

Promoting Best Practice for Inshore Fisheries: A consultation on measures to tackle gear conflict in Scottish inshore waters – Outcome Report

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1. This document analyses responses to Marine Scotland's *Promoting Best Practice for Inshore Fisheries: A consultation on measures to tackle gear conflict in Scottish inshore waters*. A copy of the consultation can be found at <http://www.gov.scot/Publications/2014/11/6562>
2. Marine Scotland issued *Promoting Best Practice for Inshore Fisheries: A consultation on measures to tackle gear conflict in Scottish inshore waters* on 14 November 2014. The consultation closed on 8 February 2015.
3. Currently there are no statutory requirements for gear conflict avoidance or resolution. This is the first time that gear conflict has been the subject of national public consultation which has sought views on gear conflict and options for a new policy direction, following up the recommendations from the Report of the Task Force on Gear Conflict.
<http://www.gov.scot/Resource/0046/00462653.docx>
4. The Task Force made recommendations on possible solutions for the Scottish Government and its industry partners to consider. As stated in the consultation, *the Scottish Government's principal aim is to identify a balanced and effective policy for resolving gear conflict. The key issue is to ensure proportionality of response to protect the interests of individual vessels while not imposing unnecessarily restrictive practices on the whole fleet or one specific sector.*
5. There were 52 responses to the consultation, with over half coming from individuals, which made up 55 per cent (29) of the total. 29 per cent (15) were from fishermen's associations. Four per cent (2) were from Inshore Fisheries Groups. Four per cent (2) from National Federations, 6 per cent (3) were from non-governmental organisations or other groups and the remaining 2 per cent (1) from a local authority.
6. Where permission was given, consultation responses have been placed in the Scottish Government Library. To make arrangements to view responses

contact the Scottish Government Library on 0131 244 4560, or at: Area GD Bridge, Victoria Quay, Edinburgh, EH6 6QQ). Responses can be copied and issued but a charge may be made for this service.

Consultation Outcome

Policy Context

7. The vast majority of inshore fishermen, whether static or mobile, manage to co-operate well on a daily basis sharing fishing areas without conflict or fuss. Accidental damage to gear is sometimes an occupational hazard in fishing but often these accidents are dealt with quickly and resolved directly and amicably by fishermen themselves.
8. Deliberate acts of vandalism of gear can have a serious impact on a fisherman's livelihood, particularly small operators who not only lose gear that needs to be replaced but time spent fishing. Unfortunately, due to changes in fishing patterns and increased competition for marine space the frustration with unresolved cases of gear conflict is increasing.
9. In response to this frustration the Cabinet Secretary for Rural Affairs, Food and the Environment, Richard Lochhead, established a Task Force to explore the issue. Further detail on the background is contained in the Task Force report.
10. Gear conflict is a long standing fisheries problem. The Task Force concluded that the inability to control and resolve gear conflict under the existing legislative framework and fisheries management activities, and the inability to take action against those responsible for deliberate acts of vandalism, was an unacceptable position in which to place fisheries management.
11. The Task Force concluded:
 - that the current system for preventing gear conflict is not appropriate or fit for purpose. The lack of successful prosecutions and dissatisfaction among industry demonstrates that government needs to put measures in place to tackle the problem;
 - the lack of evidence for dealing with incidents of gear conflict is the overriding challenge;
 - steps need to be taken to improve detection of and sanctions against deliberate activities. Marine Scotland does not currently have a role in enforcing gear conflict, despite it being the direct result of a regulated fishing activity;

- that Marine Scotland should consult on changes, possibly legislative, to address gear conflict specifically within the fisheries management framework and should consider bringing in sanctions that relate directly to fishing opportunity. This would complement the common law powers enforceable by Police Scotland.

12. Marine Scotland recognises the right of every fisherman to earn a living from the sea. We want to remove barriers - particularly those of a long standing and complex nature - for inshore fishermen, maximising the productivity of the sea and promoting sustainability. Deliberate acts of gear conflict are simply unacceptable.

13. This consultation was the first serious attempt at exploring what a new policy on tackling gear conflict could look like. It is a complicated problem with no easy solution. Tackling and reducing incidents of gear conflict requires a new fisheries management framework; the current management tools and reporting requirements are not designed for that purpose. The biggest challenge is gathering enough evidence to prove that vandalism or theft of gear has occurred and that it was a deliberate act. Changes from both the mobile and static sector would be required to improve the standard of evidence.

14. Although it may not be proportionate to bring about change for dealing with gear conflict in isolation, a case for change is perhaps emboldened when wider benefits are considered. There is a commitment in the Inshore Fisheries Strategy to improve data collection to deliver better information on shellfish stocks and the fishing footprint on inshore vessels; changes made to tackle gear conflict could help facilitate these data improvements. Change will not be easy or achieved as quickly as many would like, but Marine Scotland is committed to seeking solutions that bring long lasting positive outcomes and equity to fishermen so that all can continue to earn a living from the sea.

