

Marine Scotland: Trial electrofishery for razor clams

1. General

1.1 A copy of the trial's terms and conditions must be kept on board the vessel at all times. Marine Scotland reserves the right to change any of the terms and conditions of the trial when it considers change necessary. Such notice will be communicated in accordance with The Sea Fishing (Licences & Notices) (Scotland) Regulations 2011.

1.2 The owner(s), master(s) and/or charterer(s) of the vessel are jointly and severally responsible for compliance with all the terms and conditions of the electrofishing for razor clams trial and for ensuring that all crew are cognisant and compliant with the terms and conditions.

1.3 A copy of the derogation certificate, including Annexes A, B, C and D, permitting the participation of the vessel in the trial must be kept on board the vessel at all times. Marine Scotland reserves the right to vary the derogation from time-to-time. The derogation may be revoked or suspended in part or in whole if it appears to Marine Scotland that this is necessary for the management of the trial, or it is appropriate to do so where there is a contravention of the terms and conditions of the trial or the domestic licence. Such notice will be communicated in accordance with The Sea Fishing (Licences & Notices) (Scotland) Regulations 2011.

1.4 The derogation is only valid if it is held in conjunction with a valid domestic fishing licence for the same vessel. The derogation is invalid if any of the details at Sections 1 to 5 on pages 1 and 2 of the vessel's domestic licence change. The derogation is subject to the conditions set out in the domestic licence with which it is held unless a condition in this derogation is more restrictive.

1.5 The derogation is issued based on statements made by the vessel owner(s) in the application form and, if applicable, subsequent correspondence. The making of false statements is an offence.

1.6 The derogation will only be valid whilst the details provided in sections 1, 2, 5 and 6 of the application form remain the same. Any changes to these sections must be notified to the administrating Marine Scotland Fishery Office immediately. Any changes to the dive team specified in the application form must be authorised by the Access to Sea Fisheries team, Marine Scotland (AccesstoSeaFisheries@gov.scot), and Annex B reissued, before the commencement of diving operations by the revised dive team. Marine Scotland aims to consider such changes within 5 working days.

1.7 The grant of a derogation does not confer any entitlement to any future licence or authorisation for harvesting razor clams.

1.8 The derogation is non-transferable between owners.

1.9 The derogation is non-transferable between vessels.

1.10 Derogations will be subject to detailed and, in some cases, individual conditions.

1.11 Participation in the trial shall not be construed as creating a relationship of employment between the Scottish Ministers and any owner, master, charterer, dive contractor, diver, crew member or other person.

1.12 In performing the trial, any owner, Master and/or charterer of the vessel must comply in all respects with:

- i. all applicable law;
- ii. any applicable requirements of regulatory bodies; and
- iii. Good Industry Practice.

In this condition, 'Good Industry Practice' means standards, practices, methods and procedures conforming to legal and regulatory requirements and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking as the owner(s), Master and/or charterer of the vessel under the same or similar circumstances.

2. Vessel

2.1 The vessel must be registered as a United Kingdom fishing vessel under the Merchant Shipping Act.

2.2 The vessel must have a fishing licence issued by one of the UK administrations.

2.3 The vessel must hold a UK Fishing Vessel Safety Certificate.

2.4 The vessel must be compliant with The Fishing Vessels (Codes of Practice) Regulations 2017 and compliant with all safety requirements as stipulated In Merchant Shipping Notice MSN 1871 (F) Code of Practice for Safety of Small Fishing Vessels.

2.5 Any installation and/or modification work undertaken must meet Maritime and Coastguard Agency safety/stability requirements. Responsibility for any work undertaken which renders a vessel unstable or unsafe remains entirely with any owner of the vessel.

2.6 The owner(s) of the vessel is responsible for ensuring that adequate insurance cover is in place for the vessel and for all personnel on board, including insurance for diving.

2.7 The owner(s) of the vessel is responsible for ensuring compliance with The Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997. The vessel must have a written risk assessment in place which reflects the change of fishing method.

