I am writing with reference to SSI 2017/57: The Shellfish (Restrictions on Taking by Unlicensed Fishing Boats) (Scotland) Order 2017. Heather Lyall, Senior Assistant Clerk to the Committee contacted my officials on Friday 10 March 2017 seeking clarification on a number of issues relating to the Order, which I have responded to below.

How is this going to be enforced?

Marine Scotland Fisheries Officers' conduct routine patrols of ports and areas where fish is landed, and conduct routine audits of registered buyers to ensure there is no buying from unlicensed vessels.

Marine Scotland Compliance carries out regular risk assessments and considers what the main risks and areas of priority are. Together, with knowledge of where unlicensed fishermen historically fish and any intelligence received – there is a phone number and email where information can be provided anonymously – a picture is built up and known areas and activities can be targeted with resources. This may be extra patrols in the area by coastal officers, or the tasking of a Marine Patrol Vessel or a Rigid Inflatable Boat (RIB) patrol.

A Registration of Buyers and Sellers (RBS) Scheme has been fully operational in Scotland since 2005 and requires all buyers and sellers of first sale fish to be registered.

Once registered, buyers and sellers are able to buy and/or sell first sale fish and shellfish. The purpose of the RBS Scheme is to enable individuals or companies to become registered buyers and sellers of first sale fish and shellfish, while allowing fisheries administrations to keep track of the actual amounts of fish species being sold; improve the monitoring and control of landings of fish; and increase traceability of fish by ensuring that all landings are properly recorded and capable of verification.
In many areas, those businesses that might be more likely to be an unlicensed buyer of fish, are visited regularly and informed of the legal requirements when purchasing fish and shellfish, as well as being targeted through information leaflet drops.

There is a range of enforcement options open to officers in Marine Scotland Compliance. Front line officers may decide that a verbal debrief or an advisory letter is an appropriate step or may consider that a more serious form of action is necessary depending on the extent and perceived seriousness of the suspected offence. In such cases, a warning letter may be issued; a Fixed Penalty Notice may be offered where the maximum value is £10,000; or referral to the Crown Office and Procurator Fiscal Service for consideration of court action might be necessary.

I want to reassure you that action is being taken against those believed to be undertaking illegal commercial fishing. For example, in 2016 Marine Scotland Compliance officers, while on a routine patrol to check on local shellfish landings, came across an individual in possession of three boxes of lobster. They knew the individual as a fisherman from his ownership of a previous vessel and soon identified that these lobster had been caught from a vessel to which there was no licence attached. Officers also established – when the prospective buyer arrived – that the lobster were being caught and sold commercially. The appropriate witness statements were gathered and an interview of the fisherman was conducted. He was offered a fixed penalty notice of £500 as an alternative to court action which was paid in full. On this occasion it was clear that the individual concerned was making a profit from his enterprise.

**When setting the limits what were the scientific grounds?**
**What is the estimated catch from unlicensed fishing boats?**

Brown crab, velvet crab and lobster are important to Scotland’s rural economy, fished by around 1,400 static gear (creel) vessels, with landings worth £26.8 million in 2015. In recent years, fishermen have expressed increasing concern about the health of these fisheries. Assessments by Marine Scotland Science indicate that crab and lobster stocks in some areas are being fished close to or above recommended levels. So for example, crab (brown and velvet) on the east coast are fished above recommended levels.

Whilst supporting the right of hobby fishermen to continue to enjoy their hobby and to catch ‘one for the pot’, there is a strong desire to deal with unlicensed fishermen fishing commercially and illegally under the guise of conducting a hobby.

Anecdotal evidence from multiple sources tells us that some hobby/unlicensed fishermen are selling their catch on a commercial basis, and that there are particular hotspots around the coast and increased activity during spring and summer months, for example, on the Moray Firth. Genuine hobby fishermen are not required to record or notify Marine Scotland of their catch and by its very nature, illegal commercial fishing is difficult to measure. It is clear that a problem exists and that positive action should be taken now to ensure that the conservation measures taken by commercial fishermen are not undermined, and stocks are protected to support valuable export markets.

I also want to ensure we support the new conservation management measures for Scotland’s commercial crab and lobster fisheries, which are due to come into force later this year.
It is interesting to note that licensed vessels need to have a shellfish entitlement to target crab and lobster otherwise they face restrictions on what they can take from the sea:-

- up to 5 Lobsters or Crawfish per day, caught with pots or nets, and
- up to 25 crabs per day, caught with pots or nets, or
- any shellfish, excluding Green crabs, taken as a permitted by-catch, when fishing for other species using towed gear, up to a maximum limit of 10% by weight, of the total catch

I am keen to ensure that hobby fishermen can enjoy their pursuit but that we bring in measures to prevent unlicensed, and thus illegal, commercial fishermen claiming to be undertaking a hobby. I believe that it is reasonable to set limits on what can be caught by hobby fishermen but that any restrictions put in place need to be proportionate, and enforceable.

