in terms of Article 11 of 1342/2008
- F Days at Sea arrangements for ‘parked licences’
- G Penalties

1. Purpose and revision

1.1 The purpose of these rules is to inform interested persons how the Scottish Government proposes to administer the days at sea regime for eligible vessels absent from port carrying regulated gears in the Cod Recovery Zone (CRZ). It seeks to provide a consolidated guide to the matters and arrangements most relevant to the operation of this regime.

1.2 These rules have been prepared by the Scottish Government in consultation with the Conservation Credits steering group. Where it appears to the Government that there is a need for revision, this will be done in consultation with the steering group and a new version of the rules will be issued. New versions will be sent to skippers or their appointed representative and to other interested persons.

1.3 The rules do not attempt to provide a definition for every term used, nor a full background to the history or reasons for particular rules or arrangements. They are intended rather to be a practical guide to the day to day management of the scheme and the activities of relevant vessels. The meaning of many terms is well understood and it is assumed that readers will be familiar with the main features of statutory and other arrangements for sea fishing. In addition, many terms used here are already defined in EU and / or domestic regulations and to repeat those definitions would make this guide overly long. Where necessary, reference is made to regulations and other instruments.

2. Status

2.1 The rules describe the manner in which the Scottish Government proposes to fulfil its functions in administering the days at sea regime for relevant vessels. These rules still require to be read along with the relevant provisions of EU and domestic law.

3. Eligibility to carry regulated gears

3.1 The regulated gears are the gear groupings described in Annex I to EC Regulation 1342/2008.

3.2 Vessels will be eligible to be absent from port carrying categories of regulated gears in the CRZ where they have a record of fishing activity with those gears in the years 2001, 2002 or 2003.

3.3 Vessels eligible to carry gear category TR1 (whitefish gear) may carry any category of regulated gear. Vessels eligible to carry one of the 'static gears' (Gill Nets, Trammel Nets and Long lines) may carry any of them.

4. Notification of intention to carry regulated gears: management periods

4.1 Before the first day of each management period, the master of a vessel or their representative must notify the effort management team which categories of regulated gear the vessel will carry in the forthcoming period, and make an application for days at sea. An application to transfer days at sea will also constitute such notification.

4.2 A management period may be a period of one or more months. Vessels that apply for a track record allocation (see section 6 below) may only notify a twelve month management period.

4.3 Where vessels apply for a new management period that amends (and completes) a previously notified management period, and causes a deficit in the now closed management period, no new allocation will be made until the deficit caused by the amendment is eliminated (by means of a transfer). Days unused at the end of a management period (including days transferred in) may not be carried forward.

5. Carriage of regulated gears of one category

5.1 Vessels may carry on board regulated gears of one category only.

6. Allocation of basic days at sea: flat rate and track record options

6.1 Upon receipt of an appropriate application form, the effort management team will issue letters to eligible vessels that specify an allocation of days for the designated management period. These letters constitute a special permit to carry the specified regulated gears in the CRZ and should be carried on board at all times when absent from port and in the CRZ carrying regulated gears. The special permit will also specify sea areas where the vessel may be present.

6.2 The Scottish Government will issue special permits to eligible licensed fishing vessels whose port of administration is in Scotland. Allocations of days will be made in respect of vessels. Allocations of days will not be made to licence entitlements not presently associated with a vessel.

Flat rate

6.3 Eligible vessels may apply for a 'flat rate' allocation. The flat rates for basic allocations in 2010 are set out in Annex A. Vessels will receive an allocation of days in proportion to the duration of the management period notified – i.e. a vessel notifying a 6 month management period will receive half of the annual allocation.

6.4 Where a vessel notifies more than one category of gear, its allocation of days will be the average of the rates for the categories notified and subject to gear maxima for the gear allocations that are lower than the average.

6.5 Where a vessel notifies TR1 (whitefish) and another gear, its allocation of days will be the average of two rates with an adjusted gear maximum for whitefish. The whitefish allocation of days will be the number of days that would have been allocated to a vessel notifying TR1 only less 90 days (or pro rata thereof for management periods of fewer than 12 months).

6.6 Where a vessel applies for an allocation of days in more than one sea area (i.e. for the West of Scotland and the North Sea) its allocation of days will, where appropriate, be subject to area maxima.

6.7 Where a vessel applies for an allocation of days in more than one sea area and for more than gear category, its allocation will, where appropriate, be subject to area and gear maxima.

Track record allocation

6.8 Vessels notifying gear categories TR1 (whitefish) and / or TR2 (*Nephrops*) may, alternatively, apply for a basic allocation based upon 75 per cent of their average annual (kilowatt days) effort in the period 2004-07.

6.9 Where a vessel did not fish in one or more of the years between 2004 and 2007, the average will be based upon the years in which it did fish. In addition, where a vessel joined the fleet mid-year, the effort management team may consider averaging effort in that year on a pro rata basis. A track record allocation will not be made on the basis of fishing activity in one year only.

6.10 Vessels applying for a track record allocation that (are eligible to and) wish to notify both TR1 and TR2 will receive an allocation for each gear based on their average use with each gear. It should be noted that vessels must apply for either the flat rate or a track record allocation for all categories of gear notified. They may not apply for the flat rate for one category of gear and the track record allocation for another.

6.11 All vessels receiving a track record allocation must keep and submit to the effort management team a record of all catches of cod, including discards, on a trip by trip basis. Records should be submitted directly to the effort management team.

6.12 Vessels receiving a track record allocation that carry on board TR1 gear must ensure that the cod end mesh size is 120mm or greater.

Track record allocation – the option to attribute kW days track records of associated licences

6.13 Vessels applying for a track record allocation may attribute to their track record the kW days track record of relevant CRZ eligible licences that are associated with the vessel making the application. Allocations (i.e. after the deduction of 25% from the average) will be subject to a maximum for all gears combined of 300 days. There is an example at the footnote.¹

6.14 It is anticipated that this option will be most relevant to new vessels, which will have incurred expenditure in acquiring and aggregating licences from CRZ eligible vessels.

6.15 The option is also available to existing vessels that choose to aggregate licences with those on an already licensed vessel, but we do not anticipate that many existing vessels will wish to take it up. This is because the additional kW and tonnage capacity of licences will reduce to zero where those licences are aggregated with a vessel that is already licensed to its actual capacity. It is not possible to reinstate the kW and tonnage on to the licence entitlement if – in future – the licence holder sought to disaggregate it from the licences with which it had been aggregated.

