

Subordinate legislation - The Sea Fish (Prohibition on Fishing) (Firth of Clyde) Order 2024

Correspondence from Sustainable Inshore Fisheries Trust (SIFT), 12 March 2024

Dear Deputy Convener,

Clyde Cod

Thank you for circulating SIFT's letter dated 26th February 2024 ahead of your Committee's consideration of The Sea Fish (Prohibition on Fishing) (Firth of Clyde) Order 2024 at its meeting on 28th February 2024.

Whilst SIFT welcomes the Committee's careful scrutiny of the Order, we continue to have the following concerns:

- the Order will not materially contribute to a recovery in Clyde cod, because it focuses exclusively on protecting cod during the spawning season. Recovery will only be achieved when juvenile cod are also protected - especially from bycatch in trawls;
- the measures brought forward under the Order unnecessarily prohibit the low impact sectors of the Clyde fishery from continuing to operate. SIFT believes that Marine Directorate has failed to provide adequate evidence to justify this prohibition;
- Other evidence provided by Marine Directorate to support its management measures was also inadequate.

As a consequence, we believe that your Committee was put in a position where it was impossible to come to a fully informed decision on the Order. Accordingly, we urge the Committee to press Ministers to review the Order at the first opportunity. We set out our concerns in more detail below.

1. The adequacy of the Order

SIFT believes that the Order is insufficient, on its own, to recover the Clyde cod fishery. We note that the Cabinet Secretary stated during the Committee session: "this order seeks to maximise protection of spawning cod and the habitats in which they are likely to spawn". However, we also note that Mr Gibb of Marine Directorate stated during the session that "A fisheries manager has two focuses: they must protect juvenile fish to allow them to become adults and spawn, and they have a duty to protect the adults so that they can spawn and create juveniles".

Notwithstanding the surprising absence of any reference to the fundamental management concept of Maximum Sustainable Yield in Mr Gibb's evidence, we believe that the Order, by focusing exclusively on protecting spawning activity, and ignoring the protection of juvenile fish, will fail to ensure that the cod stock will recover so that it could again support a dedicated Clyde cod fishery.

We would urge the Committee to seek clarification from the Scottish Government on why only one of the fishery management 'focuses' referred to by Mr Gibb is being addressed. We would further strongly recommend that in doing so, the Committee draws evidence from the PhD work by Ana Adao at Strathclyde University (co-supervised by Marine Directorate) into the role of discards in the recovery of fish stocks in the Firth of Clyde.

2. The adequacy of evidence relating to the prohibition of static gears

As noted in SIFT's letter of 26th February 2024, we are concerned that low impact static gear fishing is to be prohibited under the Order despite an absence of evidence from Marine Directorate that it has a substantial adverse impact upon cod spawning.

In support of the prohibition, Mr Gibb of Marine Directorate submitted the following statement on creels in the Clyde at your session: "a local fisher says that in his area between 4000 and 5000 creels would be deployed and there are several local fishers in the area".

On being pressed on the source of this anecdote, Mr Gibb stated that his source was "a direct quote from a fisherman, who had an article in a newspaper as well as writing to me. My understanding from what he said is that, in his area, in addition to his boat, there are two other boats—in other words, cumulatively, there would be two or three boats operating together. That is about right. Every single fleet of creels can number 50 to 75, and numerous fleets will be hauled each day. There will be more fishermen, so a figure of many thousands is factually accurate." Mr Gibb then went on to state "we do not know how many creels there are in the water".

We trust that a recollection of a newspaper article was not used as part of the formal basis for deciding the scope of the Order. This would fall far short of the evidential standard which Marine Directorate indicated was the rationale for it not taking account of the Strathclyde PhD research in its decision making on the Order. This raises questions about whether double standards are being applied to the selection of evidence used by Marine Directorate.

