

Sustainable Inshore Fisheries Trust

1. In Chapter 1 the Scottish Government identified a range of areas around achieving our vision for environmentally conscious and sustainable fishing. Therefore, in relation to these discussion points do you have any views or ideas in regarding the areas identified in Chapter 1?

Vision

SIFT welcomes the commitment to ensuring that Scottish fisheries will reflect the objectives of the National Marine Plan and the UK Marine Strategy. However we believe that the Discussion Paper should emphasise more clearly the primary socio-economic objective of inshore fisheries policy. SIFT believes this should be to ensure the continued well-being of coastal communities, built upon a diverse and abundant marine ecosystem. The Scottish fleet comprises more than 60 boats under 12m in length for each one in excess of 40m in length. This fleet of small boats is crucially important to coastal communities. The socio-economic objective of inshore fisheries policy should therefore be to promote the survival of small scale inshore fishing by ensuring the marine ecosystem is sufficiently robust to support this fleet. This should be clearly stated.

International and domestic frameworks and future management plans

It is vital that existing international and domestic frameworks are not merely 'taken account of', but are explicitly acknowledged as being central to achieving the vision of environmentally conscious and sustainable fishing. Therefore SIFT recommends that the full range of fishery principles to which Scotland is bound, are restated alongside future Scottish fisheries legislation. SIFT welcomes the inclusion of 'key principles' in the National Discussion Document ('the Document'), particularly given the Common Fisheries Policy, which enshrines key environmental and socio-economic policy objectives, will cease to apply to Scotland on leaving the EU. However the principles listed in the Document should also explicitly state support for:

- **Sustainable Use**

Fishery management in Scotland must promote the sustainable use of fish stocks. This is an important policy objective which is enshrined in Article 1 of the 1992 Convention on Biological Diversity, Article 2 of the 1995 UN Fish Stocks Agreement, and the UK's 2009 High Level Marine Objectives.

- **Maximum Sustainable Yield**

Fishery management in Scotland must establish and abide by criteria for biomass and fishing mortality consistent with MSY by a specified date, using a Total Allowable Catch for each fishery. MSY is a central tenet of global fisheries management and is enshrined, albeit with economic or environmental qualifications, in Article 61(3) of the 1982 UN Convention on the Law of the Sea, to which Scotland as a part of the UK is a party. The restoration of fish stocks 'at least to levels that can produce MSY as determined by their biological characteristics' is also prioritised in the 2015 UN Sustainable Development Goals, which are supported by the Scottish Government as part of its National Performance Framework.

- **Ecosystems Approach**

Fishery management in Scotland must adhere to the ecosystems approach. It is a defining principle of the 1995 UN Code of Conduct on Responsible Fisheries, the 1992 (OSPAR) Convention on the Protection of the Marine Environment in the North-East Atlantic, and is specifically referred to in the Basic Regulation of the Common Fisheries Policy. Furthermore the Scottish National Marine Plan's Fisheries Objective 5 states '*Management of sea-fisheries [should be] on a regional sea-basin ecosystem basis with ...where appropriate ecosystem-based management of inshore fisheries*'.

- **Equity**

Fishery management in Scotland must promote equity amongst all stakeholders. The UK's High Level Marine Objective 6 is that '*the marine environment is benefitting society as a whole, contributing to resilient and cohesive communities*'

- **Transparency**

There should be endorsement of the principle of transparency in Scottish fishery management. The UN's Code of Conduct on Responsible Fisheries specifically calls on fisheries managers to '*ensure that decision making processes are transparent*'. Transparency should apply to both access to information and to the ability to engage with the decision making process. More specifically:



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- data relating to fishing locations, effort, landings and discards should be transparent and accessible, as is standard practice in other European jurisdictions where there is public access to fishing vessels' electronic logbooks;
 - the UK government publishes the basic terms and conditions of English fishing licences (<https://www.gov.uk/guidance/understand-your-fishing-vessel-licence>) the Scottish government should also do so;
 - quota holdings are now listed on a public database, information on leasing and transfers between licence holders should be as well;
 - information about enforcement should be more transparent: including publication of data on investigations launched, warnings given, administrative penalties applied, criminal proceedings commenced, and final penalties imposed. SIFT recommends that an annual report on these matters is published.
- **Devolution**

There should be endorsement of the principle of devolution in Scottish fishery management, in line with The UK's High Level Marine Objectives' commitment to '*promote greater decentralisation of decision making in fisheries management*'.

Furthermore it is vital that, following Brexit, our future management of fisheries explicitly endorses Article 17 of the Common Fisheries Policy which requires that the allocation of fishing opportunities takes environmental, social and economic criteria into account.

Equally importantly, fisheries management must commit to non-regression from the other goals and standards previously imposed through membership of the European Union, for example the obligation on fisheries policy to contribute to a fair standard of living in fishing communities.

Translating high level principles into practice

The most effective way to translate high level principles into practice is by ensuring that new governance arrangements and fishery management measures are adopted. These are set out in our response to Chapter 2, below. Effective governance reform will not only '*enable an adaptive and responsive approach to management*' but will ensure that, preferably, there is a **pro-active** approach to fisheries management. Furthermore it will ensure that fishing ceases to be treated as if it existed in isolation from other marine users, and increase wider stakeholders' role in management.

Adoption of fisheries management technical measures, including spatial management and REM will also play a central role in translating principles into actions.

Working with Marine Planning

SIFT welcomes the ambition to turn the aims of the National Marine Plan into operational detail. This will require fisheries managers to work closely with the Regional Marine Planning Partnerships. Indeed, the NMP **requires** that '*inshore fishing interests should be represented by Inshore Fisheries Groups whose management plans will inform and reflect the regional plan*' (SNMP para. 2.10) and that: '*Inshore Fisheries Groups should work with all local stakeholders with an interest to agree joint fisheries management measures. These measures **should inform and reflect the objectives of regional marine plans***' (SNMP Fisheries Objective 5).

