

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

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## **SECTION 1 - Summary**

Scottish inshore waters extend from the baseline of the coast to 12 nautical miles (nm) with the majority of the fleet active inside 6 nm. The inshore fleet is diverse and ranges from trawlers to creelers, dredgers to netters, and divers and hand gatherers whose total first sale catch value in 2012 was nearly £90 million. Comprised of approximately 1,500 vessels, often smaller boats (typically 8-10 metre in length) with one or two man crews, quite often working part-time and with a restricted geographic range.

Gear conflict is not an endemic issue in Scottish waters but as the intensity of use of the marine environment has increased, locally significant occurrences have increasingly come to the attention of Marine Scotland. Gear conflict can occur both within and between fleet sectors and is not conducive to the aim of ensuring fisheries are well managed.

This consultation is an open discussion on proposals that could be introduced to tackle the issue of gear conflict in Scottish inshore waters. Marine Scotland recognises the right of every fisherman to earn a living from the sea through legal and sustainable means, no fleet sector or gear type having primacy over another. We want to see the removal of barriers to inshore fishermen making a sustainable and profitable living in harmonious co-existence with other users of the marine environment. Where there are measures that can promote better fisheries management and cooperation between sectors they should be encouraged.

Marine Scotland has an open mind on these proposals to tackle gear conflict and believes that voluntary agreement reached locally between protagonists, without the need for intervention by government or other agencies, is, where possible, the best route to resolution of conflict situations. But it is clear that improvements need to be made. This is backed up by the report from the Task Force on gear conflict which reported to Ministers in July 2014. This consultation is the first time that the fishing industry has been asked to consider measures to improve the prevention, deterrence and detection of gear conflict in Scottish inshore waters. This is a complex problem with no simple solution and whatever changes are introduced have to be proportionate to the fleet and regulators.

While gear conflict is a policy issue which requires a dedicated solution it is important to be cognisant of how this fits into the wider inshore management of Scottish fisheries. The Inshore Strategy has at its core the requirement for improving the evidence base through better data collection on fishing vessel activities. Where it is feasible Marine Scotland will seek to promote local initiatives for fisheries management. Consequently any measures intended to tackle gear conflict will need to complement these strategic aims, as well as the requirement to sit within a formal framework for good governance.

## **SECTION 2 - Background on the Consultation Process**

The purpose of this consultation document is to seek the views of those who actively prosecute inshore fishing opportunities within Scotland; particularly those who have experienced gear vandalism and theft or are concerned about gear conflict. Responses to this consultation will be used to inform policy development in this area.

The consultation will last for 12 weeks and responses are invited by 6 February.

The views and suggestions received in consultation responses will be analysed and presented to the Inshore Fisheries Management and Conservation Group (IFMAC) the national co-management body for discussion and endorsement of next steps.

Please send your returns or address any queries to:

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The Scottish Government may make the responses to this consultation paper available to the public and to the Scottish Parliament. We will acknowledge responses. If you respond to this consultation you are requested to complete the enclosed respondent information form attached at Annex A. This will ensure that we handle your responses appropriately.

A consultation report will be published by Marine Scotland.

## **Background on the Consultation Process**

### **What is the aim of this consultation?**

2.1 This consultation is about how the Scottish Government can address gear conflict, which is recognised as falling into the realm of possible vandalism and theft. While gear interactions can be resolved amicably on a voluntary basis within inshore fisheries there may be instances of criminal activity. It is a widely held view that the current arrangements for resolving gear conflict are often ineffective at securing a fair resolution for the victims of illegal acts. Anecdotally, there are suggestions that gear conflict incidents are becoming more frequent, or at least that fishermen are becoming less tolerant of such incidents and more prepared to report irresponsible operators or frequent offenders.

2.2 The aim of this consultation is to build upon the report produced by the Task Force on Gear Conflict which was presented to the Inshore Fisheries Management and Conservation Group (IFMAC) on 29 September 2014, a copy of which can be found on the Marine Scotland website <http://www.scotland.gov.uk/Topics/marine/Sea-Fisheries/InshoreFisheries/GearConflict>

2.3 The report noted various shortcomings of current processes and recognised that Marine Scotland was best placed to explore possible options for change. These are the subject of this consultation, which also provides the opportunity for interested parties to propose relevant solutions.

2.4 This is the first time that the Scottish Government has held such a national consultation on the issue of gear conflict. Proposals for the implementation of possible measures are discussed. However, given the complexity of issues, the criminal nature of activities and the need for firm evidence it may be that further discussions with industry and additional consultation are required. In addressing the issue of gear conflict it is essential to understand whether national measures are required or if local/regional solutions would be most effective.

### **Scottish Government Considerations**

2.5 Marine Scotland supports the use of appropriate fishing gear by inshore fishermen around the coast of Scotland regardless of gear type provided it is legal and is used subject to environmental criteria for stock or nature conservation purposes. Deliberate acts of gear vandalism and theft at sea are illegal and cannot be tolerated. Such acts may be from fishing vessels, merchant vessels or leisure craft and are carried out on a fishing vessel's gear. Where incidents do occur there needs to be a robust process in place that can deal with those responsible in a

proportionate and dissuasive manner. Those agencies responsible for gear conflict need to have the best tools available to help them achieve these aims.

2.6 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 sector.** Marine Scotland is acutely aware of the significant impact gear damage or loss can have on an individual's business. In consequence it is important that those individuals responsible for gear conflict are the subject of enforcement action. Such an approach requires to be balanced against the fact that the vast majority of fishing vessel operators act respectfully of other fishing operations and avoid gear interactions wherever possible.

