

EIRs (FOI/19/02531)

1. Please provide any data held as to products or installations fitted on board a fishing vessel, used for enforcement purposes by Marine Scotland in respect of suspected illegal fishing activity that show all of the following:

- **Exact position of vessel; and**
- **Direction of vessel; and**
- **Speed of vessel; and**
- **That the fishing vessel was actively involved in fishing.**

The installations fitted to Scottish registered fishing vessels generally do not show all of the above information.

The Vessel Monitoring System (VMS) required to be fitted to fishing vessels of 12 metres and over will show the first three but in our view will not definitively prove the fourth point.

The Automatic Identification System (AIS) required to be fitted to fishing vessels over 15 metres and will show the first three but in our view will not definitively prove the fourth point.

The Remote Electronic Monitoring Systems (REM) required to be fitted to certain classes of vessels in certain circumstances can provide additional information which includes sensory data to indicate that winches have been activated. It may also have cameras to show that gear has been deployed or has been hauled.

REM equipment without cameras is fitted to 27 razor vessels, and REM equipment with cameras is fitted to 20 scallop vessels.

The requirements for REM are set out in: a Scottish Statutory Instrument (SSI), notably the Regulation of Scallop Fishing (Scotland) Order 2017 which you can view here <http://www.legislation.gov.uk/ssi/2017/127/contents/made>; and the terms and conditions for participating in the razor fishery trial, more information about which is here: <https://www2.gov.scot/Topics/marine/Sea-Fisheries/management/razors/trial>. Please also see the attached razor trial derogation.

2. Please provide any data held as to products or installations fitted on board a fishing vessel of any size used for enforcement purposes by Marine Scotland for suspected illegal fishing activity, which show when a fishing boat is actively engaged in fishing activity with gear in operation.

Please see the answer above.

It should be noted that the requirements for REM are not governed by the length of the vessel.

3. Please provide any data held as to the level of evidence required by Marine Scotland in respect of an offence for suspected illegal fishing activity in order to attempt to meet the burden of proof to a criminal standard that a vessel was engaged in illegal fishing activity. If there is any data as to training material for

Marine Scotland personnel as to the collation of evidence before commencing a prosecution for suspected illegal fishing activity, please provide this also.

The Crown Office and Procurator Fiscal Service has published the following guidance for Specialist Reporting Agencies such as Marine Scotland:
https://www.copfs.gov.uk/images/Documents/Prosecution_Policy_Guidance/Guidelines_and_Policy/Specialist%20Reporting%20Agencies%20-%20Reports%20to%20the%20Procurator%20Fiscal%20-%20A%20Guide%20for%20Specialist%20Reporting%20Agencies%20-%207th%20edition%202006.PDF.

Section 2 covers your question.

We believe an exception under regulation 10(5)(b) of the EIRs applies to some of the information you have requested. This is because to provide copies of training materials intended for officers could reveal the methods and techniques used in enforcement and could therefore potentially jeopardise the effective enforcement of infringements of the law.

4. Please provide any data held as to guidance or policy of alerting fishermen when it is suspected that they are within a restricted area potentially illegally fishing in order to avoid prosecution. Any data on the time period that it has taken Marine Scotland to alert fishermen and any warnings given following on from positional data of the fishing vessel within a restricted area is requested.

There is a process for officers to follow should a vessel be remotely detected entering a restricted area.

We believe an exception under regulation 10(5)(b) of the EIRs applies to some of the information you have requested. This is because to provide copies of operational guidance or policies intended for officers could reveal the methods and techniques used in enforcement and could therefore potentially jeopardise the effective enforcement of infringements of the law.

5. Please advise how many prosecutions have been started by Marine Scotland based entirely on positional data of a fishing vessel (with or without any interpretational data on positional data in support), that does not have any supporting aerial or surface water surveillance evidence or the like to evidence or corroborate fishing activity alongside the positional data.

Marine Scotland Compliance does not prosecute. In Scotland cases are prosecuted by the Crown Office and Procurator Fiscal Service (COPFS) to which Marine Scotland Compliance refers cases for consideration of prosecution. In any case, Marine Scotland Compliance would seek to gather all available evidence and where only one source of evidence to a particular material fact was available would consider what the best course of action would then be.

The Crown Office and Procurator Fiscal Service has published the following guidance for Specialist Reporting Agencies such as Marine Scotland:
https://www.copfs.gov.uk/images/Documents/Prosecution_Policy_Guidance/Guidelines_and_Policy/Specialist%20Reporting%20Agencies%20-%20Reports%20to%20the%20Procurator%20Fiscal%20-%20A%20Guide%20for%20Specialist%20Reporting%20Agencies%20-%207th%20edition%202006.PDF.

[es_and_Policy/Specialist%20Reporting%20Agencies%20-%20Reports%20to%20the%20Procurator%20Fiscal%20-%20A%20Guide%20for%20Specialist%20Reporting%20Agencies%20-%207th%20edition%202006.PDF](#)

6. Please provide any data as to whether Marine Scotland would commence a criminal prosecution against a fisherman for suspected illegal fishing activity in a restricted area based entirely on IVMS data or VMS data and the interpretation of that data.

Please see answer above.

7. Please provide data on any initiatives by Marine Scotland to assist fishermen to ensure that they are aware of where the restricted fishing areas are and when the boundaries change.

Boundaries to restricted areas are set out in legislation or fishing licence conditions. Fishermen become aware of changes or indeed new boundaries through the process of consultation and stakeholder engagement that forms the early part of changes to the law. Information resulting from this would be obtainable through the network of local fishery offices. There are also external organisations that provide information and updates to fishermen across a range of issues including Marine Protected Areas where there might be restrictions on fishing.

Changes to licence conditions are published weekly on the Scottish Government website. Fishers are legally obliged to check these changes and notifications.

There is a process for officers to follow should a vessel be remotely detected entering a restricted area. However, we believe an exception under regulation 10(5)(b) of the EIRs applies to some of the information you have requested. This is because to provide copies of guidance and / or operational policy intended for officers could reveal the methods and techniques used in enforcement and could therefore potentially jeopardise the effective enforcement of infringements of the law.

8. Please provide any data held as to any data sticks or navigational aids to be provided by Marine Scotland to assist fishermen with updating their navigational equipment to keep up to date with changes to the boundaries of restricted fishing areas.

It is incumbent on fishermen to be aware of the laws that apply to the areas in which they intend to fish.

There are also external organisations that provide information and updates to fishermen across a range of issues including Marine Protected Areas where there might be restrictions on fishing.

9. Please provide any data held as to concerns, problems or issues raised by Marine Scotland or fishermen to Marine Scotland as to malfunction, error or the like of units fitted on board to provide positional data to Marine Scotland as to the position of the fishing vessel.

Failure of the VMS system is provided for in EU legislation. Marine Scotland Compliance follows these rules. Concerns problems or issues with on board units can be raised by fishermen or Marine Scotland. Issues requiring a technical fix would be done through the supplier of the unit and the fisherman.

Figures for the last three calendar years for numbers of non-compliance are as follows:

Year	2017	2018	2019	TOTAL
Numbers of non-compliance reports	165	103	106	374