7. Allocation of basic days at sea to vessels catching less than 5 per cent cod

7.1 Eligible vessels notifying gears TR1 and / or TR2 which, in 2008 and 2009², landed less than 2.5 per cent cod by weight may receive an allocation of 200 days at sea. Vessels that have no record of fishing with TR1 and / or TR2 in one of the years may qualify on the basis of activity in the year where there was fishing.

7.2 Alternatively, a vessel notifying these gears that landed 2.5 per cent or more of cod but less than 5 per cent cod will also be allocated 200 days at sea if they agree to fish exclusively south of latitude 59 degrees in the North Sea and outside the ‘Farn Deep’s’. For the purposes of the scheme, the ‘Farn Deep’s’ will be the area defined in Annex B.

7.3 Vessels may qualify for this allocation separately with TR1 or TR2. Therefore, if a vessel’s record of landings makes it eligible for the allocation in respect of one of the gear categories, then it may receive the allocation for the eligible gear. A vessel that notifies both TR1 and TR2 and is eligible for the less than 5 per cent cod catch allocation for one gear but not the other will receive an allocation based on the average of the two relevant allocations. So, for example, a vessel fishing in the North Sea that qualifies for the allocation with TR2 but not TR1 will receive a basic allocation that is the average of 200 and 120, which is 160 of which 30 days TR1. Its allocation will be subject to the TR1 maximum described in paragraph 6.4 above.

7.4 A vessel will revert to the standard allocation(s) for the remainder of the scheme year for the gear categories notified if:

¹ A 200 kW vessel is licensed with licences from two 105kW vessels that it has replaced. Each of the replaced vessels had an average of 300 days at sea in the 2004-07 reference period - thus their combined kW day average is 63,000 kW days (31,500 + 31,500). The vessel now applying for a track record allocation may be allocated 75 per cent of the combined kW days track record –, 47,250 kW days, which is 236 days for the new vessel with a 200kW engine.

² Where “2008” is the period from 1 February 2008 – 31 January 2009.

- i. On one occasion it lands more than 2.5 per cent cod;
- ii. An inspection or observation at sea records a catch of cod that is 5 per cent or more of the total catch; or,
- iii. Having received an allocation on condition that it does not, it fishes at any time north of latitude 59 degrees in the North Sea or within the 'Farn Deeps'.

The effort management team, in considering whether to return a vessel to the standard allocation(s), will take into account the actual weight of fish landed.

7.5 A vessel may apply for this allocation during a management period. Where a vessel wishes to revert to the standard allocation during a management period an allocation will be made for a management period that commences at the beginning of the month after the amended application is received. For example, a vessel that has applied for a 12 month management period and received 200 days, and later on wishes to revert to the standard allocation, will receive a pro rata allocation for the remaining months of the effort year.

8. Conditions of basic days at sea allocation

8.1 In addition to the scheme rules specified, allocations of days at sea are subject to mandatory conditions:

- i. Vessels must comply with all Scottish Government Real Time Closures (RTCs) and seasonal closures; and, with any equivalent measures imposed by other UK Fisheries Administrations;
- ii. North Sea vessels notifying TR2 (*Nephrops*) are required to insert a 110mm Square Mesh Panel (SMP) into the fishing gear carried on board while absent from port and in the CRZ if using mesh in the cod end of less than 90mm; and,
- iii. Vessels will be expected, on receipt of a reasonable request, to carry an observer.

8.2 Vessels notifying TR2 and fishing in the West of Scotland are subject to separate mandatory requirements in relation to gear. These require the installation of a 120mm SMP. TR2 vessels fishing in the West of Scotland and complying with these requirements will – in doing so - also comply with Conservation Credits scheme rules. TR2 vessels fishing only in the North Sea need only comply with the rules described in the preceding sub-paragraph (ii) above.

9. Allocation of additional days at sea (Conservation Credits 'buy backs')

9.1 Vessels notifying gear categories TR1 and / or TR2 will receive an allocation of days at sea in addition to the basic allocation if they agree to undertake during the management period specified additional conservation measures. These additional days are not available to vessels notifying only one gear category and receiving an allocation of days at sea based on catching less than 5 per cent cod. These additional measures are optional and may be taken up for the duration of one or more management periods. Vessels receiving a track record allocation (which requires a twelve month management period) may take up the Conservation Credits buy backs for one or more months.

9.2 The Conservation Credits buy back options involve vessels fishing exclusively with specified selective gears. Section 11 explains separately options that vessels may take to ensure that their time at sea does not count against their allocation.

Specified selective gears

9.3 Vessels that fish exclusively with a specified selective gear during a management period will receive additional days at sea. Each of the specified selective gears is defined in Annex C.

Amount of buy back

9.4 The number of additional days that will be allocated to vessels of different types in different sea areas is shown at Annex A. The days shown there are annual allocations.

Method of calculating allocations for vessels notifying two gears and taking up buy back options

9.5 Vessels notifying TR1 and TR2 that take up buy back options for one gear but not the other will receive an allocation based on the average of their allocations for each gear, including the relevant buy back allocation. So, for example, a North Sea vessel that notifies TR1 and TR2 and fishes exclusively with the Orkney cod avoidance trawl when using TR1 will receive an annual allocation of 148 days of which no more than 50 may be used with TR1³.

9.6 Vessels notifying TR1 and TR2 that elect to take up a specified selective gear option for each gear will receive an allocation based on the average of each basic allocation plus the relevant buy back allocation. So, for example, a North Sea vessel that notifies TR1 and TR2 and fishes exclusively with the Orkney cod avoidance trawl when using TR1 and with the *Nephrops* SMP with TR2 will receive an annual allocation of 162 days of which no more than 50 may be used with TR1⁴.

9.7 Vessels that have notified TR1 and TR2 and have received, in respect of one gear category only, the allocation of 200 days at sea associated with catching less than 5 per cent cod, may also be allocated additional days at sea for taking up one or more of the Conservation Credits buy back options in respect of the other gear category. Their allocation of days at sea will be the average of the 200 day allocation and the basic allocation for the other gear plus the buy back days. So, for example, a West of Scotland vessel that notifies TR1 and TR2; is eligible for the less than 5 per cent cod catch allocation with TR2 only; and, fishes exclusively with the Orkney cod avoidance trawl when using TR1 will receive a basic allocation of 170 days, of which no more than 50 days may be with TR1⁵.