One of the activities that can cause problems is when unlicensed fishermen arrive at a particular spot and over a short period of time harvest significant amounts of shellfish from a small geographic spot. This can have a significant impact on scallop, lobster and crab stocks in that location.

Another example of problem behaviour is demonstrated in a recent Marine Scotland intelligence report. A source on the Moray Coast informed officials that there were quite a few unregistered small boats working up to 20 creels each in the Hopeman/Lossiemouth area. It was alleged that these vessels were selling shellfish, including undersized specimens, to various buyers, including restaurants in Aberdeen, and were storing live lobster for the lucrative Christmas period. Restrictions on taking by unlicensed boats would aid Compliance activity and help ensure only licensed vessels fished commercially.

Consideration was given to setting weekly or seasonal catch limits rather than a daily limit. Whilst there is some merit in this idea any measures introduced simply must be enforceable. I consider that it would be disproportionate to require hobby fishermen to report their catches, as is required by licensed fishermen, and without such an accompanying measure a weekly or longer period catch limit would be unenforceable and may in effect become the de facto daily limit. Unless a hobby/unlicensed fishermen had been subject to a previous inspection within the proscribed time limit, there would be no way for an enforcement officer to know what any particular fishermen had previously caught.

In setting catch limits I am seeking an easily understood and enforceable regulation but is not attempting to set a limit that would define either personal consumption or what is considered reasonable to ‘feed a family’. People are diverse as are family arrangements and what would be reasonable for one family could be too much or too little for another.

Safety of the public and fishermen is also paramount. Unlicensed fishermen may not have the relevant safety certificates etc. or be complying with best practice. In addition, there are concerns due to the untraceability of produce and the possibility of shellfish being sourced from areas affected by toxins, particularly if harvested from unclassified waters.
In considering introducing catch limits Marine Scotland did investigate what measures were in place elsewhere, notably in Northern Ireland and the North East of England. Northern Ireland introduced regulations in 2008 that included making it illegal to land, bring to land or retain on board a boat more than five crabs or one lobster per boat per day. In the North Eastern Inshore Fisheries and Conservation Authority (NIFCA) in England introduced catch limits for hobby/unlicensed fishermen about 12 years ago, alongside other restrictions and requirements. Within the first year of these changes NIFCA estimates that the catch from hobby/unlicensed fishermen reduced by 80%. This was in part due to policing by fishermen themselves and that NIFCA could confiscate the catch if it was above the permitted level.

22 responses, majority from the industry less than 50% supported the government please justify.

Most respondents to the consultation supported the introduction of limits on unlicensed fishermen. Whilst 22 responses were received expressing an opinion on catch limits, only three respondents were opposed to any restrictions being introduced. One respondent wished to see a total ban on all hobby/unlicensed activity. Ten respondents supported the proposals as set out. The remainder agreed broadly with the proposals to introduce limits but suggested variations in what those limits should be, with two respondents suggested the limit should allow a family to be fed and two suggested the limit for lobsters should be set at two. There were a number of suggested variations on limits for catching crabs ranging from reducing to three or splitting crab by species and setting a limit of one or two for brown crab or ten for other species.

What efforts were made to engage local unlicensed fishing boat owners?

A proposal to set catch limits for those fishing from unlicensed boats was consulted on in the summer of 2016. Marine Scotland did take steps to publicise the consultation by circulating widely amongst a variety of stakeholders. There is no organisation (of which I am aware) that represents those who fish from boats without a licence and certainly no organisation representing those who fish illegally. As such, there was no way of knowing who these individuals might be. However, Marine Scotland did contact, amongst others, the Scottish Sea Angling Conservation Network (SSACN), where there may be cross over with some members also catching shellfish from unlicensed boats.

Why was it not considered to make it offence to sell shellfish (as per rod caught salmon) rather making it illegal to catch them?

At present, unlicensed fishing vessels may not sell their catch for profit, nor may fish be bought from an unlicensed vessel.
The setting of catch limits will allow the Scottish Government to differentiate between those genuinely pursuing a hobby and those catching sufficient quantities to make it a financially viable exercise and make a profit. Whilst I recognise the public's right to fish, this right must be balanced with the management of commercial fishing activity and the sustainability and health of the stock. I will of course listen to all concerns on this matter and keep restrictions under review.

FERGUS EWING