

Consultation on Scotland's Future Catching Policy (FCP) – partial Business and Regulatory Impact Assessment (BRIA)

March 2022

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Purpose and intended effect

This consultation seeks the views of stakeholders on Scotland's Future Catching Policy (FCP), which will establish a new approach to managing sea fishing activities within Scottish waters and will ensure that the right management measures are in place to support reasonable and pragmatic decision making.

[Scotland's Fisheries Management \(FFM\) Strategy](#)¹ set out a range of principles and commitments intended to deliver a sustainable and responsible approach to fisheries management in Scotland. This includes a commitment to deliver a robust catching policy, in partnership with stakeholders, which would introduce a range of technical and spatial improvements for fisheries vessels, reduce waste, and encourage compliance with legislation.

The development of the FCP will directly support a number of key principles contained within the FFM Strategy, most notably to improve accountability and confidence in sea fishing operations along with demonstrating transparency and credibility in the fisheries management decisions that are taken, and the rules and regulations that are in place.

In taking forward the FCP, Scottish Ministers will be delivering on their obligations under the by-catch objective of the Fisheries Act (2020) and commitments made within the Joint Fisheries Statement (JFS) specifically to 'work in partnership with stakeholders to develop a range of management measures that support fishers to avoid unwanted catches of quota species to reduce unnecessary fish mortality and discarding of fish' and 'working with industry to reduce and, where possible, eliminate bycatch and entanglement of sensitive species'.

Objectives:

The main components of the FCP as set out within this consultation are:

- To put in place additional technical (e.g. gear selectivity) and spatial (e.g. area closures to protect spawning fish) measures, designed to reduce unwanted catch of fish where these are required. Unwanted catch refers to elements of catch which fishers traditionally do not want to land and which would often be discarded. Implementation of effective technical and spatial measures may also help tackle instances of non-fish bycatch, for example, by helping fishers to take positive action to avoid bycatch of species such as seabirds, seals and cetaceans (whales, dolphins and porpoises).
- Any additional technical and spatial measures are anticipated to be introduced on a mandatory, rather than voluntary basis, therefore ensuring a level playing field for all vessels operating in a particular segment of the fishing fleet.

¹ [Future fisheries: management strategy - 2020 to 2030 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/future-fisheries-management-strategy-2020-to-2030/pages/1-introduction-and-why-we-need-it.aspx)

- Measures developed in partnership with stakeholders through a co-management approach, will be reasonable and pragmatic, and adjusted to take account of differences between different parts of the fishing fleet. Any measures will help the fishing industry to fish responsibly, and will support marketability of Scottish fish by demonstrating sustainability. They will also have considerable benefit for fish stocks by ensuring that fishers fish within sustainable limits, will reduce fishing pressure on unwanted catch, including of vulnerable or sensitive species, and will support improvements to biodiversity in Scottish waters.
- In addition, the FCP will introduce a series of changes to current rules around discarding, which are currently set out under the landing obligation (which requires that all fish subject to quota limits are landed unless subject to an exemption). Taking a segment by segment approach, rather than applying a one-size-fits-all approach, will allow us to adjust and simplify existing exemptions and discarding rules to account for variations between fleet segments, whilst ensuring the principles of reducing waste and increasing accountability continue to be met.
- Recognising increasing pressures on available marine space and tensions between some parts of the fishing fleet operating using different types of gear, the FCP consultation also seeks views on additional management measures which might be required for the gillnet and longline fisheries in order to address issues with displacement that can limit the ability of other vessels to avoid unwanted catch.

The Scottish Government proposes that the FCP should take a fleet segment approach, splitting fisheries into seven distinct segments and taking a tailored approach to addressing the individual issues with unwanted or accidental catch and discards associated with each of these segments. The “fleet segment” section further below outlines proposals for each fleet segment in detail, but the following bullets can be used to illustrate the measures being proposed:

1. Pelagic fleet segment (pelagic trawls and purse seiners)
 - Continue to land all fish
 - Enhanced monitoring via Remote Electronic Monitoring (REM)
2. Offshore whitefish fleet segment (large mesh demersal trawls and seine nets)
 - Reduce unwanted catch through additional technical and spatial measures
 - Land all fish marketable fish (fish above MCRS²)
 - Ability to discard small undersized fish through a blanket de minimis exemption on the proviso that this is fully accounted for
3. Offshore mixed fleet segment (small mesh offshore demersal trawls)
 - Reduce unwanted catch through additional technical and spatial measures
 - Land all marketable fish (fish above MCRS)
 - Ability to discard small undersized fish through a blanket de minimis exemption on the proviso that this is fully accounted for

² Minimum Conservation Reference Size or “MCRS” is the minimum size that a fish must be in order to be sold for human consumption. The MCRS measure is intended to protect small, undersized fish from being targeted by helping prevent markets for small, undersized fish