9.8 Vessels that receive a track record allocation and take up one or more of the Conservation Credits buy back options will have added to their allocation for each relevant gear the percentage additional allocation noted in the table in Annex A.

9.9 Where a vessel volunteers to fish exclusively with a specified selective gear, it will receive an appropriate additional allocation. Fishery Officers will then make arrangements with the vessel to inspect the gear so as to confirm that it conforms to the specification set out in the scheme rules. Where the gear is found not to comply with the scheme rules, additional days allocated to the vessel may be deducted from the vessel's balance.

9.10 Where two vessels that form a 'pair team' wish to take up one of the selective gear options, then both vessels must sign up.

9.11 A vessel may apply for buy backs during a management period. Where a vessel wishes to make an amended application during a management period that does not include buy backs it may do so. An allocation will then be made for a management period that commences at the beginning of the month after the amended application is received. For example, a vessel that has applied for a 12 month management period with TR1 while fishing exclusively with the Orkney cod avoidance trawl will receive an initial allocation of 140 days. If, during the 6th month the vessel wishes to fish without

³ Allocation = TR1 allocation (140) + TR2 allocation (176), divided by 2 = 158. TR1 maximum = TR1 allocation minus 90 = (140 - 90 = 50).

⁴ Allocation = TR1 allocation (140) + TR2 allocation (184), divided by 2 = 162. TR1 maximum = TR1 allocation minus 90 = (140 - 90 = 50).

⁵ Allocation = TR1 allocation (140) + TR2 allocation (200), divided by 2 = 170. TR1 maximum = TR1 allocation minus 90 = (140 - 90 = 50).

the selective gear, it may do so. It should make an application for the period 1 July – 31 January. An allocation of 60 TR1 days will then be made.

10. Transfers of days at sea

10.1 Transfers of days at sea are subject to controls.

10.2 Some vessels may not transfer out days:

- i. Vessels will not be permitted to transfer any days if they have not, in the preceding two effort management years, undertaken fishing activities above a minimum level. The minimum level is 40 days at sea in each year deploying regulated gear in the CRZ;
- ii. Vessels that elect to take up one or more of the Conservation Credits buy back options in a management period may not transfer out any days during that period. In applying this rule the effort management team will consider exceptional circumstances such as unplanned and lengthy repair work;
- iii. Vessels that receive the allocation of days at sea associated with catching less than 5 per cent cod; and,
- iv. Vessels that notify more than one gear category in a management period may not transfer days out during that period.

10.3 Vessels that may transfer out days are subject to limitations:

- i. Transfers may only take place between vessels that have notified the same categories of regulated gears during a concurrent management period;
- ii. Vessels that notify TR1 in a management period may not transfer out from their basic allocation more than 50 per cent of the allocation for that period;
- iii. Vessels that notify a gear category other than TR1 in a management period may not transfer out from their basic allocation more than 30 per cent of the allocation for that period; and,
- iv. Vessels that receive a track record allocation may transfer days out and in, but only with other vessels that also receive a track record allocation, subject to the maxima noted above.

10.4 Where a transfer takes place, the number of days received by the recipient will be adjusted in proportion to the comparative fishing capacity (measured in engine power) of the vessels involved.

10.5 Vessels that are ineligible to carry regulated gears in terms of section 3 may nonetheless transfer in days from eligible vessels. The transfer in of days by an ineligible vessel does not, however, confer any eligibility on the recipient.

10.6 Transfers of days at sea that involve vessels administered by another UK Fisheries Administration (FA) may be subject to exceptional controls. A vessel administered by Marine Scotland that wishes to apply to transfer days at sea to a vessel administered by another UK FA must make that application to Marine Scotland. A vessel seeking to transfer in days from a vessel administered by another UK FA must first seek confirmation from Marine Scotland that the proposed transfer conforms to the Conservation Credits scheme rules and any exceptional controls imposed on inter-FA transfers. Marine Scotland will not automatically credit the account of a vessel that transfers in days from a vessel administered by another UK FA. Any exceptional arrangements applying to inter-FA transfers will be communicated to members of the Conservation Credits steering group.

10.7 These controls apply to the transfer out of days allocated to vessels. Vessels may transfer out days previously transferred in.

10.8 Exceptional arrangements apply in relation to vessels that make a successful application to 'park' one or more licences on a vessel. The arrangements that apply are described in Annex F.

11. Recording of time at sea: time at sea not counting against vessels' allocations

11.1 Days at sea will be administered in hours.

11.2 For the purposes of the scheme, a fishing trip will commence from the time a vessel records in its log book the commencement of the trip inside the CRZ. A fishing trip will be concluded when a vessel makes a landing or part landing, recording the landing in its log book. A fishing trip is suspended where a vessel enters a designated landing port and notifies that activity to the UK Fisheries Call Centre on 0131 271 9700 or by email to ukfcc@scotland.gsi.gov.uk. The vessel must also notify its departure from the designated landing port, at which point the voyage will re-commence.

Transiting the CRZ

11.3 Time at sea in the CRZ will not reduce the vessel's allocation where the vessel is in transit to fish exclusively outside the zone, or exclusively to the west of the 'French line' (described at Annex D) where the vessel carries on board appropriate VMS that allows their position to be tracked. Vessels wishing to transit in this way must call the UK Fisheries Call Centre on 0131 271 9700, by fax on 0131 244 6471 or by email to ukfcc@scotland.gsi.gov.uk prior to departure from port. All on board fishing gear must be lashed and stowed during the period of transit. This method may also be used by vessels wishing to transit from port to port, however it should be noted that in order for time spent at sea to be excluded from the uptake of their days at sea allocation, no fish may be carried on board while in transit out of the CRZ.

11.4 Skippers should note that if they notify an intention to transit, fish outside the CRZ or the west of the French line and then fish inside the CRZ or – where applicable – to the east of the French line on return to port, all of their time at sea within the CRZ, including that spent transiting the zone on their outward journey, will be deducted from their allocation.

Non-fishing activity

11.5 Time at sea will not count against a vessel's allocation where it is undertaking non-fishing related activity, provided that the vessel first notifies its intention to do so as well as notifying the nature of the activity. The vessel must surrender its special permit for the duration of the activity and must not carry fishing gear or fish on board.

