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Dear Gordon,

The marking of static fishing gear

The October Newsletter carried a piece about the RYA request for information concerning “badly marked fishing gear” so that legislation can be enacted to solve the problem. I have grave concerns about this and fear that it might cause at least bad feeling between all kinds of recreational sailors and the professionals.

Before I go any further I must point out that long before I became a 'Wednesday Race Officer' I used to be a fisherman. After working on a variety of fishing boats from bottom trawling to purse seining, I bought a small creel boat. Although it is some time since I hauled creels (well over 20 years ago), I still know how it should be done.

Since then I have been involved in a variety of occupations which have taught me a lot about the process of enacting 'rules and regulations' amongst other things.

Every time I hear a call for legislation to solve a problem, especially from England, alarm bells ring. Everyone, especially politicians, forgets that legislation affects only the law abiding. Such calls one would naturally expect from within a statute based legal system such as English Law. However Scots Law is not statute based but a Roman or common law system that sometimes does not require a statute.

For example, those who are old enough to remember the problems of solvent abuse in the late 70s, early 80s will remember the calls for 'something to be done' to stop the supply of such materials for the purposes of abuse. By the time parliament got round to it in England, two convicted suppliers in Glasgow had served their 3 year sentences in Barlinnie and had been released.

Procurators Fiscal have common law powers with respect to 'nuisance'. (See Stair Memorial Encyclopaedia of Scots Law copy in the Mitchell Library Glasgow)

Thus the question arises, has RYA Scotland asked the Crown Office what the prosecution policy is towards static fishing gear shot in such a way that it constitutes a nuisance?

Also, generally speaking, Harbour Authorities have total control of their areas which also includes fishing activities. Has Clyde Port (or Peel Port) issued licences to the trawlers we see operating off the Club House? Has it issued any licences to creel boats?

Sometimes on a Wednesday afternoon I see a small boat hauling creels off the club slipway. The boat is registered in Greenock thus it must be able to sell the catch. But he does not shoot again in front of the slipway that evening thus few know he is doing it. Therefore he does not become a nuisance.

So what constitutes “badly marked gear?”

Neither the RYA or the Cruising Association (CA) websites are very helpful with any kind of definition. All they seem to want is data concerning 'incidents' so there is a better chance to have “legislation to improve the situation”. The RYA and the CA say that now the general election is over government will now entertain their evidence to see if there is a problem.

It is worth noting here that there although the general election occurred in Scotland, there was no election for the Scottish Parliament. Thus since Fisheries are a devolved matter both the RYA and CA could have pursued their campaign in Scotland without interruption. Some kind of approach may have to be made to the Scottish Parliament anyway in the future so why delay?

Both bodies also seem to have ignored the obvious, that is if you can see it to report it, does it really fall into the category of badly marked?

Both bodies also have given no indication at all why all the Authorities should ignore the main tenet, the Collision Regulations.

Rule 5 states *“Every vessel shall at all times maintain a proper lookout by sight and hearing as well as by all available means appropriate in the prevailing circumstances and conditions so as to make a full appraisal of the situation and of the risk of collision.”*

In the vast majority of situations, the ColRegs guide mariners how to avoid other vessels but one must keep a 'proper lookout' to avoid other things such as unlit navigation buoys, loose containers, dead whales, railway sleepers, other flotsam and jetsam, fixed engines such as bag nets and their leaders, drift nets (usually there for only a tide) and the markers for bottom static gear such as prawn creels, lobster creels, velvet crab creels and tangle nets. Whelk pots tend to be singles not fleets. I have on occasion seen at least one of the above over the years. For the purposes of this letter all bottom static gear markers are referred to as creel ends.

So when a recreational sailor comes round a corner and sees the sea resembling one of 'Flanders' Fields' what is he or she looking at?

Creel End buoys are a compromise between size and suitability for the location. If they are too big, the tide will pull the end of the fleet of creels out of position thus reducing the catch. If too big it also increases the probability of collision with a passing vessel because its bow wave will be unable to push the markers out of its way. Usually, there are two markers, a bigger one which acts as the marker proper and a smaller attached to the larger by about a fathom of line to facilitate retrieval by grapnel. In very deep water well offshore the marker has a pole with a flag so that the end can be seen above the bigger waves. Such markers are small dhan buoys.

The creel line is usually a floating line to avoid hooking under snags on the bottom. The creels lie on the bottom with the line 3 feet above. Each end is anchored usually with a bunch of old byre chains or one link of big ship anchor chain. From the bottom to the surface the length depends on the depth. This floating line is kept vertically below the surface by three or four links of old small chain spliced into the line 2 or 3 fathoms down from the surface markers to avoid collision by passing vessels. If this area is subjected to strong tides, there may well be more and deeper links and a longer line.

Sailing vessels with long traditional keels will usually avoid being hung up on creel end rope but more modern designs such as fin keels and rudders are far more likely to catch said floating rope simply because the only thing between the keel and the rudder is the propeller. A T-bar keel looks as though it was designed to catch creel ends deliberately. Some of the even more modern yacht designs have so many appendages they have the nickname 'swiss army knife'.

What will happen if foiling craft become really popular? Has the modern design of keel profiles contributed to any increase in the number of collisions with creel ends?

Most of the time creels are not shot in areas used by any kind of shipping for obvious reasons such as to avoid collision and subsequent loss of gear.

Prawn creels are shot on the edge of the mud close to the hard ground. If shot on the hard only squat lobsters are caught. A common depth for prawns on the west coast is 40 fathoms. Thus one fleet of 50 prawn creels, 7 fathoms apart will probably have two 50 fathom ends up to 350 fathoms apart.

