

[REDACTED]

[REDACTED]

Our ref: Fol/19/01324  
25 June 2019

Dear [REDACTED]

## REQUEST UNDER THE ENVIRONMENTAL INFORMATION (SCOTLAND) REGULATIONS 2004 (EIRs)

Thank you for your request dated 27 May 2019 under the Environmental Information (Scotland) Regulations 2004 (EIRs).

### Your request

You asked for

- The number of incidents reported to Marine Scotland of suspected or actual infringements of MPA fisheries management rules (hereafter 'incidents') since 16 August 2015 until present day.
- The number of reported incidents subsequently investigated by Marine Scotland which led to an enforcement action, and a breakdown of the type of any enforcement action taken (eg Fixed Penalty Notice, public prosecution).
- The number of individual vessels these incidents relate to, including those reported to Marine Scotland between 16 August 2015 to present day.
- The names of the MPAs in which these incidents have been reported, and the number of incidents reported at each MPA.
- The number of incidents reported relating to fishing with a) trawling gear, b) dredging gear and c) creeling gear d) any other form of fishing
- The total number of such incidents occurring in each year, including and since 2015

As the information you have requested is 'environmental information' for the purposes of the Environmental Information (Scotland) Regulations 2004 (EIRs), we are required to deal with

your request under those Regulations. We are applying the exemption at section 39(2) of the Freedom of Information (Scotland) Act 2002 (FOISA), so that we do not also have to deal with your request under FOISA.

This exemption is subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exemption. We have found that, on balance, the public interest lies in favour of upholding the exemption, because there is no public interest in dealing with the same request under two different regimes. This is essentially a technical point and has no material effect on the outcome of your request.

### Response to your request

I enclose a copy of most of the information you requested. It is attached at the annex.

Some of the information you have requested is available from <https://www.gov.scot/publications/foi-18-01093/>. This provides figures addressing most of your questions for the period covering 22 May 2017 to 8 May 2018.

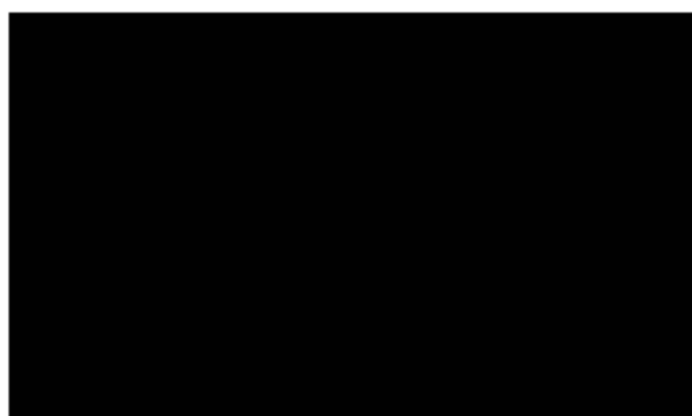
Under regulation 6(1)(b) of the EIRs, we do not have to give you information which is already publicly available and easily accessible to you in another form or format. If, however, you do not have internet access to obtain this information from the website(s) listed, then please contact me again and I will send you a paper copy.

### Your right to request a review

If you are unhappy with this response to your EIRs request, you may ask us to carry out an internal review of the response, by writing to Graham Black, Director of Marine Scotland, Area 1B South, Victoria Quay, Edinburgh EH6 6QQ, or by emailing [Directormarinescotland@gov.scot](mailto:Directormarinescotland@gov.scot).

Your review request should explain why you are dissatisfied with this response, and should be made within 40 working days from the date when you received this letter. We will complete the review and tell you the result, within 20 working days from the date when we receive your review request.

If you are not satisfied with the result of the review, you then have the right to appeal to the Scottish Information Commissioner. More detailed information on your appeal rights is available on the Commissioner's website at: <http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx>.



## ANNEX

Points to note in terms of reports:

- Reports are seldom “real time” but often reported after the event so the prospect of immediate action is reduced;
- A report does not mean or confirm that illegal activity of any kind has taken place;
- A report does not mean or confirm there is even a vessel in the MPA, or in a certain section of the MPA;
- A number of the reports don’t identify the vessel which impacts on what can be done;
- Some of the MPAs have ports in them (Loch Sunart to Sound of Jura has Oban and Wester Ross has Ullapool) so there will be fishing vessels moving through the MPA quite legitimately;
- There is seldom a clear “line of sight” through a single report all the way to enforcement action. This means that it is not usually possible to say that someone suspected something, that something was reported, that led to an investigation, and there was a subsequent prosecution for that something originally reported. This may be because something is generally reported after the event.
- When an asset has been tasked to follow up reports it usually provides a mechanism for gathering further intelligence which might then form the basis of enforcement action although the original report itself may not necessarily form part of that enforcement action.
- Reports feed into the risk assessment and tasking process and when an asset has been tasked it usually provides a mechanism for gathering further intelligence which might then form the basis of further enforcement action;
- A single report might relate to multiple vessels, and multiple reports may all relate to the same event or a single vessel.
- Some reports may either misidentify the activity of the vessel or the method of fishing it is suspected to be engaged in.
- Reports received are taken at face value and accuracy cannot be verified until followed up at a later stage.