Governance

From a governance perspective, Regional Inshore Fisheries Groups (RIFGs) must be structured so that cooperation with the Regional Marine Planning Partnerships (RMPPs) is facilitated. In particular the respective roles and responsibilities of the RIFGs and RMPPs must be clearly defined, and it is made clear which organisation has primacy on fisheries management decisions. To facilitate such cooperation, SIFT recommends that each RMPP is formally represented on the relevant RIFG. However given that RIFGs are largely representative of the fishing industry, which is not the sole stakeholder in the fisheries, it is not appropriate for RMPPs to defer exclusively to RIFGs on fisheries

issues. So RMPPs must take into account wider views on fisheries issues so that they can develop their own positions in relation to fisheries matters, independently of RIFGs.

Plans

With regards to plans: clarity is needed on precisely how Regional Marine Plans should dovetail with RIFG Fishery Management Plans. It would be reasonable for the latter to be the more detailed documents, and subject to more frequent revision. Moreover, FMPs need to be developed at a stock level, which may cross over the boundaries of Scottish marine regions. It follows that FMPs are the right place to develop policies relating to effort, quota, and technical measures relating to the fishery. Arguably questions concerning conflicts between different modes of fishing should also be addressed in RIFGs' FMPs where a fuller range of views can be considered and an accommodation between different interests can be sought.

Where Regional Marine Plans do come into the picture and can usefully address fisheries issues is in relation to managing tensions between fishing and other users of the marine environment, particularly seabed habitats. Regional Marine Plans can also play an important role in ensuring that *'other sectors take into account the need to protect fish stocks and sustain healthy fisheries for both economic and conservation reasons'* as required by the National Marine Plan.

Data

A fundamental barrier to integrating Marine Spatial Planning with fisheries management stems from the absence of adequate spatial data. In particular there is insufficient data for planning purposes with regards to:

- stock assessments (particularly for non-quota species);
- fish habitats (such as spawning grounds);
- where fishing occurs in Scottish inshore waters (arising from a lack of VMS, gear sensor data or other information that would be available if publicly accessible log books were mandatory).

Until this absence of data has been resolved, there is little prospect of an effective strategic integration of fishery management and Regional Marine Planning. The problem is compounded by the dynamic impacts of climate change; as sea temperatures rise, species distributions change. It is therefore vital that significant emphasis is placed upon ongoing data gathering if marine planning and fisheries management are to be effectively integrated.

Marine Protected Areas

SIFT welcomes the ambition to complete the work on Marine Protected Areas but notes that MPAs are not fishery management tools. Spatial zoning for the purpose of fisheries management is a separate and - as yet - largely undeveloped measure in Scotland. Nevertheless SIFT welcomes the recognition in the Discussion Paper that completing the MPA network is a key foundation of improving marine environmental status for 'the benefit of fishers', and the implicit recognition of the eco-system approach to marine management. To that end, SIFT believes that a priority must be the development of comprehensive management measures for these MPAs. This must include considerably enhancing the capacity to subsequently **enforce** management measures. Accordingly, SIFT recommends that with regard to MPA enforcement, new legislation should:

- Provide Marine Enforcement Officers (MEOs) with the equivalent range of powers granted to British Sea Fishery Officers (BSFOs);
- Allow for the conferment of enforcement powers on 'lay' individuals for both fisheries and marine conservation legislation in specific sea areas (e.g. a defined MPA).

Marine litter

With regard to Marine litter, the Scottish Government should ensure that the Scottish fishing industry, through regulation, ceases to pollute the seas. The KIMO 'Fishing for Litter' scheme has made a contribution to addressing the problem of waste material in Scottish waters, but has not gone far enough; the scheme sought only to collect



waste that had already been littered. It did not promote behavioural change in the fishing industry. To address the problem of pollution at source all littering should be an offence, be it deliberate or not. Legislation should be introduced that is based upon the Polluter Pays Principle. Moreover, Scotland should seek to reduce lost or abandoned ('ghost') fishing gear, by:

- **Litter management.**
Imposing a duty of care on the fishing industry to ensure there is no littering of the marine environment, to cover all materials used in the fishery (gears, protective clothing and other equipment), and include vessels at sea and in harbours;
- **Mandatory Gear Marking.**
Requiring all gear to be marked to reduce the likelihood of being accidentally lost as a result of interaction with other marine users, and aid recovery of gear that has moved since deployment;
- **Redesign of fishing gear.**
Designing gear so that it minimises pollution, so that gear that is at risk of abrasion (such as dolly ropes) is no longer permitted unless made of biodegradable materials.

2. Chapter 2 explores a range of discussion points around future governance, engagement and accountability. With regards the areas discussed what are your opinions of the discussion points raised and any related views on the themes identified in Chapter 2?

Please give your comments:

Strengthening co-management.

It is vital that co-management in Scottish fisheries is not only maintained but strengthened, because shared decision-making can promote more sustainable outcomes for coastal communities and the marine environment.

Crucially, to achieve this outcome, governance structures need reform in both the two key existing stakeholder fora: Regional Inshore Fisheries Groups (RIFGs) and the Inshore Fisheries Management and Conservation Group (IFMAC). SIFT has undertaken detailed work on the issue of reform of Regional Inshore Fisheries Groups and its full report *The Reform Of Regional Inshore Fishery Groups* is available here <https://www.sift-uk.org/wp-content/uploads/2019/03/The-Reform-of-RIFGs-SIFT-December-2018.pdf> We summarise our recommendations below.

