



BRIEFING NOTE

The Scottish Creel Fishermen's Federation's JUDICIAL REVIEW of the Scottish Government's decision to refuse the Inner Sound of Skye inshore fisheries pilot proposal.

August 2020

"We are at an important moment. When countries now understand that protecting the environment is not something that is done at the expense of jobs and the economy but is essential to securing jobs and the economy for the future"

Nicola Sturgeon, 2018, Scottish Forum on Natural Capital

Key Points

- With the assistance of Fish Legal, SCFF has lodged a petition for judicial review of the decision by the Scottish Government to refuse the application by the North West Responsible Fishermen's Association (NWRFA)ⁱ for a fisheries Pilot in the Inner Sound of Skye.
- The NWRFA Pilot proposal was submitted under the Scottish Government's Inshore Fisheries Pilots programme, which was designed to trial different aspects of gear restriction (separating mobile and static fishing gear) in order to improve the evidence informing inshore fisheries management
- The NWRFA Pilot was specifically designed to examine what environmental and economic benefits may be obtained in a 'creel only' zone as opposed to a 'trawl only' zone in the Nephrops fishery. The Nephrops is a large prawn and is Scotland's second most valuable catch.
- The Nephrops creel fishery is a 'low impact high value' fishery that supplies the valuable live langoustine market. The Nephrops trawl fishery is a 'high impact low value fishery' that supplies the scampi market. There is a growing concern that Nephrops trawling has caused the chronic decline in west coast fish populations because of its very high levels of bycatch.
- The grounds for the judicial review are that Marine Scotland, (the executive agency responsible for managing Scotland's fisheries) refused the Inner Sound Pilot based on the results of a public consultation rather than applying the criteria that their own pilot programme guidance had set out as the basis on which applications would be determined. Consultation responses were dominated by members of the trawl industry who will object, as a matter of course, to any restriction on their freedom to trawl.
- SCFF has a wider concern that this case follows a pattern that suggests that the mobile sector wields too much influence with Marine Scotland and thus that the management of our fisheries appears more aligned with the interests of the mobile sector than with the public interest or fisheries policy under the National Marine Plan.

Introduction

The Scottish Creel Fishermen's Federation has lodged a petition for judicial review against the Scottish Government in the Court of Session. The legal issue behind this judicial review is the handling of the Scottish Government's Inshore Fisheries Pilot Programme; specifically its decision to refuse a pilot proposal for the Inner Sound of Skye. The proposed Skye Pilot was designed to provide evidence on the environmental and economic benefits of creeling as opposed to trawling in Scotland's important inshore Nephrops fishery. This legal challenge highlights an important concern about the way our inshore fisheries are managed by Marine Scotland and an apparent gap between policy and practice. Marine Scotland is the executive agency that is responsible for the management of Scotland's publicly owned inshore fisheries.

We have an uncontroversial definition of fisheries management: *"the application by a public authority of fisheries management measures in support of inshore fisheries policy objectives and the public interest"*. The broader question needing urgent examination is whether Marine Scotland, in managing our inshore fisheries, meets this definition both in the case of the Inner Sound Pilot Programme and more generally. The failures on behalf of Marine Scotland that led to the SCFF to bring this judicial review follow a predictable pattern of behaviour, which suggests that it may not. We believe this to be a matter of great public concern because our fisheries are one of Scotland's greatest assets. Our inshore fisheries are of particular ecological value as well as being of huge economic significance to coastal communities.

This judicial review is ultimately about the Scottish Government doing what they say they are going to do. In this case, the crucial issue is understanding the relationship between **protection of key marine ecology and a maintaining a healthy fishing economy**. This briefing note is headed by a quote from Nicola Sturgeon that indicates that the Scottish Government understands the importance of that relationship; the issue of obtaining evidence of that relationship, for fisheries management purposes, is at the heart of this Judicial Review. Readers can assess for themselves whether the First Minister's words are mere lip-service or whether she and her government mean what they say. This judicial review is therefore also about trust and confidence in the Scottish government's policies.

Scotland's important Nephrops fishery

This case mainly concerns our inshore Nephrops fishery. The Nephrops Norvegicus is a small (max total length 25 cms) pale orange lobster which goes by the many names but in the culinary world is commonly referred to as scampi or langoustine. Scotland has the largest annual landings of Nephrops of any country in the world at around 18,000 tonnes and it is our second most valuable fishery worth some £80 million per annumⁱⁱ.