Emergency aid

11.6 Time at sea will not count against a vessel's allocation where it comes to aid of another vessel in need of emergency assistance or because it was transporting an injured person for emergency medical aid.

12. Penalties

12.1 There will be a regime of administrative penalties. Annex G describes the penalties and the circumstances where the effort management team will consider their application. Where the team is considering the application of a penalty it will notify the relevant persons in writing of the intention to impose the penalty, and the reasons for its possible application. The team will also discuss the circumstances with the Association of the vessel concerned prior to the application of a penalty.

12.2 On receipt of this notification, the affected person may appeal. Appeals should be made to the address below and should state reasons. Where an appeal is lodged the effort management team will appoint a reporter – who will be an officer of Marine Scotland from outwith the Effort management team – to consider the terms of the appeal.

Effort and Quota management team
Marine Scotland: Sea Fisheries Policy
1B South
Victoria Quay
Edinburgh
EH6 6QQ
1 June 2010 (effective from)

ALLOCATIONS OF DAYS AT SEA 2010

Flat rate basic allocations of days 2010

Gear category	Description	Days in sea areas			
		North Sea		West of Scotland	
		Min	Max	Min	Max
TR1	Whitefish demersal trawls – equal to or greater than 100mm	120	144	120	144
TR2	<i>Nephrops</i> demersal trawls – equal to or larger than 70mm and less than 100mm	176	200	176	200
TR1 / TR2	Under 5 per cent cod catch allocation		200		200
TR3	Demersal trawls, Seines of mesh size equal to or larger than 16 mm and less than 32 mm		228		228
BT1	Beam trawls of mesh size of 120mm or greater		152		168
BT2	Beam trawls of mesh size equal to or larger than 80mm and less than 120mm		152		168
GN1	Gill nets and entangling nets, excluding trammel nets		140		140
GT1	Trammel nets		140		140
LL1	Longlines		172		172

Buy back allocations of days 2010

Classification	TR1 gears	TR2 gears	Allocations			
			TR1 Flat rate days	TR2 Flat rate days	TR1 track record	TR2 track record
Level 1 gear	<ul style="list-style-type: none"> “130 mm cod end” 	<ul style="list-style-type: none"> “120/130 mm Square mesh panel” 	+8	+8	+5%	+5%
Level 2 gear	<ul style="list-style-type: none"> “300 mm belly mesh” 		+12		+7%	
Level 3 gear	<ul style="list-style-type: none"> “Orkney trawl” “Shetland trawl” “200mm SMP” “600 mm belly mesh” 	<ul style="list-style-type: none"> “160mm Square mesh panel” 	+20	+16	+12%	+12%
Level 4 gear	<ul style="list-style-type: none"> “Eliminator trawl” “800mm belly mesh” 	<ul style="list-style-type: none"> “200mm Square mesh panel” 	24	24	+15%	+15%

Definition of 'Farn Deeps'

The 'Farn Deeps', for the purposes of the scheme will be defined in terms of sequentially joining the following co-ordinates:

56.0000N	002.0000W
56.0000N	000.0000W
54.0000N	000.0000W
54.0000N	000.2068W

Then north along the mean low water mark to

55.7860N	002.0000W
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Definitions of specified selective gears

TR1 gears

1. “The Scottish Eliminator trawl”

To qualify for the additional days associated with the use of the Scottish Eliminator trawl, a vessel must use gear that has all of the following features:

- All top sheet wing netting sections to be made of diamond mesh netting of at least 600mm mesh size;
- All lower sheet wing netting sections to be made of diamond mesh netting of at least 600mm mesh size;
The belly panel must be made of diamond mesh netting of at least 600mm mesh size. It must extend across the full width of the trawl, be attached directly to the fishing line and extend towards the rear of the net for at least 7.5m (stretched length); and,
- All top sheet netting directly above and forward of the belly panel must be made of diamond mesh netting of at least 600mm mesh size.

2. “The Orkney / Shetland cod avoidance trawl”

To qualify for the additional days associated with the use of the Orkney cod avoidance trawl, a vessel must use gear that has all of the following features:

- All top sheet wing netting sections to be made of diamond mesh netting of at least 300mm mesh size, as measured from knot centre to knot centre;
- All lower sheet wing netting sections to be made of diamond mesh netting of at least 300mm mesh size, as measured from knot centre to knot centre;
- The belly panel must be made of diamond mesh netting of at least 300mm mesh size as measured from knot centre to knot centre. It must extend across the full width of the trawl, be attached directly to the fishing line and extend towards the rear of the net for at least 7.5m (stretched length); and,
- All top sheet netting directly above and forward of the belly panel must be made of diamond mesh netting of at least 300mm mesh size, as measured from knot centre to knot centre.

3. “130mm cod end”

Cod end of mesh size 130mm or greater.

4. “The 300mm belly panel cod avoidance trawl”

To qualify for the additional days associated with the use of the 300mm belly panel cod avoidance trawl, a vessel must use a gear with a belly panel that has the following features:

- The belly panel must be made of diamond mesh netting of at least 300mm mesh size;
- The stretched length of the belly panel should be no less than 12m;
- The leading edge of the belly panel must be no greater than 4.6m from the fishing line centre; and,
- The rear edge of the belly panel must be at least 16.6m from the fishing line centre.

5. “The 600mm belly panel cod avoidance trawl”

To qualify for the additional days associated with the use of the 600mm belly panel cod avoidance trawl, a vessel must use a gear with a belly panel that has the following features:

- The belly panel must be made of diamond mesh netting of at least 600mm mesh size;
- The stretched length of the belly panel should be no less than 12m;

- The leading edge of the belly panel must be no greater than 4.6m from the fishing line centre; and,
- The rear edge of the belly panel must be at least 16.6m from the fishing line centre.

6. “The 800mm belly panel cod avoidance trawl”

To qualify for the additional days associated with the use of the 800mm belly panel cod avoidance trawl, a vessel must use a gear with a belly panel that has the following features:

- The belly panel must be made of diamond mesh netting of at least 800mm mesh size;
- The stretched length of the belly panel should be no less than 12m;
- The leading edge of the belly panel must be no greater than 4.6m from the fishing line centre; and,
- The rear edge of the belly panel must be at least 16.6m from the fishing line centre.