#### Options for a new policy

2.7 With any change in policy the Scottish Government will need to take account of the cost of implementing and enforcing any new proposals. Bringing in fisheries management or control rules to regulate gear conflict will also bring an additional enforcement burden. The options proposed in this consultation are categorised as:

- Prevention
- Detection
- Deterrence

2.8 Several questions are posed in this consultation:

**Question 1: Should spatial management measures be considered to deal with gear conflict?**

**Question 2: If yes, should spatial separation be considered on a national basis or only in gear conflict "hotspots"?**

**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?**

**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?**

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

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

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

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

**Question 9: What other measures can strengthen Codes of Conduct?**

**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?**

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

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

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

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

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

## **Section 3 – Introduction**

3.1 In November 2013 Richard Lochhead MSP, Cabinet Secretary for Rural Affairs, Food and the Environment, established a Scottish Government Task Force to examine gear conflict in Scottish inshore waters. This was in response to increasing complaints from inshore fishermen over the failure of government to adequately regulate gear conflict.

3.2. The Task Force was asked to:-

- consider the range of issues contributing to gear conflict, both accidental and deliberate;
- examine how processes and procedures might be improved both to prevent gear conflict and to deal more effectively where instances of conflict arise; and
- make recommendations on possible solutions for the Scottish Government and its Industry Partners to consider.

### **What is gear conflict?**

3.3 In order to fully understand the issue of gear conflict in the Scottish inshore zone (0-12 nautical miles) it is necessary to identify what it is, where it occurs and its extent, the potential impact on the industry, and the available options for resolution.

3.4 “Static” or “fixed” gear means fishing gear which is immobile and includes creels which are used to catch lobsters, crabs, and Nephrops, and also gill nets and baited lines which are fixed in position. “Mobile” or “active” fishing gear is towed, and in the Scottish fleet encompasses nets, which may be trawled along the sea bed, or in midwater (pelagic), targeting a variety of fish species; and also scallop dredges. Pots and creels are often typically used in areas that are inaccessible to trawlers e.g. close in to shore; or where the sea bed is rocky and could damage trawled nets. However, fishermen can target the same fish stocks and, as a result conflicts can arise. Over the years, an expansion in fishing for Nephrops with creels and changes in trawl technology has meant that in many instances creelers and trawlers now fish on the same grounds. Trawlers have also increasingly diversified to activities closer to the shore, including the squid fishery, as a way of improving fishing opportunities.

3.5 Pressure on fishing grounds has led to increased gear conflict at sea without in most cases the presence of eyewitnesses. Consequently damage is often not discovered until sometime after it has occurred. Gear damage and vandalism is a crime at sea. However, it is not a fisheries offence under existing fisheries legislation. In such cases Marine Scotland Compliance, who enforce fisheries regulations; do not have any authority to take enforcement action. Gear conflict is a difficult problem to quantify and resolve. It is difficult to prove how much gear has been lost and who is to blame for the damage or losses. There are two sources of financial cost: the cost of replacing lost or damaged gear and the loss in earnings from reduced fishing time.



3.6 There are different types of gear conflict. The difficulties of setting and operating fishing gear in exposed or heavily exploited fishing areas can lead to the *accidental* entanglement of fishing gears. Such unintentional interactions between mobile and static gear operations or between static gears from two or more vessels would not be regarded as gear vandalism but rather an indication of the complexity of the fishing vessels working environment. Equally gear vandalism would not be associated with the unintentional snagging of fishing gear by commercial or leisure craft. Such gear interaction may be a result of overcrowding of seaways, inappropriately marked gear or loss of visibility due to operational conditions etc. Such unintended consequences would look to be resolved amicably between parties. By contrast, gear conflict which falls into an *intentional* criminal act of vandalism and theft can occur under a range of circumstances and is not likely to be resolved without intervention.

### **Where does it occur?**

3.7 Gear conflict can occur anywhere around the coast of Scotland. In some areas creel fishing has moved further offshore and trawling has moved inshore creating more competition for grounds both on a seasonal and annual basis. Fishermen are under significant economic pressure to maximise catching opportunities and the competition for space has increased. In 2013 Marine Scotland commissioned a survey of gear conflict by consultants GRID Economics. Here is an extract from that limited survey of fishermen which is indicative of the problem.

**TABLE 1 - Location of the most common conflicts**

Type of Conflict (9 most Common)	No. of Respondents Experiencing			
	0-1nm	1-3nm	3-6nm	6-12nm
Nephrops Pots/Creels + Nephrops Trawls	42	55	35	12
Nephrops Pots/Creels + Dredges	11	11	4	1
Nephrops Pots/Creels + Nephrops Pots/Creels	13	15	8	2
Nephrops Pots/Creels + Other Shellfish Pots/Creels	5	7	1	2
Nephrops Pots/Creels + Other Trawls	5	4	3	0
Other Shellfish Pots/ Creels + Nephrops Trawls	9	9	8	2
Other Shellfish Pots/ Creels + Dredges	14	18	23	13
Other Shellfish Pots/ Creels + Other Trawls	8	10	13	8
Other Shellfish Pots/ Creels + Other Shellfish Pots/ Creels	22	8	7	3

Reference: Alan Radford and Geoff Riddington - Grid Economics - Inshore Gear Conflict Survey 2014

3.8 For the most common conflicts the area inside 3nm is very significant. The exception would appear to be in the category of “Other Shellfish Pots/Creels” which have almost as many conflicts with dredges and trawls in the 3 to 12nm zone as they do in the 0-3nm zone, though their encounters with their fellow Other Shellfish Pots/Creels are mostly in the 0-1nm zone.

