POLICY NOTE

THE SEA FISHERIES (REMOTE ELECTRONIC MONITORING AND REGULATION OF SCALLOP FISHING) (SCOTLAND) REGULATIONS 2024

SSI 2024/XXX

The above instrument was made in exercise of the powers conferred by paragraph 1(1)(b) and (c) of schedule 8 of the Fisheries Act 2020[1] and all other powers enabling them to do so. The instrument is subject to affirmative procedure.

Summary Box

This instrument mandates the use of Remote Electronic Monitoring (REM) systems on all "relevant scallop boats"[2] and "relevant pelagic boats"[3] during fishing trips in the Scottish zone and, for Scottish vessels falling within those categories, during fishing trips wherever they are fishing. The instrument revokes the REM requirements in article 6 of the Regulation of Scallop Fishing (Scotland) Order 2017[4] (the 2017 Order), which are being superseded.

In addition, the instrument consolidates the gear restrictions for scallop dredge vessels fishing for king scallops in the Scottish zone into a single article in the 2017 Order, with minor amendments. For vessels without a qualifying historic track record of fishing with either 9 or 10 dredges per side in the 6-12 nautical mile area within the Scottish zone at least once between 1 January 2018 and 31 December 2020 (inclusive), as evidenced by REM equipment/data, the maximum number of scallop dredges which those vessels can deploy per side in the 6-12 nautical mile area will reduce to 8 per side (16 in total) and restrictions on the maximum length and number of tow bars deployed will apply. The restrictions are set out in the Policy Objectives table below.

Policy Objectives

REM systems support comprehensive data collection in fisheries, using imagery, sensors and vessel positioning systems to independently monitor operations at sea. The components of REM systems can differ depending on the monitoring, control and surveillance objectives for which they are used.

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1 2020 c. 22. For relevant provisions specifying the scope of the powers to make regulations under paragraph 1 of schedule 8 of the Fisheries Act 2020, see, in particular, section 51(1) and paragraphs 1(6)(b), 4(1)(a), 4(2), 4(3) and 4(6) of schedule 8 of that Act.

2 Any fishing boat which deploys scallop dredges in the Scottish zone and any Scottish fishing boat which deploys scallop dredges outwith the Scottish zone. A "scallop dredge" is defined as "an appliance with a rigid framed mouth which is towed through the water and is manufactured, adapted, used or intended for use for the purpose of fishing for scallops" and a "scallop" is defined as a bivalve mollusc of the *Pectinidae* family.

3 Vessels that are 12 metres or more in length, are equipped with at least one of a chilled sea water system (CSW), a refrigerated sea water system (RSW) or freezer storage capabilities, and which deploy any kind of fishing net in the Scottish zone or, for Scottish vessels, wherever they are fishing, for the primary purpose of fishing for small pelagic species of fish (species including mackerel, herring, horse mackerel, anchovy, sardine, blue whiting, argentines, sprat, and boarfish).

4 Scottish Statutory Instrument 2017/127 - https://www.legislation.gov.uk/ssi/2017/127/made

The policy objective is to improve the capacity to monitor fishing activity in the Scottish zone, and the fishing activity of Scottish fishing vessels wherever they operate. The enhancements in monitoring and enforcement delivered by REM will deter non-compliant fishing activity and provide confidence that fishers are complying with the rules and regulations that are in place.

The high resolution data generated from REM systems will enhance the evidence base on which decisions are taken by the Scottish Government or other relevant public authorities, including the provision of scientific advice and decisions relating to wider marine planning. The use of REM is also expected to help deliver the confidence and accountability that consumers and members of the public want to see from seafood products.

