

Marine Scotland

Report of the Task Force on Gear Conflict
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REPORT OF THE TASK FORCE ON GEAR CONFLICT

Origin and Purpose

1. In November 2013 Richard Lochhead MSP, the Cabinet Secretary for Rural Affairs and the Environment, established a Scottish Government Task Force to examine gear conflict in Scottish inshore waters. This was in response to direct representations from inshore fishermen who were becoming increasingly frustrated with deliberate and destructive incidents of gear vandalism and theft and perceived shortcomings within the current system to manage it.
2. In announcing the establishment of the Task Force, the Scottish Government underlined its commitment to the right of each sector to fish and to do everything it could to help different kinds of fishing operators co-exist in harmony. Marine Scotland acknowledged that insufficient attention had been paid to this policy area over the past few years and that this was the first time that any substantive assessment would have been done to identify the issues. This piece of work was intended to be a light touch review to inform on going policy development in this area.
3. On 29 April 2014, the Cabinet Secretary for Rural Affairs, Food and the Environment emphasised in his Parliamentary speech on Inshore Fisheries that each inshore fisherman has the right to fish, regardless of the gear they use and that deliberate acts of gear vandalism should not be tolerated.
4. **Marine Scotland cannot, and will not, accept deliberate acts of gear vandalism against fishermen. These acts have a lasting impact on the viability of vessels and resulting socio economic impact of a whole community.**
5. Against this background, the Task Force was asked to:-
 - consider the range of issues contributing to gear conflict, both accidental and deliberate;
 - examine how processes and procedures might be improved both to prevent gear conflict and to deal more effectively where instances of conflict arise; and
 - make recommendations on possible solutions for the Scottish Government and its Industry Partners to consider.
6. Within these broad parameters, the Task Force had the freedom to explore and surface the issues surrounding gear conflict and offer possible solutions.

Task Force Membership and Procedures

7. The Task Force was internal to government and comprised officials from Marine Scotland (Sea Fisheries Policy and Compliance), Police Division and the Marine Coastguard Agency. It was chaired independently by Mary Cuthbert OBE, a former Scottish Government senior policy official.
8. A number of actual case studies of gear conflict incidents were examined by the Task Force. Consideration was also given to experience of tackling gear conflict elsewhere, including in other UK fishing grounds, to see whether this might inform approaches developed in Scotland.
9. In addition, the Chair and Marine Scotland officials supporting the work of the Task Force met representatives from the Scottish Creel Fishermen's Federation and the Scottish Fishermen's Federation to hear first-hand the nature of the problems being experienced in different parts of Scotland, and the impact on the industry, as well as to garner views on possible steps which might be taken to prevent gear conflict and to bring sanctions to bear on those involved in deliberate or reckless acts of vandalism or theft. Furthermore, contact was made with key representatives in Police Scotland and the Crown Office and Procurator Fiscal Service.
10. In order to help provide the Task Force with a clearer understanding of the nature; extent; and socio-economic costs associated with gear conflict, Marine Scotland commissioned consultants Grid Economics to conduct a study of the matter to support anecdotal evidence. This study was informed, in part, by a survey of inshore fishermen. A summary of the report and survey was shared with the Inshore Fisheries Management and Conservation Group (IFMAC) the Scottish Government's co-management group with industry on 30 January 2014. The study's findings underlined the impact of gear vandalism and theft on the fishermen affected both in terms of the costs incurred in replacing lost gear and disruption to their fishing operations. It also confirmed the animosity created between different fishing operators. In addition, the Task Force considered records of all gear conflict reports held by Marine Scotland Compliance through its Marine Scotland Intelligence Report database.

