

## Clyde Cod Scottish Statutory Instrument (SSI)

### Precautionary approach, scientific evidence, and implications of annulment

#### Purpose of this note

This briefing sets out SCFF's position on the proposed Clyde cod Scottish Statutory Instrument (SSI), in light of recent discussions regarding exemptions, participation in the Targeted Scientific Programme (TSP), and the possibility of annulling the SSI.

Our intention is not to oppose protection for vulnerable cod, but to explain why the current SSI does not address the primary source of cod mortality, does not meet the requirements of the precautionary approach in law, and risks delaying effective management action.

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#### Recent context

Since the Committee's most recent evidence session, Marine Directorate has indicated that fishing activity within the Clyde cod box may be permitted through exemptions, including for creel vessels, and potentially other sectors, linked to participation in the Targeted Scientific Programme (TSP).

At the same time, MSPs have indicated that annulment of the SSI is being actively considered.

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#### Targeted Scientific Programme and creel fishing

SCFF does not object to the Targeted Scientific Programme and supports proportionate, voluntary participation by creel fishers in scientific data collection.

However, we have concerns about participation in the TSP being made a **condition of access** to the fishery, particularly given that:

- there is no compelling evidence that creel fishing represents a significant risk to Clyde cod recovery; and
- the requirement creates an effective compulsion, with creel vessels facing the loss of up to 11 weeks of fishing activity if they do not participate.

While we support science and cooperation, we do not consider this a fair or proportionate application of precaution. We raise this point briefly here, but it is not the central issue with the SSI.

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## **The central issue: cod mortality in demersal trawl fisheries**

There is increasing consensus, including from scientific experts who have given evidence to the Committee, that:

- the principal driver of Clyde cod mortality is bycatch in demersal trawl fisheries;
- while data gaps remain, the evidence of significant cod mortality in these fisheries is clear, compelling and largely undisputed; and
- the evidential basis for excluding creel fishing from the cod box is extremely weak by comparison.

Despite this, the current SSI does not include measures that can reasonably be expected to reduce cod mortality in the trawl sector.

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## **Precautionary approach: legal obligations**

The application of the precautionary approach is not discretionary. It is a legal requirement under both domestic and international law.

### **UK Fisheries Act 2020**

Section 1 of the Fisheries Act 2020 establishes the precautionary objective, which requires that:

“exploitation of marine biological resources restores and maintains populations of harvested species above levels which can produce maximum sustainable yield, and that management decisions are taken on the basis of the best available scientific advice, applying the precautionary principle.”

This requires action where there is credible evidence of serious harm, even where scientific uncertainty remains.

### **UK–EU Trade and Cooperation Agreement**

Article 494 and Annex 35 of the Trade and Cooperation Agreement require fisheries management to be based on the precautionary approach, consistent with international law, including the principle that:

the absence of complete scientific certainty shall not be used as a reason for postponing measures to prevent environmental degradation where there is a risk of serious harm.

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## **Application of precaution in the Clyde cod SSI**

In practice, the precautionary approach requires that management action be directed first and foremost at **known and significant sources of mortality**.

At present:

- precaution is being applied to sectors where impacts are uncertain or minimal; and
- it is not being applied to the sector where impacts are known, substantial and repeatedly identified.

This is a reversal of how precaution is intended to operate and is difficult to reconcile with statutory obligations.

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## Annulment of the SSI

We recognise concerns that annulling the SSI could result in a temporary absence of formal protection for spawning cod.

However, it is important to note that:

- the current SSI does not include measures capable of delivering a meaningful reduction in cod mortality; and
- as such, it offers the appearance of protection without the likelihood of achieving recovery.

In these circumstances, annulment may be justified if it compels the Scottish Government to return with measures that are both lawful and effective.

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## What would constitute a credible replacement

If the SSI is annulled, any replacement should include, as a minimum:

1. **Immediate measures** to reduce cod bycatch and mortality in demersal trawl fisheries; or
2. **A formal, time-bound precautionary process** to develop and implement such measures, with clear oversight and defined deadlines.

In addition:

- any replacement SSI should be limited to **one year**, not three, to avoid delay and drift; and
  - creel vessels should be exempted from exclusion, with participation in scientific programmes encouraged but not made a condition of access.
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## Conclusion

SCFF supports effective, evidence-based action to protect and recover Clyde cod. The current Scottish Statutory Instrument does not meet that test.

We therefore support annulment of the SSI if it results in the development of measures that genuinely address known sources of cod mortality and comply with the precautionary approach required in law.

We encourage the Committee to assess proposed measures on whether they are capable of delivering real reductions in cod mortality, rather than on whether they preserve existing processes.