There is strong competition for Nephrops stocks in our inshore fishery between two completely different fishing fleets servicing two different markets:

Nephrops trawl. This method catches Nephrops by dragging a weighted net across the sea bed. Collectively the trawl sector is also known as the mobile sector. It supplies the scampi market and catches around 85% of Nephrops stocks; and

Nephrops creel. This method catches Nephrops using baited traps and pots left on the sea bed. Collectively creelers are a part of the static sector. The live product is sold to supply the valuable live langoustine market.

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The Nephrops trawl and creel fisheries have very different economics and very different impacts on the environmentⁱⁱⁱ:

- a. The creel fishery is a **'low impact high value'** fishery and
- b. The trawl fishery is a **'high impact low value'** fishery.

The defining principle of Marine Scotland's inshore fisheries management is that trawlers are free to operate wherever they wish: we refer to this as the "freedom to trawl" principle^{iv}. Creel fishermen believe that this policy principle has caused huge damage to Scotland's inshore ecology including significantly damaging fish populations. It has also inhibited creelers from expanding their fisheries, which evidence suggests is more profitable and less damaging than the trawl fishery.

Creel fishermen cannot expand their fisheries without some policy of gear restriction on the use of mobile gear. It is believed that a policy of inshore gear restriction:

- a. Could allow inshore ecology to recover including damaged inshore fish populations;
- b. Will reduce gear conflict between the static and mobile fleets;
- c. Will create more profit and more jobs; and
- d. Will be very good for Scotland food and drink strategy by promoting a high value Scottish product: langoustine.

Other interest groups around Scotland, including community groups, environmental interests and recreational angling groups share our concerns about the chronic environmental and economic effects of Nephrops trawling in inshore waters. As a consequence, there is an increasing call for Marine Scotland to reverse its 'freedom to trawl' principle in favour of more balanced policy of 'gear restriction' in the inshore that reflects the wider mix of users in our coastal waters. This reflects a wider concern that the inshore is being dominated by the mobile sector whose environmentally destructive fishing practices impact on the ability of other economic interest to benefit from the inshore. This is unfair and contrary to fisheries policy^v.

The Scottish Government Inshore Fisheries Pilot Programme

In 2015 the Scottish Government announced an Inshore Fisheries Pilot Programme under which local fishery organisations could offer up proposals to pilot measures separating mobile and static gears. The stated objective of the Pilot Programme was *to improve the evidence base to guide future inshore fisheries policy*. In the Marine Scotland Pilot Guidance it is stated categorically that submitted proposals *"will be considered on the basis of"* five given criteria^{vi}. These include *'improving the evidence base'*.

The North West Responsible Fishermen's Association (NWRFA) a regional creeling organisation and a member of SCFF put forward a proposal for a Pilot in the Inner Sound of Skye. The Pilot was designed to create separate zones for trawlers and creelers in order to study the respective economic and environmental performances of these two forms of fishing for Nephrops as well as trialling local management. **The Pilot was designed to provide important and potentially unique evidence with national implications for the management of our Nephrops fishery.**

Other proposals were put forward by other fishery groups around Scotland to examine other issues coming out of gear separation in other fisheries. There were no other proposals looking at gear separation in the Nephrops fishery.

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The proposal was put out to public consultation in January 2019^{vii}. An examination of the consultation responses shows that support or otherwise for the proposal is largely determined by whether or not the consultee has an interest in the mobile sector. NWRFA maintain that 90% of local fishing interests in the Inner Sound supported the proposal.

The Inner Sound proposal was rejected by Marine Scotland on 26 February 2020. The reason given for the rejection was given in the Outcome Report^{viii}: *“the responses to the consultation make it clear that there is continuing opposition to the proposers inshore fisheries pilot in the Inner Sound of Skye..the majority of the proposed measure [sic] set out in the consultation were strongly opposed by respondents”*.

Marine Scotland made no assessment of how the evidence to be provided by the proposed Inner Sound Pilot might or might not ‘improve the evidence base’. Whilst, of course, the consultation responses were pertinent in considering the merits of the proposal against those criteria, strength of popularity in the consultation was not a defining criterion.

SCFF believes that the decision to reject the Pilot was unlawful because the Scottish Government did not assess the proposal in accordance with its own published criteria; which included an assessment of the key learning opportunities of the Pilot with respect to the wider issues of inshore fisheries management.

Why the Inner Sound Pilot is important

What is at stake in this case is the pressing need for clear evidence about the effects of the current ‘freedom to trawl’ principle in our inshore. It is essential that inshore fisheries policy is based upon facts which have been ascertained methodically objectively and with urgency.