Perspectives and analysis: problems/issues

11. Recent research and information gleaned from meetings with industry representatives and individual case studies gave the Task Force invaluable insight into the problems being experienced and the issues surrounding them. Gear conflict can occur all round the coast of Scotland. "Static" or "fixed" gear means fishing gear which is immobile and includes creels which are used to catch lobsters, crabs and Nephrops and also gill nets and baited lines which are fixed in position. "Mobile" or "active" fishing gear is towed, and in the Scottish fleet encompasses nets, which may be trawled along the sea bed, or in midwater (pelagic), targeting a variety of fish species; and scallop dredges.
12. Pots and creels targeting crab/lobster would typically be used in areas that are inaccessible to trawlers e.g. close in to shore; or where the sea bed is

rocky and would damage trawled nets. Fishermen can target the same fish stocks and, as a result, conflicts can arise. Over the years an expansion in fishing for Nephrops with creels and changes in trawl technology mean that in many instances creelers and trawlers now fish in the same grounds. Due to lack of offshore fishing opportunity trawlers are also diversifying to activities closer to the shore such as squid fishing. In some areas creel fishing has moved further out and trawling has moved further in creating more competition for grounds.

13. Pressure on fishing grounds has led to increased gear conflict at sea without eyewitnesses being able to capture incidents as they occur and they are more often than not discovered after having occurred. Gear damage and vandalism is a crime at sea and a matter for Police Scotland. It is not a fisheries offence and therefore Marine Scotland Compliance is unable to take enforcement action.

14. Key points to emerge from the Task Force's considerations are as follows:-

Problems

- The vast majority of fishermen, whether using large or small vessels, static or mobile gear, behave responsibly and do what they can to co-exist in harmony.
- Gear conflict, accidental or deliberate, is not a new problem nor is it one for which there is a single or simple solution.
- Concerns about its impact have been heightened, in part, due to increased pressure and competition on inshore fisheries around Scotland.
- Occasional accidental damage to gear is to some extent an occupational hazard of fishing operations and, with goodwill on all sides, it is something which can be resolved amicably and satisfactorily between operators (e.g. by returning static gear to its owner).
- Deliberate gear vandalism or theft, which anecdotal evidence suggests is on the increase, is, however, another matter altogether and one which is totally unacceptable to all sides of the industry and particular to the majority of responsible fishermen.
- There is a clear recognition of the negative socio economic impact that gear conflict, caused by a few individuals, can have on a small fishing community.
- The inability to control and/or resolve gear conflict under the existing legislative framework and fisheries management arrangements or to "punish" those involved in deliberate acts of theft or vandalism is of major concern to "victims" of gear conflict.

Issues

15. There are no statutory requirements for gear conflict avoidance or resolution.
16. (Gear) vandalism and theft are common law offences and, as such, are matters for Police Scotland to investigate and, where appropriate, prepare reports to the Procurator Fiscal for potential prosecution of offences.
17. However, a lack of sufficiently strong evidence-base with adequate burden of proof has become a barrier to prosecution and a main reason for a lack of successful prosecutions to date. There are issues around corroboration and securing the evidential standard for referral to the Procurator Fiscal for what is a crime committed at sea. Essentially the offences in question are common law offences relating to theft or vandalism and are handled similarly to “neighbour disputes”. It is also recognised that prosecutors require detailed knowledge about fishing and vessel operations in order to progress an investigation.
18. From the several attempts made over the years it has proved almost impossible to secure a successful prosecution for gear damage. This is a matter for the Crown Office and unfortunately has to compete with other legitimate priorities and demonstrate that action meets the public interest test.
19. Current fisheries enforcement and management tools (for example Vessel Monitoring Systems, licensing, the penalty point system, unlimited creels numbers, effort/days at sea and restricted fishing areas) are designed to protect Scotland’s marine resource and fisheries. The monitoring of such fishing activity is not designed to enforce gear conflict or any provisions to prevent it. Marine Scotland thus has no enforcement responsibility in this respect.
20. This can create a great deal of frustration for both Marine Compliance Coastal staff and fishermen. Fishery Officers are in regular contact with fishermen and are the frontline staff for all fisheries related matters, excluding gear conflict. Gear conflict is a matter for Police Scotland, although Marine Scotland Compliance is available to provide advice, when called upon to provide evidence and expertise on fishing operations.
21. In an attempt to enable competing fishing interests to co-exist, a number of industry-led voluntary codes of conduct or other informal arrangements are in place in fishing grounds across Scotland, such as those promoted by the Scottish Fishermen’s Federation and the sharing of creel locations on data sticks undertaken by the North East Creel and Line Association. Voluntary codes of conduct are established in the Outer Hebrides and in the Solway. However, their efficacy can be undermined by nomadic vessels that on occasion may operate without any regard or respect for others. It is the actions of these relatively few individuals who cause a great deal of scepticism about voluntary measures.