4. Small inshore mobile fleet segment (small mesh inshore demersal trawls and small mesh seine nets)
 - Further reduce unwanted catch through selectivity improvements and spatial measures where required
 - Ability to discard small undersized fish (below MCRS) through a blanket de minimis exemption on the proviso that this is fully accounted for
 - Ability to discard larger whitefish through a tailored de minimis exemption on the proviso that this is fully accounted for and with the justification of avoiding disproportionate costs
5. Scallop fleet segment
 - Non quota species so not subject to landing obligation although some quota species may be caught which would be subject to discarding rules
 - Support scallop fishing in Scottish waters at sustainable levels
 - Will support the further roll-out of enhanced monitoring
6. Pots and creels fleet segment
 - Low levels of unwanted fish catch in the fishery with discards currently allowed under high survivability grounds.
 - Support shell-fishing in Scottish waters at sustainable levels
 - Non quota species so not subject to landing obligation
 - Other measures may be required to reduce instances of entanglements and accidental bycatch of cetaceans and other marine species.
7. Gill net and long line fleet segment
 - Consider additional rules to maximise use of shared marine space and minimise gear conflict
 - Other measures may be required to reduce instances of entanglements and accidental bycatch of other marine species including seabirds.

Rationale for Government intervention

Discarding, both historically and currently, occurs for a multitude of reasons and it is important to understand why, as well as understanding what currently constitutes unwanted catch. When doing this, we should recognise the significance and complexity of Scotland's mixed fisheries and geographical variations in this regard. Unwanted catch in this context means the portion of a fisher's catch which, for the reasons set out below, they would prefer not to keep and instead would wish to discard (or not catch in the first place). Reducing the level of unwanted catch is a central component of the FCP proposal.

We are also aware of wider issues around bycatch, for example around cetaceans, seals and seabirds, which could be addressed through the introduction of additional effective technical measures and adjusting operational practices while at sea. Such bycatch has a negative impact on fishers, for example reducing the amount of fishing time and gear lost due to entanglements e.g. of whales. It also has a significant impact on the welfare, health and survival of such species and effects the wider operation of the marine ecosystem. There is potential through the FCP process to

consider wider issues such as these and to develop new rules, in partnership with the fishing industry and others, to reduce instances and impact of these events.

It is worth noting when considering the discarding issue that the reasons for doing so do not apply generally across all parts of the Scottish, UK and international fleets. There are many segments within the fishing fleets which define unwanted catch differently. Issues around discarding are complex and the implementation of the landing obligation to date has shown that there are few silver bullets; rather a nuanced approach to tackling discarding is likely to yield more positive results.

The differences between fleet segments and the different reasons for discarding are not acknowledged within the application of the current landing obligation, which instead follows a blanket approach. In suggesting amendments to the landing obligation we suggest that it would make sense to take a more tailored approach which takes account of the differences between different parts of the fleet, addressing the specific issues with unwanted catch and discards associated with the different fleet segments, and applying exemptions in a proportionate and reasonable way, instead of applying measures on a one-size-fits-all basis.

Consultation

Within Government

The FCP has been developed in consultation with colleagues within Marine Scotland, including policy (Sea Fisheries), Compliance, and Marine Scotland Science, Marine Analytical Unit (MAU) and EU Exit Team; as well as wider Scottish Government and SGLD.

We have also engaged with DEFRA and other Devolved Administration departments on overlapping areas of interest.

Stakeholders have been closely engaged with the formation of the FCP – primarily through the Fisheries Management and Conservation (FMAC) Group.

Public Consultation

A full public consultation will take place on 15th March 2022

Business and wider interests

Routine updates are provided to the FMAC.

Views on REM were sought as part of the National Discussion Paper on Future Fisheries Management, which was published in March 2019.

Options

Option 1: Do nothing

Option 1 is the 'Do nothing' option; this is the baseline scenario. Under this option, there is no change to fisheries management and we will continue to operate under retained Common Fisheries Policy (CFP) rules and EU policies.

Option 2: Deliver and implement the FCP

Option 2 involves delivering a robust catching policy, in partnership with our stakeholders, which links stock management with responsive and proportionate technical and spatial measures.