7. “The 200mm Square Mesh Panel”

To qualify for the additional days associated with the use of the TR1 200mm SMP cod avoidance trawl, a vessel must use a gear with a SMP that has the following features:

- it must be made from netting of at least 200mm mesh size;
- it must be no less than 3m long;
- it must be fitted a maximum of 2 diamond meshes from each selvedge; and,
- The SMP must be no further than 9 - 12m from the cod line (i.e. the rearmost row of meshes of the SMP shall be no more than 9m from the cod line).

TR2 gears

1. “Nephrops 120/130mm Square Mesh Panel (SMP)”:

The insertion of a 120mm SMP of minimum length 3m in the straight extension of the net or a 130mm SMP in the taper. The SMP must be no further than 12-15m from the cod line (i.e. the rearmost row of meshes of the SMP shall be no more than 12m from the cod line). In the West of Scotland, the SMP must be 130mm.

2. “Nephrops 160mm Square Mesh Panel (SMP)”:

To qualify for the additional days associated with the use of the TR2 160mm SMP cod avoidance trawl, a vessel must use a gear with a SMP that has the following features:

- the SMP must be made from netting of at least 160mm mesh size;
- the SMP must be no less than 3m long;
- the SMP must be fitted a maximum of 2 diamond meshes from each selvedge; and,
- In the North Sea
 - the SMP must be no further than 9 - 12m from the cod line (i.e. the rearmost row of meshes of the SMP shall be no more than 9m from the cod line).
- In the West of Scotland
 - the SMP must be no further than 12 - 15m from the cod line (i.e. the rearmost row of meshes of the SMP shall be no more than 12m from the cod line).

3. “Nephrops 200mm Square Mesh Panel (SMP)”:

To qualify for the additional days associated with the use of the TR2 200mm SMP cod avoidance trawl, a vessel must use a gear with a SMP that has the following features:

- the SMP must be made from netting of at least 200mm mesh size;
- the SMP must be no less than 3m long;
- the SMP must be fitted a maximum of 2 diamond meshes from each selvedge; and,
- In the North Sea
 - the SMP must be no further than 9 - 12m from the cod line (i.e. the rearmost row of meshes of the SMP shall be no more than 9m from the cod line).
- In the West of Scotland
 - the SMP must be no further than 12 - 15m from the cod line (i.e. the rearmost row of meshes of the SMP shall be no more than 12m from the cod line).

Co-ordinates of the French Line

For the purposes of section 11.3 the French Line is defined by sequentially joining the following co-ordinates:

60° 15' N 04° 00' W
60° 00' N 04° 50' W
59° 40' N 05° 30' W
59° 40' N 06° 05' W
59° 20' N 06° 30' W
59° 00' N 07° 30' W
58° 40' N 07° 40' W
58° 10' N 09° 00' W
57° 50' N 09° 20' W
57° 20' N 09° 20' W
57° 00' N 09° 00' W
56° 40' N 08° 55' W
55° 30' N 09° 20' W
55° 20' N 09° 50' W
54° 30' N 10° 35' W

Vessels exempted in terms of Article 11 of 1342/2008**Background**

1. Article 11 of Council Regulation (EC) No 1342/2008 provides for the exemption from the effort regime of groups of fishing vessels with Cod catches of less than 1.5% of their total catches. Member States may apply in relation to groups of vessels. Exempted vessels can carry regulated gear within the Cod Recovery Zone without any restriction on days at sea.
2. Commission Regulation 237/2010 sets out detailed rules for the consideration of applications under Article 11. Groups of vessels may be granted exemption from the effort management regime based on concentrating their fishing effort within a geographical area outside what is referred to as the 'cod distribution area'; or, where they use gears the technical attributes of which result in cod catches, including discards, of less than 1.5% of the total catch.
3. The Scottish Government has to date made one application under Article 11. This application involved two groups of vessels which fished in the areas of low cod abundance in the Eastern Firth of Clyde and the Minches which met the criteria for exemption. These were *Nephrops* vessels which expended more than 75% of their fishing effort within one of those two areas during the reference period 2006 to 2008. These vessels were made exempt from the effort management regime with effect from the 2010/2011 scheme year, which commenced 1 February 2010.

Monitoring of groups of exempt vessels and responsibilities of vessels

4. In order to closely monitor the behaviour of the exempted groups of vessels, Marine Scotland (MS) has implemented an on board observer programme to monitor and record their catches of cod, which shall include discards.
5. Vessels granted exemption from the effort management regime as a result of this exemption are expected to continue to catch less than 1.5% cod.
6. Skippers of vessels within an exempted group are required to accept an observer on board for the entire duration of one or more fishing trips during the 2010/11 scheme year. An appropriate period of notice will be given to the vessel owner/skipper prior to the observer's arrival.

Readmission of vessels to effort regime

7. There are two sets of circumstances under which a participating vessel may be removed from the group of exempt vessels. Removal may be requested by the participating fishing vessel; or, MS may require the removal of one or more vessels from the exempt group.
8. Where a vessel wishes to change its area or pattern of fishing in a way that seems likely to take its cod catches above 1.5% then it may apply to be exempted from the group. This may happen, for example, where a vessel changes hands and the new owner has a different fishing plan.
9. MS may also consider, taking into account relevant evidence and representations, whether to remove a vessel from the exempt group. Relevant evidence will include reports from observers. In considering whether to remove a vessel, MS will take into account the importance of protecting the viability of the exemption of the group as a whole.
10. In both cases, MS shall discuss and consider the situation with the vessel's owner and representatives before taking any decision. Where MS considers it necessary to exclude a vessel in

the interests of the group as a whole, the vessel owner and its representatives will have an opportunity to appeal against the proposed exclusion.

11. Where it has been decided that a vessel is to be removed from the group, the following action shall be taken:

- MS shall remove the vessel from the list of exempt vessels and return it to the effort management regime. Any kilowatt (kW) days associated with the vessel during the 2004-06 reference period shall be restored (after any adjustment imposed on the baseline) to the relevant control total; and,
- MS shall advise the Commission that the vessel has been removed from the group of exempt vessels in order that the effort limit specified in the annual fishing opportunities regulation can be adjusted to reflect the re-inclusion of the effort of the vessel.

12. The vessel will thereafter be granted (upon receipt of an application) an allocation of days at sea based on its eligibility to carry gears in terms of section 3 of the scheme rules.