3.9 Some static gear fishermen have voiced support for the introduction of a limit to keep mobile gear out of inshore waters, partly as a response to the frustration and economic harm caused by gear conflict. A statutory ban on fishing within a 3nm limit within Scotland for mobile gear operators was removed by the Inshore Fishing (Scotland) Act 1984, following recommendations made in an independent report to mitigate the loss of fishing opportunity in the demersal sector. The ban had focused on bottom (Otter) trawling, with limited mobile gear activity permitted through seine netting and dredging.

## **How is conflict reported?**

3.10 Gear damage and vandalism is a criminal activity and should be reported to Police Scotland. Marine Scotland Compliance is unable to take any enforcement action in relation to a vessel reported to be involved in gear conflict as it is not a fisheries offence.

3.11 It is difficult to ascertain how much creel conflict occurs in Scotland. A great number of gear conflict incidents are reported to the Marine Scotland Compliance Fishery Offices once fishermen have discovered damage or loss of gear. The Intelligence Reports generated are used by Compliance to record all incidents and information received from the Coast. They are a tool for sharing intelligence with other agencies and areas within government.

3.12 The Marine Coastguard Agency also receives reports when gear conflict has an impact on maritime safety.

3.13 It should also be noted that there are cases where it is believed gear conflict is falsely reported.

## **Management tools for controlling fisheries**

3.14 The monitoring of fishing activity around the Scottish coast is the responsibility of Marine Scotland Compliance. Their role is to protect Scotland's marine resource and fisheries, upholding the laws in place to promote its sustainable management. The rules are either set out in fisheries legislation (via Statutory Instruments) or/and in the conditions contained in the fishing vessel license.

Fishing vessels that are registered in the UK are only allowed to fish if they have the necessary licence to do so and a fishing vessel licence is required (registered with the Register of Shipping and Seamen at Cardiff) to fish commercially for sea fish and to land its catch for profit. The licence specifies conditions which must be adhered to by vessel owners when fishing activity is being pursued. It authorises the sea areas in which a vessel can fish and the species of fish that can be targeted and is the mechanism of control that enables UK Fisheries Administrations to regulate fishing in line with the EU Common Fisheries Policy.

3.15 There are no restrictions on the number of creels that a vessel can deploy. However licensed vessel owners who do not hold a Shellfish Entitlement (licence condition) are allowed to land only up to 5 lobsters and 25 crabs per day. An unlicensed vessel does not have restrictions on the volume of seafood it can catch provided that it is for personal consumption and is not sold commercially. Non-

compliance with this rule is enforced through the Registration of Buyers and Sellers Scheme where buyers and sellers of first sale fish must be registered and first sale fish is recorded in a sales note.

3.16 There are areas around Scotland that are closed to fishing activity or restrict the type of gear which may be deployed. Such areas may restrict all mobile gear activity or possibly all fishing gears and are usually introduced for stock conservation reasons or to protect the environment or individual species. It is important to recognise that there are currently no statutory restrictions or requirements for gear conflict avoidance or resolution. In some instances local voluntary measures have been agreed between fishermen within specific localities but these can only operate on a consensual basis.

3.17 In line with the desire of Marine Scotland to try to help prevent and resolve gear conflict there are a range of tools that are currently used for preventing and investigating incidents:

### **Vessel Monitoring Systems (VMS)**

3.18 EU fisheries rules require vessels of 12 metres and over in overall length to have a Vessel Monitoring System (VMS). VMS records and transmits the position of each vessel every 2 hours while at sea and that information is sent to the Fisheries Management Centre of the Flag State.

3.19 This information is subject to data protection legislation and can only be used for fisheries management purposes if anonymised and aggregated and released to a third party with the owner's permission. It is, therefore, a closed system to public access and there is limited scope for using it to prove the location of any individual fishing vessel in a gear conflict case. Marine Scotland Compliance viewing VMS data would typically only be able to ascertain that an individual vessel was in a specific area on a given day and time. It may provide an indication of vessels operating within an area but cannot prove that any individual vessel is the cause of the damage/loss of gear. Vessels below 12 metres are not statutorily required to be monitored in this way.

## **Codes of Conduct**

3.20 In some locations creelers and trawlers follow a voluntary code of conduct which provides an agreed way of working in these areas. Such initiatives can be organised through a fishing association or federation, with assistance or facilitation from the local Marine Scotland Fishery Offices. Typically codes can include the location on where gear is set, seasonal fishery information and contact details for visiting skippers to determine gear locations or other spatial arrangements.

3.21 Examples of codes of conduct exist in the Solway and the Outer Hebrides, where creel fleet locations and contact numbers are accessible to mobile gear fishermen and visiting vessels.

3.22 Codes of conduct are voluntary without any statutory status, often referred to as “gentlemen’s agreements”. Their effectiveness relies on the co-operation of all parties to adhere to the arrangements. A benefit of voluntary codes of conduct is that there can be regionally specific arrangements around the coast. One of the biggest risks to a code of conduct is the arrival of a nomadic vessel that has either no knowledge of the existence of the local agreement or no respect for any voluntary code. Codes can be useful for facilitating the resolution of disputes by involving a fisherman’s association, particularly when compensation for gear is involved. However, there are still issues around the burden of proof required to resolve disputes.

## **Maritime Safety**

3.23 The Marine Coastguard Agency (MCA) has attempted to use safety focused legislation to take action on deliberate acts of gear conflict through collision regulations. There are, however, limiting conditions for taking forward a prosecution: the event must take place in the hours of daylight where there is a reasonable chance of the properly marked creels being viewed. It is noted that there is a risk to maritime safety from the deliberate act of setting creels to maximise deliberate damage to trawl vessels, or of trawl vessels deliberately towing away gear and subsequently dumping it in an unmarked location. Maritime safety is not designed to prosecute acts of gear conflict but the MCA can be an important partner in providing targeted action.

