POLICY NOTE

THE MARKING OF CREELS (SCOTLAND) ORDER 2020

SSI 2020/168

1. The above Order was made in exercise of the powers conferred by sections 3(1), (2), (2A) and (4), 22(2) and 22A of the Sea Fish (Conservation) Act 1967. The Order is laid – no procedure.

Purpose of the Instrument

2. This Order introduces requirements for the marking of creels. The Order extends to Scotland and applies in the territorial sea of the United Kingdom as adjacent to Scotland.

Policy Objectives

3. The main policy driver for this instrument is the issue of gear conflict in coastal fishing grounds. The vast majority of inshore fishers, whether static or mobile, co-operate well on a daily basis sharing fishing grounds without conflict or fuss. Accidental damage to creels is sometimes an occupational hazard in fishing but often these accidents are dealt with quickly and resolved directly and amicably by fishers themselves. The main objective of this Order is to reduce the incidence of such occurrences.

Consultation

4. There is no statutory requirement to consult on the Order itself. However, there has been significant consultation on the measures delivered via the Order. A consultation in 2014/15 on measures to tackle gear conflict in Scottish inshore waters resulted in a commitment that it would "In partnership with industry, consider measures to improve the marking and visibility of creels within 12 miles to help prevent gear conflict". In December 2015, the Cabinet Secretary announced recommendations on dealing with gear conflict. These included looking at good practice and possible legislative changes to the marking of creels inside 12 nautical miles.

5. Marine Scotland organised an online dialogue, and held discussions with three industry working groups formed specifically to consider options on addressing issues around gear conflict. Although the majority of organisations, associations and individuals who took part in the working groups supported the proposals, some parties did express concerns about being too prescriptive on how creels should be marked.

6. These proposals were therefore consulted on from November 2016 to February 2017, in order to give all fishers the opportunity to consider and comment on them.

7. Whilst overall there was support for the proposals as set out in that consultation. The consultation responses, however expressed concerns around creel loss in adverse weather or during strong tides if minimum buoy size requirement are introduced.

8. Marine Scotland has therefore decided not to legislate on minimum buoy size requirements and has instead published guidelines setting out best practice for marking creels, including minimum diameter of buoys, which aim to alleviate the concerns around creel loss.

Policy Summary

9. The Order is made in accordance with Article 19 of Regulation (EU) No. 1380/2013 on the Common Fisheries Policy and requires that:

    - Creels and fleets of creels are marked with one or more marker buoys. Fleets of creels comprising 10 or more creels must have at least one marker buoy fitted to each end of the fleet (Article 3).
    - Where creels and fleets of creels are deployed in connection with fishing from a licensed fishing boat, it requires that marker buoys display the fishing boats port number (PLN number) marked on the hull of the deploying licensed fishing boat and provides how the PLN number is to be displayed.

10. Offences for breach of this Order are contained in section 3(5) and (5A) of the Sea Fish (Conservation) Act 1967. Penalties, which are set out at section 11 of the Sea Fish (Conservation) Act 1967, include a fine not exceeding £50,000 on summary conviction and a fine on conviction on indictment. The court may also order the forfeiture of the fishing creels in respect of which the contravention constituting the offence occurred.

Ensuring Awareness

11. In August 2018 the Scottish Government published best practice guidance for marking fishing creels that sets out safe and effective marking practices. Information on the legal requirements introduced via this Order will be disseminated to the inshore fisheries sector via the Regional Inshore Fisheries Groups and also by Marine Scotland's fisheries officers.

Financial Effects

12. A Business and Regulatory Impact Assessment ("BRIA") has been published in respect of the provisions within this Order. This identified practical and financial benefits for the inshore fishing industry due to the expected reduction in accidental damage to fishing creels.

EQIA

13. This statutory instrument does not have a disproportionate impact on any specific sector, and on this basis it was not deemed necessary to produce an Equality Assessment.

Scottish Government
Marine Scotland

June 2020