2.8 The master and crew must hold the relevant certificates of competency applying to fishing vessel operations as laid down and accredited by the Maritime and Coastguard Agency.

3. Fishing gear and monitoring equipment

3.1 The electrofishing gear must operate within the parameters specified by Marine Scotland. <http://www.gov.scot/Resource/0052/00529628.pdf>

3.2 A vessel authorised to participate in the trial requires a remote electronic monitoring (REM) system, which also includes an electrical output sensor device, on board at all times. The parameters of this equipment will be specified by Marine Scotland. This equipment should remain switched on at all times, including any fishing trip where the vessel is fishing for species other than razor clams.

3.3 Before receiving the derogation allowing a vessel to participate in the trial, the master must first make himself and the vessel available at a Scottish port for a period of up to 3 days to allow inspection of the fishing gear and equipment on board.

3.4 The owner(s) of the vessel is responsible for assessing the stability of the vessel for operations carried out under the trial in accordance with [Marine Guidance Note 503](#).

3.5 A vessel must be compliant with section 7 of The Fishing Vessels (Codes of Practice) Regulations 2017. Should an inspection be required under 7(2) and (3) the derogation will not be issued until this process has been completed.

3.6 The gear and equipment inspected by Marine Scotland Compliance prior to the issuing of the derogation must not be altered, removed or replaced without prior authorisation by Marine Scotland. Before the vessel is authorised to return to sea the derogation certificate must be amended by Marine Scotland, which may include a new inspection of the equipment on board.

3.7 The gear and equipment inspected by Marine Scotland Compliance must be produced for inspection at the request of a British Sea Fishery Officer.

3.8 It is the duty of the master to ensure that the gear, REM system and electrical output sensor device are fully functional at all times. Any attempts to interfere with, damage or disrupt any of the gear and monitoring equipment may result in removal from the trial.

3.9 The master will report any damage, disruption or technical failure to the UK Fisheries Monitoring Centre immediately:

Telephone: 0131 271 9700

Email : UKFMC@gov.scot

3.10 In the event of gear and/or REM system and/or electrical output sensor device failure the master must return the vessel to port immediately and adhere to the hailing in conditions. Once Marine Scotland is satisfied that the gear/monitoring equipment is fully functioning, authority shall be granted to return to sea.

3.11 Marine Scotland will not contribute to the purchase costs, installation costs or maintenance costs of any gear or monitoring equipment. All costs shall be borne by the vessel participating in the trial.

4. Fisheries management for the trial

4.1 The derogation is valid for 110 calendar days between 1 February 2019 – 31 January 2020. Marine Scotland reserves the right to amend the number of fishing days.

4.2 It is an offence for any vessel participating in the trial to be at sea with underwater electrofishing gear and paraphernalia without having given prior notification to Marine Scotland.

4.3 The master of the vessel must activate the electrofishing derogation at the beginning of every fishing trip carried out under the trial by notifying Marine Scotland either by telephone (0300 244 9790) or by email (razor.trial@gov.scot) or SMS text message (07984 357682) before departing, stating name of master, vessel name, PLN and port of departure.

4.4 At least 2 hours before returning to port the master must notify Marine Scotland (contact details in 4.3) of the vessel's PLN, intended arrival time, port of landing, and the quantity or razor clams to be landed.

4.5 Failure to notify the start of the trip will mean that the time from either the last notification of ending a trip or the date of issue of the derogation will count towards the total time spent at sea. Failure to notify the end of the trip will mean that all time from notification of the start of the trip will count against any allocation of effort.

4.6 For any fishing trip carried out under the electrofishing for razor clams trial a vessel is only permitted to retain on-board or land razor clams.

4.7 A vessel is not permitted to catch and retain on-board on each day more than 450kgs of razor clams, and a vessel may not have on-board at any time or land more than 450kgs even if the voyage exceeds a day or 24 hour period. Marine Scotland reserves the right to amend catch limits.

