

REGIONAL INSHORE FISHERY GROUPS: POLICY, PRACTICE AND PROBLEMS

SIFT POSITION PAPER

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Executive Summary

This paper analyses the policy and practice of the Regional Inshore Fishery Groups (RIFGs), which were established by the Scottish Government in 2016 to provide a voice for the fishing industry in the development of inshore fisheries policy. It draws from the records of the RIFGs, where available.

SIFT supports the principle of local and regional fisheries management, but our analysis of RIFG practice reveals fundamental weaknesses that must be addressed in order to improve inshore fisheries governance in Scotland. The paper highlights a number of shortcomings, particularly:

- **the lack of transparency concerning the membership;**
- **the lack of transparency regarding decision-making processes.**

Both of these can in large part be attributed to these groups operating as unconstituted bodies. Furthermore, RIFGs have:

- **avoided direct engagement with important marine stakeholders**, including local coastal communities, environmental non-governmental organisations and local authorities, despite encouragement to do so in government policy;
- **developed Fisheries Management Plans with serious deficiencies in scope and substance.**

The context in which RIFGs operate has also been found wanting: even when RIFGs have produced proposals for inshore fishery management measures, the governmental response has often been slow and inadequate. It has taken up to seven years for some proposals in RIFG management plans to be adopted as regulatory measures. Many proposals are still waiting. Furthermore there are instances of when it **has been possible to successfully advocate new management measures outwith the RIFG process, which calls into question the value of working through RIFGs.**

Finally, the paper discusses the role of RIFGs in the regional marine planning process. Whilst it is relatively early to judge their performance in this regard, SIFT nevertheless has concerns that:

- **RIFGs have too much influence in discussions that impact upon fisheries management.**

The paper concludes that if RIFGs are to be given a lead role in the planning process, then

- **institutional reform is necessary in order to address the many shortcomings identified;**
- **the proposed Inshore Fisheries Bill provides an opportunity to address these shortcomings, by:**
 - **introducing a statutory framework for local and regional fisheries management;**
 - **ensuring that regional fisheries management bodies operate according to a clear and transparent constitution;**
 - **including representatives from broader marine stakeholders;**
 - **Including representatives from across the fishing industry; and**
 - **requiring RIFGs to follow key principles in the adoption of fisheries management plans.**

1. Introduction

SIFT began its work on legislative reform in light of the commitment of the Scottish Government to review the inshore fisheries legislative framework and bring forward a new inshore fisheries bill.¹ A key question for that process should be whether the centralised decision-making powers conferred by statute, accompanied by reliance on a process of engagement with the fishing industry through Regional Inshore Fisheries Groups (RIFGs), is still the best model for inshore fisheries management in Scotland.

In its 2017 *Position Paper on Legislative Reform of Scotland's Inshore Fisheries*, SIFT advocated for reform of the existing system of inshore fisheries management in Scotland, with a view to promoting more effective local management over inshore fisheries in Scotland. In particular, the Position Paper called for the system of RIFGs to be replaced with new governance arrangements, which better fit the needs of local coastal communities.

The purpose of this paper is to provide further detail on the shortcomings of the current system of RIFGs. The paper focuses on the structure and operation of RIFGs and the extent to which they provide a transparent, inclusive and effective decision-making mechanism. It also addresses their role in developing inshore fisheries management measures and their broader interface with the regional marine planning process.

Section 2 of the paper will begin by providing some historical context, in order to demonstrate the recurring nature of proposals for devolving fisheries management decisions to the local or regional level in Scotland. This section will also explain the setting up of the RIFGs and the key objectives that this reform was intended to deliver. It traces the development of RIFGs from the former system of Inshore Fisheries Groups (IFGs), a process through which many early expectations about the new system of governance were established.

Section 3 of the paper turns to the practice of the RIFGs in their first years of operation, demonstrating that several of the original policy objectives of this model of governance have not been met in practice because of the manner in which RIFGs have been constituted. This part of the paper will address the functions and status of RIFGs, their institutional structure, participation within RIFGs, and the decision-making process, with additional observations about the transparency of the procedures. The analysis is based upon the available minutes of RIFGs.²

Section 4 of the paper discusses the development of fisheries management plans and management measures by RIFGs, whereas section 5 considers broader links with the marine planning regime.

2. Historical Background to the Debate over Local Fisheries Management in Scotland

The appropriate framework for inshore fisheries management in Scotland is something that has been debated for decades, if not centuries. The Sea Fisheries Regulation (Scotland) Act 1895 allowed local authorities to request the establishment of 'sea fisheries district committees', which would have had the power to make bye-laws for fishing in their area.³ Yet, it would appear that no use was ever made of this provision, which has been ascribed to the fact that the committees were to be funded by the levying of additional taxes on the local population.⁴

¹ See Scottish Government, *A Plan for Scotland: The Government's Programme for Scotland 2016-17* (September 2016) 54. See also Scottish National Party, *Manifesto 2016*, 26: 'We will also update inshore fisheries legislation through an Inshore Fisheries Bill to support sound fisheries management.'

² At the time of writing, not all RIFG minutes were available, often due to technical problems with the links to minutes on the RIFG website.

³ Sea Fisheries Regulation (Scotland) Act 1895, ss. 5-6. Bye-laws were subject to approval of the Secretary of State for Scotland; *ibid*, s. 22(1).

⁴ *Regulation of Scottish Inshore Fisheries: Report of the Scottish Inshore Fisheries Committee* (Cameron Report), Cmnd 4453 (December 1970) para. 249. The report goes on to suggest that local fishermen 'have no wish to be represented on and by a local authority

The Cameron Committee

In the 1970 review of the Scottish inshore fisheries regulations conducted by the Cameron Committee, the notion of local management was once again mooted, but the report advocated against such a step, concluding that 'the delegation of authority to make local regulations to local committees might have merited consideration had Scottish fishermen been voiceless, had they not had representative organisations to speak for them ... but in fact they appear to be well organised.'⁵ Furthermore, the report highlighted the difficulties of ensuring that local committees were representative of all of the different interests⁶ and the authors feared that localisation might lead to parochialism and measures to protect local fishers from those vessels travelling to the region to fish.⁷

The 1984 Act

The matter came up again during discussion of the Inshore Fisheries (Scotland) Bill, when the idea of establishing localised management bodies was considered. In the end it was rejected on the basis that:

'it would be wrong for the Secretary of State to devolve his powers in this respect and, even if he did, ... the creation of these local committees might well give rise to more problems than they would solve. There could be problems of demarcation since the fish stocks might well not correspond as neatly to the committee areas as we would wish. There would also be difficulties if a committee in one area adopted a more restrictive or a more relaxed line on particular issues than a committee in another area.'⁸

Nevertheless, the Bill was amended during its passage to ensure that the Secretary of State, when exercising powers under the legislation, consulted fisheries interest groups. To this end, the Inshore Fisheries (Scotland) Act 1984 includes a requirement for consultation with 'such bodies as [the Minister] considers appropriate.'⁹ There was some resistance to the insertion of this relatively mild language into the Bill¹⁰, but it was ultimately adopted as an amendment by the House of Commons. The drafting history suggests that this provision was directed at consultation with fisheries bodies but the phrase is ambiguous and it leaves a lot of discretion as to who is consulted. The Act gained royal assent in 1984, it was brought into effect on 26th July 1985¹¹, and it remains one of the main pillars of the legal framework for inshore fisheries management in Scotland.

The Royal Commission 2005 Report,

Despite repeated rejections of establishing local management committees at governmental level, the idea continues to resurface from time to time. For example, the Royal Commission on Environmental Pollution recommended in its 2005 Report – *Turning the Tide: Addressing the Impact of Fisheries on the Marine Environment* – that the Scottish Executive should establish inshore management committees in Scotland.¹² By this time, some policy movement had already taken place in Scotland, which, whilst not seeing the introduction of statutory bodies, recognised the value of greater involvement of local and regional interests within the development of inshore fisheries policy-making.

committee, that they prefer to have their interests promoted by their own associations, who for many years have had direct lines of communication with the central executive and administrative authorities.'

⁵ Ibid, para. 253. At this point, the report adds in brackets '(we acknowledge there are gaps – for example creel fishermen).'

⁶ Ibid, para. 252.

⁷ Ibid, para. 250.

⁸ Hansard, HL Deb 29 November 1983, vol 445, col 564 (Lord Gray of Contin, Minister of State, Scottish Office). See also rejection of an amendment during the passage of the Bill through the Lords, which would have given a power to the Secretary of State to delegate his powers to a local area committee: Hansard HL Deb 13 February 1984 vol 448 cc70-89.

⁹ Inshore Fisheries (Scotland) Act 1984, s. 1. Under the Scotland Act 1998 (Modification of Functions) Order 1999, these powers were transferred to the Scottish Ministers.

¹⁰ See Hansard, HL Deb 20 February 1984 vol 448 cc519-24.

¹¹ Inshore Fishing (Scotland) Act 1984 (Commencement) Order 1985.