The instrument requires that an REM system which complies with the applicable technical specifications specified by Scottish Ministers under this instrument must be installed on board relevant scallop boats and relevant pelagic boats. The master, the owner and the charterer (if any) of, as the case may be, a relevant scallop or pelagic boat must ensure that the REM system installed onboard is fully functional for the duration of any fishing trips in the Scottish zone and, for Scottish vessels, for the duration of all fishing trips. It is the responsibility of vessel owners to meet in full any costs, charges or fees arising from installing and maintaining REM systems. It is the responsibility of vessel owners and charterers (if any) to meet in full any costs, charges or fees arising from arranging and maintaining Scottish Ministers' access to the data storage system to which an REM system transmits data recorded in relation to a fishing trip and any companion software for an REM system.

The instrument sets out processes to be followed to confirm that, where an REM system is installed on board a relevant scallop or pelagic boat for the first time, or an REM system is replaced, that the system complies with the applicable technical specifications and is fully functioning to the satisfaction of the Scottish Ministers. Procedures are set out for first installations or replacements of REM systems which occur, for relevant scallop boats, on or after 17 June 2024 and for relevant pelagic boats, on or after 7 March 2026.

The instrument provides a lead-in time before the main pelagic provisions come into force. This includes a 6 month preparatory period (beginning on 7 September 2025) before the main pelagic provisions come into force on 7 March 2026. In order to comply with the main pelagic provisions from the point they take effect, by the end of that preparatory period, the master, owner and the charterer (if any) of a relevant pelagic boat must have:

- ensured that an REM system, which complies with the technical specification specified by Scottish Ministers, is installed on board the boat;
- submitted in writing to the Scottish Ministers any information and documentation specified by the Scottish Ministers;
- ensured that the boat undergoes a remote inspection; and
- following a remote inspection and with Scottish Ministers' prior written consent, ensured that the boat undertakes a system test trip.

The instrument also sets out processes to be followed if an REM system technical fault or malfunction is detected prior to or during a fishing trip and imposes duties in relation to retaining data recorded by an REM system in relation to a fishing trip and providing that data to the Scottish Ministers on request.

The instrument establishes various prohibitions attached to any interference or tampering with the REM system or the data recorded by an REM system and creates a number of offences and penalties that are consistent with the general approach to existing fisheries legislation.

The instrument amends the Regulation of Scallop Fishing (Scotland) Order 2017[5] (the 2017 Order). It revokes the REM requirements contained in article 6 of the 2017 Order for certain scallop dredge vessels fishing for king scallops in parts of the Scottish zone (as these requirements are being superseded by the REM requirements being imposed by the instrument on all "relevant scallop boats").

In addition, the instrument consolidates the gear restrictions for scallop dredge vessels fishing for king scallops in the Scottish zone into a single article in the 2017 Order, with minor amendments. For scallop dredge vessels without a qualifying historic track record of fishing at least once with either 9 or 10 dredges per side in the 6-12 nautical mile area within the Scottish zone between 1 January 2018 and 31 December 2020 (inclusive), as evidenced by REM equipment/data (explained further in the table below), the maximum number of scallop dredges which those vessels can deploy per side in the 6-12 nautical mile area will reduce to 8 per side (16 in total) and they will be subject to restrictions on the maximum length and number of tow bars which they can deploy when fishing in the 6-12 nautical mile area. All scallop dredge vessels fishing for king scallops in the 0-6 nautical mile area of the Scottish zone will be subject to restrictions on the maximum length and number of tow bars that they can deploy when fishing in that area.

The table below shows the restrictions on scallop dredge gear in the Scottish zone which will apply under the 2017 Order up until 16 June 2024 and the restrictions which will apply from 17 June 2024 onwards, once the amendments which the instrument makes to the 2017 Order come into force.