As mentioned, the aim of the FCP consultation is to explore options for each of the fleet segments in the following manner:

1. Pelagic fleet segment (pelagic trawls and purse seiners)
 - Continue to land all fish
 - Enhanced monitoring via Remote Electronic Monitoring (REM) through a separate consultation
2. Offshore whitefish fleet segment (large mesh demersal trawls and seine nets)
 - Reduce unwanted catch through additional technical and spatial measures
 - Land all fish marketable fish (fish above MCRS)
 - Ability to discard small undersized fish through a blanket de minimis exemption on the proviso that this is fully accounted for
3. Offshore mixed fleet segment (small mesh offshore demersal trawls)
 - Reduce unwanted catch through additional technical and spatial measures
 - Land all marketable fish (fish above MCRS)
 - Ability to discard small undersized fish through a blanket de minimis exemption on the proviso that this is fully accounted for
4. Small inshore mobile fleet segment (small mesh inshore demersal trawls and small mesh seine nets)
 - Further reduce unwanted catch through selectivity improvements and spatial measures where required
 - Ability to discard small undersized fish (below MCRS) through a blanket de minimis exemption on the proviso that this is fully accounted for
 - Ability to discard larger whitefish through a tailored de minimis exemption on the proviso that this is fully accounted for and with the justification of avoiding disproportionate costs
5. Scallop fleet segment
 - Non quota species so not subject to landing obligation although some quota species may be caught which would be subject to discarding rules
 - Support scallop fishing in Scottish waters at sustainable levels
 - Will support the further roll-out of enhanced monitoring
6. Pots and creels fleet segment
 - Low levels of unwanted fish catch in the fishery with discards currently allowed under high survivability grounds.
 - Support shell-fishing in Scottish waters at sustainable levels

- Non quota species so not subject to landing obligation
- Other measures may be required to reduce instances of entanglements and accidental bycatch of cetaceans and other marine species.

7. Gill net and long line fleet segment

- Consider additional rules to maximise use of shared marine space and minimise gear conflict
- Other measures may be required to reduce instances of entanglements and accidental bycatch of other marine species including seabirds.

Sectors and groups affected

The following sectors have been identified as being affected:

- Catching sector
- Public sector

Any industry not mentioned has been screened out of the process and not expected to incur any additional costs. These include oil and gas, renewables, and recreational activities.

Benefits

Option 1: Do nothing

No additional benefits are expected to arise from this policy option

Option 2: Deliver and implement the FCP

The benefits of a sustainable and accountable fishing industry could be measured in both economic, environmental and reputational terms if the FCP proves effective. By reducing discards, increasing accountability and introducing a robust and adaptive catching policy and management process, we will go a long way to delivering the Scottish Government commitment to managing our fisheries in a responsible and sustainable way.

Additional benefits from this policy include sustained economic opportunities for the fleet, a level playing field between nationalities and improved sectoral reputation for improved market opportunities.

Costs

Option 1: Do nothing

This option is not predicted to create any additional costs to the sectors and groups outlined above, however there may be a detriment to the fishing stocks if discarding continues at current levels given the technical complexity around the application of the current exemptions, coupled with a lack of compliance with the general landing obligation rules.

Option 2: Deliver and implement the FCP

There may be some cost to industry resulting from the introduction of new technical measures and the requirement to alter their fishing gear, but none of these measures have been agreed and it is therefore not possible to cost them at this stage. Following the consultation analysis, there will be dedicated workshops, designed to tailor the most appropriate measures to each fleet segment in order to achieve the goals of the FCP. The final BRIA will evaluate the costs of implementing each of these measures as and when they are formulated.

Total Costs

The FCP proposes some changes to the management decision process and focuses on how best to avoid already unwanted catch; neither of which will have a significant impact on business revenues. There is a proposal to explore extra selectivity measures and if this requirement is agreed upon, there could be a cost to businesses for changing their gear. Given that these measures are still being explored through the consultation process, the costs associated cannot be predicted at this time but will be evaluated throughout the implementation process.

Scottish Firms Impact Test

There will be no impact.

Competition Assessment

Introduction of the FCP through an SSI would deliver equality of measures across Scottish waters and will ensure a level playing field for all vessels wishing to fish in Scottish waters regardless of nationality.

Test run of business forms

There are no forms directly introduced by this Order and therefore no requirement for a test run of business forms.

Legal Aid Impact Test

It is not expected that the FCP will have any impact on the current level of use that an individual makes to access justice through legal aid or on the possible expenditure from the legal aid fund as any legal/authorisation decision impacted by the proposed legislation will largely affect businesses rather than individuals.

Enforcement, sanctions and monitoring

Marine Scotland Compliance will remain responsible for enforcement of fishing regulations and will continue to base their activities on a risk-based basis with the additional clarity provided by the FCP.

Implementation and delivery plan

The proposed Order will come into force in 2022 if possible following workshops.

Post-implementation review

The Scottish Government will review the effect of the legislation in 2023.

Summary and recommendation

Option 2: Deliver and implement the FCP

Option 2 involves delivering a robust catching policy, in partnership with our stakeholders, which links stock management with responsive and proportionate technical and spatial measures, which delivers a reduction in waste and which encourages compliance.

Declaration and publication

I have read the Regulatory impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of the businesses in Scotland.

Signed: Warren Devine

Date: 24/02/2022