## Existing Good Practice

3.24 In his opening speech to the Parliamentary debate on inshore fishing on 29 April 2014 the Cabinet Secretary for Rural Affairs, Food and the Environment, Richard Lochhead, said “*I have previously stated that my personal preference is for industry lead initiatives to prevent and resolve gear conflict. It is clear that when there is a breakdown in co-operation there needs to be a robust framework in place to bring restitution.*” There are several examples of good co-operation which have occurred on a regular basis and sometimes been linked to a code of conduct. On the East Coast, for example, static fishermen have distributed creel fleet locations on USB data sticks for mobile fishermen to use in their plotters along with contact details for the static operators. This type of activity can be regarded as the “gold standard” in co-operation but it relies on local good will rather than a formal framework for good governance.

## **Case Studies – The Barriers to Prosecution**

3.25 From the several attempts made over the years it has proved almost impossible to secure a successful prosecution for gear damage. This is a matter for Police Scotland and the Crown Office and this issue has to compete with other priorities, demonstrating that action meets the public interest test. There are issues around corroboration and securing the evidential standard for referral to the Procurator Fiscal (PF) for crimes committed at sea. Essentially the offences in question are common law offences relating to theft or vandalism and are handled in a similar way to “neighbour disputes”. It is also recognised that prosecutors may require detailed knowledge about fishing and vessel operations in order to progress an investigation.

3.26 The following illustrations highlight the challenges in detection and prosecution for different types of gear conflict. The list is not exhaustive but it is based on real life reports known to Marine Scotland Compliance.

### **Trawler vs Creel**

*Issues:*

- A trawler is found fishing in an area heavily saturated with static gear
- Both the trawler and the creels fish on the sea bed
- The trawler retrieves its nets and cuts away creels that have been snagged, often without notifying the creel fisher
- Creel fisher faces loss of gear (£45 p/creel) and is unable to retrieve it at the time, leading to loss of income
- Requirement to purchase new gear

### *Case Study*

On this particular day a trawler appeared and paid little respect to the creel fisherman. It was suggested over the radio that the creel vessel should move his gear. As the conflict developed the trawler brought its net to the surface with the creels entangled in his trawl. The crewman then began to cut loose the creels dropping them to the sea-bed. The creel fisher can do nothing but wait for the actions of the trawl skipper to finish cutting away the ropes. The creeler then attempted to retrieve his creels.

As a result of this incident the creel fisher reported the incident to the Police. Despite an approach to the local Fishery Office staff by the Police no further action was taken. The loss of gear added up to 60 creels lost with ropes and buoys, incurring significant financial cost.

This is an example of blatant disregard for others by the trawler. The trawlerman knows there will be few if any consequences for his actions. The Fishery Office is unable to take any action, and no action is taken by law enforcement agencies.

### **Scallop vs Creel**

*Issues:*

- Scallop fishers share grounds with static gear fishers
- Both fish inshore in shallow waters
- Nomadic scallop dredgers often fish in high numbers as a fleet or on a 'there today, gone tomorrow' basis
- Visiting vessels are not familiar with local vessels
- Both target lucrative highly priced species

### *Case Study*

A rogue scallop dredger decided to fish in an area heavily populated with creels. Creel operators have fished in this area for over 25 years. In general a Code of Conduct exists in the area which local fishermen try to respect and work together on ensuring that they are all aware of the locations of creel as well as trawling and scallop grounds. On this occasion over 70 creels were lost to the actions of the scallop dredger, some of which had only been bought recently. There was no communication made with the creel vessels by the mobile gear skipper. The scallop dredger was only in the area for a day and a night but it managed to cause a lot of damage to creels in that time. A creel fisherman managed to obtain evidence by camera taking into account pictures of his GPS. The creel fisher gave statements to Police Scotland. However, when the case was referred no further action was taken by the Procurator Fiscal. The trawl skipper did not receive any penalties for his actions.

### **Creel vs Trawl**

*Issues:*

- In an area where both sectors combine, the creel fisher can be guilty of closing off areas which the trawl skipper wants to access.
- Therefore there is no access to fishing grounds for the trawler
- Some creels are left on sea bed for lengthy times
- The trawl skipper declines to fish in the area
- The trawl skipper argues that this impasse is creating a lost opportunity to work together
- Frustration leads to impatience and then to conflict



### *Case Study*

During a normal fishing operation a trawler commences fishing at the head of an inshore sea loch. A normal day's fishing takes place targeting Nephrops with 3 periods of trawling completed by mid-afternoon. Whilst returning from the Eastern most part of the loch on a final towing operation the trawl skipper finds that a creel vessel has blocked his exit path to deeper water. No prior communication has been made with the trawl skipper who may have been able to negotiate with the creel skipper in order to avoid conflict. The trawl skipper only knows about the creel gear once his vessel has become surrounded by creels and sees the buoys. The skipper must then haul his gear by which time it is entangled in pots and ropes, causing a loss of fishing time. Sadly on this occasion creel losses are unavoidable - both parties have lost out on catch and fishing time. This unfortunate incident could have been avoided by improving communications and vessels working better together.

### **Creel vs Creel**

#### *Issue:*

- Competition for same species and same space

### *Case Study*

Reports were received of a creel vessel stealing creels from other fishermen. The incident was reported to the Fishery Office and recorded by the Marine Scotland Intelligence Report. Several fishermen tried to gather video evidence of the thefts. Due to the high number of incidents reported the Fishery Office contacted the police to see if a joint operation might be possible to uncover the culprit and recover the gear. Using intelligence-led enforcement the Police and Fishery Officers worked together to recover gear that was believed to have been stolen.

Fishery Officers hauled gears to check to see if it was marked. Some 200 creels were identified as being set by a skipper and identified by other skippers as the true owners.