¹² Royal Commission on Environmental Pollution, *Turning the Tide: Addressing the Impacts of Fisheries on the Marine Environment* (25th Report), Cm 6392 (December 2004) para. 11.47.

The establishment of IFGs

The turning point came with the re-election of the coalition government in 2003. In the Partnership Agreement underpinning the second coalition government of the Scottish Labour Party and the Scottish Liberal Democrats, there was an **agreement to 'set in place an urgent review of the management of all fisheries within the 12-mile coastal zone with a view to delegating responsibility to local stakeholders,** if necessary through reform of the Inshore Fisheries Act and other regulatory measures for inshore fisheries.¹³ As a result of that process¹⁴, Scottish Ministers proposed the introduction of Inshore Fisheries Groups (IFGs) in 2005.¹⁵ **These new bodies would be tasked with 'developing local objectives for inshore fisheries management within the geographical area that the group covers and developing management plans to deliver those objectives.'**¹⁶ This change of policy was designed to overcome what was perceived to be a reactive response to inshore fisheries issues under the applicable legislation¹⁷ and an ad hoc reliance on stakeholder consultation. **The new IFGs were thus intended to promote proactive management 'in a coordinated and coherent way.'**¹⁸

With this in mind, **IFGs were supposed to have the ability to 'plan for and react to changing circumstances and provide the opportunity to pilot and test new management measures in a meaningful and critical context.'**¹⁹ To this end, six pilot IFGs were established in 2009 covering the Clyde, Moray Firth, North West, Outer Hebrides, Small Isles & Mull, and South East.

Originally, it was proposed that 12 groups would be created in total, but an early review carried out in 2010 on behalf of the Scottish Government recommended reducing the number of IFGs²⁰, and it was subsequently decided to establish just six permanent groups, covering slightly larger areas, namely the East Coast, Moray Firth & North Coast, the North West, Orkney, the Outer Hebrides and the South West. Shetland was excluded due to the existence of the Shetland Islands Regulated Fishery (Scotland) Order, which confers licensing and other regulatory powers directly on the Shetland Shellfish Management Organisation.²¹

The Regional IFGs

Further reform was to follow in 2016²², when the six IFGs were replaced by three Regional Inshore Fisheries Groups (RIFGs) covering the North and East Coast (NECRIFG), the West Coast (WCRIFG), and the Outer Hebrides (OHRIFG), with two 'associated network groups' in Orkney and Shetland.²³ The structure and functions of the bodies in the latter two regions differs significantly from the standard RIFG. Shetland continues to be subject to the regulating order regime and so it is to be treated somewhat differently from the other RIFGs. Orkney is also different in that there is a limited company called Orkney Sustainable Fisheries (OSF) Ltd which was established to 'run the local lobster hatchery and carry out research projects on the local shellfish populations.'²⁴ Whilst OSF

¹³ Scottish Labour Party and the Scottish Liberal Democrats, *A Partnership for a Better Scotland* (May 2003) 16.

¹⁴ See inter alia D Symes and S Ridgway, *Inshore Fisheries Regulation and Management in Scotland: Meeting the Challenges of Environmental Integration*, SNH Commissioned Report Fo2AA405 (2003).

¹⁵ See also *The Royal Commission on Environmental Pollution Report "Turning the Tide": Addressing the Impact of Fisheries on the Marine Environment - the Scottish Executive Response* (2006)13.

¹⁶ Scottish Government, *A Strategic Framework for Inshore Fisheries in Scotland* (2005) para. 37.

¹⁷ *Ibid*, para. 16.

¹⁸ *Ibid*, para. 38.

¹⁹ *Ibid*, para. 38.

²⁰ See Homarus Ltd, *Inshore Fisheries Groups in Scotland: Early Review and Policy Appraisal (IFG Early Review)* (September 2010).

²¹ See the Shetland Islands Regulated Fishery (Scotland) Order 2012, which replaces the previous 1999 regulating order. The 2012 order confers regulatory powers on the Shetland Shellfish Management Organisation until 31 January 2028.

²² These changes were introduced following the adoption of the 2015 Inshore Fisheries Strategy, which describes the new regional bodies as 'the authoritative voice on inshore fisheries matters in mainland marine regions.'

²³ Marine Scotland, *Scottish Regional Inshore Fisheries Groups: Outline Structure and Functions (Structure and Functions)*, Appendix C, para 1.

²⁴ <http://www.orkneysustainablefisheries.co.uk/>

is recognised as fulfilling similar functions to the other RIFGs, given the significant differences in its structure and participation, it will not be included in the current analysis.

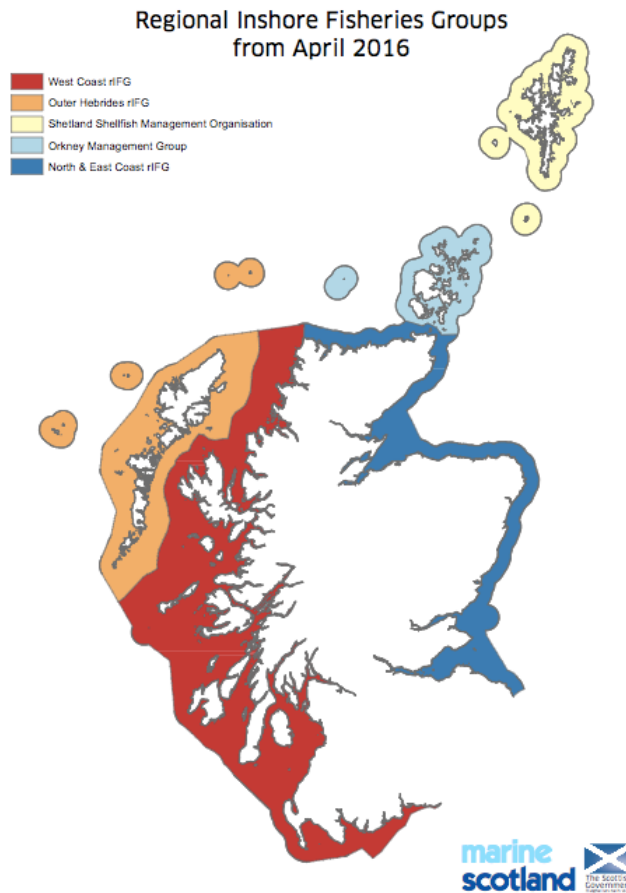


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What this brief historical overview demonstrates is that the question of localisation of inshore fisheries management is an issue that has consistently resurfaced throughout the years in debates over the appropriate format for inshore fisheries governance in Scotland. The debates also illustrate key issues that arise in the design of any system of localised management, including the delimitation of boundaries, as well as the composition and funding of any body given responsibility for fisheries issues. The following sections will evaluate the practice of the RIFGs in some of these respects, focussing on participation, transparency and accountability.

3. RIFG Status, Institutional Structure, Participation and Decision-Making

3.1 Status of RIFGs

According to the Scottish Government, '[RIFGs] are non-statutory bodies that aim to improve the management of Scotland's inshore fisheries out to 6 nautical miles, and to give commercial inshore fishermen a strong voice in wider marine management developments.'²⁵ Whilst they may be non-

²⁵ <http://www.gov.scot/Topics/marine/Sea-Fisheries/InshoreFisheries/rifgs>

statutory, RIFGs are essentially quangos²⁶ and they play a key function in inshore fisheries management in Scotland by providing a link between local and regional fishing interests on the one hand and government decision-makers on the other hand. The administration of RIFGs is financed and supported by Marine Scotland, which further underpins the link with government.

IFGs have not met their original ambitions

Whilst these bodies were always intended to be non-statutory in nature, in contrast to the English Sea Fisheries Committees/IFCAs²⁷, **in practice, the precise characterisation of the Scottish model has evolved over time, from a relatively transparent and inclusive mechanism for developing inshore fisheries policy to a more informal arrangement largely concerned with giving a platform to elements within the fishing industry to influence government decision-making.**

From transparent and constituted to opaque and ill-defined

The original model for IFGs anticipated that they would be formally constituted, with clear 'rules of procedure to guide the conduct of their business.'²⁸ **The advantage of this constituted approach was to ensure that decision-making was carried out in transparent and accountable manners.** Indeed, it would appear that many of the IFGs did operate according to a constitution, which formally established the IFG, set out its objectives and powers, and established the membership and institutional structure of the IFG.²⁹ Whilst constituted, it would appear that the IFGs operated as unincorporated associations, meaning that they did not have separate legal personality of their own.