15. In light of the consultation responses, Scottish Ministers considered a range of issues based upon the enforcement and compliance challenges. Currently, there is not the infrastructure in place to properly monitor gear conflict incidents:

- the current VMS requirements for over 12 metre vessels are not sufficient to **detect** all incidents of gear vandalism and theft;
- there is insufficient information, in some areas, about the location of creels and tows and creel numbers to **prevent** gear conflict;

- there is not sufficient confidence that gear is properly marked, particularly by unlicensed fishermen, to **prevent** gear conflict; and
- the lack of current enforcement and penalties for vandalism and theft of creels means there are insufficient measures in place to **deter** deliberate gear conflict.

16. The majority of individual respondents can be broadly categorised into two groups - mobile and static fishing interests. Most respondents support the Scottish Government's intention to introduce a new policy on gear conflict that will tackle these long standing problems. Very few responses advocated no change and the continuation of business as usual. There is also a consensus that changes should not be applied solely to one sector of the fleet. The key to establishing a balanced policy to tackle gear conflict rests in the ability to be proportionate whilst recognising the changes required to tackle this issue and taking cognisance of representations made in the consultation. It is important to identify what measures will be effective, and where legislation is needed to underpin gear conflict reduction.

17. Many of these initiatives are interdependent and success is contingent on the improvement of evidence reporting. To address this Scottish Government proposes to take the following steps:

- Introduce spatial separation pilots within inshore waters to test how such an approach can prevent and deter gear conflict. Marine Scotland will prioritise areas and vessels for technological trials to deter gear conflict;
- In partnership with industry, consider measures to improve the marking and visibility of static gear within 12 miles to help prevent gear conflict;
- Apply tracking technology to vessels fishing inshore waters with a view to helping deter gear vandalism and encouraging a change in behaviour, and providing better evidence to enable Police Scotland to pursue gear vandalism and theft;
- Test better deployment of technology to improve our understanding of fishing vessels' operations, positioning and use of gear to prevent gear conflict;
- In the longer term consider the legislative options for Marine Scotland to take a more direct role in gear conflict. ; and

- These steps should help reduce deliberate acts of gear conflict and are intended to act as a powerful deterrent for unresolved incidents of gear conflict and for future acts

18. Many of the above recommendations complement on-going policy improvements for inshore fisheries in Scotland.
19. 74 per cent of respondents were in favour of some form of **spatial separation**. A significant number of creel fishermen want to see the reintroduction of the 3 mile limit on the west coast of Scotland. They believe that the reintroduction of spatial separation is the only solution to gear conflict. This is echoed by some East Coast creelers but interestingly they did not propose a 3-mile limit. Instead, these East Coast creel responses indicated a general preference for a 6- mile limit or for a network of boxes closed to mobile activity.
20. Marine Scotland recognise the sensitivities and controversy regarding spatial separation but believe that there is merit in exploring, on a trial basis, the use of spatial separation as a tool as part of a suite of measures to improve management of inshore fisheries. We believe that there is merit to trialling whether spatial separation can contribute to the reduction of gear conflict, particularly in certain gear conflict hot-spots. In doing so, we recognise the need to balance mobile gear interests against static gear concerns.
21. Any use of spatial management to address gear conflict needs to complement wider Marine Scotland proposals for Marine Protected Areas management, currently under discussion.
22. It is acknowledged that the ability to introduce gear conflict management measures is difficult when basic data about creel effort is lacking. Several respondents noted that it would not be proportionate to implement measures to combat gear conflict without first addressing the **data deficiencies for effective creel management**.
23. Marine Scotland is considering the potential pressure on stocks as a result of increasing creel effort and will be consulting nationally on a new framework for creel management. To support that endeavour Marine Scotland is analysing the information available on creel numbers and is conducting in depth surveys with fishermen to inform how a methodology for reporting information to make catch per unit effort calculable. While this will not directly alleviate gear conflict it may result in measures tailored towards local fisheries. Marine Scotland consulted on the introduction of additional management measures for creels in 2012. At that time the fishing industry did not support the

introduction of national limits or permits but were open to considering local initiatives.

24. The Inshore Fisheries Management and Conservation Group (IFMAC) established a short-life working group to discuss the issue of hobby/unlicensed fishermen and report back with possible actions to reduce the incidence of unlicensed fishing.

25. The working group identified a number of possible actions. There is anecdotal concern from industry that the operations of unlicensed fishermen contribute to gear conflict through poorly marked gear and the setting of gear on top of licensed operators. Marine Scotland has consulted on legislative options, including consideration of:

- Permits for unlicensed/hobby fishermen
- Creel limits and/or tagging
- Landing limits for different species
- Personal Consumption Definitions
- The outcome of that consultation will be issued shortly.

Next steps

26. There is support for Marine Scotland to take a greater role with regards to gear conflict. Further consideration will be given to how Marine Scotland Compliance may be able to play a more formal role in assisting Police Scotland in the future.

27. In the longer term, legislative options for Marine Scotland to take a more direct role in gear conflict will be considered.