Before the enactment of the Inshore Fishing (Scotland) Act 1984 trawling within 3 miles of the coast around Scotland was banned. The prohibition was removed largely because trawling had led to an increased depletion of off-shore stocks and mobile sector wished to move inshore.

Since then, inshore waters have been subject to competition for fish and shellfish between fishermen using different techniques. **There is a significant and growing body of evidence showing that the decision to open up the inshore to trawling has been disastrous both environmentally and economically.**

Environmental Impacts. Static gear does minimal damage to sea floor habitats other than the Nephrops caught in the creel. By comparison heavy mobile gear dragged across the seabed does enormous damage to important habitats that are often complex and fragile. Complexity of habitat is an important factor in the successful breeding of inshore fish species, since it provides both food and shelter for young fish^{ix}. Static fishing fosters husbandry of local Nephrops stocks with for example the return of ‘berried’ females and juveniles being common practice. By contrast Nephrops trawl fishing has a very substantial bycatch, often as high as two-thirds by weight^x with high levels of mortality. This is because Nephrops trawlers use a very fine net.

There is now a substantial body of scientific evidence that the chronic use of mobile gear in the inshore has had a devastating effects on the ecology of our inshore waters^{xi}. We would refer in particular to Marine Scotland’s Clyde Ecosystem Review (CER) for comprehensive evidence that

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chronic trawling has fundamentally altered the profile of our inshore fish population with the loss of both larger fish and loss of variety in the structure of the fish population. Marine Scotland's Marine Atlas reports a lack of demersal (groundfish) species on the west coast and the notes the "significant pressure" of fishing on the ecology, suggesting that the problem is now widespread. For further details of the Scottish Government's response to destruction of health fish populations in the Firth of Clyde see Annex Part A.

Economic impacts. Demersal fish include many of the major commercial varieties such as cod, haddock, and flat fish. The inshore fisheries for these commercial species have collapsed on the west coast over the last 30 years. This has also impacted other fisheries that depend upon fish of a certain size such as recreational sea anglers. Recreational sea angling is potentially of great significance to Scotland but the Scottish Government does not prioritise the recovery of fish populations in the inshore and has no strategy for recreational sea angling (see Annex Part B) for further details).

Unfortunately, the economic impact of the 'freedom to trawl' principle goes beyond even the loss of demersal fisheries. Because of the disparity in power between trawlers and creelers, trawlers are able to control as much as 85% of the Nephrops stock: this is because of 'gear conflict' and 'avoidance behaviour'. Creelers are constrained from expanding their fisheries because if they do it is highly likely that they will get their gear towed by a trawler, and it will be lost causing significant economic loss. Where creel gear is towed away by a trawler this is called 'gear conflict', and where the creeler does not expand his fishery for fear of 'gear conflict' this is called 'avoidance behaviour'.

These phenomena, which directly arise from the 'freedom to trawl' principle have significant economic effects. These were fully set out by the SCFF in its 'Misallocation' paper presented to the Scottish Government in 2017^{xii}. The paper shows that per tonne of Nephrops caught, creeling creates substantially more revenue, more profit and more jobs than the equivalent tonne caught by trawlers. This is because its product, which is live langoustine is worth around £12,000 per tonne whereas the principal trawled product is tailed Nephrops, which is sold for scampi at around £1750 per liveweight tonne, although average value is nearer £3000 per tonne^{xiii}. Given the substantial price disadvantage of its product, trawlers have to kill a lot of Nephrops (and much more besides) to cover the greater cost of a larger vessel with more crew and much greater fuel usage. A given tonnage of static gear catch will support materially more maritime and onshore employment than its mobile caught equivalent. Were access to a given area of fishing to be regulated by a market, whereby exclusive rights to fish there were subject to a bid price, it is readily demonstrable that static operators could and would outbid mobile operators. As matters stand however access is determined by the 'freedom to trawl' principle; in other words it is a free-for-all.

The GRID economics Technical Report^{xiv} produced for Marine Scotland in 2015 and the later Misallocation Report demonstrate beyond reasonable doubt that Scotland's best interests would be served by allocation more fishing opportunities to Nephrop creelers. There is no ambiguity about this and Marine Scotland's own economics unit (Marine Analytical Unit) has agreed that there is a misallocation. The uncertainty relates to how much of a correction is required to maximise the benefits to Scotland. The imperative now is to understand better the magnitude of the beneficial changes that will follow. For example, to what extent will Nephrops stocks change? To what extent will creelers adjust to the new incentive effects? To what extent will our marine biomass and biodiversity be enhanced? How far will the improved marine environment enhance the well-being of those whose recreational experience is based on interaction with the marine environment. If lack of evidence on these matters is preventing Marine Scotland from addressing the misallocation one would expect some enthusiasm for the Pilot.