Practice has, however, changed since the abolition of IFGs in early 2016 and their replacement with RIFGs. Subsequent guidance from Marine Scotland has confirmed that **RIFGs may operate as non-constituted groups**³⁰ and this is how the NECRIFG and WCRIFG have operated since their establishment in 2016.³¹ **Obviously, this choice has implications for the governance of RIFGs, particularly when it comes to membership and decision-making, with a significant loss of transparency and a lack of clarity about who can be involved in the process.** These issues will be discussed in further detail below. As one of the original IFGs that survived the consolidation, the OHRIFG still purports to have a constitution, which is annexed to its Fishery Management Plan. Yet, in practice, the operation of this institution deviates significantly from the constitution and so it is probably better to understand the OHRIFG as a distinct entity from the OHIFG, and which operates as an unconstituted body in the same manner as the NECRIFG and the WCRIFG.

3.2 Institutional Structure

The original plans for IFGs anticipated a two-tier structure, consisting of an annual meeting of all members, with the more regular operation of the IFG overseen by a smaller Executive Committee composed of representatives nominated or elected by the membership.³² With the advent of RIFGs, this two-tier structure appears to have been abandoned and RIFGs are simply expected to have a Management Committee. But given that the **RIFGs do not operate according to a formal**

²⁶ Quasi-Autonomous Non-Governmental Organisation, which is defined by the Oxford English Dictionary as 'an administrative body which has a recognized role within the processes of national government, but which is constituted in a way which affords it some independence from government, even though it may receive state funding or support and senior appointments to it may be made by government ministers.'

²⁷ IFCAs were introduced under the Marine and Coastal Access Act 2009 in order to replace the previous system of Sea Fisheries Committees; see Marine and Coastal Access Act 2009, Part 6, Chapter 1.

²⁸ Scottish Government Marine Directorate, *Inshore Fisheries Groups Constitution and Guidance Notes (IFG Guidance Notes)* (August 2008)

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²⁹ See e.g. South-East IFG Management Plan, June 2012, Appendix B; Small Isles and Mull IFG Management Plan, June 2012, Appendix 1. These constitutions were based upon a model prepared by the Scottish Government.

³⁰ NECRIFG Minutes, 3 June 2016, para. 5(v).

³¹ See the WCRIFG Management Plan (2017) 3.

³² IFG Guidance Notes.

constitution³³, the membership of the Management Committee is unpredictable, and operates with few rules to regulate participation or to constrain the conduct of meetings.

Like their predecessors, RIFGs may establish geographic subcommittees and thematic work groups.³⁴ Most RIFGs have made good use of these powers. For example, the WCRIFG has established four geographic sub-committees (Clyde, Mull & Argyll, Solway, and West Highlands & Skye). To some extent, these sub-committees mirror the original areas proposed for IFGs. The OHRIFG has similarly formed a Broad Bay sub-group to address the particular issues in that area and the NECRIFG agreed to set up geographical sub-groups to mirror the four regional planning areas in its zone of responsibility, (Forth and Tay, North East, Moray Firth, and North Coast).³⁵ RIFGs have also established working groups to deal with thematic issues, such as a Cackle sub-group and Razor sub-group under the auspices of the OHRIFG and gear conflict working groups under the WCRIFG and NECRIFG.³⁶

Whilst such subsidiary bodies, whether geographical or thematic, can be seen as a positive development in terms of strengthening the participation of locally-based members in decision-making³⁷, a negative aspect is that **there is often no public record of their composition and minutes are not always recorded. This has serious implications for transparency and accountability.** Although initiatives from sub-committees must be subsequently agreed by the Management Committee,³⁸ this may just provide a rubber-stamp for what has been agreed. **Rules about transparency and publication of minutes should be extended to any subsidiary body.** The fact that the OHRIFG already have such a practice suggests that it would be feasible for others to do so.

3.3 Participation of Fishing Interests in RIFGs

The 2005 Strategic Framework for Inshore Fisheries in Scotland recognised that ‘fishermen must be at the core of [the IFGs]’³⁹ and this has certainly been the practice of RIFGs. Government guidance for RIFGs suggests that the Management Committee will largely be composed of representatives of the local fishing industry, who are seen as ‘the key stakeholders for the development of fisheries management provisions.’⁴⁰ This includes, in principle, not only fishers, but also processors and distributors. The guidance provided to RIFGs makes clear that ‘all inshore fishermen from all sectors have the chance to engage with the RIFG regardless of the size of the Association or lack of one.’⁴¹

In practice **there are real concerns about the prevalence of attendance of well resourced, and frequently national) fishermen's organisations and the absence of independent fishers as members of these ostensibly regional bodies. The failure by the RIFGs to offer financial assistance for attendance costs, aggravates this problem.**

The Outer Hebrides RIFG

The OHRIFG has seen participation from seven fisheries organisations, including three national organisations (Scottish Pelagic FA; Scottish White Fish PA; and the Scottish Fishermen’s Federation) and four other groups, two of which are not based in the area (Western Isles FA; Mallaig and North

³³ See above.

³⁴ Structures and Functions, para. 10.

³⁵ See NECRIFG Minutes, 25 November 2016.

³⁶ See e.g. NECRIFG Minutes, 9 June 2017.

³⁷ The early review of IFGs carried out in 2010 revealed that ‘there is ... a perception amongst inshore fishermen that current IFG Executive Committee membership is weighted in favour of larger fishermen’s associations, usually representing more organised and mobile operators [and] the challenge for IFGs in local consensus-building is therefore to improve the representation of smaller individual operators, many of whom are not members of a fishermen’s association and very unlikely to become so or are members of smaller, more loosely organized associations’; IFG Early Review, 53.

³⁸ See OFRIFG Minutes, 1 June 2016.

³⁹ Scottish Government, *A Strategic Framework for Inshore Fisheries in Scotland* (2005) para. 40.

⁴⁰ Structures and Functions, Annex C, para. 5.

⁴¹ Structures and Functions, Annex C, para. 16.

West FA; Orkney FA; and Clyde FA). **This would seem to reaffirm the concerns expressed in the Early Review of the IFGs that IFG Executive Committee membership is weighted in favour of larger fishermen’s associations, usually representing more organised and mobile gear operators**⁴². The flexibility of the current system would appear to allow any association to attend meetings and participate. Indeed, some organisations send more than one delegate to meetings. What is noticeably different from the original OHIFG constitution is that no independent member appears to serve on the Management Committee of the OHIFG, although it is not clear whether this is by intention or simply a lack of interest.

The West Coast RIFG

The WCRIFG has regular participation from ten fisheries organisations, including three national organisations (Scottish Creel Fishermen’s Federation; Scallop Association; Scottish Scallop Diver’s Association) and seven regional groups, not all of which are based in the area (Northern Irish FPA; Clyde FA; South West FPA; Western Isles FA; Orkney FA; MAFA; North West Responsible FA). The WCRIFG appears to have an independent member, although it is not clear how they were selected.

The North & East Coast RIFG

The NECRIFG is by far the largest of the RIFGs with nineteen fisheries organisations regularly participating, including five national organisations (Anglo-Scottish FA; Scottish Creel Fishermen’s Federation; Scottish White Fish PFA; Salmon Net Fishing Association of Scotland; Scottish Pelagic FA/Scottish Fishermen’s Federation) and 14 regional or local groups (Mallaig and North West FA; Moray Firth Inshore FA⁴³; Arbroath and Montrose Static Gear Association; Buchan Inshore FA; Eyemouth FA; Aberdeen Inshore FA; North East Creel and Line FA; Fife FA; Port Seton FA; Fife Creel FA; Dunbar FA; St Andrews Inshore FA; FMA Pittenweem; Whitehalls Inshore FA). The NECRIFG also has a number of independent members (three at the January 2018 meeting), although it is also not clear how they are selected given the lack of a constitution.⁴⁴

Chairmen

In addition to the representatives of the fisheries organisations, the Chair of the RIFG, who is selected to be independent of any fishing interests, plays an important role in feeding in views from bodies that may not be able to attend meetings and also from independent fishermen who are not otherwise represented on the group.⁴⁵ It is not clear how this happens in practice.

Conclusions on Fishing Interest participation

Based upon our survey of RIFG practice, it would appear that the RIFGs are able to channel a wide variety of views from the fishing industry into their discussions, including both large-scale national organisations and much smaller local groups. Nevertheless, **the lack of a constitution undermines the transparency of this process, as it is not clear what mandate these different representatives have**. For example, the original model constitution for the IFGs specified that fisheries associations had to have at least ten members in order to qualify for membership.⁴⁶ It also permitted one representative from each organisation to participate. **These rules ensuring that no organisation could unduly influence proceedings, and aimed at ensuring fairness and representativeness in the decision-making process do not appear to apply to RIFGs**. Indeed, a key issue in this context is the lack of clarity, because, even if there are rules of procedure for the RIFGs, they are not readily accessible. SIFT believes that **this lack of transparency in the current operation of RIFGs also undermines the legitimacy of the decision-making process and, at a minimum, RIFGs should be**

⁴² OFIFG Minute, 20 June 2013.

⁴³ It was reported at the January 2018 meeting of the NECRIFG that the Moray Firth Inshore FA had been disbanded but that the two representatives from that organisation were continuing to serve as independent members on the RIFG until they formed a new association; NECRIFG Minutes, 19 January 2018.