Question one: Should spatial management measures be considered to deal with gear conflict?

28. 74 per cent of respondents were in favour of introducing spatial measures with 13 per cent against and another 13 per cent who did not answer.
29. In supporting comments it was stressed that spatial measures are an option for helping to deal with gear conflict, especially where there is support from local stakeholders. It was noted from those against that spatial separation was not required where there was good practice between operators already in place.

'Spatial management is the only practicable way to deal with gear conflict WIFA deem it appropriate to use spatial management measures to deal with gear conflict.' – West Coast creel fisherman

'Mallaig and North West Fishermen's Association would be happy to consider spatial management measures to deal with gear conflict but it would depend on the parameters involved. Mobile Nephrops gear has effectively precluded from many traditional mobile gear areas because of creel saturation.' - MNWFA

'We're losing more ground every day to static gear Nephrops fishermen and if that is a way of resolving the issue then let us sit round a table and talk about it.' – Nephrops Trawlerman

'Spatial management was one option to help mitigate against gear conflict, but it must be consensual, driven by stakeholders and appropriate to the area. [SFF and SWFPA].

It would be useful to examine structures such as the mid-channel on the channel conference, which manage to achieve agreement between international stakeholders, to see if their operations could be relevant to the Scottish context.' –Scottish Fishermen's Federation.

Question two: If yes, should spatial separation be considered on a national basis or only in gear conflict "hotspots"?

30. It was clear from the majority of responders to this question that a "*national one size fits all*" solution was not welcome. Several called for the reintroduction of the 3 mile limit on the West Coast only. Individual East Coast creel fishermen called for separation to be more targeted to those in

areas that are known to be gear conflict hotspots. Sixteen responses specifically mentioned focussing upon known hot spots.

‘On the West Coast there is an appetite to return to the reinstatement of the three mile limit which was originally introduced to protect inshore fish and shellfish stocks. On the East Coast there is no appetite for change as the preference is for spatial management which would accommodate the introduction of closed box areas.’ – Scottish Creel Fisherman’s Federation

‘The Clyde Fishermens’ Association would not recommend spatial separation on a national basis. Local Agreement and settlements decided in fair consultation are likely to be more effective.’ – Clyde Fishermen’s Association

31. There was concern raised from those who believe that fishing grounds are already saturated with creels. They were concerned that spatial separation would only increase pressure.
32. A point made by Mallaig and North West Fishing Association and the Scottish Fishermen’s Federation was that without some consideration at the national level there is a risk that local agreements may result in displacement. While the majority of respondents certainly support the design and development of spatial separation at a local level there is a strong logic for there to be some coherence at national level on how local areas of spatial separation will interact with each other.

‘I think that spatial separation should be considered on a national basis as there shouldn’t then be any confusion as to exactly what or where “hotspots” are.’ – West Coast fisherman.

‘I do not think that spatial management measures could work unless they were nationwide or in certain lochs. But this would have to protect the trawlermen as much as the creel men. We have seen that what happened in Loch Torridon was not successful creel/mobile management.’ - West Coast fisherman.

Marine Scotland response

Where there is gear conflict there is a negative socio-economic impact on the community and that should not be allowed to continue unchecked. Spatial separation is a blunt tool that is most effective when delivered by statutory measures rather than through voluntary agreements. It is clear that there are different requirements East and West and for some areas around Scotland this option is not needed, or indeed welcome. Sustainable management of fish stocks is of primary importance. Where there is spatial separation there is a risk of displacement and saturation if proper management is not in place. These risks would need to be mitigated in a cohesive fashion. Marine Scotland proposes that it utilises the planned spatial separation to be undertaken for Marine Protected Areas and Special Areas of Conservation to see what effect it has in preventing and deterring gear conflict. We also propose, through the IFG network, to establish some known hot spot areas to test whether spatial agreements between mobile sectors can be brokered.

Way forward

Marine Scotland believes spatial management can be an effective tool to help tackle gear conflict. In areas where spatial measures are introduced there needs to be monitoring of stocks to see the interaction between different types of fishing activity.

It is intended that these pilots will complement restricted areas already proposed through the establishment of MPAs and SACs. As well as these areas, in the months ahead Marine Scotland will also work closely with industry on developing proposals for spatial separation pilots for introduction in 2016. In developing such pilots recognition will be given to those who historically operate in the area. Spatial separation is not intended to deny one operator over another but to promote co-operation.

Question 3: Should appropriate technology be considered to monitor all vessel locations to the degree capable of providing a level of proof to identify gear conflict?

33. 64 per cent of responses agreed with this question, 23 per cent responded no and 13 per cent did not reply.

34. The number of those in favour was fewer than those in favour of spatial separation, despite technology being a necessary component of any separation.

35. There were concerns about the cost of monitoring systems and whether they would be a new burden added to fishing operations.