4.8 A vessel using the trial as a diversification opportunity can only target species other than razor clams when all underwater electrofishing gear and paraphernalia has been removed from the vessel. If / when the electrofishing gear has been removed from the vessel the Master must notify the UKFMC before departing, stating name of master, vessel name, PLN and port of departure (contact details in 4.3).

4.9 For vessels 10 metres and under in length, vessel owners must complete an accurate landings form (FISH1) in respect of all fish caught and landed. Vessel owners must submit it to their port office of administration by 2359 hours each Monday, detailing the amount of each species and the area of capture as per ICES rectangle/Stat rectangle and Lat/Long of the start position of each tow, for each trip made for the week ending at 2359 hours on the preceding Saturday. All fishing activity carried out as part of the trial must be recorded on the FISH1 as a tow by tow record, including short or abandoned tows.

4.10 For vessels over 10 metres in length a logbook should be carried at all times. The vessel master must complete the appropriate logbook and landing declaration in accordance with Council Regulation (EC) 1224/2009, depending on vessel size. Logsheets should be submitted for each trip detailing the amount of each species and the area of capture as per ICES rectangle/Stat rectangle and Lat/Long of the start position of each tow, including short or abandoned tows.

4.11 All retained catches of razor clams must be sold either at one of the UK Designated or Registered Auctions during the agreed auction times or to a registered buyer under UK subordinate legislation relating to Buyers and Sellers of First Sale Fish.

4.12 Marine Scotland reserves the right to re-allocate quota.

4.13 Quota is not transferrable between vessels.

4.14 It is an offence to trans-ship sea fish to or from the vessel to which the derogation relates.

4.15 The master of the fishing vessel is responsible for gathering accurate scientific data when required. This will include recording further data on catches and may, at times, also include towing cameras or other monitoring equipment.

4.16 It is the responsibility of the owner(s) of the vessel to contribute to future monitoring, research and stock assessments for the trial: this may include an annual financial contribution.

4.17 The vessel must facilitate an observer on board when required. The vessel must have approved additional lifesaving appliances for all persons on board.

4.18 Time at sea will not count against a vessel's allocation where it is undertaking a transit voyage (a non-fishing voyage between two recognised ports), provided that before departing the master notifies his intention to do so to the UKFMC (contact details in 4.3), stating name of master, vessel name, PLN, port of departure, intended port of arrival, expected arrival time. Communication to UKFMC in whatever format should include the word 'transit'. During transit voyages no fishing activity or storage of fish on board is permitted. Those vessels with a fully functioning electronic logbook should state reason for departure accordingly.

5. Razor clam trial sites, food safety and traceability

5.1 The derogation is only valid within waters classified for razor clam harvesting by Food Standards Scotland (FSS) which are also located within the trial areas authorised by Marine Scotland. No commercial fishing operations authorised under the electrofishing for razor clams trial will be conducted in waters that are not classified by FSS or are otherwise subject to pre-classification requirements by FSS (i.e. collection for the purposes of achieving classification). A vessel collecting razor clams for the purpose of achieving classification, must have a derogation to participate in the trial and an active remote electronic monitoring (REM) system, including electrical output sensor device, on board.

5.2 The shoreward boundary for all fishing operations authorised under the electrofishing for razor clams trial is mean low water springs (MLWS). Under the trial, no electrofishing gear can be deployed or razor clams harvested beyond the shoreward boundary of MLWS.

5.3 No fishing operation authorised under the electrofishing for razor clams trial is permitted on maerl beds, seagrass beds or flameshell beds. If an encounter with any of these species occurs, the vessel should cease fishing in that location and report the encounter to Marine Scotland (contact details in 4.3). The vessel should resume operations only when reaching a suitable alternative location where the species are not encountered.

5.4 Marine Scotland reserves the right to amend, close or limit access to trial areas.

5.5 Marine Scotland reserves the right to close trial areas if they are not utilised within one year.

5.6 Any catches of razor clams that are to be transported away from the place of landing must be accompanied by a FSS shellfish movement document as issued by the local authority and in addition to a transport document compliant with Article 68 from Council Regulation (EC) No. 1224/2009, with the latter being presented at the request of a British Sea Fishery Officer.