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In conclusion, after 36 years of inshore trawling there is a solid body of scientific evidence that the freedom to use mobile gear in the inshore has had and has a devastating effects on the ecology of inshore waters and the remaining fisheries that depend upon it. **To deny this is to do nothing other than state the key issue in this case: which is: what are the facts?** This Judicial Review is brought to oblige Marine Scotland and the Scottish Government to adhere to their own policies that commit them to answering that important question.

Marine Scotland and Fisheries Policy

Marine Scotland, as the executive agency in charge of our fisheries, are obliged to be guided by its own policy objectives, which are clearly set out in our National Marine Plan (NMP) and the Marine (Scotland) Act 2010. These require Marine Scotland **to place fisheries on a sustainable footing, in order to avoid environmental destruction and where possible to promote the health of marine ecology**^{xv}.

In particular, the Scottish Government's National Performance Framework commits them to: *"by 2020 [to] effectively regulate harvesting and end over-fishing...and unregulated fishing and destructive fishing practices and implement science-based plans, in order to restore fish stocks in the shortest time feasible, at least to levels that can produce sustainable yield as determined by their biological characteristics"*. The same policies expressly favour the promotion of local, artisanal fisheries, of which creeling is the paradigm example, and the adoption of robust measures to protect vulnerable stocks, put in place *"mechanisms for managing conflicts between fishermen"* (Policy FISHERIES 1), so as to manage fisheries in the long-term public interest.

In 2015 the Scottish Government published the recommendation of the 'Report of the Task Force on Gear Conflict' that the Government *"should consider the scope for piloting time and/or spatial zones at gear conflict 'black spots'..[and] whether licence conditions need to be used to support the restricted areas or closures made under the Inshore Fishing (Scotland) Act 1984"*.

It is an express crux of the Scottish Government's policies that more and better evidence is needed of the effects of different fishing activities on fisheries and the marine environment: for example NMP Objective 7 and Policy GEN 19 'Sound Evidence'. In implement of that, the Scottish Government's current Scottish Inshore Fisheries Strategy 2015 states as its first principle:

"improving the evidence base on which fisheries management decisions are made".

On 25th May 2017 the Scottish Ministers announced the Inshore Fisheries Pilot Programme and one of its two purposes was to *"trial the impact of separating different methods of fishing, such as creeling and trawling in an area. Mr Ewing announced the measures ahead of the meeting with the Scottish Creel Fishermen's Federation. He said: 'these pilots will investigate how we can best manage our inshore fisheries and whether there are new and innovative ways of sustainable maximising the benefits of the sector. Giving communities more management control gives them a sense of ownership and opportunity to work together to find solutions that best meet their needs. This work will help us improve our inshore fisheries while maintaining a diverse marine environment. Importantly it will make sure future strategies are based on better evidence, experience and understanding so our coastal communities can make the most of our inshore waters"* [emphasis added]. On 31st May 2017 the Minister told the Scottish Parliament that the purpose of the Programme was that *"the learning from the pilots will inform a more strategic approach to*

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managing inshore fisheries, to ensure that we make the most of our valuable inshore waters, and they will inform work on the future of fisheries management in Scotland in the next few years”

Given the growing body of evidence showing the economic and ecological damage to the inshore caused by the use of mobile gears, a Pilot specifically designed to provide empirical evidence on the environmental and economic benefits of gear restriction in the Nephrops fishery is very clearly important. As expert fisheries economist has stated in support of the SCFF’s action:

“Modelling is no substitute for the real life experience that a pilot would provide. The Pilot study would enable the effects of re-balancing to be observed directly rather than estimated through modelling. Thus we could observe:

- *How creelers (and trawlers) adjusted their fishing activity*
- *How the new pattern of exploitation impacted on income and employment in the fishery*
- *How the supply chain adjusted and the consequences for onshore employment*
- *The extent of changes in the marine environment*
- *How improvements in the marine environment benefitted other stakeholders”*

No other Pilot proposals were investigating these questions in the Nephrops fishery, and we are not aware of any other empirical studies of these important issues. It would seem that Marine Scotland’s Marine Analytical Unit (their inhouse economics experts) agreed on the need for an empirical study. Having already provided a positive assessment of the Inner Sound Pilot Proposal to Marine Scotland officers they further advised that:- *“it would be good to discuss if some form of small scale trial is feasible to test some of the evidence presented in the Nephrops research – or at least verify what evidence is missing to be able to do this”*.

