

Dear Convener,

Further to the Committee's recent consideration of the Clyde Cod SSI, and the decision to recommend annulment, I am writing to thank members for the seriousness and care with which this issue has been examined.

In anticipation that the Scottish Government may bring forward further measures to ensure its legal obligations toward Clyde cod are met, we have prepared a short summary of the key legal and policy considerations which we hope will assist the Committee in its ongoing scrutiny. The central issue is whether any future approach demonstrates compliance with the precautionary framework established under the **UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021**, the **Joint Fisheries Statement**, and related fisheries legislation and international commitments. In our view, the previous SSI did not clearly demonstrate compliance with that framework.

A one-page summary is set out below. A fuller briefing, including relevant extracts from the legislation and policy framework, is attached for reference.

Clyde Cod – Replacement SSI: Key considerations

If further measures are brought forward, the key test for the Committee will be whether the proposed approach applies the **precautionary principle** as required by current law and policy.

In practical terms, the precautionary framework requires that Government:

- Takes action to reduce environmental risk **despite scientific uncertainty**, and does not delay action because of evidence gaps
- Focuses management measures **proportionately on activities presenting the greatest risk**
- Takes account of **economic and social impacts**
- Identifies measures that are **cost-effective** in delivering conservation outcomes
- Provides for **review and adjustment** in light of new scientific information
- Operates within a process that allows effective **Parliamentary scrutiny**

Context from the Committee evidence

Evidence presented to the Committee indicated that:

- The previous SSI focused largely on data collection rather than measures to reduce mortality
- Survey evidence shows the stock has not been recovering
- The principal source of mortality is widely understood to be bycatch in Nephrops trawl fisheries
- Relevant survey data has not yet been fully processed or made available
- Reference was repeatedly made to “evidence gaps”, despite the precautionary framework requiring action in the face of uncertainty

Previously identified approach

In previous correspondence to the Committee, we noted that these legal requirements could be met through a proportionate interim approach which:

1. Targets restrictions only at gears where there is evidence of material impact on Clyde cod
2. Introduces a **time-limited SSI (for example, one year)** to maintain appropriate protection while further work is undertaken
3. Establishes a structured working process to assess options for reducing mortality and to report recommendations within a defined timeframe

We continue to consider that an approach along these lines would provide a credible means of demonstrating compliance with the precautionary framework, while allowing Government and stakeholders to identify the most effective long-term measures.

Bottom line

The key question for the Committee is whether any future measures — including any replacement SSI — demonstrate that the Scottish Government is applying the precautionary principle in accordance with current Scottish law and fisheries policy, and taking timely, proportionate and reviewable action to reduce the risk to Clyde cod.

We hope this is helpful to the Committee. Please let me know if any further information would be useful.

Kind regards,

Bally Philp

Coordinator

Scottish Creel Fishermen's Federation

Clyde Cod – Replacement SSI

Legal and policy considerations for the Rural Affairs and Islands Committee

Scottish Creel Fishermen's Federation (SCFF) 12/02/26

The key test for any future measures

If the Scottish Government brings forward further measures for Clyde cod, the central issue for the Committee will be whether the overall approach complies with the **current statutory and policy framework**.

That framework requires Ministers to apply the **precautionary principle** to fisheries management. In practice, this means that where there is a risk of environmental harm, Government is expected to take proportionate action to reduce that risk **even where scientific certainty is incomplete**, and not to delay action because of evidence gaps.

The relevant framework includes:

- **UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021**
- **Joint Fisheries Statement (2022)**
- **UK Fisheries Act 2020**
- **UK–EU Trade and Cooperation Agreement (Article 494)**

Taken together, these establish the minimum standards that Government policy must meet.

What the precautionary framework requires

1. Duty to apply the precautionary principle (Scotland)

Under the **Continuity Act 2021**, Scottish Ministers must have due regard to the guiding principles on the environment when developing policy.

The precautionary principle requires that:

- Action is taken where there is a risk of environmental harm, even where scientific certainty is incomplete
- Lack of full scientific certainty is **not used as a reason to postpone cost-effective measures**

- Decisions are proportionate to the level of risk
 - Policies are reviewed and adjusted as evidence develops
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2. Application to fisheries management

The **Joint Fisheries Statement**, paragraph 2.1.7, states:

The absence of adequate scientific information should not be used as a reason for postponing or failing to take management measures.

The precautionary objective requires fisheries management to:

- Act to **maintain or restore stocks**
- Apply precaution where scientific uncertainty exists
- Manage risk to stocks and the wider ecosystem
- Base decisions on the best available evidence

These requirements are reinforced by the **UK Fisheries Act 2020** and the **UK–EU Trade and Cooperation Agreement**, which require measures to be proportionate, cost-effective and subject to review.

Context relevant to Clyde cod

Evidence presented to the Committee indicated that:

- The previous SSI focused primarily on **data collection rather than reducing mortality**
- Survey evidence shows the stock has **not been recovering**
- The principal source of mortality is widely understood to be **bycatch in Nephrops trawl fisheries**
- Relevant survey data exists but has **not yet been fully processed or published**
- Reference was repeatedly made to “evidence gaps”, despite the precautionary framework requiring action in the face of uncertainty

Taken together, this points to the need for a management response that applies existing evidence within a precautionary framework.

Minimum expectations for compliance

In order to demonstrate compliance with the precautionary framework, any further measures should show that:

1. **Management action is targeted at activities presenting a material risk to the stock**, and avoids unnecessary restrictions where no such risk has been identified.

2. Any regulatory measures are **time-limited or subject to defined review**, allowing adjustment as evidence develops.
 3. Government has established a process capable of:
 - Assessing options for reducing mortality
 - Evaluating environmental, economic and social implications
 - Identifying proportionate and cost-effective measures
 - Reporting outcomes within a timeframe that allows Parliamentary scrutiny
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Practical route to compliance

In previous correspondence to the Committee, we noted that these requirements could be met through a proportionate interim approach which:

1. Targets restrictions only at activities where there is evidence of material impact on Clyde cod
2. Introduces a **time-limited SSI (for example, one year)** to maintain appropriate protection while further work is undertaken
3. Establishes a structured process to assess options for reducing mortality which:
 - Involves **relevant stakeholders**, including the fishing industry, scientific advisers, conservation interests and government
 - Evaluates the **environmental effectiveness** of potential measures
 - Assesses their **economic and social implications**
 - Identifies options that are **proportionate and cost-effective**, consistent with the precautionary framework
 - Reports conclusions and recommended actions to Ministers (and the Committee) within a defined timeframe sufficient to allow Parliamentary scrutiny (approximately **6–8 months**)

An approach of this kind would maintain protection for the stock while enabling Government to identify the most effective long-term measures and to demonstrate compliance with the precautionary framework.

Bottom line

The key question for the Committee is not simply what measures are proposed, but whether any future measures — including any replacement SSI — demonstrate that the Scottish Government is applying the precautionary principle in accordance with current Scottish law and fisheries policy, and taking timely, proportionate and reviewable action to reduce the risk to Clyde cod.