'...the introduction of approximate technology to monitor all vessel locations is considered disproportionate to the smaller class of vessels generally operating in the static gear sector i.e. vessels' monitoring should be restricted to all mobile gear operators.' - Comhairle nan Eilean Sair

36. Individual creel fishermen suggested that VMS should be put to 30 minute reporting to help deal with gear conflict. It should be noted, however, that VMS is only a statutory requirement for over 12 metre vessels.

37. Reference was made to the data collection trials using AIS technology that Marine Scotland is undertaking and whether the output of those could be considered as an option to pursue.

'...hopefully the Succorfish trials will be useful in identifying trouble makers but changes in the law to protect the static gear sector should be also considered and enacted.' – West Coast fisherman.

38. There was a perception from a minority that current VMS reporting is sufficient. Some suggested that there needs to be technology on creels and not just vessels, but that this development would only combat gear conflict if it were enforceable.

39. With regard to technology there remains an issue concerning the burden of proof, which cannot be established with technology alone. Corroboration is required that the creels were in the alleged location in the first instance and that they have been damaged or displaced.

'Currently it is nigh on impossible to prove which vessels are involved although people often know their identity. If they can be identified then action can be taken against them.' - North Minch Shellfish Association.

'I don't see how technology that will be on a creel vessel could be used in a case when the gear has no technology attached to it.' – East Coast fisherman.

Marine Scotland response

There was a cautious support for technology, but concern that it should not place a disproportionate cost or burden on fishermen. Technology is a vital part of improving the evidence base for gear conflict resolution. The current VMS framework and technology is not suitable or sufficient to provide the quality or level of data required to deal with gear conflict. It can only be shared with the owner's permission or for fisheries control purposes. Inshore vessels under 12 metres require something smaller, cheaper and of a higher resolution. This will require investment and there will be opportunities for funding technology under EMFF. The public value of such investment will need to be considered.

The aim will be to bring in statutory measures for reporting for inshore vessels as part of wider data collection requirements that will contribute to improving the evidence required to manage and resolve gear conflict.

Way forward

This aspect of the consultation should not be considered in isolation, and is central to any action taken on gear conflict.

Appropriate and effective technology is key, and should be a significant component of a modern fisheries management system within the Inshore Fisheries Strategy. Effective management of inshore stocks requires better data collection from vessels. As part of wider policy we will explore the utilisation of EMFF funding to support data collection from small scale fisheries; improve management of inshore stocks; and understand gear conflict.

Marine Scotland will undertake further research on gear technology to see how this can improve reporting and contribute to gear conflict reduction. In the meantime, Marine Scotland Compliance will assess the fleet to identify those vessels most at risk of involvement in gear conflict to prioritise those operators for technological trials.

Question 4: Do you support the idea of a centrally/regionally managed website to host information on creel locations?

4(a) Would you commit to providing information on creel locations, and for it to be in the public domain?

4(b) Do you believe fishermen would use such a website?

40. The response to this question was mixed. Both negative and positive responses expressed reservations about the introduction of such a website. 44 per cent of respondents were not supportive while 42 per cent were in favour and 14 per cent either did not respond or were not sure of their position.
41. There was support for improved communication to reduce gear conflict but concern about how the website would operate and whether it could be effective.
42. Many of those against were concerned about revealing the location of creels as that could reveal grounds to a competitor for the same target species, be it mobile or static. There were also concerns that this information could incite deliberate gear theft or vandalism. There were several concerns about the credibility of information contained on the website particularly if it were being used to take action against a vessel accused of causing gear conflict. It was suggested that Marine Scotland ought to verify the information entered onto the website to ensure that it was both credible and up-to-date. *'I would not support such a website as I think fishermen should still be allowed some privacy where they fish without the whole world knowing.'* – West Coast fisherman.

'A website could be open to abuse; again it could be possible that exact locations are incorrect or false information on creels is provided. Most of the liability would fall to the vessels.' – Clyde Fishermen's Association.

43. Many informal arrangements are already in place around the coast and are reasonably effective in some areas and not in others. This information can be an exchange of the location of creel fleets and mobile tows.

'Regards to our own Association this has been happening for the last 12 year and am afraid it has not made any difference to the amount of gear that's been towed away.' East Coast Fisherman.

44. Some trawlermen felt that static fishermen could misuse the website to block off areas for creels only. To prevent this they felt tows should also be marked on the website.

45. An interesting suggestion (from among others Shetland Shellfish Management Organisation, Western Isles Fisherman's Association, Orkney Fisherman's Association) was to limit access to the locally-sensitive pages on

the website to local operators. It was felt this might address some of the commercially sensitive issues. This could be arranged on a geographical basis.

46. In terms of whether fishermen would use the website, there were reservations about how the website would be used when there was accidental damage to creels. It was suggested these would be challenges in verifying creel locations and in the role of Marine Scotland Compliance in that verification process.

Marine Scotland response

In the interests of transparency, improving communication and sharing information between operators a website seemed to be a good option. However, given the reservations expressed by respondents on how the website could operate it does not seem that there is sufficient support for the provision of such a communication tool.