We know that Scottish Natural Heritage (SNH) provided the following advice to the Marine Scotland with respect to the Inner Sound Pilot: *“The inner sound proposal is slightly different [from the other Pilot proposals] in being focussed on Nephrops but I think it has a lot of potential to inform wider thinking on sustainable management of the Nephrops fishery. This particular proposal also mentions the potential for outcomes relating to the fishery and to the benthic environment (which we broadly agree are relevant).”* [our emphasis]

We need to understand why Marine Scotland ignored the advice of its own Economics Unit and SNH.

Moving forward?

Fundamentally, this case is about how Marine Scotland works and whether it is managing ‘*in support of inshore fisheries policy objectives and the public interest*’, or in support of some other interest. As indicated by the David Attenborough quote at the foot of this Brief, we live at a time when many elements of the natural world are showing signs of stress that threatens our future and that of our children. The state of our oceans and seas are particularly threatened. **Evidence of the breakdown of marine ecosystems and collapse of fish stocks requires fishery managers to re-examine how our fisheries are exploited to ensure they are genuinely sustainably managed in a way that that can promote their recovery and productivity for future generations.**

It is clear that chronic inshore trawling and dredging has caused huge ecological and economic damage to our inshore. The Scottish Government’s damaging ‘freedom to trawl’ policy principle must now be urgently re-evaluated. We appreciate change requires difficult decisions to be taken but as warned by David Attenborough, time is running out.

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We see the decision to refuse the Inner Sound Pilot based on objections from the mobile sector as falling into a wider pattern of behaviour from Marine Scotland that suggests that fisheries management is too closely aligned with the interests of the mobile sector to the disbenefit of other interest groups. We set out examples of this in the Annex. It appears to many that Marine Scotland gives the mobile sector a veto on change in the inshore. While it does this the 'freedom to trawl' principle is untouchable. **Unless this principle is reversed it will be impossible for our inshore fisheries to recover.** Whilst we understand that the mobile sector is an important part of the fishing industry, its interest is not the same as the national interest. We also know that the mobile sector is well funded, well organised and that it will fight any erosion of the freedom to trawl principle very aggressively. We must have confidence that Marine Scotland can look at these matters in a disinterested manner and be led by the evidence and policy rather than the demands of one particular interest group that has dominated the inshore for too long at great public cost.

The good news for the Scottish Government is that there is increasing evidence that if fishing practices change to limit or remove damaging fishing gears our fisheries can recover^{xvi}. The even better news is that transition from damaging trawl fisheries to low impact static gear fisheries can actually increase employment and improve profitability. However, for this to happen Marine Scotland must move away from a '3 wise monkeys' approach to management which ignores evidence it does not like^{xvii} to a position where it can honestly appraise the mounting evidence showing the impact of the chronic use of destructive fishing gears. We believe that there is more than sufficient evidence to underpin the case for a fundamental change of approach but if more evidence is needed then the Pilot is capable of providing further evidence to support the case for change.

Important questions to be answered by Marine Scotland

Evidence plays a crucial role in justifying the move from unsustainable practices to sustainable practices. If Marine Scotland is to limit the right of fishermen to trawl or to dredge in certain areas then this must be based on sound evidence. The need for evidence to inform fisheries management was the underlying purpose of the Pilots programme. We are concerned to understand why the Inner Sound was rejected because on the face of it the evidence it was designed to provide is so obviously important and necessary. **Understanding the basis for Marine Scotland's actions in this case is important because we need to have confidence that as an organisation it can genuinely deliver fisheries management in the national interest.** There are some very important questions to be asked of Marine Scotland:

- Why did they not apply their own criteria in deciding the Inner Sound proposal?
- Why did they fail to recognise the important and unique *empirical evidence* that the Inner Sound Pilot was designed to produce with respect to the environmental and economic implications of gear separation in the Nephrops fishery?
- Why did they ignore/reject the expert advice of SNH and its own Marine Analytical Unit in support of the importance of the Inner Sound Pilot?

If SCFF succeeds in this case we need support to ensure that Marine Scotland adopts much greater transparency in the way it works and in particular is seen to put 'clear blue water' between the interests of the mobile sector and the national interest. We need Marine Scotland to demonstrate that it can manage in the national interest and take decisions in the national interest that are unpopular with the mobile sector. In these times, we can do no better than refer Marine Scotland back to the wise words uttered by our First Minister quoted at the head of this Note and require them to follow them.

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ANNEX

Whose interests does Marine Scotland support?

