

Rural Affairs and Islands Committee

6th Meeting, 2024 (Session 6), Wednesday, 28 February

Subordinate legislation

Introduction

1. This paper supports the Committee's consideration of the Sea Fish (Prohibition on Fishing) (Firth of Clyde) Order 2024.

Sea Fish (Prohibition on Fishing) (Firth of Clyde) Order 2024

Title of Instrument:	Sea Fish (Prohibition on Fishing) (Firth of Clyde) Order 2024
Type of Instrument:	Negative
Laid date:	11 January 2024
Reporting deadline:	26 February 2024
Coming into force:	14 February 2024
Instrument drawn to Parliament's attention by DPLRC:	No
Instrument made using powers conferred by:	The Sea Fish (Conservation) Act 1967
Supporting documentation:	Policy note attached Annexe A

Purpose of the instrument

2. The purpose of the instrument is to prohibit all methods of fishing within two specified areas of the Firth of Clyde between 14 February and 30 April, during both 2024 and 2025. The Order remains in force until the end of 30 April 2025. Members will note the Order has already come into force.

Policy objectives

3. The stated objective of the instrument is to restrict fishing activities in the Firth of Clyde to provide protection to spawning cod within that area to provide them with the best opportunity to reproduce.
4. The areas closed to fishing under the Order are shown on the map which accompanies the instrument's explanatory note ([page 6 of the instrument](#)).
5. The Order will apply to British fishing boats that fish in the relevant areas though, in effect, this means that the closure will apply to all fishing vessels and fishing activity as the areas fall within territorial waters.
6. The policy note states that, "having considered the wide range of stakeholder comments and given that the best available scientific evidence shows that any activity causing disturbance within 10 metres of the seabed can negatively impact spawning cod, we are confident that prohibiting all fishing activity within the closure area allows the spawning cod the best possible protection at a critical point in their life cycle and therefore the best possible chance of increasing in numbers and making a positive contribution to the broader recovery of cod stocks". It goes on to state that—

"Monitoring carried out by Marine Directorate Compliance during the 2022 and 2023 closure indicated very few spawning cod being caught in the open area surrounding the Clyde closure area. This data suggests either that the closure is in the correct area for spawning or there are not many cod in the Clyde. In the absence of more specific scientific evidence showing the abundance or otherwise of cod in the proposed closed area, Ministers are required to take a precautionary approach to ensure the conservation of the species. They have decided therefore to maintain the closure prohibiting all forms of fishing activity during the closure period."

7. The policy note states that a prohibition on fishing covering a larger area in the Firth of Clyde has been in effect between 14 February and 30 April every year since 2001. Prior to 2022, vessels fishing only with a scallop dredge, creels or a trawl used for fishing Norway lobsters were exempt from the prohibition on fishing. The policy note further states that "given the scientific evidence showing that activity causing disturbance within 10m of the seabed has the potential to negatively impact on spawning, in 2022 these exemptions were removed to allow cod the best possible chance of successful spawning."

Committee consideration of previous years' instruments

8. Since 2001, a specific area in the Firth of Clyde has been closed to fishing each year for 11 weeks between 14th February and 30th April to protect spawning cod from disturbance from fishing activity during spawning and promote recovery of the

stock. Originally the SSI provided exemptions for Nephrops (langoustine) trawlers, creels and scallop dredgers.

9. On 10 December 2021, the Scottish Government laid the Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2021 (SSI 2021/467). This SSI provided for the closure in 2022 and 2023, with the same exemptions in place as for previous years.
10. The Cabinet Secretary for Rural Affairs and Islands wrote to the Committee on 17 January 2022 to inform it that the 2021 Order was to be revoked and a further order would be laid in its place. The Cabinet Secretary wrote that—

“upon further reflection, I believe that this approach is no longer appropriate. Despite the ongoing seasonal closure, the stock has shown little sign of recovery and as such the Scottish Government has removed the exemptions to maximise numbers.”
11. The Scottish Government laid the Sea Fish (Prohibition on Fishing) (Firth of Clyde) Order 2022 (SSI 2022/5) on 13 January 2022. This SSI removed the exemptions for Nephrops (langoustine) trawlers, creels and scallop dredgers.
12. The Committee informally discussed the order at its meeting on 19 January and agreed to seek written comments and take oral evidence ahead of its consideration of the instrument.
13. The Cabinet Secretary for Rural Affairs and Islands wrote to the Committee again on 1 February 2022 to inform it that the 2022 order was to be revoked and a further order would be laid in its place. The Cabinet Secretary wrote that—

“following further discussions with scientists and stakeholders, we believe that it is necessary to make a further adjustment to the closure. In response to legitimate concerns raised by local fishermen, we have reviewed the available scientific evidence to reassure ourselves that this approach is the most appropriate and proportionate.”
14. The Scottish Government laid the Sea Fish (Prohibition on Fishing) (Firth of Clyde) (No. 2) Order 2022 (SSI 2022/35) on 1 February 2022. In comparison with previous closures, the closure provided for by the No. 2 Order 2022 is smaller in size but removes all exemptions, meaning that fishing activity by any method would be prohibited during the ban in order to increase the protection for spawning cod.