22. Codes of conducts include measures to prevent gear conflict but there is considerable scepticism in some quarters about the ability of voluntary arrangements to tackle the problem as they lack the “teeth” many see as essential to discourage bad practice.

Conclusions

23. There seems little doubt that the current arrangements rely on the application of the criminal law alone to prevent gear conflict and dealing with the perpetrators of gear vandalism and theft. This approach is not currently providing a satisfactory or effective solution.

24. However, the challenge is to come up with a solution which is at the same time:-

- proportionate to the scale of the problems being experienced;
- tailored to specific needs of different fishing communities around Scotland; and;
- have the broad support of the fishing industry as a whole.

25. While there is clearly an appetite among some creel fishermen, for example, for more radical measures (e.g. banning trawlers/dredgers from fishing within, say, 3 miles of the coast), others believe such moves are disproportionate and are unlikely to find favour with the industry as a whole. That said, more radical measures may find favour with those who argue that spatial measures can help contribute to wider objectives such as stock sustainability and protecting the wider marine environment. It is therefore important that Marine Scotland does not look at gear conflict in isolation.

26. With this in mind, the Task Force proposes a twin-track approach to tackling the problem, combining:

- enhanced measures to prevent incidents occurring in the first place; and
- steps to improve the detection of deliberate acts of gear vandalism and theft and the enforcement of sanctions against those involved in such acts.

Recommendations

Prevention

27. The Task Force looked at a full range of possible options which might be deployed. These fall into three areas:

- Voluntary codes of conduct, agreed locally with the full support of Fishing Associations and the Federations, to mitigate against gear conflict;

- Separation of fishing activities, through space or time, either as part of these voluntary agreements or through some sort of mandatory control; and
- Better deployment of the current statutory framework for managing fisheries in Scotland and for dealing with deliberate acts of gear vandalism and theft, both to act as a deterrent against gear conflict and to deal with incidents when they do occur.

Voluntary codes of conduct

28. In an ideal world, it would be far better for the industry to agree locally how best to manage their competing interests within inshore fishing grounds to reduce tensions and prevent gear conflict. However, evidence suggests in many cases this is not enough and there is scepticism about such agreements being an adequate solution. This is because they lack “bite” in terms of ensuring fishermen comply with their terms and in allowing action to be taken against those who breach them.

29. The Task Force agree that Voluntary Codes of Practice on their own are insufficient to tackle the problem of gear conflict. Nevertheless, it is considered that they do still have a role to play in encouraging fishing interests to co-exist harmoniously. It also believes that Marine Scotland should consider a way of ensuring compliance with them by encouraging full participation of all fishermen. The only way to ensure this would be through the use of license conditions which are enforceable by Marine Scotland Compliance.

Recommendation: Marine Scotland to explore the feasibility for bringing elements of voluntary codes of practice into the licensing system in order to give them greater bite.

Separation of fishing activities by time and space

30. Negotiations for time and spatial separation are usually the result of some significant change to fishing activity, such as displacement of TR2 activity from the Fladdens into inshore waters, as was the case at Burghead in 2012. Certainly the Burghead Agreement demonstrated the gold standard in bottom up management where fishermen and their fishing representatives from all sectors, facilitated by Marine Scotland, came to an agreement on access arrangements. However, this is not underpinned by sanctions and the only motivator to comply with its terms is peer pressure. It therefore works well when all parties are in full co-operation but the co-operation can easily be undermined by the action of a few individuals.

31. The Burghead Agreement have never been tested fully but there are examples of administrative schemes, such as Real Time Closures for juvenile cod, where Marine Scotland is able to provide an incentive for co-operation with voluntary measures. In return it gives vessels an effort incentive which can be removed if vessels fail to comply. The Task Force could not readily

identify any incentives for inshore fishermen that could form part of a similar scheme.