A] The Firth of Clyde

Several independent studies, principally the Clyde Ecosystem Review (CER) authored by Marine Scotland Science have demonstrated that the ecology of Britain's largest inland sea has significantly altered since the reintroduction of trawling in the inshore. According to CER:-

- Fishing [trawling] has significantly altered the mix of species in the Clyde;
- The community of fish is..mostly small whiting
- The Nephrops trawl fishery may be partly responsible for the current absence of older larger fish in the Clyde
- In order to recover the ecosystem towards a healthy state, we need to find measures which allow large fish to survive and increase
- We cannot wait indefinitely for the result of further scientific studies

Following the publication of the Clyde Ecosystem Review Richard Lochhead then cabinet minister then responsible for fisheries made the Clyde 2020 Statement. He said of the Clyde:- *“My vision is for the Clyde Basin is for a healthy and thriving marine ecosystem that supports sustainable fishing, tourism and leisure while offering protection to the most fragile natural habitats”*. The Clyde 2020 initiative announced January 2014 was to involve *‘research and practical measures to improve the Clyde Marine Ecosystem’*.

It is a reasonable assumption given the advice of the scientists that that the ecology of the Firth of Clyde cannot recover without some substantial changes being made to fishing practice, particularly to allow more fish to survive into maturity. A scientifically based proposal was put to the Scottish Government by the Sustainable Inshore Fisheries Trust for a Regulating Order for the Firth of Clyde. The Regulating Order was a means by which a fisheries plan designed by fisheries scientists for Nephrops fishery in the Clyde could be put in place with the specific aim of allowing it to recover and thrive again. Disappointingly the Scottish Government rejected the proposals out of hand stating that it would ‘add complexity’ to the management of the Firth, that Marine Protected Areas recently introduced into the Clyde needed to be assessed before other management measures could be introduced and that there was a low level of support from the commercial fishery sector. SIFT disputed these arguments stating that management complexity only arose because the Scottish Government has been so slow at introducing Vessel Monitoring technology (which is widely used by other maritime nations), that MPAs are for conservation purposes and not related to fisheries management and that the only opponents to the proposals were the trawl and dredge fishermen who were the prime causes of the damage that the Regulating Order was seeking to restore.

By the year 2020, six years on from Richard Lochhead’s ‘2020 Vision’ statement and 8 years on from the publication of the CER not a single practical measures has been taken to improve the state of the Clyde ecosystem. This tells one all one needs to know about how much the Scottish Government values ecosystem recovery, even when what needs recovery is such an iconic part of Scotland landscape and heritage.

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B] Recreational Sea Angling

Scotland has a massive coastline punctuated with coastal communities many of which struggle to find ways to make money. Recreational sea angling should be a huge opportunity for Scottish coastal communities, yet **the Scottish Government has no strategy to develop this asset.**

The Scottish Sea Angling Conservation Network (SSCN) persuaded the Scottish Government to carry out an economic survey of the economic potential of sea angling in Scotland back in 2009^{xviii}. The report indicated that there is significant potential for growth in Scottish sea angling. It notes that the key to unlocking the potential of sea angling is to ensure the availability of fish stocks for anglers to catch. It further notes that concerns about fish stock abundance might deter new entrants and that this was something that the Scottish Government can influence. Following publication, the Scottish Government seemed supportive and Richard Lochhead formed a Recreational Sea Angling Strategy Group. The Group prepared a Report setting out policy recommendations^{xix}. A key recommendation was the *need to apply fishery measures to allow fish populations to recover*. Marine Scotland seemingly did not like this and the other recommendations in the RSA Strategy Report. The Report was not published and the RSA Strategy group quickly disbanded. SSCN were told *'not to rock the boat'* by Marine Scotland and given £50,000 per annum for 5 years to do shark tagging and the whole matter was quietly dropped.

RSA remains a huge unexploited opportunity for Scotland to this day. Why should our sea anglers have to go all the way to Norway to catch a decent sized cod for example?^{xx} It is clear that to develop Recreational Sea Angling there is a need for fish to be able to grow to a size to attract anglers and this is not possible without restricting the activities of the Nephrops trawlers.

The economic case for embracing an RSA strategy is enormous. Why does the Scottish Government do nothing?