The success of such an initiative would be dependent on buy-in from fishermen. We would not wish to force fishermen to reveal the location of tows when there is not a gear conflict problem; this would not encourage co-operation.

Way forward

Any measures brought in to improve communication have to be proportionate and should not apply additional burdens on fishermen or create additional tensions. Marine Scotland will not pursue the development and implementation of a nationwide website at this stage. If, however, IFGs or local areas would like to progress local website initiatives to host information about creel locations to reduce gear conflict then Marine Scotland will look to provide assistance where possible.

Question 5: Do you support the introduction of administrative restrictions on vessels who engage in deliberate gear conflict?

47. 73 per cent of respondents said they supported administrative restrictions, 12 per cent did not and 15 per cent either replied maybe or not at all.
48. This supports the direction of travel that was taken forward from the Task Force report.

'Yes. Administrative restrictions could be used to exclude vessels from certain areas for a specific period. Evidence used could be the use of VMS data which would independently assess that a vessel had caused damage to gear and was in breach of agreed Codes of Conduct for a specific area. Based on evidence to date regarding gear conflict cases it is considered that the names of the same vessels are quoted regularly in relation to gear conflict incidents at certain locations.' - Outer Hebrides Inshore Fisheries Group.

Yes, probably an excellent deterrent.' – Scottish Creel Fishermen's Federation

49. While the great majority of respondents wish Marine Scotland to develop an administrative restriction scheme to deal with gear conflict, they also raised caveats with regard to the operation of administrative restrictions. A great deal of those who supported such an approach did on the basis that the restrictions were not applied to accidental damage and that safeguards were built in.

'...If restrictions are to be put in place it would have to be for both sectors. However, if it proved that a mobile vessel has maliciously caused damage then I do think there should be some sort of punishment for such actions.'
Mobile fisherman.

50. Those against administrative restrictions expressed reservations that they could put them at a competitive disadvantage.

'How could it be fair to both sides? Are you going to hand out administrative penalties to creel owners that shoot their pots on the tow grounds?' Mobile Fisherman.

51. Clyde Fisherman's Association were not supportive of administrative sanctions, noting that it is difficult to monitor gear conflict.

'The CFA are of the opinion that most gear conflicts are unintentional and therefore penalising fishermen for accidental/unavoidable incidents would be ineffective in preventing further issues...also difficult to monitor any perceived deliberate gear conflict.'

'The idea of administrative restrictions for those who engage in deliberate gear conflict as described in para 5.20 of the consultation documents seems sensible but only if all the safeguards mentioned are fully respected and any accidental incidents do not get unnecessarily registered as deliberate.'
Scottish Fishermen's Federation

Question 6: Do you believe administrative penalties can be effective?

52. The use of non-statutory administrative management measures has been successfully used in other areas of fisheries management. However, if Marine Scotland Compliance obtained evidence that, on the balance of probabilities, a contravention of the law had occurred, it could report the case to an internal panel within Marine Scotland who would consider the report and whether sufficient evidence existed to justify variation of the vessel's Multi Area Licence (potentially becoming a Restricted Area Licence (RAL) for a fixed period).

53. Administrative restrictions were, generally, felt to be an effective way of addressing the viewed shortcomings of the current process. 73 per cent thought administrative penalties could be effective, compared to 12 per cent who did not, and 15 per cent not answering or undecided. As indicated in the summary of responses to question 5, concern about ensuring fairness/equity between operators was raised. Several respondents commented upon the level of restriction for deliberate acts of vandalism and theft and called for it to be punitive.

'Possibly, is backed up by the threat of court action.' Coast

'Only if the penalties hurt.' – North East Fisherman.

'If it was in the form of a sizable fine, it would be a very effective deterrent.'
North East Fisherman.

'Exclusion of vessels from areas due to administrative restrictions would be a fair and balanced approach to reducing future gear.' Fishing Association

'The CFA are not supportive of administrative penalties... the CFA would be concerned that fishermen may receive penalties for accidental/unavoidable incidents. The CFA would not consider penalties to be effective. Although it should be noted that under the current administrative model outlined in Question 5, it would still be possible for a vessel to offer compensation for the lost or damaged gear and for that to be the matter resolved.' Clyde Fisherman's Association.

54. Some called for spatial separations as an alternative to administrative penalties.

‘Administrative penalties will not stop “accidental” gear conflict, only spatial management will do this. Administrative penalties may be effective, however criminal charges and spatial management would be more so!’ West Coast Fisherman.

55. Respondents were clear that the system would need to be robust, even handed and transparent to be effective.

56. *“If sanctions are clear, applied consistently and are strong enough to be effective. A short written warning is grossly ineffective. It is clear from the consultation paper that using the Police route is not productive and the case studies reinforce the thinking that there will be no sanction, no liability for the loss of creels to produce. Marine Scotland Compliance needs teeth! The best way is tied into spatial controls and licence conditions, combined with technology to inform where, when and how long the vessel is in the locality. Independent.*

Marine Scotland response

Administrative penalties can act as a powerful deterrent, foster better behaviour and promote co-operation. However to be effective and fair there needs to be a sufficient evidential standard to support claims that creels are where they are stated and that they have been displaced. This represents an immediate challenge for implementation. Many respondents see the merit in exploring such a proposal. There is, however, a challenge in designing a system that will address the evidence required to impose additional reporting or restrictions.