⁴⁴ See footnote 45.

⁴⁵ See Marine Scotland, RIFG Newsletter 2017.

⁴⁶ See IFG Guidance Notes, 5.

required to operate according to a publicly available constitution, which sets out the processes for determining membership and decision-making.

Similarly problematic is the lack of involvement of other stakeholders in the RIFG process and it is to this issue that we now turn.

3.4 Participation of Other Marine Stakeholders in RIFGs

The early policy documentation relating to IFGs, acknowledged that it was 'essential ... that other stakeholders have an opportunity to be involved in this process [including] processors, environmental interests, community members, and other marine users.'⁴⁷ Thus, there was an expectation that governance structures would reflect these diverse interests. **This commitment was to be operationalised by the establishment of Advisory Groups of relevant experts and stakeholders, who should be consulted on key issues, including the development of a fisheries management plan.** The guidance produced by the Scottish Government suggested that the Executive Committee will have 'a duty to invite' representatives from a list of organisations to their meetings and this list included not only governmental bodies such as Scottish Natural Heritage (SNH), the Scottish Environmental Protection Agency (SEPA), and local authorities, but also 'Environmental [Non-Governmental Organisations (NGOs)] which are in membership of Scottish Environment LINK.'⁴⁸ The practice of the IFGs would seem to have supported the involvement of these interest groups, at least as reflected in their constitutional documents.⁴⁹ Indeed throughout the three year term of the original pilot IFGs, they all held regular meetings between the Executive Committee and the Advisory Groups, with the latter involved in the development of the IFG Management Plans throughout the lifetime of the IFGs. Notwithstanding, this situation was not seen as perfect by all commentators who were critical of the narrowness of opportunity for non-fishing interests to become involved in IFGs, highlighting the 'significant democratic implications'⁵⁰, particularly through the exclusion of local community groups.⁵¹ **Nevertheless, practice under RIFGs would appear to have become worse, not better.**

The narrative of participation noticeably changed with the transition from IFG to RIFG. **Subsequent policy documentation made clear that the RIFGs were bodies that were 'open for engagement by all commercial fishermen ... supported by expert advice from government bodies and agencies with NGOs and other stakeholders also expected to contribute where appropriate.'**⁵² This language suggests a hierarchy of interests, with fishermen at the centre, government on the sidelines, and 'other stakeholders' relegated to participation in some, but not necessarily all, discussions. This marginalisation of stakeholders is further evidenced by the guidance issued to RIFGs, which makes clear that the participation of marine stakeholders is to be based upon ad hoc invitation by the Chair.⁵³ This leaves stakeholder participation to the discretion of each group.⁵⁴ **The lack of a constitution and thus any formal consultation procedures further cements the second-class status of non-fishing interests in the decision-making process.**

In practice most RIFGs have exercised this discretion to almost completely exclude wider marine stakeholders from discussions. Available records of the meetings of the three main RIFGs show that there has been no NGO representative at the table for discussions. This change of policy is perhaps best highlighted by the example of the OHRIFG, where a representative of RSPB was in

⁴⁷ Scottish Government, *A Strategic Framework for Inshore Fisheries in Scotland* (2005) para. 40.

⁴⁸ IFG Guidance Notes, 21.

⁴⁹ See e.g. Small Isles and Mull IFG Management Plan, para. 4.1.6, listing Scottish Environment Link as a member of the Advisory Group.

⁵⁰ M Pieraccini and E Cardwell, 'Towards Deliberative and Pragmatic Co-Management: A Comparison between Inshore Fisheries Authorities in England and Scotland' (2016) 25 *Environmental Politics* 729, 741.

⁵¹ *Ibid*, 742, citing the refusal of the Scottish Government to allow Arran COAST to attend the South West IFG.

⁵² Structure and Functions, Annex A, para. 6. (emphasis added)

⁵³ Structure and Functions, Annex B, para. 5.

⁵⁴ This is made clear later in the same document, which says 'Marine stakeholder groups will be invited to attend at the discretion of the Chair'; *ibid*, para. 16.

attendance at the final meeting of the IFG as it was constituted in January 2016, but their involvement ends with the transition to the RIFG model from April 2016 onwards.

In contrast, representation of governmental interests is reasonably consistent, particularly when it comes to central government. **Representatives of Marine Scotland and SNH are regular attendees of all RIFGs.** Seafood Scotland has participated in some meetings, albeit on a more ad hoc basis. **SEPA is surprisingly absent from most meetings, despite the fact that it was listed as a mandatory attendee in the original model IFG constitution.**

The involvement of local government in discussions varies between RIFGs: representatives of Comhairle nan Eilean Siar regularly attend meetings of the OHRIFG, but local authority representatives are few and far between at meetings of other RIFGs, despite the fact that they exercise important functions that are highly relevant to the fishing industry, including some responsibilities for harbours. A representative of Argyll and Bute Council has attended a few meetings of the WCRIFG, but this is the only other example that can be found, despite the fact that a number of other local authorities (Highlands and Islands; Dumfries and Galloway) border the area covered by this group. Local authority representation would appear to have been entirely absent from the NECRIFG. It is impossible to tell whether this is due to a lack of invitation or a lack of interest, which only underlines how the lack of a constitution impairs the transparency of RIFGs and workings.

Conclusions on Other Marine Stakeholder Participation

The lack of participation severely undermines the legitimacy of the RIFG process and sits uneasily with the early aspirations for localised inshore fisheries governance in Scotland⁵⁵, as well as international best practice.

Fisheries are a public resource and best practice calls for 'consultation and the effective participation of industry, fishworkers, environmental and other interested organisations in decision-making with respect to the development of laws and policies related to fisheries management...'⁵⁶ This is particularly true of inshore fisheries management, where the interest of local fishing communities are a key factor in decision-making, but 'managers must also account for wider environmental demands and the position of fisheries vis-à-vis other users of marine space, while at the same time supporting the social and economic contribution of the sector.'⁵⁷ Of course, there may be other ways to involve non-fisheries interests, which may to some extent compensate for their lack of participation in RIFGs themselves and some of these processes will be discussed below in section 4 on the development of management measures. Nevertheless, SIFT believes that **it is essential that non-fisheries interests, including local coastal communities and environmental NGOs, are directly represented in RIFG discussions.** If RIFGs will not voluntarily engage with wider marine stakeholders, then more drastic reform is necessary in order to oblige them to do so. Such reforms are not intended to drown out the voice of the fishing industry in policy discussions, but rather to ensure that other voices can also be heard. **The best way of ensuring that this balance is achieved is through the formal constitution of RIFGs.**

3.5 Decision-Making

Given the lack of a constitution, there would appear to be no formal rules of procedure governing decision-making by RIFGs. Indeed, guidance from Marine Scotland suggests that RIFGs are not expected to make decisions as such, but rather they are a forum in which to seek consensus amongst the participants.⁵⁸ Where this is not possible, the differences of opinion will simply be noted in the

⁵⁵ See above.

⁵⁶ Food and Agriculture Organization of the United Nations, *Code of Conduct on Responsible Fishing*, para. 6.13.

⁵⁷ J Phillipson and D Symes, 'Recontextualising inshore fisheries: The changing face of British inshore fisheries management' (2010) 34 *Marine Policy* 1207, 1207.

⁵⁸ Marine Scotland, *Regional Inshore Fisheries Groups - Decision-Making Process (Decision-Making Process)*, para. 2.2.

record of the meeting.⁵⁹ Within this process, **the RIFG Chair plays a central role**. Early research into the operation of IFGs suggests that satisfaction with the decision-making process is related to the strength of leadership and 'good leadership is essential for improving ... participation in decision-making processes for fisheries management.'⁶⁰ Indeed, the Chair plays a key role in facilitating discussions and compromise between interest groups and the success of RIFGs will in part depend upon their success in this process.

4 Management Plans and Regulatory Proposals

4.1 The Development of Fishery Management Plans

One of the main functions assigned to RIFGs is the development of fishery management plans (FMPs).⁶¹ This is a task that had been commenced by the IFGs, and RIFGs have built on these initial frameworks, some more successfully than others.

The Food and Agriculture Organization of the United Nations (FAO) defines a FMP as 'a formal or informal arrangement between a fishery management authority and interested parties which identifies the partners in the fishery and their respective roles, details the agreed objectives for the fishery and specifies the management rules and regulations which apply to it and provides other details about the fishery which are relevant to the task of the management authority.'⁶² In other words, a **FMP translates high-level fisheries policies and principles into a detailed framework for decision and action in relation to a particular fishery**.⁶³ There is obviously no single model for a FMP, which must be developed to reflect the context and requirements of a particular fishery, but, according to one prominent source:

*'each management objective should be examined individually and the management measures that are designed to help achieve that objective should be identified and explained. Here the plan needs to be very specific on how objectives and measures link up and which performance indicators are going to be used to measure the achievement of management objectives.'*⁶⁴

According to best practice developed under the auspices of the FAO, it is suggested that FMPs should, at a minimum, contain:

- a **description of the fishery** especially its current status and any established user rights:
- the **management objectives**;
- **how these objectives are to be achieved**;
- **how the plan is to be reviewed and/or appealed**; and
- the **consultation process for review and appeal**.⁶⁵

This structure is mirrored to some extent in the **official guidance produced by Marine Scotland to support RIFGs, which states that a FMP should '[detail] the agreed actions which the RIFG will seek to achieve and [describe] the activities, operational areas and economic significance of the local fisheries**'.⁶⁶ It must be appreciated that the RIFGs 'fisheries management plans' go beyond purely fisheries management issues, as post-capture operations also fall within their remit, including the development of landing facilities and marketing of locally caught fish products. RIFG FMPs have

⁵⁹ Ibid.