C] Expert Reports

2014 GRID Economics Study. In 2014 The Scottish Government put out to tender for an economics study called 'Management of the Scottish Inshore Fisheries; Assessing Options for change'. This research was to *'provide crucial evidence for the development of policies as part of the Strategy for Inshore Fisheries. The initiative responds to the policy demands of stakeholders on inshore fisheries issues in particular around stock conservation and around conflict management. It will contribute to filling the substantial and widely recognised evidence gap which exists on inshore fisheries and which currently prevents the formation of policy based on robust evidence'*

The published study provided strong evidence in support for a policy of inshore gear restriction in the inshore. The report's conclusions caused angry protest from members of the mobile sector attending the IFMAC committee^{xxi}. Marine Scotland immediately disassociated itself from the report commenting in the IFMAC minute that the paper *'does not provide policy advice and that Marine Scotland has no current plans to introduce a national one or three mile limit restriction on fishing with mobile gear'*. The study was dropped by Marine Scotland despite its conclusions being peer reviewed for no other apparent reason than the Mobile sector disagreed with its conclusions. As illustrated by the current example, this is somewhat ironic given that one key outcome of its 2015 inshore strategy was an 'improved evidence base'. It seems, time and again, that the only evidence that Marine Scotland will take note of is 'evidence' approved by the mobile sector.

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2016 New Economics Foundation Working Paper: The Scottish Nephrops fishery: Applying social, economic, and environmental criteria. In this paper NEF presented 17 social, economic and environmental criteria for assessing the Scottish Nephrops fishery. Those criteria were chosen to align with the Scottish Government's Strategic Objectives to make Scotland wealthier and fairer, smarter, healthier, safer and stronger, and greener. The paper presents a multi-criteria decision-making framework to evaluate trade-offs and to determine the holistic performance of creelers and trawlers. The key conclusion was that the creel fishery should be granted greater spatial access to inshore waters to generate the best economic, social and environmental value from the fishery. It further notes *"Allocating fishing opportunity to those fleets and gear types that present best value to society is an opportunity not to be missed and will provide a necessary lifeline for rural communities highly dependent on the inshore resource, especially on the West Coast of Scotland"*.

It should be noted that this work was undertaken as an independent study and was not commissioned or sponsored in any way by the static gear sector or by any environmental NGO. The conclusions of the Report were not acknowledged by the Scottish Government and NEF's very carefully argued case, set out specifically in terms of the Scottish Government's own Strategic Objectives, remains unanswered.

In 2017 the SCFF published a paper "Correcting the Misallocation of Nephrops Stocks in Scottish Inshore Waters: Untapping a Vast Economic and Environmental Potential. The paper written by a leading fisheries economist presents evidence of a substantial misallocation of Nephrops between creeling and trawling in Scottish inshore waters currently fished by both methods. The paper shows that per live weight tonne of Nephrops creeling outperforms trawling on every economic measure as well as being considerably less damaging to the environment. The paper argues that access to Nephrops stock is currently determined by 'capricious factors'. In practice means that trawlers will dominate the fishery because they are larger, more powerful and can tow away creel gear at will rather than because of economic factors. They currently catch over 85% of the stock. The paper argues that in order to achieve the optimal economic and environmental outcomes for Scotland there needs to be a substantial rebalancing in favour of creeling. This would have to be done through a policy of gear restriction.

Despite Marine Scotland acknowledging that there is a misallocation and the need for further geographically specific evidence looking at the value generated per unit of area there has been a refusal by Marine Scotland to positively engage with the SCFF to establish a common frame of analysis that can assess the geographical scale of misallocation. It is our view that the Inshore Fisheries Pilot was potentially a very valuable way of providing empirical evidence regarding the scale of 'misallocation' and this was acknowledged by Marine Scotland's Marine Analytical Unit in their advice to Marine Scotland policy makers.

D] 'Local' Inshore Fisheries Management?

A key part of the Scottish Government's inshore strategy is the formation of 'Regional Inshore Fisheries Groups'. These Groups are drawn from different sectors of the commercial fishing world and under RIFG rules can develop local fishery plans. The fundamental problem with these groups is that they are dominated by the views of the mobile sector so they do not in any genuine way represent the views of local fishermen. For example it is highly unlikely that any restrictions to mobile activity would be approved unless agreed by the mobile sector. In practice this is highly unlikely to happen and RIFGs merely provide another opportunity for the mobile sector to veto any change. NWRFA tried to gain approval for its Inner Sound pilot with the West Coast RIFG but it was opposed by members of the mobile sector.

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The RIFGs do not acknowledge the interest of any other groups such as RSA or environmental groups and these are not included as part of the membership. This is in contrast to the position in England where a wider range of interests is included on the local IFCA's. It should be noted for example that recently the Sussex IFCA has just enacted a ban on trawling within 5 nautical miles of the coast for the purpose of protecting and restoring inshore kelp forest which is vital for protecting juvenile fish. Unfortunately and regrettably in current circumstances it would be impossible to imagine an RIFG in Scotland agreeing anything so progressive.