Sea Zone within the Scottish zone	**Restrictions under the version of the 2017 Order which applies until 16 June 2024**	**Restrictions under the version of the 2017 Order which will apply from 17 June 2024 onwards**
		Note The REM requirements under Article 6 of the 2017 Order for certain vessels fishing for king scallops in parts of the Scottish zone are being revoked, as they are being superseded by the REM requirements which Part 2 of this instrument will impose on all scallop dredge vessels fishing for any species of scallop in the Scottish zone. Therefore, any

5 Scottish Statutory Instrument 2017/127 - https://www.legislation.gov.uk/ssi/2017/127/made

		scallop dredge vessel fishing for any species of scallop in any part of the Scottish zone will need to comply with the REM requirements imposed by Part 2 of this instrument (explained above).
0 – 6 nautical miles	If carrying an REM system which met the requirements of Article 6 of the 2017 Order and was fully functional at all times:- 8 dredges per side (16 in total) If not carrying an REM system which met the requirements of Article 6 of the 2017 Order and was fully functional at all times:- 8 dredges per side (16 in total) Maximum tow bar length 7.5 metres and no more than 2 tow bars deployed.	8 dredges per side (16 in total) Maximum tow bar length 7.5 metres and no more than 2 tow bars deployed
6 – 12 nautical miles	If carrying an REM system which met the requirements of Article 6 of the 2017 Order and was fully functional at all times:- 10 dredges per side (20 in total). If not carrying an REM system which met the requirements of Article 6 of the 2017 Order and was fully functional at all times:- 8 dredges per side (16 in total). Maximum tow bar length 7.5 metres and no more than 2 tow bars deployed.	8 dredges per side (16 in total). Maximum tow bar length 7.5 metres and no more than 2 tow bars deployed. In the case of vessels that have an "historic track record" of fishing for king scallops in the 6-12 nautical mile area with 9 or 10 dredges per side, verified by REM equipment/data, the vessel may still deploy up to 10 dredges per side (20 in total) when fishing for king scallops in the 6-12 nautical mile area. These vessels will not be subject to restrictions on the maximum length and number of tow bars which they can deploy when fishing for king scallops in the 6-12 nautical mile area.

		An historical track record is defined as, at any time during the reference period from 1 January 2018 to 31 December 2020 (inclusive), having carried out at least one fishing trip fishing for king scallops while deploying 9 or 10 dredges per side within the 6 to 12 nautical mile area, while fitted with a REM system which met the requirements of Article 6 of the 2017 Order.
12 – 200 nautical miles	If carrying an REM system which met the requirements of Article 6 of the 2017 Order and was fully functional at all times:- 14 dredges per side (28 in total)	14 dredges per side (28 in total) No change to the maximum dredge numbers which can be deployed
A single trip during which scallop dredges are deployed by the vessel in both the 0-12 nautical miles area and the 12-200 nautical miles area	8 dredges per side (16 in total). Maximum tow bar length 7.5 metres and no more than 2 tow bars deployed.	8 dredges per side (16 in total). Maximum tow bar length 7.5 metres and no more than 2 tow bars deployed. No change to the maximum dredge numbers which can be deployed or to the restrictions on tow bar length and number of tow bars deployed.

EU Alignment Consideration

The EU is taking steps to consider a role for REM in certain fisheries as part of their wider review of the EU control and enforcement regulation[6]. The instrument will advance the standards shared with the EU, creating a temporary period of divergence while it progresses its own development of REM.

Consultation

To comply with the requirements of paragraph 5(1) of schedule 8 of the Fisheries Act 2020, the Scottish Ministers have undertaken a 12-week public consultation which sought views on the implementation, impact and costs on the pelagic and scallop dredge fleets, and also on the

6 Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy (OJ L 343, 22.12.2009, p. 1–50

general principles on the use of REM in the Scottish zone. The consultation ran from 15 March to 7 June 2022.

Responses were submitted by 15 individuals and 33 organisations or groups, including conservation groups and the fishing sector and have proved helpful in providing stakeholder views on a number of key questions and developing the instrument. Recurring issues or themes raised in the consultation included ensuring that the same REM requirements were applied to all vessels within a fleet segment fishing in the Scottish zone regardless of origin, that monitoring and enforcement was consistent across Scottish and non-Scottish boats, the potential ecological and commercial benefits of using REM and dealing with system malfunctions. A full analysis report of the consultation responses[7] and an outcome report answering the general points raised across the representations[8] are published on the Scottish Government website. A full list of those consulted and who agreed to the release of this information is attached to the consultation report published on the Scottish Government website.