Together the Fishery Officers were able to contribute their expertise to inspect gears and the Police were able to use their powers to investigate the stolen property. The police were confident of getting a prosecution and queried whether it was possible to remove the fishing licence. Unfortunately the case was not taken forward by the Procurator Fiscal.

## **SECTION 4 – Task Force on Gear Conflict**

4.1 In direct response to representations from active fishermen, the Cabinet Secretary for Rural Affairs, Food and the Environment, Richard Lochhead MSP, established the internal government Task Force on Gear Conflict. The Task Force was chaired independently and was set up to examine if the current arrangements for dealing with gear conflict were fit for purpose. The Task Force concluded its examination and reported to Ministers in mid-July. The report was discussed at IFMAC on 30 September 2014.

### **Task Force Findings**

4.2 There seems little doubt that the current arrangements rely on the application of the criminal law alone to prevent gear conflict and deal with the perpetrators of gear vandalism and theft. This approach is not currently providing a satisfactory or effective solution. The Task Force noted that the challenge is to come up with solutions which are:

- proportionate to the scale of the problems being experienced;
- tailored to specific needs of different fishing communities around Scotland; and
- have the broad support of the fishing industry as a whole.

4.3 While there is clearly an appetite among some creel fishermen for more radical measures (e.g. banning trawlers/dredgers from fishing within, say, 3 miles of the coast) others believe such moves are disproportionate and are unlikely to find favour with the industry as a whole. That said, such measures may find favour with those who argue that spatial measures can help contribute to wider objectives such as stock sustainability, encouraging other economically beneficial activities, and protecting the wider marine environment. It is therefore important that Marine Scotland does not look at gear conflict in isolation.

4.4 With this in mind, the Task Force proposed a twin-track approach to tackling the problem, combining:

- enhanced measures to prevent incidents occurring in the first place; and
- steps to improve the detection of deliberate acts of gear vandalism and theft and the enforcement of sanctions against those involved in such acts.

### **Scale of the problem**

4.5 Most inshore fishermen experience gear conflict but very few receive any resolution from conflict incidents and this is accepted as commonplace despite the

significant cost in gear repair, replacement and time denied from fishing. The intelligent reports to Marine Scotland Compliance, usually through local Fishery Offices, have amounted to over 40 reports during the summer period in 2014.

### **The Task Force recommendations**

4.6 The Task Force's recommendations aim to prevent gear conflict and improve instances of detection.

#### **Recommendation 1**

Marine Scotland to explore the feasibility for bringing elements of voluntary codes of practice into the licensing system

#### **Recommendation 2**

Marine Scotland, in consultation with its Industry Partners should look more widely at the scope for licence changes to specifically address gear conflict within fisheries management. This would, therefore, bring the matter within the scope of Marine Scotland's enforcement and compliance remit. It is recognised that questions of proportionality and regulatory burden will be central to these considerations.

#### **Recommendation 3**

Marine Scotland in consultation with its industry partners and IFGs should consider the scope for piloting time/or spatial zones at gear conflict "black spots". In addition, it should consider whether license conditions need to be used to support the restricted areas or closures made under the Inshore Fisheries (Scotland) Act 1984.

#### **Recommendation 4**

That Marine Scotland considers how technology might be better used to support the gathering of evidence for gear conflict.

#### **Recommendation 5**

Marine Scotland to undertake targeted surveillance in areas where there is historically know to be gear conflict to inform enforcement improvements. Incidents of gear conflict would be reported to Police Scotland as usual.

## Section 5: Consultation objectives

5.1 While the majority of the recommendations of the Task Force are the subject of this consultation Marine Scotland Compliance have already directed significant resources in an immediate response to **recommendation 5**. This has resulted in valuable additional information.

### Operations Spinner and Fly

#### Task Force Recommendation 5

5.2 Marine Scotland Compliance undertook operations from the end of August until the end of September 2014, investigating gear conflict issues, at a cost of around £200,000. As part of these operations, Marine Scotland Compliance Officers interviewed the skippers of static and mobile gear vessels fishing around the east coast of Scotland. A total of 57 East Coast skippers took part in the interviews, representing 34 static and 23 mobile gear vessels.

5.3 Skippers were asked questions about how they liaise with each other in relation to gear placement. The responses showed that:

- Most static gear vessels did not advise mobile gear vessels about the locations of their gear, and just under half advised the local Fishery Office. In both cases, this tended to be due to their placing gear within 2nm of the shore, and so they did not find it necessary to make contact.
- Just over half of mobile gear vessels made enquiries or had been contacted about the locations of static gear in the area they were fishing in, with those not doing so working further off-shore. Contact tended to be directly with local skippers or via their fishermen's association, rather than going through the local fishery office.

5.4 There was general agreement that communication could be better between the two sectors, despite there being a number of methods available (VHF, mobile phones, email etc.), and that improvements could be useful in helping to avoid gear conflict.

5.5 The suggestion of a website or similar system was popular, with most skippers saying they would use one if it was made available. While several features were suggested (such as being able to enter and check the locations of creels, or to check when mobile vessels would be passing through an area) the main requirement was that such a system would need to be kept updated in order to be useful.

5.6 While just under half of static gear vessels said that they had suffered damage to gear at some point, three-quarters had not encountered any problems in the past few years. Those that had not encountered problems tended to be those who placed their gear within 2nm of the shore.

5.7 All static gear vessels said they clearly marked their gear. This was usually done with buoys (often with the vessel name and/or PLN written on them), flags or a combination of both.