Administrative restrictions have been used in other areas of sea fisheries management and there is merit in exploring this option, if it can be made an effective way of reducing gear conflict, before embarking on a legislative route. The successful implementation of an administrative restrictions system is dependent upon there being sufficient technology to ascertain where a vessel has been operating, whether creels have been properly marked and if there was sufficient notice given to allow other operators to avoid them.

Administrative restrictions can be used to take action against those who deliberately cause vandalism of fishing gear. However, the success of implementing administrative restrictions will be wholly dependent upon evidence being available to prove intent.

Such an approach will require Marine Scotland to undertake a formal role in gear conflict, something which it has not been done to date. Fishery office staff would be required to undertake a more formal facilitation role. Perhaps having that role formalised will in itself help encourage the return of lost gear and reporting of accidental damage.

Way forward

Given these considerations with regard to administrative restrictions, the Scottish Government will consider opportunities for primary legislation so Marine Scotland can take a more direct role in gear conflict. Such an approach remains a future aspiration as it not possible to implement under the current legislative framework.

Even handedness

Unlicensed fishermen are a challenging constituent group to whom to apply administrative restrictions. Marine Scotland will carefully consider how to accommodate this group into a framework of restrictions. Further work will be needed following the result of the current consultation on unlicensed fishermen.

Question 7: Would you like to see a national code of conduct on spatial interaction?

57. 63 per cent of respondents did not want to see a national code of conduct, while 21 per cent were in favour and 16 per cent did not respond to the question.

58. The historical frustration with the lack of enforcement action on codes of conduct appears to have influenced this negative response. Many respondents have had personal experience where codes of conduct have proved ineffective. It is however acknowledged that there are areas where codes have been successful. A one- size-fits-all approach was not felt to be appropriate. There was a consensus that Codes of Conduct work well until they are tested.

'...I think that a national code of conduct may be harder to enforce.' – South West Fisherman.

‘SWFPA does not support the principle of a national code of Conduct. We believe that each appropriate area or region should be able to negotiate a code with due regard to the activity in the area and any possible conflict type. However, a common set of principles would need to be set in regard to both conflict resolution and penalties.’ —Scottish White Fish Producers’ Association.

59. There were arguments put forward for controls and enforcement to be set at national level to ensure that there is consistency. There is also scope for additional reporting to be implemented at a local level if that is deemed, in partnership with the industry, to support a reduction in gear conflict.

‘Without enforcement, compliance will be patchy and fragile at best. The code of conduct established by the Clyde IFG should provide a powerful lesson here; without statutory status and proper enforcement it was never implemented.’ – Sustainable Inshore Fisheries Trust

‘...there have been codes of conduct in place since 2004 and every one has been a waste of time and money.’ - North East Fisherman.

Question 8: Would you like to see regional codes of conduct on spatial interaction?

60. 56 per cent of respondents were against regional codes while 37 per cent were in favour and 7 per cent did not respond to the question.

61. The non-legislative status of codes meant that there was little support for them. Those who did support them noted that sanctions should be attached.

‘Without all the necessary information and controls, any such system would have to guard against displacement occurring.’ –Scottish Fishermen’s Federation

Marine Scotland response

Personal experience clearly influenced the considerable resistance to National Codes of Conduct. It would be a straightforward process to introduce a National Code but opposition renders it as an unattractive policy option.

Way forward

While the majority of responses were negative about codes of conduct there are some positive examples of local codes around Scotland. Those who have invested in making them work should be commended.

It would be difficult for government to impose a national policy of Codes of Conduct upon industry when they are, by their very nature, intended to be collaborative, voluntary and specific to the locality. That said, however, where there is an appetite from a local community to establish a code of conduct then Marine Scotland would support that process.

It is perhaps past failures that have discredited the efficacy of codes but they may have a role to play when used in conjunction with other measures such as spatial separation and technology improvements.

The good practice embedded in codes should be encouraged where possible and while Marine Scotland supports voluntary initiatives the changes proposed under the marking of gear, technology improvements and administrative restrictions may mean that codes can work more effectively in the future.

Question 10: Do you believe there should be prescriptive rules about the marking of gear within 12 nm?

10(a) If so, what should they be?

62. 70 per cent of respondents supported clearer and better rules about the marking of gear inside 12 miles while 23 per cent were against and 7 per cent did answer the question.