RIFGs

There should be reform of the RIFGs, so that they:

- Are **constituted as multi-stakeholder fisheries bodies** with mandates to promote sustainable fisheries and align with sustainable fishery principles;
- Have **independent chairmen**;
- Have **transparent rules on membership** eligibility, establishing the number of attendees entitled to represent any given body or subsector of the fishing industry in order to ensure a balance between representatives of the static fleet and the mobile fleet, as well as ensuring that other fishing sectors (such a diving or hand-gathering) have a voice in discussions;
- **Include other interest groups** as full members of RIFGs. Although it will be important to ensure that the total number of representatives of interest groups should not exceed the total number of representatives from the fishing industry;
- Have **transparent rules on decision making** processes;
- Have **mandatory quarterly meetings**, the Minutes of which are publicly accessible;
- Have **cost allowances for attendees** to ensure that less well-resourced members are able to attend meetings, and that there are also penalties for non-attendance.
- Have a **remit that covers the full Scottish Marine** Area out to 12 nautical miles.



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- Have constitutional objectives which oblige them to work with Marine Planning and that each RMPP is formally represented on the relevant RIFG.
- Be required to prepare, deliver, maintain and review **management plans**, in accordance with guidance prepared by the Scottish Ministers. Such guidance should demand a rigorous planning process, which would ensure a high quality outcome.

IFMAC

Stakeholder participation regarding the management of fisheries must not be restricted to the 'industry landscape'. Fisheries have to work alongside other marine users including community groups, and representatives of the scientific, environmental, recreational and energy sectors. So it is also vital that there is reform to IFMAC so that it becomes a more effective and equitable national multi-stakeholder forum for fisheries management. The functions and governance of IFMAC should be reformed to:

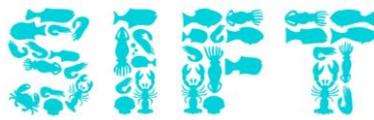
- Be **constituted** as a national multi-stakeholder body with a mandate to promote sustainable fisheries in line with agreed principles;
- Have an **independent chairman**;
- Have **transparent and strict rules on membership** including the number of attendees entitled to represent any stakeholder group;
- Have **transparent rules on decision making** processes;
- Have **mandatory quarterly meetings**, the Minutes of which are publicly accessible;
- Provide **cost allowances for attendees** to ensure that less well-resourced members are able to attend meetings, and that there are also penalties for non-attendance.
- Have **decision making powers**;
- Have a **remit that cover the full Scottish Marine Area**.

It will be vital that any constitutional changes to RIFGs and IFMAC include clarification on the interaction between these two bodies: SIFT recommends that IFMAC could adopt a role as a forum for promoting dialogue, and best practice between RIFGs. Greater clarity on this relationship would also accord with the objectives of achieving greater transparency within inshore fisheries governance.

Reform of Regulating Orders

SIFT agrees that Regulating Orders, (and Several Orders), which are the only existing methods for local management of fisheries are often inflexible, expensive or otherwise inappropriate. However SIFT believes there is scope to reform Regulating Orders and make them a more effective instrument for enabling devolution of fishery management, especially in the inshore fishery where there is likely to be a continuing requirement for specific highly devolved management measures. Under such reform, Regulating Orders should:

- Have the powers to regulate the fishery of **any commercial marine species** (not just shellfish as is currently the case) and recreational inshore sea fishery species.
- Are grantable for **long durations** to enable the fishery to be managed for the long-term. There are successful examples in English inshore waters of Regulating Orders of long duration. e.g. Fal Fishery Order 2016 has a duration of 30 years;
- Are **grantable to public sector organisations**, including Local Authorities especially as the establishment of these Orders often requires considerable resources, which typically lie beyond the means of private stakeholders.
- Have adequate governance measures in place to ensure that the fishery under a Regulating Order is **managed in the best interests of the public**, as it is vital that Regulating Orders do not become tools for the effective 'privatisation' of public fisheries.
- Have **review mechanisms** in place to ensure that the Management Plan can adapt to changes of circumstance within the fishery.



Furthermore, the functioning of Regulating Orders would improve if

- during a Regulating Order application process, the **decision to proceed to a full public inquiry were taken by an independent arbiter;**
- **tolls and levies on licensees are front-loaded**, to deter misreporting of landings (and hence avoid levy payments) and to enable the Grantee to have greater business planning certainty over income streams.
- **powers to enforce Regulating Orders are available to both Fisheries Management Officers employed by the Grantee and to Marine Scotland Compliance.** This will preclude instances when officers of the Grantee are unable to take enforcement action due to the lack of powers regarding non-licence-holder infringements. It will also ensure that (conversely) Marine Scotland Compliance Officers can take enforcement action against the Regulating Order's licence conditions. Existing compliance rules give rise to duplication of effort by the Grantee and Marine Scotland Compliance to effectively enforce the fishery; detrimentally impacting on the resources of both parties.

Remote Electronic Monitoring (REM) in the inshore

There is a lack of ambition regarding proposals for rolling out REM in inshore fisheries. Fishing activity data is a vital prerequisite for effective inshore fisheries management. There is no case for restricting data collection to areas 'around' MPAs or 'sensitive areas' given that the fishery is a publicly-owned resource and the Scottish National Marine Plan's Sea Fisheries objectives include a commitment to '*An evidence-based approach to fisheries management*'. More specifically, the lack of ambition regarding REM conflicts with the commitment in the Scottish National Marine Plan to move '*towards a system of monitoring total removals from the sea, reducing unwanted catches and minimising discards, [which] will be key priorities for fisheries management over coming years. These may lead to changes in spatial fishing patterns and entail significant developments in the scientific evidence base for managing fisheries*'. [6.53]. New Scottish inshore fishery legislation should therefore require:

- the **installation of I-VMS across the inshore fleet;**
- the **full roll-out of equipment to record when gear is being deployed**
- mechanisms to ensure that REM **equipment is tamper proof.**
- **Discard monitoring equipment be mandatory** for vessels operating in fisheries where there is a high risk of bycatch.
- **Electronic Recording** technology be made mandatory to monitor fishing activity; landings data must also be recorded via electronic logbooks, and made publicly available, as is the case in other European jurisdictions.
- **Incident Reporting** a platform should be established which will facilitate the anonymous reporting of incidents of bycatch, entanglements or incursions into protected areas.
- **Improving the resource-efficiency of compliance** - additional measures which could enhance the cost-effectiveness of compliance activities must be enacted, including:
 - **Evidential standards** should be altered so that the current requirement for two separate pieces of evidence is lessened, as it has been in relation to certain wildlife offences under the Wildlife and Countryside Act 1981. Also the acceptability of technical evidence such as from REM equipment should be enhanced.
 - **Administrative Penalties** for certain fisheries offences could be reformed, so that non-payment of Fixed Penalty Notice fines can lead to a licence penalty, which could accumulate into a licence suspension. Furthermore, provision should be made in new legislation to ensure that offenders would lose the value of the catch which was the subject of the offence.
 - **British Sea Fisheries Officers** powers could be more widely used to improve the compliance resource for Scotland's inshore fisheries. BSFOs are appointed under the Sea Fisheries Act, 1967 and may be: '*...persons appointed as British sea-fishery officers by one of the appropriate Ministers.*' An option may be the creation of a new office, perhaps to be known as 'Marine Bailiffs' who could have conferred upon them the powers to enforce both fisheries and marine conservation legislation in

specific sea areas. In any event they should be given powers to gather evidence during the early stages of any suspected infringement.

Prioritising Scottish interests.

SIFT's focus is in the inshore fishery, where international interests do not present a material challenge to Scottish interests. SIFT believes that existing restrictions on the use of inshore waters by international vessels should be maintained.

Fewer representative bodies

Whilst there may be appealing administrative reasons for reducing the number of representative bodies which engage in fisheries management, SIFT believes that the key issue, as referred to elsewhere in this response, is to ensure that the representation of the fishing industry on these bodies is fair and balanced. So it is vital that any reduction which occurs should ensure that the full range of stakeholders continues to be accurately reflected. SIFT believes that the changes to governance that it recommends would have that effect.

However measures need to be implemented to ensure that no stakeholders are excluded from representation on account of practical or financial barriers to participation. To date there has been frequent under-representation of artisanal fishing interests in stakeholder gatherings on account of their inability to fund their attendance at meetings far from their home ports. So SIFT recommends that in future, full representation is ensured by the provision of either funding to assist less well-resourced stakeholder groups attend meetings, or the provision of effective tele conferencing technology.

SIFT also recommends that engagement takes place in fora where there are no opportunities for intimidation by one stakeholder group against another. SIFT has direct experience of engagement with members of the inshore fishery who wished to engage with NGOs or community groups but could not do so publicly for fear of reprisals from other elements within the fishery.

3. Chapter 3 explores areas for discussion around access to our waters and the role of Scotland in future fisheries negotiations as part of the UK. Do you have any views or ideas in relation to the discussion points raised in Chapter 3?

SIFT focuses its activities on Scotland's inshore waters. It believes that existing restrictions under Article 5(2) of the Basic Regulation of the CFP [*In the waters up to 12 nautical miles from baselines under their sovereignty or jurisdiction, Member States shall be authorised, until 31 December 2022, to restrict fishing to fishing vessels that traditionally fish in those waters from ports on the adjacent coast, without prejudice to the arrangements for Union fishing vessels flying the flag of other Member States under existing neighbourhood relations between Member State.*] on access to inshore fishing grounds which largely favour local and traditional fishing vessels should be maintained.

4. Chapter 4 identifies the Scottish Governments aim to establish fishing opportunities for long term future sustainability and accessibility. Accordingly, in relation to these discussion points do you have any views or ideas to the areas identified in Chapter 4?

Please give your comments:

Maximum Sustainable Yield

In order to achieve the sustainable management of inshore fisheries, criteria for biomass and fishing mortality consistent with Maximum Sustainable Yield should be established for all commercial fishing stocks, based upon best scientific advice. The centrality of Maximum Sustainable Yield for fisheries management is enshrined in the CFP and more recently was set as an objective in the UK Fisheries Bill 2018 (as amended). SIFT does not accept that MSY ranges should replace the core principle of MSY; this would mean that Scotland would be setting lower standards than its European and UK counterparts. Moreover, it would not be in line with the aspirations of the UN Sustainable

Development Goals which call for measures by 2020 to restore fish stocks in the shortest time feasible, at least to levels that can produce maximum sustainable yield as determined by their biological characteristics.

New legislation should explicitly commit Scottish fisheries managers to establish and abide by criteria for biomass and fishing mortality consistent with Maximum Sustainable Yield for all commercial fish stocks by a specific date. This obligation should be implemented through a requirement for fishery managers to set a total allowable catch commensurate with achieving Maximum Sustainable Yield for each commercial fishery.

Data Limited Stocks

SIFT welcomes the recognition that comprehensive and cohesive inshore fisheries management needs a strong science base. This is especially important given that, currently, many Scottish inshore fisheries are being conducted without adequate scientific data. For example the wrasse fishery lacks substantive stock assessments and adequate scientific justifications for its (voluntary) landing sizes and temporal restrictions. And the scallop fishery also takes place without stock assessments. SIFT also has serious concerns regarding the quality of some fisheries science that is being undertaken, most notably with respect to the 'scientific trials' of electrofishing for razor clams; these trials fall far below accepted standards as they lack, inter alia, coherent baselines and adequate data gathering protocols.

These data limitations not only present a barrier to comprehensive fisheries management but substantially damage Scotland's reputation as a competent fisheries manager. This inadequate situation will need to be addressed if a dedicated inshore strategy is to be developed, not least because it will be impossible to judge its success in the absence of better data.

The collection, management and use of data from the fisheries sector under the Data Collection Framework (DCF) is co-funded by the EU. It may be necessary for the UK to continue this data collection on the same level in the future using national funding only. But given the highly efficient work-sharing of the European science and advisory system, the important role of UK experts within this system, plus the significant contribution of funds from the UK, any change may yield negative consequences for the performance and quality of European fisheries research and advice. New legislation should provide a continued, coordinated data collection programme, which specifically covers the Scottish Marine Area.