⁶⁰ MR Msomphora, 'Stakeholder Participation and Satisfaction in the Process of Developing Management Plans: The case of Scottish Inshore Fisheries Groups' (2015) 116 *Ocean and Coastal Management* 491, 498.

⁶¹ See Structure and Functions.

⁶² Food and Agriculture Organization of the United Nations, *Fisheries Management*, FAO Technical Guidelines for *Responsible Fisheries No. 4* (1997) para. 4.1(1).

⁶³ Ibid, para. 1.7(ii).

⁶⁴ DJ Die, 'Fisheries Management Plans', in KL Cochrane and SM Garcia (eds) *A Fishery Manager's Guidebook, Second Edition* (Wiley-Blackwell 2009) 427.

⁶⁵ Ibid, 426.

⁶⁶ Structure and Functions, para. 7.

also been encouraged to address 'those issues directly influencing a Scottish Marine Region Marine Planning Partnership (MPP) in determining spatial management arrangements.'⁶⁷ This latter aspect of RIFGs will be discussed in section 5 below.

All RIFGs have now adopted their FMP, although, as the review below illustrates, the content and quality of these documents varies significantly from region to region.

The Outer Hebrides RIFG Fisheries Management Plan

This FMP predates the establishment of the RIFG and was adopted by the IFG in 2011/12, so it is some seven years old. Of all of the FMPs, the Outer Hebrides FMP is by far the most detailed document and it has most of the key characteristics that one may expect of an FMP.

The Plan describes the key characteristics of the area including the relevant fisheries, ports, and storage/processing facilities. The plan then explains the current legislation and regulations in force for the fishery - although it only specifies those specific area-based measures that apply within the Outer Hebrides region and does not address broader, more general fisheries regulations that may play a critical role in the regulation of the inshore fishery (such as minimum landing sizes). It includes relevant (non-binding) codes of conduct that have been developed by fishing interest groups to accommodate different types of fishing activity. The plan then summarises the wider marine environment of the area, including Special Areas of Conservation (SACs), Special Protection Areas (SPAs), Ramsar sites, protected species and priority marine features. Finally, by means of providing context for the plan, the document describes other key activities taking place in the marine environment.

The Plan then describes the management objectives for the RIFG, which are: 1) improve management of creel fisheries/propose additional conservation measures for key fisheries; 2) assist industry in developing new sustainable fisheries; 3) encourage the fishing sector to 'catch for the market'; 4) assist the industry in implementing cost reduction measures; 5) provide marketing support to current and developing fisheries 6) reduce fishing's impact on the environment, particularly sensitive species and habitat; 7) develop more selective catching practices to reduce unwanted catch of target and non-target species; 8) provide advice, training and facilitate access to available funding for fishermen; 9) encourage new entrants into the fishing industry at a sustainable level; 10) promote appropriate engagement with all other marine stakeholders to ensure fisheries issues are fully integrated with wider decision-making on the marine environment; 11) improve decision-making and reduce conflict in the sector and between other marine users.

Each of these objectives is then supported by identifiable management measures or other actions, of which there are 37 in total. In terms of fisheries management, the range of proposals include limiting effort, increases in minimum landing sizes, carrying out surveys of stocks and development of plans for new fisheries (cockles, razorfish, mackerel, squid), and reviewing access arrangements for all fisheries. The FMP also proposes some specific changes to the area-based measures adopted under the 1984 Act in order to take into account changes in fishing practices and patterns. The proposals are accompanied by detailed justification, as well as proposed timings for carrying out each action. How some of these measures were progressed will be discussed below.

The West Coast RIFG Fisheries Management Plan

This FMP, adopted in May 2017, is based upon previous management plans adopted by the IFGs in the area and describes itself as a 'flexible rolling document which will be subject to ongoing review.'⁶⁸ Long on broad qualitative ambition and short on detail, it falls far short of the quality

⁶⁷ Decision-Making Process, para. 2.1.

⁶⁸ WCRIFG Fisheries Management Plan (2017) 5.

or extent that would be expected of good practice for an FMP as outlined in the FAO's Technical Guidelines.

The FMP sets three overarching strategic objectives, namely 1) to conserve, enhance and restore commercial stocks in inshore waters and the supporting ecosystem; 2) to optimise long term and sustained economic return to local coastal communities that are dependent on inshore fisheries and to promote quality initiatives; and 3) to maintain and restore the quality of the inshore marine environment. The plan also describes in extremely loose terms the actions (aims) that the RIFG will take in order to meet these objectives. In particular, the RIFG will i) work directly with and inform government agencies of inshore fishing interests in designation and management processes; ii) respond to relevant marine statutory consultations; iii) bring forward fisheries issues with other networks, such as MPPs and IFMAC; iv) develop position statements that reflect the expectations of the RIFG⁶⁹; v) explore options for scallop management planning. These broad ambitions are supplemented by more specific aims for the four local sub-committees, focussing on a range of species.

The North and East Coast RIFG Fisheries Management Plan

This Plan, adopted in June 2017, is also based upon previous management plans adopted by the IFGs in the area. Running to a mere three pages, the NECRIFG FMP is the shortest of the RIFG FMPs and has a number of technical shortcomings, not least of which is that it does not describe the fisheries that are being managed or proposed (despite the fact that there are active discussions within the RIFG about the establishment of new fishing opportunities.)⁷⁰ The plan is more of an action plan for the establishment of a FMP than a FMP itself.

The FMP sets an overall strategic objective of delivering a 'more sustainable, profitable and well managed inshore fisheries sector across the North & East Coast region in line with the Scottish Inshore Fisheries Strategy.' The Plan is then divided into six sections dealing with branding, science, community support, management, diversification, money management and implementation. Each section lists projects that will be undertaken by the RIFG. The core of the FMP falls within the management section, which sets out actions that the RIFG will undertake: i) a mapping exercise to help with gear and spatial conflict resolution, as well as to provide effort and catch data; ii) a science-based project on how to conduct seasonal stock assessments for each non-TAC species in order to assist fishery managers to comply with their obligation to promote MSY; iii) a science project to identify natural nurseries for target species and to allow fisheries managers to consider appropriate protection measures; iv) a science project to identify opportunities to develop new natural nurseries in areas such as no-take zones around wind farm developments; v) a project to identify the protected features within MPAs and SACs to enable sustainable fishing in those areas without harm to the protected feature. Under diversification, the Plan also identifies a project to identify fisheries which may be developed via new fishing methods or through fishing for new species.

Conclusions on Fishery Management Plans

There has been significant criticism of the lack of either scope or substance in the RIFG FMPs. They do not translate high-level fisheries policies and principles into detailed frameworks for decision and action in relation to a particular fishery. SIFT also shares wider concerns that little has been done by the RIFGs in the development of their FMPs to remedy the defects that were highlighted in their predecessor's plans. These concerns included that there are few measures proposed that would reduce damage to the seabed, its biodiversity and historic environmental interests⁷¹. One of the constraints of RIFG FMPs is that they only contain proposals for management

⁶⁹ The FMP includes a position statement on the laying of subsea cables in Appendix I. For further discussion, see Section 5 below.

⁷⁰ See e.g. the discussion of a new ring-net fishery for herring and a new sprat fishery that took place at the April 2018 meeting of the NECRIFG.

⁷¹ Marine Scotland, *Management Proposals of Inshore Fisheries Groups: Strategic Environmental Assessment Environmental Report* (August 2013) para. 27.

supported by consensus within the RIFG.⁷² This may explain some of the gaps and weaknesses in the FMPs, although it highlights the limitations of the decision-making process underpinning the development of FMPs. **SIFT does not have confidence that RIFGs in their current form have either an incentive or the capacity to address these concerns in a substantive and adequate manner.** This once again underlines the need for urgent reform of the inshore fisheries management system in Scotland.

4.2 The Adoption of Regulatory Measures

As RIFGs are non-statutory bodies with no management powers of their own, the FMPs themselves have no formal legal status unless they are adopted by the Scottish Government. Indeed, guidance from Marine Scotland anticipates that FMPs will be forwarded to Marine Scotland for consideration on what further action, either regulatory or voluntary, may be required. If regulation is required, the adoption of a FMP is only the first step in what is a lengthy and complex process.