63. A number of suggestions for new rules on marking were proposed. Respondents felt that at the very least gear should be properly marked with

the PLN and vessel name. Here are some of the proposals put forward that could form part of further discussion with fishermen:

MARKING OF GEAR

- 50 inch buoys well weighted and correct length end ropes
- Marked buoys with name and PLN (28 responses)
- Marked with flags and floats – PLN same size and colour
- Unlicensed fishermen should make gear to the same standard as licensed vessels
- No point due to spring tides
- Not an issue if you have spatial management (5 responses)
- No new rules are needed at all (3 responses)
- Dhan on one end and buoy on the other end with vessel and PLN
- Double buoy with poles and flags
- Difficulty with night fishing (2 responses)
- A3 marked sizes (4 responses)
- Well lit buoys (2 responses)
- 12 foot dhans radar reflector and lights disappear
- Serial numbers on pots/traps/cages (2 responses)
- Ends marked with 40 inch floats with vessel name and numbers on displayed floats]
- Dhan tags
- Safety concerns and other maritime users (2 responses)
- Floating ropes are bad, floating ropes from a riser rope are bad
- Fathom between buoy and grasper buoy on both risers

64. Improvements to the marking of gear can make it more visible, enabling other operators to avoid it more easily. This should contribute to a safer environment for all marine users.

‘As recreational sailors often travel through several inshore fishing areas, I would welcome consistency of approach between areas, for example with regard to marking creels and ways of disseminating locational information. However, this should not be taken to such a degree as to prevent appropriate local measures being taken.’ Scottish Yachting Association.

Marine Scotland response

Rules are currently set out in 1224/2009 and need to have a legislative basis to be applied within 12 miles. In 2008, Marine Scotland took the decision not to apply the same measures within 12 miles. This position was promoted after engagement and consultation with industry. As discussed in the Task Force report, in 2014 Marine Scotland undertook some specific gear conflict operations and noted that there was a variance in standards of gear marking. Any changes to rules on the marking of gear need to be backed up by licence conditions and/or a statutory instrument to apply them equally to all marine users.

Way forward

Marine Scotland will consider what measures are appropriate with operators and whether these need to be introduced on a national or local basis. Before adopting legislative measures we intend to trial whether the better marking of gear is effective in reducing gear conflict.

A small short term working group will be established to look at the specific suggestions put forward in response to this consultation. This group will be established as soon as possible.

There are other users of the sea who have an interest in changes to the marking of gear. Marine Scotland will therefore engage with the Maritime and Coastguard Agency on the development of any rules that are proposed.

Question 11: Should these measures be extended to all fishing vessels, including unlicensed operators?

65. This is currently subject to a separate consultation. 87 per cent of respondents were supportive of an even-handed approach with measures also being applied to the unlicensed sector.

'Too many incidents take place at sea and too often the professional fisherman is blamed when in fact the majority of incidents are through

amateurs with little or no knowledge, taking advantages as Marine Scotland Compliance does not have the resource to investigate most of these incidents. More resource should be made available to Marine Scotland Compliance which would help remedy many of the problems that exist.'
Scottish Creelers and Divers

Marine Scotland response

It is clear that any measures that are introduced to reduce gear conflict have to include all fishermen and not just licensed activity. If Marine Scotland is applying any new measures to combat gear conflict then it will need to carefully consider the appropriate mechanism to apply to different types of fisherman. Licence conditions are flexible and can be altered relatively easily to adapt to new changes. Any gear marking and administrative restrictions will only be applicable to licensed vessels under the current legislative framework.

Way forward

IFMAC has been examining the issue of unlicensed/hobby fishermen and currently there is a consultation on whether measures need to be introduced to regulate their activity. The outcome report will be published shortly.

Question 12: Do you support the introduction of some kind of vessel tracking system for under 12 metre vessels?

66. 46 per cent of respondents were in favour of this proposal while 42 per cent were against and 12 per cent did not answer the question.
67. These results are somewhat at odds with the responses to other questions in favour of improvements to evidence gathering and even-handed treatment of unlicensed fishermen.
68. The majority of static fishermen, who are more likely to have vessels less than 12 metres long, were concerned about the introduction of such a system, highlighting the potential cost burden. In some cases respondents did not see the value of static vessels reporting in this manner, suggesting that creels themselves need to be tracked electronically rather than vessels.

69. Several respondents pointed out that there were clear safety advantages of expanding tracking to smaller vessels but that this needed to be balanced against the cost and regulatory burdens.

Marine Scotland response

While it is consistent with the wider Inshore Fisheries Strategy to introduce measures to improve data on vessel operations and activity, there would also appear to be additional benefits of such technology for reducing incidents of gear conflict.

There is recognition that the current data reporting framework does not provide sufficient evidence for undertaking prosecutions on gear conflict and vandalism. Providing evidence of where a vessel operates is central to proving who is responsible for an incident. An area worth further exploration is the use of technology on static gear.

Respondents' comments on cost and burden are well understood, but if there is to be effective action taken to reduce gear conflict then there will need to be some technological requirement in order to enforce it. Clearly there needs to be some proportionality with regard to the type of technological solutions which might be implemented.