Specific feedback received as part of the consultation has been used to shape the legislation, including (but not limited to) the following topics:

- extending the lead-in time for the pelagic industry to prepare for REM requirement;
- refining the definition of pelagic vessels to more accurate reflect the fleet segment;
- refining the technical specifications setting out minimum standards for REM systems as part of the REM requirements that must be met; and
- ensuring that consistent REM monitoring and enforcement is in place.

In addition, not all responses to the consultation resulted in a change to the legislation or policy, including (but not limited to):

- the number of cameras required for scallop vessels - a number of consultation respondents suggested that the number of digital cameras required on a scallop dredge boat could be increased to realise the full benefits of REM, for example to monitor catch composition and discards. The Scottish Government response recognised this ambition but was clear that it had to be tempered with realistic expectations of what the technology can currently deliver, along with what and how data can be analysed considering different working environments onboard fishing vessels.

The Scottish Government shared the consultation document with other UK fisheries administrations, namely the UK Government, Northern Ireland Executive and Welsh Government. Further consultation on the content of the instrument has taken place, particularly around the technical specifications that vessels are required to meet. Suggestions relating to the minimum technical standard and data transmission requirements have been taken account of within the final legislative drafting.

7 https://www.gov.scot/publications/analysis-consultation-marine-resources-ensuring-long-term-sustainability-remote-electronic-monitoring-rem/

8 https://www.gov.scot/publications/sg-response-consultation-marine-resources-ensuring-long-term-sustainability-remote-electronic-monitoring-rem/

In accordance with Article 36(4) of the UK General Data Protection Regulation[9], consultation with the Information Commissioner's Office took place in 2022 and 2023 on the data protection implications of REM.

Guidance documents on the specific REM requirements for the scallop dredge fleet and the pelagic fleet will be published on the Scottish Government website.

Impact Assessments

A Business and Regulatory Impact Assessment (BRIA) and Data Protection Impact Assessment have been completed, and the BRIA is attached to this instrument. An Equality Impact Assessment (EQIA) has not been completed for this instrument as there are no direct or indirect effects on specific protected characteristics set out in the Equalities legislation, and a Fairer Scotland assessment is available on the Scottish Government website. The instrument has no direct or indirect effect on children or young people.

A full Island Communities Impact Assessment (ICIA) has not been completed as the instrument is not likely to have an effect on an island community which is significantly different from its effect on other communities (including other island communities). A Strategic Environmental Assessment (SEA) has not been completed because the instrument is likely to have no or minimal direct environmental effects.

When preparing this legislation, the Scottish Government has considered and had due regard to the environmental principles contained within the UK Withdrawal from the European Union (Scotland) (Continuity) Act 2021 ('the Continuity Act').

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The costs of an REM system that meets the requirements of the technical specifications which will be specified by the Scottish Ministers under this instrument for relevant scallop boats and relevant pelagic boats will vary depending on the REM system chosen by a business and the means of data transmission. Furthermore, the configuration of the REM system - in particular the number of cameras and sensors required to meet the minimum standards set out in the technical specifications - will vary depending on factors such as a vessel's size, layout and nature of fishing operations.

As set out in the BRIA, the financial effects on pelagic fishing vessel businesses are not significant, representing less than 1% of the average Scottish pelagic vessel's annual net profit. The annual costs for the scallop dredge fleet, including replacement systems, represents 9% of the profit from an under 15 metre vessel and 7% of the profit from an over 15 metre vessel. Funding was provided for the cost of initial REM systems and installations on the active Scottish scallop dredge fleet due to the variability in the fleets profitability each year and to provide the owners of these vessels sufficient time to prepare for incurring future REM costs. This programme of work was initially hampered by the COVID-19 pandemic, with the majority of installations taking place 2021 - 2023.

9 The assimilated Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (EUR 2016/679)

Scottish Government
Marine Directorate

20 March 2024