Although the RIFG FMPs are not government documents, the fact that they are submitted to Marine Scotland for approval and may require action from the Scottish Ministers means that **FMPs have been treated as triggering the relevant provisions of the Environmental Assessment (Scotland) Act 2005.**⁷³ This legislation sets down detailed procedural obligations for the assessment of plans that fall within its scope, including the information that must be contained in the environmental report⁷⁴ and the consultation procedures that must be followed. A plan or programme may not be adopted before the relevant requirements in Part 2 of the Act have been satisfied.⁷⁵ **The obligations relating to consultation are particularly significant, as they ensure both a large degree of transparency, but also allow a range of actors to comment on the elaboration of the plan and its environmental effects.** The legislation expressly requires that the consultation procedure must provide sufficient opportunity for interested parties to effectively respond.⁷⁶ SNH, SEPA and Historic Environment Scotland are also designated as statutory consultees under the legislation.⁷⁷ The 2005 Act requires that the authority takes into account every opinion expressed in response to the consultation.⁷⁸ In order to ensure that authorities do not simply go through the motions, the Act introduces a requirement that the responsible authority makes available a statement on how the environmental report was taken into account in finalising the plan or programme, how environmental considerations were integrated into the final document, and how it responded to opinions expressed through the consultation process.⁷⁹ Marine Scotland ran a consultation on the IFG FMPs from 15 August 2013 to 10 October 2013⁸⁰ and 12 responses were received in total, including from the statutory consultees⁸¹, and some of the responses have already been discussed above in section 3 on the fisheries management plans.

It is also worth noting that the Environmental Assessment (Scotland) Act 2005 not only applies to the initial adoption of a plan but also to their modification.⁸² In practice, no subsequent assessment was undertaken of the RIFG FMPs adopted in 2017, although this may be explained by the fact that many of the management proposals in these later FMPs were repeated from the earlier plans and so they were considered to have already been assessed.

⁷² Decision-Making Process, para. 2.5.

⁷³ See Marine Scotland, *Inshore Fisheries Groups Management Plans: Strategic Environmental Assessment Screening Report* (May 2012).

⁷⁴ Environmental Assessment (Scotland) Act 2005, s. 14.

⁷⁵ *Ibid.*, s. 12(1).

⁷⁶ *Ibid.*, s. 16(3).

⁷⁷ *Ibid.*, s. 3.

⁷⁸ *Ibid.*, s 17.

⁷⁹ *Ibid.*, s. 18(1)-(3).

⁸⁰ See <http://www.gov.scot/Resource/0043/00430276.pdf> <accessed 23 May 2018>.

⁸¹ Alongside the responses from SNH, SEPA and Historic Scotland, responses from received from three environmental groups, one from an IFG, one from a fishermen's organisation, two from other organisations (Scottish Power and Scottish Water), and two from individuals.

⁸² Environmental Assessment (Scotland) Act 2005, s. 4(2).

Nevertheless, SIFT is concerned about the process for assessing future FMPs, particularly if there is no formal periodic review of the FMPs and modifications are instead introduced on an ongoing ad hoc basis by RIFGs, as is implied by the FMPs themselves.⁸³ Another issue that has been raised in the context of the strategic environmental assessment process concerns timing and the need to ensure that any assessment is 'undertaken at an early stage in the development of future iterations of inshore fishery management proposals.'⁸⁴ The need for proactive approach to this issue is supported by the general review of the 2005 Act carried out by SNH, SEPA and Historic Scotland in 2011, when it was suggested that the success of environmental assessment depends upon it becoming embedded in corporate culture and being seen as an integral part of policy-making.⁸⁵ To achieve this aim, it is vital that an assessment is carried out at an early stage in the plan-making process and the focus of the assessment should be tightly focussed in order to ensure the most appropriate outcomes. **Early engagement with environmental assessment and related consultation procedures is even more important in light of the effective exclusion of broader marine stakeholders from the RIFG process itself.** This issue was 'noted for consideration in future assessment' in the post-adoption statement on the 2013 Environmental Report of the IFG Management Proposals, which also reflected that 'the responsibility for timing of [Strategic Environmental Assessment] will be the responsibility of Marine Scotland in consultation with IFGs.'⁸⁶ **SIFT would welcome some clarity from Marine Scotland on how it proposes to take forward this issue as the RIFG FMPs come to be reviewed in the future.**

It must also be noted that if a RIFG proposal concerns the establishment or expansion of a new fishery in or adjacent to waters that coincide with a SAC or SPA, then a further assessment procedure must take place. EU law imposes an obligation on public authorities to carry out an 'appropriate assessment' of 'any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects.'⁸⁷ There is no legal requirement to carry out a consultation in relation to an appropriate assessment under the Habitats Directive⁸⁸, although consultation with the appropriate nature conservation body (usually SNH in Scotland) is mandatory.⁸⁹ Following an assessment, a plan or project may only be authorised if the relevant authority has 'ascertained that it will not adversely affect the integrity of the site concerned.'⁹⁰ It is only 'for imperative reasons of overriding public interest, including those of a social or economic nature' that a project or plan may be authorised if it will adversely affect the integrity of the site, and even then, only if compensatory measures are adopted.⁹¹ So for example, a proposed drift net fishery in the Moray Firth would appear to be have blocked due to potential impacts on the dolphin population, which is the subject of protection in the Moray Firth SAC.⁹²

The focus of the consultation under the 2005 Act (and under the habitats regulations if a consultation does take place) is on the environmental effects of the FMPs and the proposals contained therein.

⁸³ See e.g. WCRIFG Fisheries Management Plan (2017) 5: 'the latest Fisheries Management Plan is a flexible rolling document which will be subject to ongoing review by the WCRIFG Management Committee allowing it to evolve as actions are addressed or new developments or issues arise.'

⁸⁴ See Marine Scotland, *Management Proposals of Inshore Fisheries Groups: Strategic Environmental Assessment Environmental Post-Adoption Statement* (July 2014) para. 3.3.4.

⁸⁵ Scottish Natural Heritage, Historic Scotland and the Scottish Environmental Protection Agency, *The Scottish Strategic Environmental Assessment Review: A Summary* (July 2011) 5-6.

⁸⁶ Marine Scotland, *Management Proposals of Inshore Fisheries Groups: Strategic Environmental Assessment Environmental Post-Adoption Statement* (July 2014) para. 3.4.2.

⁸⁷ European Union Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (Habitats Directive) Article 6(3).

⁸⁸ See e.g. *RSPB v Scottish Ministers* [2017] CSIH 31, 16 May 2017, para. 190.

⁸⁹ Conservation (Natural Habitats) Regulations 1994, Regulation 4(4).

⁹⁰ Habitats Directive, Article 6(3).

⁹¹ *Ibid*, Article 6(4).

⁹² See NECRIFG Minutes, 25 November 2016.

However, Marine Scotland also has a policy of carrying out more general consultations on proposals for management measures. This is reflected in the guidance provided to RIFGs:

*'Where Marine Scotland accepts that the RIFG has reached consensus on a proposal or has made as much progress as seems possible and there is a requirement for a statutory intervention to initiate the management measure, it will seek to undertake a full public consultation in line with its statutory responsibilities. Resultant findings will be reported as advice to the appropriate Scottish Government Minister and acted upon accordingly.'*⁹³

A good example of this process is the development of management proposals suggested by the OHRIFG in their FMP.

- (i) As noted above, the Outer Hebrides FMP suggests the need to review the area-based measures contained in the Inshore Fishing (Prohibition of Fishing and Fishing Methods) (Scotland) Order 2004. A public consultation was run from 4 December 2015 to 26 February 2016 in order to seek views on these proposals.⁹⁴ Only ten responses were received, including from the OHRIFG itself and two fisheries groups which were constituent members of the RIFG.⁹⁵ Following the consultation, the new measures were adopted in the form of the Inshore Fishing (Prohibition of Fishing and Fishing Methods) (Outer Hebrides) Order 2017.
- (ii) The Outer Hebrides FMP proposed increased minimum landing sizes for lobster, brown and velvet crabs. A public consultation on the proposed measures was held from 4 July 2014 to 29 August 2014, with five responses, including from the RIFG itself and two of its constituent FAs. The changes were subsequently introduced through the Outer Hebrides (Landings of Crabs and Lobsters) Order 2015.⁹⁶
- (iii) The FMP also included a proposal to limit creel numbers for all creel fisheries. This is a measure that has been mooted in several RIFGs, with some resistance from Marine Scotland.⁹⁷ Nevertheless, the proposal to, inter alia, limit the number of creels that vessels may operate in the north of the Minches, from Stornoway to Barra Head, was shortlisted as one of the five proposals for inshore fisheries pilots by Marine Scotland in 2017.⁹⁸ Yet, Marine Scotland has intimated that only two of the proposals will ultimately be selected⁹⁹, and furthermore that there will be a moratorium on spatial measures during the two-year period of the pilots, which means that there is no guarantee that this measure will advance in the near future.¹⁰⁰ Even if it is successful, it will be at the cost of proposals from other RIFGs.