TAC and Quota based management

Total Allowable Catch and quota-based management make a positive contribution to sustainable fishing within the Scottish inshore waters.

The concept of TAC is a central pillar of EU fisheries management. It must continue to underpin Scottish fishery management, to be based on scientific advice on stock status from advisory bodies such as ICES, and be set annually.

The existing system of quota-based management should be retained. Although the quota system has not always been well managed, it has inherent merits, particularly regarding the relationship between fishing activity and the natural biological life-cycle of species. A range of issues arise in regard to quota:

- **Extent of Quota**
SIFT recommends that consideration should be given to applying quota to all commercially fished species, in order to bring the entire fishery within the management regime.
- **Ownership of Quota**
Given that the Scottish Government regards quota as a public asset, quota should be leased to fishermen rather than permanently allocated, with Marine Scotland retaining title and with restrictions on any secondary market transactions. This will also ensure that fisheries managers retain greater control over the allocation of fishing opportunities.
- **Duration of Allocation**



Lease terms must be long enough to provide incentives for conservation and tailored to reflect the type of fishery. Where the data required to determine tailored allocation duration is lacking, a default duration could be set which enables fishermen to business plan within a sustainable fishery context.

- **Quota Allocation**

It is desirable that the CFP's Article 17 criteria on the allocation of fishing opportunities be restated to ensure that fishing is environmentally, economically and socially sustainable. Article 17 states:

“When allocating the fishing opportunities available to them, as referred to in Article 16, Member States shall use transparent and objective criteria including those of an environmental, social and economic nature. The criteria to be used may include, inter alia, the impact of fishing on the environment, the history of compliance, the contribution to the local economy and historic catch levels. Within the fishing opportunities allocated to them, Member States shall endeavour to provide incentives to fishing vessels deploying selective fishing gear or using fishing techniques with reduced environmental impact, such as reduced energy consumption or habitat damage.”

Currently, quota is not allocated in the best interests of the fishing industry, the marine environment or marine dependent communities, given the significant concentration of quota in a small number of individuals and companies and a concomitant decline in fishing opportunities for small-scale fishers. New allocation criteria should:

- **be more transparent** and objective;
- **relate to socio-economic and environmental factors** – for example employment in marine dependent communities or the extent of the dependency upon quota within a given fishery;
- **involve ‘top slicing’** of existing allocations so that there is an increase in allocation to smaller scale fishers (Under 10s and Non Sector vessels);
- ensure that a **proportion is reserved for new entrants**, to fishers who can demonstrate best practice (in terms of environmental impact such as fuel efficiency or other ecosystem impact, or in terms of uptake of REM) or to mitigate hardship amongst fishers who have exhausted their initial allocations.
- **Allocations should also be made, where possible, at a localized or regional level**, to take into account, inter alia, stock data. This could allow the movement of quota between individuals or vessels without leaving the area and would enable managers to respond to changes in stocks or in the markets. However for some more migratory inshore stocks (such as mackerel) there will continue to be a need to allocate quota on a national (and international) level. To ensure this outcome, existing EU competition law, which plays an important role in the regulation of the Fish Producer Organisations currently holding much of the quota, will need to be retained or replaced with equivalent domestic legislation.

- **Further criteria**

SIFT believes that there would be merit in revisiting the issues surrounding inshore quota, to determine the business case for an appropriate approach to issues such as sanctions on misuse (a ‘use it or lose it rule could be introduced), the role of Producer Organisations in the inshore to facilitate quota trading within the fishery, definitions on inshore vessels, rules for governing the amount of quota that is reserved, etc.

Effort based Management

There will continue to be specific occasions where effort based management will be an appropriate adjunct to the wider underlying quota based management regime, for instance with respect to restrictions on the amount of static gear deployed by vessels in specific locations. SIFT recommends that new legislation should ensure that effort-based management measures can be implemented where appropriate.

5. In Chapter 5 the Scottish Government discusses possible options for access to fishing in distant waters and new entrants. With regards the areas discussed what are your opinions of the discussion points raised and any related views on the themes identified in Chapter 5?

Please give your comments:

With respect to ensuring access to the inshore fishery, the legislative priority should in future be on allocating licenses to new entrants.

New entrant licences

These should be specifically made available for new entrants, and should:

- Be allocated without a requirement of applicants to previously obtain a **licence entitlement**;
- Be **free of charge** – so as not to discriminate against less well-resourced applicants;
- **Not have a transfer value** - to deter speculation;
- **Not be permitted to be amalgamated** – subject to exceptions relating to the inheritance of licences between individuals who share an interest in a fishing entity (for example a colleague or family member);
- **Not be issued if there are concerns about over-capacity** and its effect on stocks.

6. Chapter 6 identifies a broad range of themes and points around the future management of the inshore fishing industry. As a stakeholder what are your opinions of the discussion points raised and any related views on the themes identified in Chapter 6?

Please give your comments:

Given that SIFT's response to this Discussion Paper focusses on Scotland's inshore fishery, all of the views and recommendations expressed throughout this document relate to SIFT's views on future management of the inshore fishery. So this section sets out SIFT's position on issues not addressed elsewhere in our response.

Need for new legislation

Existing Scottish inshore fishery legislation is outdated; it comprises a mix of Acts that date back over half a century including the Inshore Fishing (Scotland) Act 1984, the Sea Fisheries (Shellfish) Act 1967 and the Sea Fish (Conservation) Act 1967. These Acts have been modified by, inter alia, the Inshore Fishing (Scotland) Act 1994, the Aquaculture and Fisheries (Scotland) Act 2007 and the Aquaculture and Fisheries (Scotland) Act 2013. However, the Acts:

- **lack clarity** for fishermen and regulators;
- **fail to promote transparency** of decision making;
- **hinder the adoption of modern fishery management techniques.**

SIFT welcomes the commitment to comprehensively address the very particular challenges of inshore fisheries management through the introduction of new inshore fisheries legislation, possibly as part of wider fisheries legislation. SIFT has undertaken extensive work on this issue and its 2017 report *Legislative Reform Of Scotland's Inshore Fisheries Position Paper* is available here <https://www.sift-uk.org/wp-content/uploads/2019/01/Sift-position-paper-inshore-fisheries-reform-2017.pdf>

It is vital that a new Bill is introduced as a matter of urgency if the inshore fishery is to develop sustainably. The Scottish fishing fleet has over sixty vessels under 12m in length for every one vessel over 40 metres in length. The socio-economic benefits arising from maintaining sixty inshore vessels are substantial - ranging from professional services such as accountancy through vessel and gear maintenance to the payment of harbour dues. Furthermore these activities frequently occur in coastal communities where alternative economic activities are limited. So the inshore fishery should be a political priority, for reasons that stretch beyond fisheries.