32. The fishing vessel licensing system does allow Marine Scotland to apply conditions to the licence. It would be legally possible to take some of the elements of the codes of conduct and apply them as a licence condition. These could include fisheries management measures such as position reporting, through Vessel Monitoring Systems (VMS) or Automatic Identification Systems (AIS), or the tagging of creels, the reporting of creel position and possibly limiting the numbers of creels permitted. Fishing would be restricted by the conditions set out in the licence. There is also an obvious link to inshore fisheries groups in proposing such measures to combat gear conflict.
33. To make these measures enforceable they would need to be underpinned by technology that would allow Marine Scotland to track and monitor activity. As a condition of access to inshore waters, or certain fishing areas, Marine Scotland could restrict access only to those fishing vessels which had consented to these measures, through the application of special license conditions.
34. Special licences conditions or limitations on the authority to fish could supplement the general fishing licence conditions and have previously been used in fisheries where there is a risk of illegal activity. Most recently, in 2014, Marine Scotland introduced a scheme to control the catching and landing of razorfish. Skippers have to hold an additional authorisation to catch razorfish and to sign up to certain conditions to ensure that they have not used electricity to catch them. Similar provisions could be made for preventing gear conflict with access predicated on conditions such as the accurate reporting of the number and location of creels, and mobile vessels would have to agree not to tow in areas where gear has been set. The location of gear and the fishing operations would need to be backed up with additional technology requirements.
35. The Task Force clearly understands that accidental incidents can occur. Where a vessel accidentally impedes another then common sense ought to prevail. A good test of this is whether all reasonable steps have been taken to return displaced gear or if an offer of appropriate remuneration has been made.
36. It seems more proportionate to target the few rogue individuals deliberately damaging gear rather than applying blanket additional management measures that would have an impact on all operators. A parallel could be drawn to the measures brought into deal with pelagic misreporting through the application of the “polluter pays principle”. Here, more restrictive management measures are only applied to vessels breaching the rules. This has been found to be an effective and proportionate deterrent.

Recommendation: That Marine Scotland, in consultation with its industry partners, should look more widely at the scope for licence changes to specifically address gear conflict within fisheries management. This would, therefore, bring the matter within the scope of Marine Scotland's enforcement and compliance remit. It is recognised that questions of proportionality and regulatory burden will be central to these considerations.

Restricted fishing areas

37. It is always possible for Marine Scotland to restrict access to vessels in certain areas, although usually this is for conservation reasons. The current legislation certainly allows for this although gear conflict has never been the primary motivation for such a closure.
38. The Task Force would recommend to Marine Scotland that it considers any forthcoming requests for closures as a good opportunity to pilot some of the recommendations made in this report, particularly in areas that are known to be gear conflict black spots.
39. Marine Scotland's policy is for Inshore Fisheries Groups (IFGs) to be the vehicle for making improvements to fisheries management at a local level. However, IFGs are at different stages of maturity around the coast and finding support from the IFG membership, which incorporates all types of commercial fishermen, can be difficult if proposals are thought to favour one sector over another. The Task Force believes it is reasonable for proposals on restricted areas to come forward from the IFG, even if there is division within the IFG (provided these divisions are made transparent.) It would of course be for Marine Scotland to make the final decisions on the appropriateness of restricted areas to address gear conflict. To prevent such proposals becoming divisive to the IFG decision-making process these restrictions should be discussed with Associations and Federations and piloted in areas where Marine Scotland Compliance are fully aware of historical reports of gear theft and incidents of vandalism.

Recommendation: Marine Scotland in consultation with its industry partners and IFGs should consider the scope for piloting time and/ or spatial zones at gear conflict "black spots". In addition, it should consider whether licence conditions need to be used to support the restricted areas or closures made under the Inshore Fisheries (Scotland) Act 1984.