ⁱ NWRFA is an association of creel fishermen based in the north west of Scotland and it is a member of the SCFF.

ⁱⁱ Scottish Sea Fisheries Statistics 2018 Scottish Government

ⁱⁱⁱ For a study of the comparative performance of creel and trawl see F Ziegler Environmental life cycle assessment of Norway lobster (*Nephrops norvegicus*) caught along the Swedish west coast by creels and conventional trawls LCA methodology with case study

^{iv} "the fundamental principle of devolved management is that access to the marine resource should remain unrestricted where possible.." para 13 Scottish Regional Inshore Fisheries Groups Outline Structure and Functions Marine Scotland. There are, of course, some limitations in some areas of some Marine Protected Areas but these are the exceptions that prove the rule.

^v See "NMP GEN 17 Fairness: all marine interest will be treated with fairness and in a transparent manner when decisions are being made in the marine environment." We do not believe that the current freedom to trawl principle respects the interests of other marine users who depend upon a healthy marine environment.

^{vi} Marine Scotland – Inshore Fisheries Pilots -Proposal Form – Guidance 2017

^{vii} Inshore Fisheries Pilot: inner Sound of Skye A consultation Scottish Government Jan 2019

^{viii} Marine Scotland Inshore Fisheries Pilot: Inner Sound of Skye Consultation Outcome Report

^{ix} This fact is already recognised by more progressive fishery managers. An interesting recent example is the Sussex Inshore Fisheries and Conservation Authority which has put an inshore trawl ban in place to preserve and restore kelp beds which are important fish habitat.

^x By way of example, the rate of discarding in the Clyde sea *Nephrops* fishery is very high and the proportion has been estimated between 66-80% according to the Clyde Ecosystem Review. See section 6.8.3

^{xi} Whilst there is no consistent programme of inshore monitoring of the health of inshore fish populations, scientific data indicates that there is a substantial problem with the health of our inshore fish populations and the most likely cause of this is trawling. What is most marked is the loss of larger fish with also a loss of balance of fish varieties that you would find in a healthy fishery. The Clyde Ecosystem Review (Marine Scotland Science 2012) shows that fish population of the Firth of Clyde now consists of whiting of below minimum land size. The authors conclude that 'fishing activity' has substantially altered the mix of fish in the Clyde that we need to take measures to allow larger fish to survive. Monitoring surveys up the west coast of Scotland indicates a similar decline in the prevalence of large fish over the same period indicating that the same causative factors are at work.

^{xii} Correcting the Misallocation of *Nephrops* Stocks in Scottish Inshore Waters: Untapping a Vast Economic (and Environmental) Potential SCFF 2017.

^{xiii} A typical *Nephrops* trawler catch is 60% tails and 40% whole dead. Dead whole has an average price of £4500 giving a per tonne value of an average trawler catch of around £3000.

^{xiv} Management of the Scottish Inshore Fisheries Assessing The Options for Change Technical Reports GRID economics 2014

^{xv} S.3 Marine (Scotland) Act 2010 in exercise of any function that affects the Scottish marine area the Scottish Ministers must "act in the way best calculated to further the achievement of sustainable development, including the protection and, where appropriate, enhancement of the health of that area, so far as is consistent with the proper exercise of that function".

^{xvi} See Marine Conservation Begins at Home: How a local Community and Protection of a Small Bay Sent Waves of Change Around the UK and Beyond Bryce Stewart et al Frontiers in Marine Science February 2020

^{xvii} A perfect example of the 3 wise monkeys approach was Marine Scotland's response to the GRID economic paper. See Annex part 3

^{xviii} Technical Report Economic Impact of Recreational Sea Angling in Scotland

^{xix} Sea Angling Strategy Group Report (unpublished). This contains a number of recommendations many of which Marine Scotland must have found unpalatable including: "Within Marine Scotland it should be understood that the key to unlocking the potential of sea angling is, where appropriate, to ensure the availability of fish stocks for anglers to catch. This is because fish stock abundance affects RSA activity levels, capital investment and the effectiveness of promotional activity" and "it should be recognised that, because Scotland's inshore fisheries have not been managed explicitly as jointly exploited

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fisheries, there is possibly a legacy of situations where current commercial fishing activity is incompatible with maximising society's benefits from joint commercial and recreational exploitation".

^{xx} The Norwegians do not permit inshore trawling

^{xxi} The Inshore Fisheries Management and Conservation Committee is an ad hoc committee of fishermen and other interests convened by Marine Scotland to discuss fishery interests. It is clear from the proceedings of the committee that it is dominated by mobile interests.

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