More specifically, SIFT believes that the overarching theme of such new inshore fisheries legislation should be on enhanced **local management**. So, in addition to the principles which we set out elsewhere, we believe that new legislation should enshrine:



- **Local management powers**, so that options to manage inshore fisheries on a regional basis, where desirable, would include the ability to issue licences and vary licence conditions in line with *as a minimum* those powers currently conferred on Regulating Order Grantees licencing. This might be achieved through statutorily designating powers of management and enforcement to local bodies. Alternatively, powers to manage regionally should be conferred directly on Scottish Ministers (implemented via Marine Scotland).
- **Flexible (adaptive) management**, such that fisheries and compliance managers can readily adjust management and enforcement measures at regional levels without recourse to onerous legislative processes.

Defining the inshore fishery

SIFT welcomes the clarification that inshore fishery refers to activity that occurs exclusively within 12NM.

Competing priorities and spatial management

Spatial management is a vital component of fisheries management and can play a crucial role in enabling different stakeholders to use increasingly busy marine areas. Scotland has been slow to adopt such measures, in contrast to other jurisdictions. Additional spatial management measures should therefore be prioritised. To that end, SIFT agrees that the introduction of a significant low-impact trial that will separate mobile gear activity from static gear and recreational users should be a management priority.

Spatial management schemes work most effectively when they are tailored to the character of a given sea area, its ecosystem and the local fishing industry. Accordingly, SIFT agrees that simplistic ‘blanket applications’ of spatial exclusion zones, although initially appealing may be inappropriate. However it is also vital that, in situations where biogenic features have already been lost as a result of artificial damage, significant weight is given when developing zoning boundaries in spatial management proposals to the potential of these features to recover.

To make a spatial management scheme effective, it is necessary to take several key design considerations into account. These design considerations, which must be central to the future development of spatial management zones (SMZs), or networks of SMZs, include:

- ***A network of the SMZs must be geographically dispersed in order to promote connectivity*** Maximising connectivity between SMZs will improve the ecological coherence of a network and will afford greater ecosystem resilience.
- ***Total area protected from damaging fishing gear must be between 20-30% of sea area in order to sufficiently represent complex substrates and habitats*** Research indicates that optimal fishery productivity benefits are typically achieved when the total protected network is circa 30% of the overall sea area under management.
- ***Complex and important substrates must be most protected.*** A network that protects complex and important habitats for finfish and shellfish will help to maintain the structure and functioning of an ecosystem and contribute to the recovery of finfish fisheries. Importantly, this should not preclude other, less complex, areas from protection, as it is evident – for example from within the South Arran MPA - that degraded substrates can recover their complexity if subject to effective conservation management.
- ***Habitat types must be represented across the network in order to support the sustainable use and protection of marine biological diversity and ecosystems.*** A SMZ network should protect the whole range of marine biodiversity and ecosystems within a sea area. This will boost the resilience of marine ecosystems and helps maintain the structure and functioning of the wider ecosystem
- ***Length of perimeter of SMZs must be high in relation to sea area protected to increase the potential for spill-over effects and aid the fishing industry.*** A high ratio will increase spill-over across the borders which will benefit both the fishing industry, promote ecosystem resilience and reduce enforcement and management cost benefits.
- ***Individual SMZ shapes must be simplified where possible to ease compliance and enforcement*** SMZs with simple shaped boundaries help to aid compliance.

New Scottish fisheries management legislation must ensure that these design considerations, which generally preclude simple spatial management zoning determined by distance from shore, can be taken into account. However SIFT recognises that there may be instances where a more simplistic design of spatial management zoning is adopted. In such circumstances SIFT believes that zoning determined by depth of water rather than by distance from the coast should also be given consideration.

Reactive Management

SIFT welcomes the proposal to introduce a distinct licence or permit system to regulate fishing activity within the 12 nautical mile zone. Such an inshore licencing system could enshrine technical measure restrictions that are currently set out within [EU Council Regulation 850/98](#) which aims to conserve fishery resources for the protection of marine organisms. (The Regulation includes measures relating to fishing nets and conditions for their use; provisions for fixed gears; minimum conservation reference sizes for marine organisms; measures to reduce discarding; restrictions on fishing for certain fish species; and spatial restrictions for certain species or for use of certain fishing gear). A new licensing system would:

- simplify the legislation relating to inshore fisheries;
- provide an opportunity to close loopholes (for example the illegal use of ‘blindners’);
- strengthen powers of enforcement;
- establish governance structures which promote the flexible and rapidly responsive implementation of technical measures on a regional rather than national basis.

However, SIFT is concerned that the suggested ‘*necessary consultation process*’ as mentioned in the Discussion Paper could prohibit the rapid reactive inshore fisheries management for which such inshore licences are being proposed. Accordingly, SIFT recommends that the consultation process should mirror that undertaken by IFCA when introducing Bylaws, whereby a relatively short local consultation exercise is undertaken.

Additionally, SIFT believes that any such inshore licences should be prohibited from accruing a monetary value, so as to avoid both speculation and concentration of access to fisheries.