Allocations and transfers of days at sea in relation to vessels that ‘park’ their licence on another fishing vessel – exceptional arrangements

1. Marine Scotland has announced that it will consider applications from vessels to ‘park’ their licence on another fishing vessel. This annex is concerned with the exceptional arrangements connected to allocations and transfers of days at sea involving vessels that have made a successful application to park licences.

Allocations

2. A vessel that has been granted permission to ‘park’ its licence on another vessel (i.e. a donor vessel) will not be able to apply for an allocation in respect of all the gear categories that it would otherwise be permitted to apply for in terms of scheme rule 3.2. Such vessels may only apply for an allocation for gear categories that they have deployed in the CRZ for 40 or more days in each of two preceding effort management years. The vessel that has licences parked on it (i.e. the recipient vessel) may apply for an allocation in relation to the gears that it is eligible to carry in terms scheme rule 3.2. All parties to the parking application must apply for a 12 month management period and make that application no later than 28 February. Any subsequent applications will only be considered in exceptional circumstances for the remainder of the effort year to 31 January 2011.

3. Vessels applying to park their licence on another fishing vessel will not be awarded a special permit that authorises them to carry regulated gear in the CRZ. Their days at sea will be allocated to them as part of an administrative process and may only be transferred to the fishing vessel specified in the application to park. In addition, where a vessel applies to park its licence on another fishing vessel it must, if the application is successful, surrender any special permit it has been previously awarded.

4. The vessel that parks its licence (the ‘redundant’ vessel) may thereafter during the effort management year make no new application for days at sea, unless it is subsequently re-licensed with a licence that has CRZ eligibility and originates from an active vessel (which for these purposes is a vessel that has fished for 40 or more days in each of the preceding two effort management years with the categories of regulated gear that the redundant vessel wishes to apply for).

5. In years after the first year of the availability of parking arrangements, vessels that have parked their licences in a previous year may be eligible to apply for an allocation to park on the basis of the activity of the vessel on which their licence was parked in the previous year.

6. Where part or all of a licence that has been parked on a vessel is subsequently aggregated with the licence of the vessel that it was parked on, then the vessel with the now aggregated licence will be subject to the standard Conservation Credits scheme rules with respect to allocations and transfers.

7. Where a parked licence is disaggregated the part(s) that are disaggregated and not aggregated with the licence that they were previously parked on may continue to receive a parked allocation (which may be transferred as described below) where an application to park on the vessel with the aggregated licence or on another vessel is received at the same moment as the application to aggregate. If an application to park is not received at the same moment then the disaggregated elements of the licence that are not aggregated with the licence of the vessel that they were parked on will become standard licence entitlements, and accordingly will not be eligible to apply for an allocation of days at sea.

8. There is no change to the scheme rules with respect to the allocation of Conservation Credits buy back allocations. These will be allocated where appropriate to active vessels. Transfer maxima

described below relate to percentages of basic allocations, before any buy backs (including the supplement provided to vessels that catch less than 5 per cent Cod).

Transfers

9. Where a vessel has parked its licence on another vessel then it may transfer 85 per cent of its basic flat rate allocation to the fishing vessel that its licence has been parked on (and only to that vessel). Where the vessel that has parked its licence is in receipt of a track record allocation, then it may transfer 100 per cent.

10. Scheme rules 10.2(iii), 10.2(iv), 10.3(i) and 10.3(iv) will not apply to vessels that are part of the parked licence scheme. Accordingly:

- i. Vessels that receive the allocation associated with catching less than 5 per cent Cod may transfer days out, subject to the points noted above;
- ii. Vessels that notify more than one gear may transfer out (insofar as they fished for 40 or more days with each gear, and thus may apply for an allocation in respect of the relevant gears);
- iii. Recipient vessels may transfer in categories of days that they have not notified; and,
- iv. Vessels that receive a track record allocation may transfer days in from a vessel that has received a flat rate allocation, and vice versa.

11. The vessel that is in receipt of days transferred from parked licensees may not transfer out any days, except in exceptional circumstances where the vessel in receipt of days at sea from parked licences suffers a mechanical breakdown that makes further fishing during that year impossible. In these circumstances, the effort management team may permit the vessel to transfer out a proportion of their days at sea.

12. Where Marine Scotland grants permission to a fishing vessel to park its licence after it has commenced fishing operations for the effort management year in question then the transfer maxima noted above will be reduced by the number of days that the donating vessel has expended to the date of the application being approved.

13. Transfers of days at sea will remain subject to scheme rule 10.4, which adjusts days received to take account of the comparative engine power of the vessels involved in the transfer.

Penalties

This table note the penalties that the effort management team will consider imposing in different circumstances. The team will give consideration to any relevant exceptional circumstances.

Action	Penalty
Activity in excess of cumulative annual allocation of days.	Excess of up to 5 days: 2 days for each day of excess will be deducted from the allocation for the first management period notified in subsequent year. Excess of more than 5 days: 3 days for each day of excess will be deducted from the allocation for the first management period notified in subsequent year.
Fishing in area of seasonal closure when in effect.	Deduction of 7 days.
Fishing in area of Real Time Closure when in effect.	Deduction of 5 days.
Carrying on board of more than one category of regulated gear.	Deduction of 5 days.
Failure to fish exclusively with specified selective gear after notifying intention to so fish.	Deduction of days awarded in relation to use of gear in the management period, including any days used from that additional allocation.
Failure to accept an observer on board in response to a reasonable request.	On the first occasion, no penalty. On the second and each subsequent occasion, deduction of 5 days.

The Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2010

Business & Regulatory Impact Assessment

1. Title

1.1 The Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2010

2. Purpose and intended effect

Objectives

2.1 This Order enforces the EU control measures set out in Articles 27, 29 and 30 of Council Regulation (EC) No. 1224/2009⁽⁶⁾ (“the Control Regulation”) for the purpose of enforcing the EU restrictions and obligations contained in Annex IIA to Council Regulation (EU) No. 23/2010⁽⁷⁾. These restrictions and obligations relate to sea fishing by EU fishing boats within the cod recovery zone (as defined in the Order).

2.2 This BRIA relates to the Order implementing the EU measure, not to the EU measure itself. It does not therefore address the detail of the EU measure. The provisions made by the Order apply equivalently across all vessels that are subject to the restrictions set out in the EU measure therefore no one group will be disproportionately affected.