We would urge the Committee to seek clarification from Marine Directorate on the evidence it provided regarding the quantity of creels used within the Clyde cod box area. It might also be useful to check its familiarity with the figure of relative disturbance by gear type we provided to the Committee in advance of that meeting

(trawling disturbing 18,000 times more seabed per kilo of nephrops landed than creeling, as referenced by the Scottish Government¹).

3. Use of available evidence

As noted above, the Strathclyde PhD research into the role of discards in the recovery of fish stocks in the Firth of Clyde was not taken into account in the drafting of the current Order. In his evidence to Committee, Dr Needle of Marine Directorate acknowledged that the evidence for the Order “is mostly based on published literature ... We combine that with an on-going set of substrate data from the British Geographical [sic – Geological] Survey” and that the PhD “research has not yet been published so there has been no external or internal peer review”.

Notwithstanding SIFT’s understanding that Marine Directorate, as a co-supervisor of the research, has carried out exactly such an internal review, we note that (as observed by Ariane Burgess MSP during the session) your Committee’s fisheries advisor, Prof Fernandes, has confirmed that “peer review is not essential for it to be used to inform policy”.

Given that Marine Directorate has a duty under the Fisheries Act 2020 and the accompanying Joint Fisheries Statement to make ‘full use of the best available scientific advice to support decision-making’, SIFT questions the Minister’s statement to you that “we are basing the order on the best scientific evidence that is available to us”.

We would urge the Committee to seek clarification from Marine Directorate on why it did not seek to take the PhD research into account.

4. The relevance of North Sea closures

SIFT was also concerned by Marine Directorate’s references to North Sea closures in relation to its Clyde measures. The Directorate’s Mr Gibb stated at your session that there are “10 identical closures in the North Sea”. We question how these North Sea closures are ‘identical’ to those in the Clyde, given they apply to different dates and durations, and - importantly - distinguish between fishing gear types (in this instance permitting pelagic trawls and seine netting in closed areas).

We would urge the Committee to seek clarification from Mr Gibb on how the North Sea closures are ‘identical’ and therefore relevant to the Order.

5. The evidence relating to the Clyde cod

SIFT is concerned that Marine Directorate’s Mr Gibb stated that “There is no stand-alone Clyde set of stocks and species” and goes on “Therefore the idea of managing Clyde stocks in the Clyde is not right.”

¹ <https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2015/01/management-scottish-inshore-fisheries-assessing-options-change/documents/00467217-pdf/00467217-pdf/govscot%3Adocument/00467217.pdf>

Regarding cod, these statements are contrary to the advice provided by ICES which was referenced by Dr Needle. The ICES document: ICES. 2022. Workshop on Stock Identification of West of Scotland Sea Cod (WK6aCodID; outputs from 2021 meeting). ICES Scientific Reports. 4:5. 24 pp. <http://doi.org/10.17895/ices.pub.10031> states that the scientific evidence points most strongly to North Sea and west of Scotland cod being made up of multiple overlapping subpopulations spanning Divisions 4.a and 6.a and a separate subpopulation of Clyde.

We are also concerned about Mr Gibb's statement that 'biomass has almost doubled'. It is unclear how such a claim has relevance to Clyde cod stock, given Dr Needle's evidence that "we remain in a position of not having a Clyde-specific stock assessment for cod". The statement may have referred to the Northwestern cod stock assessment, but this would not be relevant to the Order your Committee was considering because the Clyde is a separate sub-population.

We would urge the Committee to seek clarification from Mr Gibb on the relevance to the Order of both his statements about Clyde stocks and about the doubling of the cod stock in other regions. In summary, SIFT is extremely concerned about the quality of evidence presented by Marine Directorate to your Committee in support of its management proposals under the Order. SIFT believes that the evidence provided to the Committee may have hindered your Committee's ability to come to a balanced and evidence-based decision on the Order.

SIFT recommends a new Order after one year as opposed to the current practice of doing so every two years. This would give the opportunity to revise the Order ahead of the 2025 season, which could both support a recovery of cod stocks and the continuation of the static gear fishery.

Yours sincerely

Charles Millar - Executive Director