Carriage Orders

Carriage orders can be laid in UK domestic legislation to prohibit the carriage of certain objects. The underpinning legislation in England and Wales is the [Marine and Coastal Access Act 2009](#) through the bylaw-making powers it confers on IFCA, and these provisions apply to both the carriage of fish species and fishing equipment. However, in Scotland, these powers only extend to fishing nets, as conferred from Section 2 of the [Inshore Fishing \(Scotland\) Act, 1984](#). To SIFT’s best knowledge, the only extant Carriage Order in Scotland is [The Inshore Fishing \(Prohibition of Carriage of Monofilament Gill Nets\) \(Scotland\) Order 1986](#). New inshore legislation should enable the use of Carriage Orders in Scotland to apply to fish species as well as a broader range of fishing equipment. More specifically, Carriage Orders could be used to strengthen technical (gear) measures, for example in [The Shellfish \(Restrictions Taking by Unlicensed Fishing Boats\) \(Scotland\) Order 2017](#) where the potential for successful enforcement action of suspected infringements would be strengthened if the daily catch limits were underpinned via daily carriage limits.

7. Possible options for the future funding of the fishing industry are identified in Chapter 7 for discussion. What are your views on the discussion points raised and do you have any other ideas with regards future funding options or opportunities going forward?

Please give your comments:

Funding future fisheries management

The core underlying issue is how to fund the management of the fishing industry in future. At the root of this issue is the fact that Scotland’s sea fisheries incur public costs but largely provide private benefits. The public costs, which are substantial, include port infrastructure, enforcement, science, and tax exemptions for fuel. These are paid for through general taxation. The private benefits go to those individuals and their colleagues who possess one of the



limited supply of licences to fish commercially. These benefits can be substantial; the fishing industry in Scotland is generally highly profitable with a net margin of some 25% in the catching sector (although it is important to note that not all fishery sectors are equally profitable). In an open market, such profitability would attract new entrants, which would have the effect of increasing competition and reducing margins. But in the fishing industry, existing participants have some protection against such competition by the limited availability of licences.

So a profitable industry benefits from substantial public funding. When viewed in this light, it is reasonable to question whether the industry's contribution towards its own management costs is adequate. This same question has been posed in recent years in a range of countries – and answered by the adoption of a variety of 'cost recovery' mechanisms such as licence auctions and levies which channel funds from the fishing industry back into management costs.

It is also notable that other natural resource sectors in Scotland have specific charges levied upon them in response to their profits from publicly owned resources, to account for their environmental costs and to cover the costs to the state of management. For instance the oil and gas extraction sector is subject to Petroleum Revenue Tax - a supplementary tax on profits arising from UK production, the aggregates extraction sector is subject to the Aggregates Levy intended to offset the environmental damage caused by quarrying (and to enhance recycling) and the water industry sector is subject to Environmental Charges to recover management costs. It is not clear why the fishing industry should be treated differently, and not be subject to similar sector-specific charges, levies and taxes.

Additional funding requirement

Furthermore, given the growing evidence that high quality fisheries management can yield public benefits, (for example less environmental damage, and a more resilient economy in remote coastal regions), and that Scottish fisheries management responsibilities are likely to increase following the UK's departure from the EU, it is reasonable to anticipate that management costs will rise in future. It is therefore appropriate to consider how the Scottish fishing industry could contribute more to the future costs of managing itself. More specifically, the question arises over what cost recovery measures could be fairly implemented. SIFT believes that there are a range of cost-recovery measures that could be introduced in future in Scotland which, in addition to raising revenue from the fishing sector to take account of the profits it makes from exploiting a publicly owned resource, and contributing to the cost of managing itself, would provide financial incentives to improve the performance of the fishery and reduce its environmental and socio-economic costs.

Detailed proposals for cost recovery are set out in the recent paper by SIFT and New Economic Foundation here <https://www.sift-uk.org/wp-content/uploads/2019/03/Management-Costs-NEF-SIFT-2018.pdf> . We summarise our views on this issue as follows:

Removing Fuel subsidies

One option for cost recovery is to end fuel subsidies to the fishing fleet. The current subsidy regime, which was worth some £14 million in 2016, not only increases fuel use (and hence the industry's carbon emissions) but also subsidises, and hence gives a competitive advantage to, the least environmentally sustainable types of fishery (scallop dredging). This conflicts with two priority national objectives – reducing carbon emissions and promoting sustainable use of natural resources. Removing the fuel tax exemption would incentivise the fishing industry to switch to less fuel intensive gear – either by developing new efficient gears or by transferring effort from mobile to static gear. It would also reduce the cost of managing Scotland's fisheries by some £14m per annum.

Quota Auctions

Although sparingly used in Europe (e.g. the Faroe Islands) quota auctions provide a mechanism to raise revenues from industry and to influence management in other respects (particularly in fisheries such as Scotland where quota is the dominant allocation tool). Quota auctions could:

- address the legal grey area around quota ownership, by being designed so that the quota is time limited (e.g. for ten-years only);
- be used to allocate limits on effort (i.e. days at sea, number of pots);
- restrict eligibility for certain fisheries by limiting participation in the auction to individuals with particular credentials - such as relevant track record.

However auctions can also present problems in fisheries because:

- There are many non-quota fisheries in Scottish waters (approximately 30% of Scottish landed value comes from non-quota fisheries). These fisheries incur management costs, create negative externalities and generate resource rent - just as quota fisheries do. Auctioning quota would not raise revenue from these fisheries.
- The variability in the resource means that the revenue stream is uncertain;
- The success of the most profitable fishers, or those with the greater access to capital, at auctions does not guarantee the most desirable quota allocation.