**The number of incidents reported to Marine Scotland of suspected or actual infringements of MPA fisheries management rules (hereafter ‘incidents’) since 16 August 2015 until present day.**

16 August 2015 – 21 May 2017: 74 reports

9 May 2018 – 25 May 2019: 38 reports

**The number of reported incidents subsequently investigated by Marine Scotland which led to an enforcement action, and a breakdown of the type of any enforcement action taken (eg Fixed Penalty Notice, public prosecution).**

All incidents are followed up. All reports from our own sources and members of the public are immediately assessed to see if immediate action is possible. Where there are available resources (aircraft or vessel), and this is in line with current priorities, they can be re-tasked to gather evidence and, if possible, detain any suspect boats. Whether or not immediate action is possible, all reports and intelligence received is fed into the Marine Scotland Compliance’s Intelligence Database (MSID). All of this information is graded and assessed at a regular risk assessment and tasking session where priorities and tasks for coastal officers, ships and aircraft are decided. Local officers also follow-up intelligence reports from their area at a local level.

As already mentioned above in the “points to note”, there is seldom a clear “line of sight” from a single report all the way through to enforcement action. Reports provided to Marine Scotland Compliance feed into the risk assessment and tasking process which determines the tasking for assets. When an asset has been tasked it usually provides a mechanism for gathering further intelligence which might then form the basis of further enforcement action, although the original report received may not form part of that enforcement action.

### Enforcement Outcomes 16 August 2015 to 25 May 2019

	No Further Action	Advisory Letter	Warning Letter	Fixed Penalty Notice	Referred to COPFS
2016				1	
2017			1	1	
2018	1*		1	1	1**
2019					1

\* established that no offence was committed

\*\* FPN not paid so referred to COPFS

**The number of individual vessels these incidents relate to, including those reported to Marine Scotland between 16 August 2015 to present day.**

16 August 2015 – 21 May 2017: 20 identified fishing vessels.

9 May 2018 – 25 May 2019: 19 identified fishing vessels.

**The names of the MPAs in which these incidents have been reported, and the number of incidents reported at each MPA;**

and

**The number of reports relating to fishing with a) trawling gear, b) dredging gear and c) creeling gear d) any other form of fishing**

16 August 2015 – 21 May 2017

Please note that a report does not mean or confirm that illegal activity of any kind has taken place; nor does it mean or confirm there is even a vessel in the MPA, or in a certain section of the MPA.

<b>MPA or other closed area name</b>	<b>Number of reports</b>	<b>Type of Gear</b>
East Mingulay	1	Trawl (1)
Loch Sunart to Sound of Jura	24	Dredge (23); Trawl (8); Unidentified (1)
Loch Creran	1	Creel (1)
Loch Sween	5	Trawl (3); Dredge (2)
Luce Bay	1	Trawl (1)
South Arran	27	Trawl (23); Dredge (4); Creel (2); Unidentified (1)
South Inner Sound	3	Trawl (2); Dredge (1)
Upper Loch Fyne	8	Trawl (7); Dredge (1)
Wester Ross	4	Trawl (3); Dredge (1)
	<b>74</b>	

(the number of gear types doesn't always add up to the number of reports as some reports have multiple vessels)

9 May 2018 – 25 May 2019

Please note that a report does not mean or confirm that illegal activity of any kind has taken place; nor does it mean or confirm there is even a vessel in the MPA, or in a certain section of the MPA.

<b>MPA or other closed area name</b>	<b>Number of reports</b>	<b>Type of Gear</b>
Clyde Sea Sill	1	Trawl (12)
East Mingulay	1	Trawl (1)
Firth of Forth SSI	2	Trawl (2)
Loch Sunart to Sound of Jura	5	Dredge (5)
Loch Carron	1	Unidentified (3)
South Arran	24	Trawl (20); Dredge (1); Creel (5); Unidentified (1)
South Inner Sound Seasonal Closure	1	Unidentified (1)
Upper Loch Fyne	1	Trawl (1)
Wester Ross	2	Dredge (2)
	<b>38</b>	

The total number of such incidents – by which we presume you to mean reports of suspected incursions - occurring in each year, including and since 2015

Year	Number of Incidents
2015	2
2016	59
2017 (to 21 May)	13
2018 (from 9 May)	25
2019 (to 25 May)	13
	<b>112</b>