### **Options for resolution**

5.8 Marine Scotland has a responsibility to apply policies that are balanced and proportionate. The aim of this section is to highlight the areas we think need to be considered to improve policy on gear conflict. Perhaps the biggest question is in relation to the Task Force's **recommendation 2**; that is, whether Marine Scotland should take a more direct role in managing gear conflict. The primary role for enforcing common law offences rests clearly with Police Scotland but given that the offences relate to fishing there is an opportunity for Marine Scotland to consider taking a lead. This could be through introducing fisheries management measures such as vessel location reporting.

5.9 Potential options for responding to the Task Force recommendations are complementary to provisions already applied in fisheries management. The options set out in this section are suggestions for what could become part of a formal framework for good governance.

- Spatial management
- Communication
- Marking of gear
- An administrative sanction (Polluter Pays Principle)
- Codes of Conduct
- Securing better evidence through technology

## **APPLYING SPATIAL MANAGEMENT**

### **Task Force Recommendation 3**

5.10 Some mobile fishermen believe the only way to reduce gear conflict is to introduce spatial separation between mobile and static activities. Fishermen emphasise that there are already different spatial requirements in different areas of the country. While it is not current policy to introduce spatial separation on the basis of gear conflict alone, Scottish Ministers will respond to requests from local inshore stakeholders.

5.11 Spatial separation can, on the face of it, appear a blunt tool to deal with gear conflict and may cause displacement. To ensure that spatial management is fair and proportionate it will require a full analysis of the impact on those who fish there.

#### **Measures designed for more effective monitoring and enforcement:**

5.12 The regulation of any spatial separation will require appropriate technology.

**Question 1: Should spatial management measures be considered to deal with gear conflict?**

**Question 2: If yes, should spatial separation be considered on a national basis or only in gear conflict “hotspots”?**

**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?**

## **APPLYING BETTER COMMUNICATION**

### **Task Force Recommendation 4**

5.13 Better and open exchange of information on fishing operations is key. The output of recent Compliance operations supported the suggestion (point 5.3) that improvements to communication could help resolve conflict in some areas. While there are excellent examples of sharing information around the coast they do not include all the required stakeholder groups. It is important that other agencies such as Police Scotland and the Maritime and Coastguard Agency are involved in this process.

5.14 Such bodies would be required to achieve better buy-in to current informal arrangements or make provisions for enforcement to become a routine element of their business planning. The fishing industry has been supportive of Marine Scotland hosting or facilitating the use of a website to display information on creel locations. Marine Scotland has experience of using electronic monitoring and reporting for fisheries management purposes. Examples include the notification of Juvenile Cod Real Time Closures within the EU stock recovery programme and the notification of variation of fishing licenses; both of these actions are underpinned by a statutory requirement to inform vessel operators.

5.15 Several fishermen have voiced their concern regarding having to disclose their fishing practices to competitors or have been worried about publicising their location of activity, which may make them a target for theft or vandalism. Such open access to fishing activity information may in itself not be a sole solution to resolving the gear conflict issue but may remove the defence of ignorance of another vessel's activities or intentions.

#### **Measures to put in place effective enforcement:**

5.16 Equal application of rules to all fishing vessels points towards the requirement for a licence condition or the provision of legislation (via a statutory instrument) seeking to make gear conflict a fisheries offence.

5.17 In order for enforcement to be based on the provision of authorities' information of typical working patterns of both the mobile and static gear fleets within any particular location there would need to be a reference for all fishermen to refer to.

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

**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?**

## **APPLYING THE 'POLLUTER PAYS' PRINCIPLE**

### **Task Force Recommendations 2 and 4**

5.18 One option worth exploring is the design and implementation of a non-statutory system that can be operated without putting pressure on the judicial process. This is not intended to replace the powers of Police Scotland for common law enforcement but, rather, to complement them.

5.19 The use of administrative management measures has been successfully used in other areas of fisheries management. In 2006 fisheries managers considered imposing Restricted Area Licensing (RAL) on the pelagic fleet to tackle what was believed to be misreporting of fishing grounds in Area VI and IV in previous years. The introduction of RAL would have removed flexibility for vessels at sea and would have been a significant imposition on the pelagic fleet. The action of a few vessels would have meant blanket measures applying to the whole fleet. This proposal was criticised by the fishing industry as disproportionately punitive and it was not ultimately applied. Instead, from 2006 until the present day the activities of the pelagic fleet have been closely monitored using VMS data.

5.20 Considering the current issue of gear conflict, if a vessel was found to have breached the misreporting rules to the criminal standard then that would continue to be referred to the Crown Office and Procurator Fiscal Service (COPFS) for prosecution. 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 RAL for a fixed period). Clearly there would need to be safeguards built into any such process as the aim would not be to advantage one part of the fleet over another but to have restitution. There would need to be sufficient confidence that a) a vessel was indeed responsible for loss of damage of gear b) that the evidence was genuine and was not spurious accusations or deliberately placed by static fishermen to exclude mobile fishermen c) there would need to be sufficient confidence and verification that the number of creels lost or damaged was genuine. Under this administrative model it would still be possible for a vessel to offer compensation for the loss or damaged gear and for that to be the matter resolved.

5.21 A similar policy could be applied to mobile operators fishing within 12 (6) miles. All vessels could be asked to sign up to a code of conduct with regard to respecting established creel locations. If creels were accidentally taken then they would have to be either returned, given details for retrieval or have compensation offered to them. Provisions would be introduced to restrict the area in which they were licensed to fish. Under such a scenario the onus is not only on the mobile



operators, but also on static operators who would have to demonstrate they have made every effort to tag and report the location of gear. Sufficient safeguards would need to be built into any scheme rules to ensure that there were no provocations of gear conflict.

5.22 As with the case of pelagic misreporting it is hope that the threat of a restricted licence would deter vessels from engaging in gear conflict.