Committee consideration of 2024 instrument

15. In advance of laying this instrument, [on 11 January 2024, the Minister for Energy and the Environment wrote to the Committee](#) to provide an update on the seasonal spawning closure in the Firth of Clyde. The letter also sets out the changes to the cod stocks in Scottish waters since the previous SSI and includes the reasons behind the Scottish Government’s decision to continue the spawning

closure, in the same manner as in 2022 and 2023 without exemptions, for the 2024 and 2025 period.

16. In response, [on 1 February 2024, the Committee wrote to the Scottish Government](#) asking for further information on a range of issues relating to the scientific evidence and data underpinning the policy regarding seasonal closures in the Firth of Clyde.
17. [The Minister for Energy and the Environment wrote to the Committee 8 February 2024 providing a response to the points raised by the Committee.](#)

Consultation

18. A public consultation on the proposals ran from 30 June to 22 September 2023, receiving 47 responses. [Further information on the consultation, including individual responses is available on the Scottish Government's website.](#)
19. The policy note states that, whilst there was an overall majority in favour of the continuation of the closure (55%), those organisations representing the fishing industry disagreed with its continuation without the reintroduction of exemptions for certain methods of fishing.

Impact assessment

20. A Business and Regulatory Impact Assessment (BRIA) has been completed. The policy note states that the impacts of this policy on businesses have a significant range due to the uncertainty surrounding the potential impacts but the maximum and expected costs portrayed are estimated to be conservative estimates.
21. The BRIA notes that, based on fishing activity data, businesses have seen a range of outcomes in 2022, with some being displaced to other areas and maintaining their catch, some unable to displace activity and catching less. When accounting for the wider impacts on the Nephrops fishery, and based on the impact of the closure in 2022, it could be as little as a 2% drop in landings. If the fishing fleet can maintain this level of adaptability in displacing their activity from the Clyde closure area, the impact on the fishing vessels and economy as a whole could be as little as £19,000 per annum.

EU alignment consideration

22. According to the policy note, this instrument supports and maintains alignment with the EU's principles of environmental sustainability and fisheries management. Spatial closures are commonly used in the EU to protect juvenile and spawning fish. EU vessels are not impacted by this closure as it applies inside Scottish territorial waters

Consideration by the Delegated Powers and Law Reform Committee

23. [The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 23 January and agreed that no points arose.](#)

Parliamentary procedure – negative instruments

24. The negative parliamentary procedure is set out in Chapter 10 of the Parliament's Standing Orders. Instruments subject to the negative procedure come into force on a specified date and remain in force unless it is annulled by the Parliament. Thus, the Parliament does not need to agree to the instrument in order for it to come into force.
25. The Parliament may, however, and on the recommendation of the lead committee, recommend the instrument be annulled within 40 days of the instrument being laid. Any MSP may by motion propose to the lead committee that the committee recommends "that nothing further is to be done under the instrument". Any motion for annulment would be debated by the lead committee and a report made to Parliament.

For decision

- 26. The Committee is invited to make any recommendations in relation to the instrument.**

**Rural Affairs and Islands Committee clerks
February 2024**

Policy Note

The Sea Fish (Prohibition on Fishing) (Firth of Clyde) Order 2024

SSI 2024/6

1. The above instrument was made in exercise of the powers conferred by sections 5(1)(a) and 20(1) of the Sea Fish (Conservation) Act 1967. The instrument is subject to the negative procedure.

Summary Box

The aim of the closure is to restrict fishing activities in the Firth of Clyde so as to provide protection to spawning cod within that area during their spawning period to provide them with the best opportunity to reproduce. Scientific research suggests that any activity causing disturbance within 10m of the seabed has the potential to impact on spawning activity.

Policy Objectives

2. The purpose of the Order is to protect spawning cod stocks in the Firth of Clyde at a crucial time in their life cycle by prohibiting fishing activity during their spawning season. The Scottish Ministers make the Order in exercise of the powers conferred by sections 5(1)(a) and 20(1) of the Sea Fish (Conservation) Act 1967.
3. The Order prohibits fishing within two areas of the Firth of Clyde from 14 February until 30 April, in both 2024 and 2025. A prohibition on fishing covered the same area for the spawning period in 2022 and 2023. This closure was put into effect through The Sea Fish (Prohibition on Fishing) (Firth of Clyde) (No. 2) Order 2022. A prohibition on fishing covering a larger area in the Firth of Clyde has been in effect between 14 February and 30 April every year since 2001. Up until 2022, vessels fishing only with a scallop dredge, creels or a trawl used for fishing Norway lobsters were exempt from the prohibition on fishing. Given the scientific evidence showing that activity causing disturbance within 10m of the seabed has the potential to negatively impact on spawning, in 2022 these exemptions were removed to allow cod the best possible chance of successful spawning.
4. The Order prohibits all fishing activity within the following two areas of the Firth of Clyde from 14 February until 30 April, in both 2024 and 2025.