Improved enforcement

40. Notwithstanding the Task Force's desire for consideration to be given to making specific legislative or other provision to address gear conflict, this would take time and there is a need to act now to better enforce the existing law relating to gear vandalism and theft.
41. With regard to incidents of gear conflict/vandalism reported to Police Scotland, from the information available to it, the Task Force were unable to

identify any successful prosecutions for gear conflict/vandalism. Indeed, few cases were reported to the Procurator Fiscal. The Task Force explored the reasons for this lack of enforcement action and it was clear that the main barrier to prosecution was the inability of investigating officers to build a sufficiently strong evidential base which would satisfy necessary tests of burden of proof. More often than not, there are either no witnesses to an incident or the victim is the only witness, which means there is no corroboration to support the case. Moreover, it is a challenge for the investigating officer to prove that the number of creels reported were in place and had been displaced or damaged by a particular vessel or whether the vessels involved were undertaking fishing operations in the area.

42. The Task Force is conscious that this type of offence needs to be balanced with other Police Scotland priorities but by addressing the evidential shortcomings it is possible to address the inaction on gear conflict. Providing Police Scotland with the scope for better evidence may support the enforcement of common law offences such as vandalism and theft at sea.
43. The Task Force is also conscious that to support any future investigations, providing Police Scotland with more robust information on fishing activity should be stronger evidence and may support the enforcement of common law offences such as vandalism and theft at sea.
44. In order to overcome the challenges faced in getting an evidential base for a successful prosecution, the Task Force considered whether vessel tracking technology deployed to manage fisheries might have a role to play. More specifically it considered whether Marine Scotland could apply European control standards in Regulation 1224/2009 - "the Control Regulation" - to address the evidential standard. However, it should be noted that this would represent "gold plating" (that is, going beyond what EU legislation requires the UK to implement) and that it is currently against government policy to apply measures that go beyond the EU standard, given that this is seen as disproportionate.
45. However, a case for such action can be made if it is felt that there is a genuine policy need for it. In considering this matter Marine Scotland must judge whether the application of EU control standards are proportionate. Currently the EU standard applies to vessels of 12 metres in length overall. Any move towards expanding VMS or AIS on a statutory basis to vessels below that length will need to be subject to discussion with IFMAC and a full public consultation.

Recommendation: That Marine Scotland considers how technology might be better used to support the gathering of evidence for gear conflict.

Next Steps

46. The Task Force recommends that Marine Scotland consults fully on the recommendations contained in this report to inform future policy decisions and potentially strengthen Marine Scotland's role. There is a clear and recognisable need for a consensus to be reached on these recommendations and whether/how they should be pursued. However while these are being considered by Ministers and stakeholders we recognise there is an on-going impact on fishers arising from current activity. Therefore, the Task Force recommends that Marine Scotland Compliance undertakes targeted surveillance operations over the coming months to better understand from such actions how a **policy on gear interaction detection and deterrence** can be enforced. This would include:

- Special surveillance operations in specifically selected areas known by Marine Scotland;
- Consideration of what licence conditions arrangements would be appropriate;
- Consideration by Marine Scotland Compliance of the practical challenges and resource requirement needed to be the lead Agency on gear conflict resolution; and
- The involvement of other agencies such as MCA.

47. The output from these short term actions would give valuable information to inform a consultation on measures to tackle gear conflict.

Recommendation: Marine Scotland to undertake targeted surveillance in areas where there is historically known to be gear conflict to inform enforcement improvements. Incidents of gear conflict would be reported to Police Scotland as usual.

48. It is widely acknowledged in Marine Scotland's Inshore Fisheries Strategy that a key priority is to make significant improvements to the evidence base for managing inshore fisheries. Gear conflict; therefore, ought to be looked at in the wider policy context. The elements that need to be brought in to make improvements to the evidential standard will have wider benefits for gathering data on fisheries activity. With the onset of marine protected areas and marine planning the time has come to look afresh at how inshore vessels operate and where. Gear conflict should not be looked at in isolation and cannot be allowed to continue when the viability of fishing vessels and access to fishing grounds needs to be balanced against the needs and concerns of the wider marine environment.