**Measures to put in place for effective enforcement:**

5.23 There are several elements to apply a 'polluter pays' principle:

- Established principles and behaviours;
- Designation of application: zones, boxes;
- Mobile vessel activity monitoring: VMS or AIS;
- Provision of accurate detail on the location of creels;
- Tagging or marking of creel fleets;
- Marine Scotland Compliance to monitor any complaints of loss of gear; and
- Licence variation for vessels that fail to observe good practice.

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

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

## **APPLYING VOLUNTARY CODES OF CONDUCT**

### **Task Force Recommendation 1**

5.24 Marine Scotland supports non-regulatory intervention wherever possible and codes of conduct can be an effective way of promoting co-operation and good practice between sectors. Codes of conduct work best where fishermen directly affected by them are involved in their development and promotion. The report from the Task Force on Gear Conflict praised the existence of codes but noted that they require the good will of all that fish in that area and that the actions of one rogue can undermine their credibility.

### **Measures to put in place for effective enforcement**

5.25 One option for strengthening codes of conduct is to improve the dissemination of fishing activity information. Codes of conduct are by their very nature voluntary and unless they are enshrined in legislation they are not enforceable. One of the criticisms of codes is that there is no sanction attached to a breach of a code's conduct requirements and therefore no consequences for those that do break the rules of the code.

5.26 If codes are linked to licence conditions in the fishing licence then Marine Scotland Compliance is required to be involved in the enforcement. This could, for example, be linked to the application of the polluter pays principle. The design of any such licence conditions would need the full co-operation and participation of active fishermen as well as their representatives.

5.27 Statutory elements of codes of conduct could include:

- mandatory reporting of creel numbers and locations;
- verification of creel numbers and locations through technology;
- sharing location of creel numbers and locations;
- curfews;
- reporting damage to static gear to UKFCC; and
- strengthening the role of the Fishery Office/local fishing representatives to monitor adherence to conditions set out in the code(s).

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

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

**Question 9: What other measures can strengthen codes of conduct?**

## **APPLYING A NEW STANDARD FOR MARKING OF GEAR**

### **Task Force Recommendation 2**

5.28 The detailed rules on the marking of passive fishing gear are set out in Article 9 of Commission Regulation 404/2011. However, these rules only apply outside 12 nautical miles. In the discussions leading to the introduction of the Control Regulations 1224/2009 Marine Scotland pursued a policy, informed by industry, of not applying the same rules outside and inside 12 nm. It was argued by industry representatives that the rules were onerous, expensive, and unsafe for small vessels inside 12 nm. Additionally there are concerns about the durability of tags and markings in certain tidal waters.

5.29 As part of the preparatory investigation for this consultation Marine Scotland Compliance undertook surveillance and monitoring exercises around the Scottish coast to better understand gear interaction. The results of those operations indicated that there was a considerable difference in the quality of gear marking.

5.30 Stringent marking of gear inside 12 nm will make static gear more visible to mobile vessels. Some static fishermen are however concerned that visible marking will leave them at risk to deliberate acts of vandalism or theft. There is a balance to be struck here and Marine Scotland is keen to consult openly on improving the marking of gear inside 12 nm.

### **Measures to put in place for effective enforcement**

5.31 Any changes to the rules on the marking of gear within 12 nm must apply equally to licensed and unlicensed vessels. The issue of unlicensed hobby fishermen will be the subject of a separate consultation and there is potential for joint development of fisheries policy within this area. Comments are welcomed on the basis that any gear in the sea should be appropriately marked to reduce potential for gear conflict, whether with commercial fishing, merchant or leisure craft.

5.32 Marine Scotland Compliance will need to take enforcement action on gear that is not appropriately marked. This will require significant resource.

**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?**

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

## **APPLYING A BETTER EVIDENTIAL STANDARD**

### **Task Force Recommendations 1, 2 and 4**

5.33 It is challenging to secure the necessary evidence standard for Police Scotland to act if a common law offence (theft or vandalism) has occurred. In order to have better evidence we will need to establish whether creels have been removed / displaced, and if the vessel is likely to have been fishing in the area. In order to provide better information there needs to be an increase in the reporting of creel locations and vessel location. Currently VMS only applies to vessels of 12 metre overall and longer. Therefore the options to consider are:

- Full extension of VMS to vessels below 12 metres, with the possibility of an increased “ping” rate;
- Greater application of AIS and reporting of gear location;
- Potential declaration and formal reporting of areas cleared of static gear on a seasonal basis (seasonal closures); and
- Mandatory tagging of creels to identify the owner.

5.34 All of these options put a cost burden onto fishermen and the extension of any current legal requirements needs to be carefully thought through.

5.35 VMS units cost approximately £1500. There are also associated warranty and transmission costs to factor in. Current Control Regulation provisions also stipulate that transmission needs to be on a two hourly basis, by satellite, and that a vessel cannot leave port for a trip unless it has a fully functional unit. Two hourly position reports do not provide sufficient data for inshore activities. VMS is first and foremost a control tool, and is covered by data protection agreements. Extending technology to vessels on a statutory basis will need to be underpinned by a statutory instrument and the impact of data protection will need to be addressed.

5.36 Technology appears to feature in a wide range of measures to address gear conflict.

### **Measures to put in place for effective enforcement**

5.37 To inform what kind of technology is appropriate in the inshore environment the following should be considered:

- There are data protection issues to consider if applying VMS to vessels under 12 metres;
- Marine Scotland will require greater monitoring;
- AIS is not tamper proof (that is, it can be switched off);

- Greater detail is required on fishing location;
- It does not apply to unlicensed fishermen; and
- Proportionality of applying technology to smaller vessels.