Part 1 - North Area:

A	55° 30.000' N	005° 05.472' W
B	55° 30.000' N	005° 00.000' W
C	55° 23.820' N	005° 00.000' W

D	55° 23.820' N	005° 24.600' W
E	55° 30.000' N	005° 24.600' W
F	55° 30.000' N	005° 19.947' W

Part 2 – South Area:

A	55° 25.713' N	005° 32.426' W
B	55° 26.100' N	005° 31.920' W
C	55° 17.220' N	005° 16.860' W
D	55° 10.680' N	005° 14.700' W
E	55° 12.960' N	005° 08.940' W
F	55° 13.860' N	005° 00.000' W
G	55° 06.797' N	005° 00.000' W
H	55° 00.000' N	005° 02.496' W
I	55° 00.000' N	005° 05.170' W
J	55° 00.000' N	005° 10.120' W
K	55° 00.000' N	005° 21.000' W
L	55° 17.962' N	005° 47.914' W
M	55° 25.088' N	005° 33.303' W
N	55° 25.392' N	005° 33.065' W

5. The 2024 and 2025 closure is the same as the closure provided for by The Sea Fish (Prohibition on Fishing) (Firth of Clyde) (No. 2) Order 2022 for the 2022 and 2023 spawning periods. The Order revokes that Order, the provisions of which had expired in any event.
6. The Order will apply to British fishing boats that fish in the relevant areas though, in effect, this means that the closure will apply to all fishing vessels and fishing activity as the areas fall within territorial waters.

Consultation

7. A public consultation took place from 30 June to 22 September 2023. The Scottish Government received 47 responses to this consultation. These included 36 responses from individuals and 11 responses from organisations. In addition, we received two further submissions via email which did not follow the format of the consultation questions but supported the principle of the closure. Responses will be published online where permission has been granted by the respondent.
8. This is a very polarised topic and responses to the consultation were wide ranging. 55% were in favour of the closure continuing for 2024 and 2025. Whilst there was an overall majority in favour of the continuation of the closure, those organisations representing the fishing industry disagreed with its continuation without the reintroduction of exemptions for certain methods of fishing.

9. Having considered the wide range of stakeholder comments and given that the best available scientific evidence shows that any activity causing disturbance within 10 metres of the seabed can negatively impact spawning cod, we are confident that prohibiting all fishing activity within the closure area allows the spawning cod the best possible protection at a critical point in their life cycle and therefore the best possible chance of increasing in numbers and making a positive contribution to the broader recovery of cod stocks. Monitoring carried out by Marine Directorate Compliance during the 2022 and 2023 closure indicated very few spawning cod being caught in the open area surrounding the Clyde closure area. This data suggests either, that the closure is in the correct area for spawning or, there are not many cod in the Clyde. In the absence of more specific scientific evidence showing the abundance or otherwise of cod in the proposed closed area, Ministers are required to take a precautionary approach to ensure the conservation of the species. They have decided therefore to maintain the closure prohibiting all forms of fishing activity during the closure period.

Impact Assessments

10. A Business and Regulatory impact assessment has been completed and is attached. There are no equality/children's/privacy impact issues. As this SSI has been rolled over and is not a new policy no SEA or Islands Impact Assessment has been carried out.

EU Alignment Consideration

11. This instrument supports and maintains alignment with the EU's principles of environmental sustainability and fisheries management. Spatial closures are commonly used in the EU to protect juvenile and spawning fish. EU vessels are not impacted by this closure as it applies inside Scottish territorial waters.

Financial Effects

12. A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impacts of this policy on businesses have a significant range due to the uncertainty surrounding the potential impacts as explained in the BRIA in section 6.2.1. but the maximum and expected costs portrayed are estimated to be conservative estimates.
13. The BRIA notes that based on fishing activity data this group has seen a range of outcomes in 2022, with some being displaced to other areas and maintaining their catch, some unable to displace activity and catching less. When accounting for the wider impacts on the Nephrops fishery, and based on the impact of the closure in 2022, it could be as little as a 2% drop in landings. If the fishing fleet can maintain this level of adaptability in displacing their activity from the Clyde closure area, the impact on the fishing vessels and economy as a whole could be as little as £19,000 per annum.