Background

2.3 General provisions for fishing effort for vessels in the context of the recovery of cod stocks under Council Regulation (EC) No. 1342/2008 as amended by Annex IIA of Council Regulation (EU) No 23/2010 of 14 January 2010 are implemented by Administrative arrangements under the Conservation Credits Scheme.

2.4 The Order provides for the enforcement in Scotland of and creates offences and details penalties associated with the number of days that certain fishing boats can spend at sea and the use of gear permitted within the cod recovery zone in accordance with Articles 27 and 30 of the Council regulation (EC) No. 1224/2009

Rationale for Government intervention

2.5 The Scottish Government is required to meet EU obligations or it could be subject to infraction proceedings. Additionally, in terms of responsible fisheries management Scottish vessels and other vessels operating in Scottish zone are

⁽⁶⁾ Council Regulation (EC) No. 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No. 847/96, (EC) No. 2371/2002, (EC) No. 811/2004, (EC) No. 768/2005, (EC) No. 2115/2005, (EC) No. 2166/2005, (EC) No. 388/2006, (EC) No. 509/2007, (EC) No. 676/2007, (EC) No. 1098/2007, (EC) No. 1300/2008, (EC) No. 1342/2008 and repealing Regulations (EEC) No. 2847/93, (EC) No. 1627/94 and (EC) No. 1966/2006 (O.J. No. L 343, 22.12.09, p.1).

⁽⁷⁾ Council Regulation (EU) No. 23/2010 fixing for 2010 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in EU waters and, for EU vessels, in waters where catch limitations are required and amending Regulations (EC) No. 1359/2008, (EC) No. 754/2009, (EC) No. 1226/2009 and (EC) No. 1287/2009 (O.J. No. L 21, 26.1.10, p.1).

expected to adhere to provisions for fishing effort to ensure sustainability of fisheries stocks.

3. Consultation

Within Government

3.1 Officials and Ministers from the other UK Fisheries Administrations (Department for the Environment, Food and Rural Affairs (DEFRA), Welsh Assembly Government (WAG) and the Department for Agriculture and Rural Development Northern Ireland) were involved in the autumn negotiations. As part of the policy discussion and formulation of an agreed UK line Marine Scotland held several meetings with fishing industry representatives on the proposed Regulation. These discussions informed the Scottish position and ultimately the UK negotiating position.

Public Consultation

3.2 As with all Fisheries Council negotiations the Scottish Government engages with representatives from the fishing federations and producer organisations in the run up to and throughout negotiations.

With Business

3.3 The Scottish Government has had, during 2009 and 2010, ongoing and regular (monthly) consultation with industry representatives via the Conservation Credits Steering Group (CCSG) which have become paramount to the implementation of and industry participation with the Scottish Conservation Credits Scheme (CCS). All aspects of our current scheme have been discussed with and agreed by the CCSG prior to implementation. The CCSG is a co-management group (see paragraph 6.2 below) that develops, considers and proposes policy recommendations for Scottish Ministers. Ongoing monthly policy review is accomplished by the same mechanism.

4. Options

4.1 Two options have been considered and identified in implementing this Regulation:

4.2 Option1: Do nothing

This clearly will not deliver the objective of the Regulation and will result in a regulatory vacuum and mean that the Scottish Government was failing to discharge its regulatory obligations. It would risk the reputation of the Scottish Government and its significant influencing capability and expose Scottish Ministers to risk of infraction proceedings by the European Commission. This option has a high potential negative risk of damage and a medium probability of such impact.

4.3 Option 2 Bring a new SSI into force

This would ensure the Scottish Ministers have the legal backstop and provides for the enforcement in Scotland of and creates offences and details penalties associated with the number of days that certain fishing boats can spend and the use of gear permitted within the cod recovery zone in accordance with the Council Regulation. This option fully transposes the Regulation, is not considered 'gold plating' and is highly likely to meet the objective of the Regulation.

5 Costs and benefits

Sectors and groups affected

5.1 All Scottish fishing vessels over 10m in overall length which must comply with the EU Regulation and the administrative scheme rules that underpin it & Marine Scotland Compliance who have responsibility for the enforcement of fisheries management rules.

Costs

5.2 Option 1 - The Commission has a duty to act to see the Common Fisheries Policy properly enforced, especially when the survival of historic European fisheries, e.g. cod is endangered. The Commission's power to take the Member States to court is one of the most significant weapons in its arsenal. The costs to those who do not take it seriously can be substantial. The most striking example is the decision delivered against France by the ECJ in July 2005 for failing to put an end to the systematic capture and landing of undersized hake. The Court imposed a EUR 20 million fine on France, along with a periodic penalty of EUR 57 million every six months, until the failings were remedied.

5.3 This option would risk a significant financial cost (in the possible order of millions of Euros per day based on previous successful infractions against other Member States) if successful infraction proceedings were lodged against Scottish Ministers as identified in 4.2 above. Consequential losses to the Scottish fishing industry through a negative impact on fishing stocks as a result of irresponsible fishing and loss of negotiating influence with the Commission would also be likely and significant but difficult to quantify.

5.4 Option 2 - There are no additional regulatory costs associated with this Order. The administrative arrangements of fisheries management measures are already in place and therefore the Order will pose no additional cost if vessels remain fishing responsibly and within the law. The sanctions available under option 2 carry a financial penalty of up to £50K.

Benefits

5.5 Option 1 - There are no benefits associated with this option, the absence of this Order will result in a failure to manage stocks sustainably and in line with European legislation on establishing a long-term plan for cod stocks and the fisheries exploiting those stocks.

5.6 Option 2 - Would mitigate risk of consequential and unintended losses to the Scottish fishing fleet as a whole through irresponsible fishing and consequently negatively impact commercially on business and the rural communities dependent on them. Fish landings alone by Scottish vessels is worth around £396m annually and the 5000 fishermen that are employed directly on Scottish boats.

6. Scottish Firms Impact Test

6.1 The majority of businesses affected will be small or micro businesses. The measures apply to all fishing vessels over 10m in overall length that operate in the sea areas specified. There will be no additional impact on small/micro firms as this Order continues the current arrangements. Failure to do so will result in unregulated activity which will have a negative impact of the management of sustainable stocks and the businesses that rely upon them. For the purposes of fisheries management many vessels can be classified as small businesses.