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

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

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

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

## **SECTION 6: Next steps**

6.1 This consultation is intended to be open and the proposals outlined above are at an outline level. We envisage further consultation and direct engagement with industry if they are to be implemented.

6.2 The aim of this consultation is to establish a framework for good governance that is effective and proportionate.

6.3 A consultation report will be published and discussed at the industry co-management Inshore Fisheries and Conservation Group (IFMAC).

ANNEX A



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

RESPONDENT INFORMATION FORM

**Please Note** this form **must** be returned with your response to ensure that we handle your response appropriately

**1. Name/Organisation**

Organisation Name

Title Mr  Ms  Mrs  Miss  Dr  Please tick as appropriate

Surname

Forename

**2. Postal Address**

<input type="text"/>		
<input type="text"/>		
<input type="text"/>		
<input type="text"/>		
Postcode	Phone	Email

**3. Permissions - I am responding as...**

<b>Individual</b>	/	<b>Group/Organisation</b>
<input type="checkbox"/>		<input type="checkbox"/>
Please tick as appropriate		

**(a)** Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

**Please tick as appropriate**  
 Yes  No

**(c)** The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

**(b)** Where confidentiality is not requested, we will make your responses available to the public on the following basis

**Please tick ONE of the following boxes**

Are you content for your **response** to be made available?

**Please tick as appropriate**  
 Yes  No

Yes, make my response, name and address all available

**or**

Yes, make my response available, but not my name and address

**or**

Yes, make my response and name available, but not my address

**(d)** We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

**Please tick as appropriate**  Yes  No



## CONSULTATION QUESTIONS

**Question 1: Should spatial management measures be considered to deal with gear conflict?**

Comments

**Question 2: If yes, should spatial separation be considered on a national basis or only in gear conflict “hotspots”?**

Comments

**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?**

Comments

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

**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?**

Comments

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

Comments

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

Comments

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

Comments

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

Comments

**Question 9: What other measures can strengthen codes of conduct?**

Comments

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

Comments

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Comments

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Comments

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Comments

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

Comments

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

Comments

## ANNEX B

### Total Gear Conflict Costs by Gear Type by IFG

Home	Gear	Mean	N	Std. Deviation	Sum
<b>South West</b>	Demersal trawl	£2,600	2	3,394	£5,200
	Nephrops pots/creels	£8,494	17	12,367	£144,400
	Nephrops trawl	£6,967	6	7,431	£41,800
	Other shell fish pots/creels	£1,983	10	1,759	£19,825
	Pelagic trawl	£15,000	1		£15,000
	Scallop dredge	£9,000	1		£9,000
	<b>Total</b>		<b>£6,357</b>	<b>37</b>	<b>9,345</b>
<b>North West</b>	Demersal trawl	£0	1		£0
	Nephrops pots/creels	£4,340	42	6,547	£182,300
	Nephrops trawl	£4,700	9	4,232	£42,301
	Other shell fish pots/creels	£5,940	5	8,350	£29,699
	Other shellfish hand diving	£0	1		£0
	Scallop dredge	£0	1		£0
	Scallop hand diving	£8,000	2	0	£16,000
	<b>Total</b>		<b>£4,431</b>	<b>61</b>	<b>6,160</b>
<b>Outer Hebrides</b>	Nephrops pots/creels	£10,850	10	15,649	£108,500
	Nephrops trawl	£5,000	6	3,688	£30,000
	Other shell fish pots/creels	£26,000	3	30,790	£78,000
	<b>Total</b>	<b>£11,395</b>	<b>19</b>	<b>16,760</b>	<b>£216,500</b>
<b>Moray Firth &amp; North Coast</b>	Nephrops pots/creels	£2,000	1		£2,000
	Nephrops trawl	£5,000	1		£5,000
	Other shell fish pots/creels	£4,066	16	6,184	£65,050
	Scallop dredge	£0	1		£0
	<b>Total</b>	<b>£3,792</b>	<b>19</b>	<b>5,744</b>	<b>£72,050</b>
<b>Orkney</b>	Nephrops pots/creels	£3,750	2	1,768	£7,500
	Other shell fish pots/creels	£1,100	2	1,273	£2,200
	Other shellfish hand diving	£0	1		£0
	<b>Total</b>	<b>£1,940</b>	<b>5</b>	<b>2,029</b>	<b>£9,700</b>

<b>East Coast</b>	Demersal trawl	£1	1		£1
	Nephrops trawl	£3,000	1		£3,000
	Other shell fish pots/creels	£13,478	27	26,134	£363,900
	Scallop dredge	£0	1		£0
	<b>Total</b>	<b>£12,230</b>	<b>30</b>	<b>25,041</b>	<b>£366,901</b>
<b>Shetland</b>	Demersal trawl	£20,000	1		£20,000
	Other shell fish pots/creels	£8,000	1		£8,000
	<b>Total</b>	<b>£14,000</b>	<b>2</b>	<b>8,485</b>	<b>£28,000</b>
<b>Total</b>	Demersal trawl	£5,040	5	8,632	£25,201
	Nephrops pots/creels	£6,176	72	9,853	£444,700
	Nephrops trawl	£5,309	23	4,830	£122,101
	Other shell fish pots/creels	£8,854	64	19,106	£566,674
	Other shellfish hand diving	£0	2	0	£0
	Pelagic trawl	£15,000	1		£15,000
	Scallop dredge	£2,250	4	4,500	£9,000
	Scallop hand diving	£8,000	2	0	£16,000
	<b>Total</b>	<b>£6,929</b>	<b>173</b>	<b>13,505</b>	<b>£1,198,676</b>

Reference: Alan Radford and Geoff Riddington – Grid Economics – Inshore Gear Conflict Survey 2014



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