Whilst RIFGs have played a role in developing proposals for new management measures, these examples illustrate several shortcomings with the current procedures:

- **Firstly, there can be significant delay between proposals being put forward and their ultimate adoption.** This is not a problem that is unique to the development of RIFG proposals and it would appear that there is general frustration about the slowness of the policy-making process in relation to inshore fisheries.¹⁰¹

⁹³ Decision-Making Process, para. 2.4.

⁹⁴ Consultation Document: <https://consult.gov.scot/marine-scotland/inshore-fishing-prohibitions-in-the-outer-hebrides/> <accessed 23 May 2018>.

⁹⁵ Outcome Report; see <http://www.gov.scot/Resource/0051/00512157.pdf> <accessed 23 May 2018>.

⁹⁶ The 2015 Order has since been revoked and replaced by the Specified Crustaceans (Prohibition on Landing, Sale, and Carriage) (Scotland) Order 2017.

⁹⁷ See e.g. discussion within the NECRIFG of a proposal by the Dunbar FA to limit creel numbers, with a response from Marine Scotland that 'this was not feasible under the current legislation'; NECRIFG Minutes, 9 June 2017.

⁹⁸ See <http://www.gov.scot/Topics/marine/Sea-Fisheries/InshoreFisheries/InshoreFisheriesPilots> <accessed 23 May 2018>.

⁹⁹ Marine Scotland, Consultation on Proposed Sites to Host Inshore Fisheries Pilots 2017 (December 2017) 2.

¹⁰⁰ NECRIFG Minutes, 9 June 2016.

¹⁰¹ See e.g. the comments on the introduction of new measures for Scallops in WCRIFG Minutes, 9 December 2016; see also comments on gear conflict in NECRIFG Minutes, 25 November 2016.

- Secondly, **fishing interests get to influence the process at two separate stages, both in making recommendations and in the subsequent public consultation.** This “double-dip” raises questions about the fairness of the procedure.
- Thirdly, the examples demonstrate that **consultation has not been particularly effective in engaging broader stakeholders in the policy process** as there was very little response to these consultations.
- Finally, there is **no certainty that a measure proposed by RIFGs, even if supported by consensus, will necessarily achieve the support of the Scottish Government.** The Scottish Ministers appear to be very reluctant to take forward some of the more innovative ideas about inshore fisheries management with the only progress to date being a commitment to two pilots over a two-year period; this will leave a lot of participants in the RIFGs very disappointed that their ideas have essentially been knocked back or put on hold.¹⁰²

In addition, it is clear that in practice, RIFGs have not been treated as an exclusive means of developing localised management policy for inshore waters. It would appear to be accepted that ‘representation via the RIFG is complementary to any lobbying an association makes direct to Marine Scotland and the Fisheries Minister.’¹⁰³ Indeed, Marine Scotland has itself recognised that ‘any individual or association could present proposals to Marine Scotland which would be given due consideration, but more weight would be given to fisheries proposals that had the backing of the [RIFG].’¹⁰⁴ The non-exclusivity of RIFGs is also evident from the decision to allow applications from any organisation to carry out inshore fisheries pilots. Indeed, three of the five proposals which were consulted on came from fishery associations rather than RIFGs, albeit one of them was closely associated with an associated network group (i.e. OSF). This **begs the question about whether the current system creates a sufficient incentive to participate in the collective management of shared resources through RIFGs, as opposed to simply unilaterally lobbying the Scottish Ministers to take action.** In this context, it has been recognised in the literature on the management of common resources that effective stakeholder (in the broad sense of the term) participation can only be achieved if ‘it is clear to them that benefits exceed costs in their involvement.’¹⁰⁵

4.3 Voluntary Management Measures

Not all proposals for management will necessarily need the approval of Scottish Ministers. Indeed, Marine Scotland has encouraged the use of ‘a voluntary partnership approach’ whenever possible.¹⁰⁶ In practice, RIFGs have been an important forum for establishing or maintaining voluntary arrangements to manage local fisheries issues. A number of examples illustrate this point:

- (i) The WCRIFG agreed in September 2016 to a voluntary closure of Loch Sunart to mobile scallop fishing vessels until 1 November 2016 in order to protect the common skate stocks from the potential effects of an increase in scallop fishing in the area, due to displacement from Isle of Man waters.¹⁰⁷ The voluntary closure was subsequently extended to 31 December 2016. The voluntary closure was repeated for two months in 2017, but it was subsequently agreed to allow the voluntary closure to lapse and the RIFG Chair was requested to ask Marine Scotland to formally amend the start date of the

¹⁰² There is already evidence of this; see e.g. NECRIFG Minutes, 20 April 2018, in which the Dunbar IFA and St Andrews IFA has asked for assistance in developing a scheme of effort control, but were told that ‘no additional pilots or legislation would be allowed meantime’ and the associations would have to content themselves with voluntary measures. In response, the associations expressed the view that ‘there was a need for some means of enforceability and MS backing to make a scheme workable’ and ‘a voluntary scheme would not work.’

¹⁰³ NECRIFG Minutes, 25 November 2016.

¹⁰⁴ NECRIFG Minutes, 9 June 2016.

¹⁰⁵ MR Msomphora, ‘Conflict Resolution and the Delegation of Authority in Fisheries Management: The Case of the Outer Hebrides Inshore Fisheries Group in Scotland’ (2016) 73 *Marine Policy* 263, 264.

¹⁰⁶ Structure and Functions, Annex A, para. 4.

¹⁰⁷ See Report of the Loch Sunart Working Group, 26 October 2016.

closure to 1 November¹⁰⁸ and 'a request was subsequently made to Marine Scotland to seek a permanent amendment to the scallop opening period of Loch Sunart to bring it in line with other west coast waters.'¹⁰⁹

- (ii) The Solway Sub-Committee of the WCRIFG has been involved in the annual renewal of the Code of Conduct to deal with gear conflict between mobile scallop vessels and static gear fishermen in the Solway Firth.¹¹⁰
- (iii) The NECRIFG facilitated a voluntary agreement for trawling within the inner Moray Forth was reached through a working group and subsequently approved at the RIFG in November 2016.
- (iv) The OHRIFG FMP has two local codes of conduct attached as appendices, one dealing with the Rodel and Harris Prawn Area and the other with Chicken Head to Cellar Head.

Such voluntary arrangements can perform important roles in accommodating different fisheries interests. Nevertheless, **the voluntary approach is not always sufficient, particularly when some actors can be omitted from the decision making process, and others are prepared to ignore the arrangement because they have little fear of consequences.** It is for this reason that some fishery groups have called for greater use of legislation to solve some of these issues.¹¹¹

4.4 Other projects, key issues and outputs

Aside from the development of management measures, RIFGs consider a range of other issues that impact upon inshore fisheries in their area. When issues have been raised within more than one RIFG, the matter has tended to be taken forward at the national level. But RIFGs have continued to engage with the policy-making process both through direct contact with relevant officials and also through responses to consultations. Significant examples include the consultation on allocation of mackerel quota for inshore fishing vessels, the consultation on landing limits for unlicensed fishermen, and the consultation on marking of static gear deployed within 12 nautical miles of Scottish baselines, all of which respond to issues that affect more than one RIFG. RIFGs have also been active in relation to MPAs, from the point of designation through to the adoption of management measures.¹¹² Some particular conservation issues have arisen in some areas, such as the heated and on-going discussions on seal management in the NECRIFG. **The fact that these wider marine issues are raised only stresses the need for non-fishery stakeholder engagement by RIFGs.**

5 Relationship with Marine Planning

RIFGs were established at the time when the marine spatial planning system for coastal waters was being set up.¹¹³ The new marine planning framework has seen the designation of eleven marine planning regions¹¹⁴, for which regional marine plans (RMPs) will be developed by so-called Marine Planning Partnerships (MPPs). Under the legislation, MPPs must, so far as reasonably practicable, include representatives of persons with an interest in the protection and enhancement of the Scottish marine region to which the regional marine plan applies, the use of that region for recreational

¹⁰⁸ WCRIFG Minutes, 25 October 2017.

¹⁰⁹ Marine Scotland, *RIFG Newsletter 2018*, 5.

¹¹⁰ WCRIFG Minutes, 25 October 2017. The Code of Conduct is available at <http://www.solwayfirthpartnership.co.uk/uploads/fish/solway-code-of-conduct-2017-18.pdf> <accessed 23 May 2018>.

¹¹¹ See e.g. footnote 105.

¹¹² See e.g. the responses of the OHRIFG to various consultations relation to MPAs; <http://www.ifgs.org.uk/outerhebrides/news/> <accessed 23 May 2018>.

¹¹³ See Marine (Scotland) Act 2010.