5.7 Only razor clams which have been produced in accordance with food law may be placed on the market. Razor clams placed on the market must be safe as required by EC

Regulation 178/2002 and have been produced in accordance with the requirements set out in EC Regulation 853/2004.

5.8 Any razor clams inspected by Marine Scotland or Environmental Health Officers which are not fully traceable will be deducted from the available quota, with catch limits amended accordingly.

5.9 Time at sea will not count against a vessel's allocation where a voyage is undertaken for the sole purpose of collecting razor clams for sampling to achieve classification for razor clam harvesting, where:

- any necessary approval to collect a sample from the specific area has been sought from FSS/local authority;
- the master of the vessel notifies Marine Scotland of his intention to carry out a sampling trip before the voyage commences and is compliant with condition 4.3 (above);
- the master complies with condition 4.4 (above);
- the vessel's REM device is fully operational during the voyage;
- no more than 18 commercial size razor clams are caught and retained on-board for each area sampled; and
- all razor clams gathered are for classification sampling purposes only.

5.10 Time at sea for sampling to maintain classification for razor clam harvesting will count against a vessel's allocation.

6. Health and Safety

6.1 The owner(s), Master and/or charterer of the vessel shall perform the trial in such a manner as to be safe and without risk to the health or safety of persons in the vicinity of the place where the trial is being performed (whether such persons are in the vicinity of the said place at the time when the trial is being performed or otherwise) and in such a manner as to comply with any relevant health and safety or other legislation (including Statutory Instrument, Orders, or Regulations made under the said legislation) and any requirements imposed by a local or other regulatory authority in connection with the performance of trial, whether specifically or generally. The owner(s), Master and/or charterer of the vessel shall indemnify Marine Scotland and the Crown against all actions, suits, claims, demands, losses, charges, costs and expenses which Marine Scotland or the Crown may suffer or incur as a result of or in connection with any breach of this Condition.

Dive operation –

Without prejudice to the foregoing generality:-

- i. it is the responsibility of the diving contractor to ensure that all shellfish diving operations are compliant with the [Diving at Work Regulations 1997](#) and the '[Commercial Shellfish Diving in Inshore Water](#)' guidance.
- ii. it is the responsibility of the diving contractor or diving supervisor to facilitate on-site dive inspection(s) when required during the trial. The inspection(s) will be carried out by HSE diving inspectors during diving operation(s) to ensure that diving practices correspond to the information provided during the application process. The vessel must have approved additional lifesaving appliances for all persons on board.

- iii. the dive contractor must have suitable Employers' Liability Compulsory Insurance in place.
- iv. a vessel operating with one diver in the sea at any time is required to have a minimum dive size team of three qualified divers – comprising a working diver, diving supervisor and standby diver.
- v. a vessel operating with two divers in the water at any time is required to have a minimum dive size team of four qualified divers – comprising two working divers, diving supervisor and standby diver.
- vi. it is the responsibility of the diving contractor, diving supervisor and the diver to ensure divers remain at a safe distance from the fishing gear.
- vii. it is the responsibility of the dive contractor and dive supervisor to ensure regular testing of electrical safety equipment and that this is included in pre-dive checks.
- viii. electrodes should be clearly visible underwater.
- ix. it is the responsibility of the diving contractor, diving supervisor and the diver to ensure diving operations are conducted when underwater visibility is safe and suitable.
- x. it is the responsibility of the dive contractor to ensure that divers wear suitable personal protective equipment including suitable gloves.
- xi. divers must wear a full face mask.
- xii. a suitable communication system must be in place.
- xiii. divers must be connected to a lifeline which is either controlled by his or her attendant or is connected to a surface marker buoy indicating the position underwater.
- xiv. the underwater electrofishing gear should be marked with a surface marker buoy indicating position underwater.