Way forward

Regulatory rules (set out in 1224/2009) on VMS and AIS can be extended to smaller vessels. However, this requires data protection obligations and transmission costs. Marine Scotland intends to explore an appropriate system of collecting data on vessel operations and has been researching low cost, open source systems. Support may be made available through the EMFF programme.

Question 13: do you have any comments on the type of system which could be introduced?

70. There were 26 responses to this question with suggestions ranging from GPS Units, VMS and AIS. There were also suggestions that Marine Scotland Compliance should play a more proactive role in monitoring.

'The vessel tracking system should show vessels' position accurately and also show deployed gear and should be fitted to all fishing vessels. The information should be available for Fishery Officers.' North West Fisherman.

71. The SCFF felt that it was sensible to await the outcome of the current trial of AIS which is part of an EFF-sponsored Data Collection project; this was supported by 5 other respondents.

72. Two respondents argued that the 2 hourly transmissions for VMS were insufficient for gear conflict. Others suggested included 5 and 10 minute intervals for transmissions.

73. It was noted that any tracking system would need to be tamperproof and capable of providing a reliable transmission.

'Any phone based system will not have total coverage...despite sales hype the technologies have several failings' Orkney Fisherman's Association.

Marine Scotland response to question 3 applies

Vessel technology options are actively being considered by Marine Scotland. For example, through an EFF funded sustainable inshore fisheries programme, 300 AIS units are being trialled on inshore vessels around the coast. The project report will be available to Marine Scotland in October 2015.

Way forward

Further testing through the EMFF programme is anticipated to ensure that the final product is fit for purpose and can support wider improvements to inshore fisheries management. The deployment of technology on fishing vessels needs to be properly thought through to ensure value for money and that the system is capable of delivering the intended data standard.

Question 14: Do you support the introduction of creel tagging and mandatory reporting of creel locations?

74. 46 per cent of creel respondents did not support the introduction of tagging of creel locations or mandatory reporting. 44 per cent were in favour, particularly noting that this would provide information on how many creels are used and 10 per cent did not answer.

'I don't support tagging as I feel it would be a creel capping measure sneaked in by the back door, it is not needed in this area.' – North East Fisherman.

'I believe it would be very difficult to be accurate with creel reporting as creels get moved about regular, I think the marking of the bouys is sufficient opposed to creel tagging.' North East Fisherman.

75. It was suggested that the reporting of creel locations would be difficult to achieve in real time. There was a further suggestion that Marine Scotland could take on the role and responsibility of monitoring and collating the location of creels. Sensitive issues were raised around confidentiality and data protection, fishermen who don't want to reveal their activity.
76. Again, there was concern about the proportionality and potential burden being applied to fishermen but in instances where there was a particular problem with gear conflict these measures were seen as a positive way of managing local conflict. As pointed out by the Scottish Fishermen's Federation these measures would need to be developed as an option with full consultation and local agreement.
77. For many supporters of spatial separation these measures were not required if a blanket restriction and separation between sectors was introduced.
78. The Scottish Creel Fishermen's Federation referred to negative experiences in the North East Inshore Fisheries Conservation Authority where the introduction of creel limits has not been popular. There was also a concern raised by some respondents that the introduction of creel limits could lead to the start of a leasing market for tags.

Marine Scotland response

It is acknowledged that the ability to introduce gear conflict management measures is challenging when basic data about creel effort is not known. Further work is required to address this shortcoming.

Way forward

In response to concerns raised by the industry about potential pressure on stocks, Marine Scotland is to gather information on the level of effort in the Scottish creel sector. Inshore Fisheries Groups and the Inshore Fisheries Management and Conservation group will be central to the development of this work stream and explore whether such measures are necessary.

Question 15: Do you have any other comments to make regarding measures to tackle gear conflict?

- Many welcomed Marine Scotland taking an interest in tackling gear conflict, a long running issue, but were concerned that it might fall short of a permanent solution. Some mobile fishermen criticised Marine Scotland for progressing what they saw as disproportionate action on gear conflict.
- Some static fishermen argued for spatial separation and the reintroduction of a three mile limit on the West Coast, with an expectation that this would put an immediate stop to gear conflict.
- There was a theme among some, predominantly from the mobile sector, that attention needs to be directed to the unlimited numbers of creels around the coast which they felt had led to saturation.
- The Clyde Fishermen's Association recommended a review of the creel sector.
- For those negatively affected there was a desire for Marine Scotland to bring in measures that will make a real difference and address their losses.
- Many focused on the need for measures that could improve the evidence for where and when gear conflict has taken place.
- It was noted that the frequency of gear conflict differs around the coast. For example, there are no problems in Shetland other than accidental.
- The Orkney Fishermens' Association noted that there is an unknown cost to gear conflict as the majority of incidents are unreported.
- Proportionality is a clear issue of concern. The outcome of this consultation needs to be considerate of the burden it may place on operators.
- Static fishermen appear to be more open to measures because they have direct experience of lost and damaged gear.
- Mobile fishermen emphasise that increased creel numbers have restricted their area of operation and would like to see a review to inform whether a restriction of creel numbers is necessary.



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