¹¹⁴ Scottish Marine Regions Order 2015.

purposes, and the use of that region for commercial purposes.¹¹⁵ This last category clearly includes persons with an interest in fisheries and the Scottish National Marine Plan anticipates that 'inshore fishing interests should be represented by Inshore Fisheries Groups whose management plans will inform and reflect the regional plan.'¹¹⁶

The Clyde as an example of interaction between RIFGs and the Marine Planning system

One of the few practical experiences of how RIFGs will interact with the regional marine planning system is from the Clyde MPP, where relationships between the two frameworks are now emerging.

A Clyde MPP officer is invited to the WCRIFG Clyde sub-committee and the WCRIFG is represented by its Chair on the Clyde MPP.¹¹⁷ However, there has been tension in the Clyde MPP over whether RIFGs should be the exclusive means of representing fishing interests in the regional marine planning process. Certainly the RIFGs think of themselves as being an indispensable partner. For example, the WCRIFG FMP includes the objective that '*all fisheries proposals/issues raised by or via the [Clyde MPP] are reviewed by the WCRIFG Clyde Subcommittee before progressing to the [Clyde MPP]*'.¹¹⁸ The importance of the RIFGs is also recognised in the official documentation which describes the RIFG FMP as '*the primary basis upon which the fisheries interests in the area to which it related will be represented to the respective Scottish Marine Region [MPP]*'.¹¹⁹

The significance of the FMP is emphasised by the observation that '*[a]ny [MPP] would expect to be able to call on the evidence and advice presented within a [FMP] as a first point of reference. If such information is found to be lacking there is the ability for the MPP to seek alternative ways of securing such information upon which they may make spatial management decisions which may impact the fishing industry.*'¹²⁰

In the context of the Clyde, SIFT is also concerned that the Clyde MPP has been reluctant to broaden its membership to be more representative of the full range of the fishing Industry: it has rejected membership applications by both SIFT (despite SIFT having developed a Regulating Order in 2015 following economic modelling, widespread public engagement and extensive scientific research) and that of the Scottish Creel Fishermen's Federation. The concerns are further enhanced by the fact that the Clyde Fishermen's Association is both an independent member of the Clyde MPP and a driving force within the WCRIFG and its relevant sub-committees. Such contradictions undermine the legitimacy of the MPP itself.

SIFT accepts there may be a role for the RIFGs in the regional planning process, but it has concerns about:

- **the ability of RIFGs to act as the exclusive conduit for fisheries interests and to adequately represent the broad range of views and interests that exist across the inshore fishing sector.**
- **whether RIFG FMPs can serve as an appropriate basis for the formulation of regional management plans under the MPP.**

RIFGs and marine planning applications

As well as being involved in the development of RMPs, it has been agreed by Marine Scotland that '*[RIFGs] would receive notifications re development applications at the same time as statutory consultees such as SNH and Crown Estate. Through the [RIFG], the chair would seek to identify any*

¹¹⁵ Marine (Scotland) Act 2010, s. 12(3).

¹¹⁶ National Marine Plan, para. 2.10. (emphasis added)

¹¹⁷ The WCRIFG Chair is currently also on the Board of the Clyde MPP; see <http://www.clydemarineplan.scot/about-us/about-the-clyde-marine-planning-partnership/#board> <accessed 13 June 2018>

¹¹⁸ WCRIFG Fisheries Management Plan (2017) 7.

¹¹⁹ Structure and Functions, Annex A, para. 9.

¹²⁰ Decision-Making Process, para. 2.6.

owners/skippers liable to be affected and put them and their representatives in touch with the developer so they could work together to provide information and to help identify any potential mitigation measures.¹²²¹ One way in which RIFGs have sought to respond to the development of other marine uses is through the adoption of position statements. For example, the WCRIFG FMP contains a position statement on the laying of submarine cables, which calls for all cables to be buried in the seabed or alternative protective measures to be used. The FMP also foresees the development of further position statements on, inter alia, coastal/marine pipeline contracts, marine and coastal construction contracts, marine dredging, offshore renewables, inshore recreational developments, and aquaculture. On the other side of the country, the NECRIFG has produced a spatial management position statement, which includes general observations on including fisheries groups in the planning process, alongside specific positions on renewables, oil rigs and tankers, leisure and hobby fishing, eco-tourism, and sub-sea cables and pipelines.¹²²² **SIFT is, again, concerned that the views of the RIFGs submitted in relation to planning applications may be taken as representing the wider fishing industry rather than just those fishing Interests that happen to be on the RIFG.**

6 Conclusion

When the Inshore Fisheries (Scotland) Bill was introduced, it was criticised as introducing a regime 'enabling the Secretary of State to do what he likes'¹²²³, which had the potential to lead to 'a situation in which interested parties will seek to gain an advantage over others by attempting to persuade the Secretary of State to enact legislation favourable to them.'¹²²⁴ The Bill was amended to require consultation with relevant bodies and there has been a gradual opening up of the process in which reviews of inshore fisheries policy have been undertaken, first through triennial reviews of inshore fisheries measures and later through the establishment of national consultative frameworks.

The IFGs and now the RIFGs are the latest move in this direction. However as this paper shows, there are significant shortcomings in their operation, particularly when it comes to participation, transparency and accountability. As a result the RIFGs have become part of the wider problem of 'regulatory capture' within the inshore fishing industry - wherein some interest groups have benefitted from opaque and informal governance structures to promote their own interests at the expense of other stakeholders who should have an equal entitlement to be heard. This has been to the detriment of not only the fishing industry but the wider inshore economy and associated communities.

At the heart of the problem is the RIFGs lack of constitutions. This is particularly problematic and the transition from IFGs to RIFGs is a major regression in this respect. Furthermore, the generality of the policy framework in which they operate has also led to **disparate practices between the RIFGs**, which is most evident when one considers the FMPs, such as they are, that have been adopted to date.

SIFT's proposal for a legislative framework for regional management groups offers one solution to these problems, as it would require a clear set of rules for the establishment and operation of such groups and it would also place legal duties on these groups to take into account certain considerations in the development of FMPs and associated management measures.

Giving greater responsibilities to regional management groups, albeit under strict conditions laid down by legislation, may also lead to more efficient decision-making procedures with less delay. There is evidence that RIFGs themselves are keen to take on additional responsibilities, including

¹²²¹ See NECRIFG Minutes, 25 November 2016. More broadly see Marine (Scotland) Act 2010, s. 27(4) and Marine Licensing (Consultees) (Scotland) Order 2011.

¹²²² See NECRIFG Minutes, 19 January 2018.

¹²²³ See Hansard, HL Deb 29 November 1983, vol 445, col 565 (Lord Ross of Marnock).

¹²²⁴ Ibid, vol 445, col 567 (Lord Ross of Marnock).

extending their mandate out to 12 nautical miles.¹²⁵ RIFGs have also been advocates for more innovative inshore management measures, such as spatial separation schemes¹²⁶ and local licensing schemes.¹²⁷

The further devolution of responsibility to RIFGs would also appear to have broader support beyond RIFGs¹²⁸, even though objections about cost still have to be overcome.¹²⁹ Indeed, the Scottish Government has indicated in the past that this should be the general direction of travel, saying in 2013 that *'[a]s IFGs develop experience and capacity, the Government will look to develop with them new models of devolved management that allow local bodies to co-ordinate activity locally for greatest advantage, within the overall context of fisheries legislation, Scottish quota limits, and marine planning.'*¹³⁰

An alternative suggestion has been to grant regulatory powers to RIFGs by way of an order under the Sea Fisheries (Shellfish) Act 1967, which would allow the RIFG to control access to fishing grounds and to govern fishing methods in relation to key shellfish species.¹³¹

However, before any further powers are conferred on RIFGs, be it under existing or future legislation, it is vital that RIFGs are reformed in order to ensure that they are transparent and include representation from other stakeholders with an interest in the marine environment.

¹²⁵ See e.g. WCRIFG Minutes, 7 December 2016; Marine Scotland, *RIFG Newsletter 2018*, 8.

¹²⁶ See e.g. NECRIFG Minutes, 11 November 2016.

¹²⁷ See e.g. WCRIFG Minutes, 7 December 2016.

¹²⁸ Marine Scotland, *Analysis and Outcome of the 2013 Consultation* (April 2014) para. 12: 'there was overwhelming support (77% [of 68 responses]) for IFGs to take on a greater role in the management of local fisheries.'

¹²⁹ See e.g. comparison of IFCAs and IFGs carried out in IFG Early Review, 68.

¹³⁰ Marine Scotland, *Allocation of Mackerel Quota for Inshore Fishing: A consultation by the Scottish Government* (September 2013) para. 38.

¹³¹ See e.g. *IFG Early Review*, 85: 'More localised inshore fisheries such as velvet crab, cockles, mussels, razor fish, and "new" local fisheries should be a central part of IFGs activities. It is recommended that Regulating Orders are used to manage some of these fisheries where this is the only means to satisfactorily limit effort, particularly in inter-tidal bivalve fisheries, as in England and Wales.'