6.2 The policy is subject to full ongoing monthly round-the-table consultation and co-management with the Scottish fishing industry through the Conservation Credits Steering Group (see paragraph 3.3 above). The Group consists of Scottish Government, environmental NGOs and the full spectrum of the Scottish Fishing industry representatives, namely Scottish Fishermen's Federation, Scottish White Fish Producers Association, Mallaig & North-West Fishermen's Association, Scottish Fishermans Organisation, Shetland Fishermen's Association, Fishermen's Association Limited, Orkney Fishermen's Association, Clyde Fishermen's Association, Anglo Scottish Fisherman's Association, Fish Salesmen's Association (Scotland) Limited & Scottish Association Fish Producers Organisations. In addition, five individual fishing vessel businesses sit on the Group.

6.3 Individual fishing vessel business's (Denebula, Addorn, Excel, Soltice, Good Fellowship and Gleaner) were consulted face to face around the table as part of the monthly policy development and review process. This co-management approach has gained high praise from the European Commission and other Member States including most recently the Netherlands, which has recognised it as a highly effective and inclusive regional management approach to delivering Sea fisheries policy. It allows individual businesses as well as the Associations that represent them to contribute to the decision making process. All the individual businesses (above) fully support the need for full compliance capability to protect them against irresponsible fishermen. They fully support the need for the Order i.e. Option 2. They do not support the do nothing approach i.e. Option 1.

Competition Assessment

7.1 We do not believe that the Order will have an impact on the competitiveness of Scottish companies within the UK, or elsewhere in Europe. The OFT concur with this conclusion.

7.2 The Order does not directly limit the number or range of suppliers. It is an implementing Order that transposes provisions for offences under the EU Regulation and does not impact on exclusive rights to a supplier or create closed procurement or licensing programmes.

7.3 The Order does not impact on the number or range of suppliers. The order provides the legal backstop to sanctions those fishing vessels that are fishing irresponsibly and presenting a risk to sustainable stocks.

7.4 The Order does not limit the ability of suppliers to compete. The Order transposes an EU Regulation that the entire European fishing fleet and as such all fisheries business in Scotland and the rest of the UK and Europe are equally affected by the Regulation.

7.5 The Order does not reduce suppliers' incentives to compete vigorously. It will not prevent or enable the exchange of information on prices, costs, sales or outputs between suppliers.

Test run of business forms

7.6 There are no new forms introduced as a result of this Order.

8. Legal Impact test

8.1 The proposals will not have any impact upon legally compliant fishing vessels. Persistent failure to comply with that requirement undermines the credibility of the Scottish fishing fleet and stock sustainability. It is then the responsibility of Marine Scotland to investigate any failure to comply with technical and conservation rules. In the event of any breach of the rules Marine Scotland Compliance will still be able to refer cases to the COPFS for prosecution but this does not alter or undermine an individual's access to the justice system. It does, in the majority of cases, allow them to accept and pay an administrative penalty without venturing into the court system should they elect to do so.

9. Enforcement, Sanctions and monitoring

9.1 Marine Scotland Compliance (formerly the Scottish Fisheries Protection Agency) is responsible for monitoring compliance and taking enforcement action, where necessary, to deter and detect illegitimate activities in the marine environment.

9.2 As the range of these responsibilities develops under the Marine (Scotland) Act 2010, better monitoring, enforcement and capabilities will be developed in partnership with other marine management functions, including the development of existing and new technology.

9.3 Work will also continue on the important priority of fisheries compliance activity to protect important fish stocks and relationships with the UK Marine Management Organisation and others will continue to help ensure cohesive and complementary approaches are taken across administrative, geographical and responsibility boundaries.

9.4 Effective monitoring and enforcement of marine and fishing laws is vital if we are to protect Scotland's valuable marine areas and fisheries. It is important that these are protected by detecting breaches of fisheries regulations by monitoring and inspection at sea and in ports, and report as appropriate to the prosecuting authorities and providing intelligence on fishing activity in the sea areas around Scotland.

9.5 MSC would have the responsibility of enforcement of the Order. Sanctions can include, on summary conviction, to a fine not exceeding £50,000; and the forfeiture of any fish and net or other fishing gear in respect of which the offence was committed.

10. Implementation and delivery plan

Option 1

10.1 There is no implementation and delivery plan for Option 1

Option 2

10.2 The Order has been drafted under policy and compliance instruction from Marine Scotland Sea Fisheries Policy and Marine Scotland Compliance. The Order fully transposes the Regulation. The policy objective of the Order i.e. to permit the sanction of illegal fishing, will be directly delivered and monitored by Marine Scotland Compliance who is responsible for implementation and will make decisions on a case by case basis (see section 9 above). Fishing vessel businesses will be notified of the coming into force of Order through established communication arrangements already in place via local fishery offices. Implementation of the Order will dovetail into the existing administration arrangements of the Conservation Credits Scheme (see paragraph 2.3 above) operated in Scotland, England, Wales and Northern Ireland as well as UK compliance and inspection arrangements discharged through UK agencies (see section 9 above). As part of the delivery plan it is acknowledged that there is a need for a formal post-implementation review within 10 years of regulations coming into force which will be accomplished through the Conservation Credits Steering Group (see paragraph 3.3 above).

11. Summary and recommendation

11.1 Option 2 to bring in a new SSI is being recommended. The Order ensures the Scottish Government has the legal backstop to discharge its regulatory obligations and in so doing mitigates significant reputational and financial risk to the Scottish Government, the Scottish fishing fleet and the rural communities that depend upon them (see sections 4 & 5 above). There are no additional regulatory costs associated with the Option.

12. Summary costs and benefits table

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	There are no benefits, only risks, identified with this option.	This option poses significant direct reputational and financial risk (£millions) to the Scottish Government. Also risks sustainable fish stocks, sea fisheries and the rural economies (over £396m and 5000 jobs) that depend upon them.
2	Safeguards sustainable fish stocks, sea fisheries and the rural economies (over £396m and 5000	No additional regulatory costs to Scottish Government or fishing businesses. The administrative and

	jobs) that depend upon them.	policy arrangements to bring in, implement and monitor compliance are already in place.
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13. Declaration and publication

“I have read the impact assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland ”.

Signed by the responsible Minister

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Date