Well-designed auctions for specific fisheries should become a feature of future fisheries management, and reforms should ensure that

Levies and taxes

There are a range of methods of raising revenues through taxes and levies from the fishing industry. In the UK a levy on landed value already funds the Seafish Industry Authority. There is clear scope to extend this practice to obtain higher revenues from the fishery and hence support improved fishery management, which will ultimately benefit both the industry and the public. In Iceland, a levy calculated on the basis of both fishing income and landings is applied to the industry. This more complex model of taxation is designed to take account of fluctuations in the profitability of the industry and the amount of quota. In other jurisdictions, a range of specific levies and taxes are charged on specific elements of the fishery, for example in Alaska there are separate fees and taxes including the Fishery Business Tax on exporters, Fisheries Resource Landing Tax, and specific taxes relating to Salmon Hatchery Cost Recovery.

SIFT believes that a landings tax has merits and should be phased-in at a low but increasing rate across Scottish fisheries. This could be of sufficient size to make a material contribution to the costs of management. By way of an example, if the tax was 2% it would raise £11 million per annum.

SIFT believes that if a landings tax is employed it should have a differentiated rate based on fishing type and contribution to environmental externalities. In effect, fishing gears which cause the most environmental damage (and hence the highest cost to the public resource) should pay the highest rate of tax. Similarly, larger vessels (which tend to use more damaging gear) could be taxed at a higher rate than smaller vessels. Precisely how such differential levels should be determined should be subject to consultation.

Finally, and in the light of the aim of increasing the devolution of fisheries management powers to local levels, SIFT believes that there should be provision for cost recovery mechanisms to fund local as well as national level fisheries management bodies.

8. The Scottish Government understands that access to labour is a considerable concern for the industry. In Chapter 8 we identify a range of discussion points connected to access to labour and working in the fishing industry – what are your views on this area?

No comment



Sustainable Inshore Fisheries Trust

9. To ensure long term sustainability of the fishing industry the Scottish Government believe it is right for the fishing industry to contribute to costs associated with science, research and development in the future. Chapter 9 consider options for this but what are your view and thoughts on the discussion points raised in this chapter?

Please give your comments:

As noted in our response to Chapter 7 (above) SIFT recommends that the fishing industry contributes more to the public costs of fisheries management. SIFT recognises that this is contentious issue, which may engender opposition from within industry. Nevertheless it is clear that industry should in principle contribute to its costs. It is recognised that the least contentious destination for such contributions is science, research and development. Accordingly the industry's contribution to these cost should be a policy priority.

As we set out in our response to Chapter 7 (above), SIFT believes that revenue raising options which could contribute to these costs include:

1. The fuel tax exemption for fishing vessels should be phased out.
2. A landings tax should be phased in at a low but increasing rate across all fisheries. If such a landings tax is employed it should have a differentiated rate based on fishing type and the estimated contribution to environmental externalities. (It could also have a differentiated rate based on foreign and domestic landings, which can serve as an alternative to the existing economic link policy).
3. If a quota auction is employed, it should be a time-limited rather than a single sell-off.
4. Inshore fisheries management bodies should be empowered to generate their own cost recovery programmes.

SIFT believes it is important that science, research and development priorities should be determined by national fisheries and marine policy priorities. The amount that any stakeholder pays to exploit a public resource should not influence its ability to shape research priorities.

Finally, SIFT does not believe that there is merit in earmarking ('hypothecating') revenues raised from the fishing industry specifically for the purpose of funding particular aspects of fisheries management (such as scientific research). Efforts to hypothecate levy or tax revenues typically fail, not least because of the difficulty of balancing revenues and expenditure in multi-year spending plans, especially when they are subject to differing political policy aims from successive governments.

10. Finally, thinking about ensuring the long term sustainability of the Scottish fishing industry for future generations do you have any other ideas or proposals that you would like to be considered that are not covered elsewhere in the discussion paper?

Gear Vandalism

Gear vandalism, typically between mobile and static gear fishermen, is an acute problem in inshore waters, particularly within the prawn fishery. It is a common law offence that comes under the responsibilities of Police Scotland, not Marine Scotland Compliance. A significant consequence of this arrangement is the lack of prosecutions. To address this issue, it is recommended that gear vandalism is brought into new fisheries legislation as a statutory offence, and potentially is subject to administrative penalties.

Spatial management, Vessel monitoring and gear marking as recommended elsewhere in this paper would all further help resolve incidents of gear vandalism and new legislation provides the opportunity to establish a localised approach to this matter.

Protection of Essential Fish Habitat

The concept of protecting habitat for the benefit of fish in order to maximise the success of fisheries is common worldwide. The present Scottish situation of ad-hoc closures of spawning or nursery areas seems inadequate compared to the more strategic policies adopted by other countries such as USA, Iceland and New Zealand. In the US the concept became law under the 1996 Sustainable Fisheries Act (usually known as the Magnuson-Stevens Act) and mandates protecting habitat in all fisheries management plans for Federal Waters. Regional fishery management plans must “describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305(b)(1)(A), minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat”.

Furthermore, the 1995 UN Food and Agriculture Organization’s Code of Conduct on Responsible Fishing, which lays down generally accepted best practices for fisheries management applicable to all states, expressly provides that “all critical fisheries habitats in marine and fresh water ecosystems, such as wetlands, mangroves, reefs, lagoons, nursery and spawning areas, should be protected and rehabilitated as far as possible and where necessary.”

SIFT believes that similar duties and powers to protect habitat should be introduced in Scottish fisheries legislation. However it is not only a matter of protecting these habitats from fishing activity. The Code of Conduct further stresses that “particular effort should be made to protect such habitats from destruction, degradation, pollution and other significant impacts resulting from human activities that threaten the health and viability of the fishery resources.” Thus, the protection of critical fish habitats should be integrated into the marine planning framework and it should be a relevant consideration in marine licensing decisions.

Unlicensed, Part-time and Hobby Fishermen

SIFT believes there should be duties and powers to issue licenses to any fishing vessel, including those engaged in unlicensed, part-time and hobby fishing. Catch limits introduced in the Shellfish (Restrictions on Taking by Unlicensed Fishing Boats) Scotland Order 2017 should be strengthened by the introduction of Carriage Orders for species covered by the Order, and other species. Limits should also be established on gear types to be used by unlicensed, part-time and hobby fishermen.