It is usually quite easy to spot both ends of one fleet because one end of the fleet is fairly close to the end of the next fleet. The 700 yard gap between the cluster of ends is where the creels lie.

Lobster creels are shot on rocky ground sometimes on rocky pinnacles. They are mounted 10 fathoms apart, therefore the fleet with 20 creels is only 200 fathoms long but quite often shot in a circle round a peak sometimes in deep water.

Velvet crabs are found in shallow water in the kelp when the water is warmer. Just to confuse matters, single 3 parlour creels for lobsters are often shot if there is insufficient space for a fleet.

Inkwell crab pots tend to be shot offshore thus tend to avoid recreational sailors.

A quick search of the internet shows that prawn creels cost new £30 - £35 each and lobster creels about £78 each. Thus a complete new fleet of creels as described above, prawn or lobster, costs just under £2000 approximately.

Sometimes I have been dismayed when I have read the letters columns of the yachting press when there are complaints about badly marked fishing gear which has caused the correspondent great inconvenience. He seems to have gone to herculean efforts to extricate himself. But having cut the offending rope in the process, there is no indication that the letter writer has joined it up again once clear. This can lead to a total loss of the gear if anything happens to the other end.

The fisherman may well have shot the gear in a proper fisherman like manner but the ends may have been damaged by some other boat previously and might only now constitute a hazard to navigation. This is not the fault of the gear's owner.

Yachting World August 2013 carried an article flagged on the front cover '5 tips for clearing the lobster pot menace' On page 90 the article talks about how even small clumps of weed can slow a boat down. The author is a TP 52 world champion who states under point 5 "If we are going into an area of potential lobster pots such as around headlands, we will try to get some extra eyes forward, but generally the helmsman has the best view. Hopefully there wont be many fishermen reading this, but the easiest and most reliable way of getting rid of lobster pots is to cut them off".

I don't know why the author Tim Powell is worried, fishermen cut them off too but they invariably join the line up again afterwards once clear.

SatNav was coming in as I stopped catching shellfish, but waypoints are created both when the first end and then the other end are thrown over. This saves time finding said ends. If the fisherman can't find his creel end at the way point he may find propeller damage on the float if he is able to haul the fleet from the other end.

The use of waypoints has dangers especially if linked to plotters and autopilots.

I have seen a trawler going home with all the crew, including the skipper, on deck mending a very large tear in the net. I asked the skipper if it was a good idea to steam along without anyone in the wheelhouse . He said he was only on deck to mend the selvages, anyway he had the radar alarm on. But he took my point.

If trawlermen don't look out the window sometimes, what's the betting that recreational sailors don't do it either sometimes?

Modern radar is good but it won't pick out creel ends every time either.

The US Navy has been demonstrating recently that not looking out the window can kill people too. Courts martial are imminent.

There is a letter in the current (March 2018) Yachting Monthly page 14 which draws parallels between driving a car along a country road and sailing a boat on the sea. The author does not expect to find anything on said road which could damage his car, which is either unlit or unencumbered with reflective tape. (He must never have come across a lost cow in the middle of the night)

He says it is different at sea and states "It should be mandatory that anything placed upon the water from pot buoys to racing buoys should not only be large and reflective enough to see and be marked with ownership details but also have a location device fitted".

Legislation to 'improve' matters may well have unintended consequences. Anyone making a complaint about badly marked gear will have to identify themselves to 'authority'.

In these days of camera ubiquity on mobile phones it is quite likely that recreational boats will be photographed if anywhere near creel ends just in case. With photographic evidence, authority would be bound to release the name of the boat's owner. In the worst case scenario, this could all end up in the Small Claims Court with the complainer having to pay for a replacement fleet, but only if gear is irrecoverable.

How would the Courts treat any complaint from someone who has clearly violated rule 5 of the ColRegs?

The burden of proof in the criminal courts 'beyond all reasonable doubt' would be almost impossible to achieve simply because another unknown vessel's collision could have put the creel ends into an unlawful condition. The civil court's 'balance of probability' would be similarly affected.

The other thing everyone seems to forget including Tom Cunliffe introducing the video about creel ends on the CA website is that enforcing regulation and compiling databases cost money. (In the current March 2018 Classic Boat p54, Cunliffe has an article entitled Losing the Plot-Even in the electronic era, there's nothing wrong with a good old fashioned lookout).

Treasuries throughout the world love to broaden the tax base. A boat registration scheme could be introduced to provide enough revenue to administer such a scheme and pay for enforcement as envisaged by the Yachting Monthly correspondent. It would be portrayed like the Road Fund Licence aka Road Tax as a means of providing greater safety to recreational mariners. After all people can't go round enjoying themselves without paying taxes.

I don't want this to happen at all in Scotland because it would create a great deal of ill feeling where none exists at the moment. Hot heads exist in all sectors of the seagoing fraternity but they can be dealt with. However, very little can be done about the fundamentally stupid.

Three years ago I was amazed at the number of creel ends I saw off the mouth of the river Tweed. Not all will have been shot properly but we did not hit any of them or their attendant lines. Similarly it is relatively easy to work out where the creels are set in Loch Fyne north of Portavadie and then avoid them.

I hope my attempt at explaining one fishing perspective will help promote understanding and avoid ill feeling as well as creel ends, so that we can all continue to enjoy our time at sea.

Yours sincerely,

Kenneth Wilson