7. Indemnity and Insurance

7.1 Without prejudice to any rights or remedies of Marine Scotland the owner(s), Master and/or charterer of the vessel shall indemnify Marine Scotland and the Crown against all actions, suits, claims, demands, losses, charges, costs and expenses which Marine Scotland or the Crown may suffer or incur as a result of or in connection with any damage to property or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any negligent or wrongful act or omission of the owner(s), Master and/or charterer of the vessel.

7.2 Marine Scotland shall indemnify the owner(s), Master and/or charterer of the vessel in respect of all claims, proceedings, actions, damages, fines, costs, expenses or other liabilities which may arise out of, or in consequence of, a breach of Data Protection Laws where the owner(s), Master and/or charterer of the vessel has acted in accordance with Marine Scotland's written instructions.

7.3 Except in the case of loss, damage or personal injury (including death) suffered by an employee of the owner(s), Master and/or charterer of the vessel (in respect of which the

indemnity in Condition 7.1 shall apply whether or not the loss, damage or personal injury was caused by the negligent or wilful act or omission of Marine Scotland, the Crown or any servant or agent of the Crown) the indemnity contained in Condition 7.1 shall not apply to the extent that the loss, damage or injury is caused by the negligent or wilful act or omission of Marine Scotland, the Crown or any servant or agent of the Crown.

7.4 The owner(s) and/or charterer of the vessel shall have in force adequate:

- (a) employer's liability insurance, in accordance with any legal requirements for the time being in force, and
- (b) public liability insurance for such sum and range of cover as the owner, Master and/or charterer of the vessel deems to be appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under these Conditions

8 Non-compliance

8.1 Marine Scotland will take action where necessary against vessels which breach the conditions of the trial or any other general fishery regulations. Action may range from advisory or administrative sanctions, including permanent expulsion from the trial, to formal enforcement action.

8.2 Any breach of the trial that potentially indicates an offence in law will be handed to the relevant authorities for further investigation. Vessels prosecuted for a fisheries offence that occurs within the duration of the trial will have their continued participation in the trial reviewed by Marine Scotland.

8.3 If having considered evidence, Marine Scotland considers that, on the balance of probabilities, a vessel has been operated in a way contrary to the objectives and/or terms and conditions of the trial, Marine Scotland reserves the right to terminate that vessel's further participation in the trial.

8.4 Removal from the trial will be considered where the participant has failed to comply with the terms and conditions of the trial, including where:

- there has been a failure to allow observers on board;
- there has been a failure to facilitate a dive inspection;
- there has been tampering or interference with the on board gear and monitoring equipment;
- the daily catch limit has been exceeded;
- the days at sea limit has been exceeded;
- the gear on board is not the gear that was authorised at the last inspection;
- there have been unauthorised amendments to the dive team personnel;
- there is inconsistency between scientific data submitted to Marine Scotland by the master and the landing data, including visual inspections;
- there have been failures to notify the start and end of a fishing trip;
- a vessel is operated in a way contrary to the objectives of the trial

8.5 Any vessel, owner, charterer and master removed from the trial will not be permitted to re-join it.

9 Data

9.1 All data will be treated as commercially sensitive. However, data gathered may be used in aggregated and anonymous form in publications and reports produced by, for an on behalf of Marine Scotland.

9.2 Enquiries made under Freedom of Information (Fol) shall be answered following normal Fol guidelines. However, personal data will be released only where this is in accordance with the Data Protection Act. To see how we treat your personal data please visit the privacy notice pages in the following links: <https://www2.gov.scot/Topics/marine/PrivacyNotice> and <https://www2.gov.scot/Topics/marine/Compliance/Privacy>.

9.3 For scientific purposes, landings data submitted on logsheets and FISH1 forms will be shared with Marine Scotland Science.

10 Governing Law

10.1 These Conditions shall be governed by and construed in accordance with Scots law and the owner(s), Master and/or charterer of the vessel hereby irrevocably submits to the jurisdiction of the Scottish courts. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of Marine Scotland to take proceedings against the owner(s), Master and/or charterer of the vessel in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.