

CONSULTATION QUESTIONS

SECTION 1 - THE SUSTAINABLE DEVELOPMENT OF AQUACULTURE

Farm Management Agreements (FMAs)

1. Do you agree that we should, subject to appropriate safeguards, make it a legal requirement for marine finfish operators to participate in an appropriate Farm Management Agreement (FMA), with sanctions for failure to do so, or to adhere to the terms of the agreement? (Page 9)

YES but the safeguards would have to take account of organic and other standards that may be at variance with the mainstream of salmon farming practice. Any sanctions must also be proportionate. Alternative marine species that may be cultivated in the same management areas as salmon may require a completely different set of standards and should not be disadvantaged if they are unable, for legitimate biologically related reasons, to comply with the requirements of a salmon-centric FMA.

Appropriate Scale Management Areas (MAs)

2. Do you agree that operators should have primary responsibility for determining the boundaries (and other management arrangements) for Management Areas, but with Scottish Ministers having a fallback power to specify alternative areas? (Page 9)

YES but any Ministerial powers should be exercised as a last resort.

Management Measures and Dispute Resolution

3. Do you agree that an independent arbitration process should be put in place (with statutory underpinning) to resolve disputes related to Farm Management Agreements? (Page 10)

YES

4. How do you think such a system might best be developed? (Page 10)

The arbitration process must be fully independent of industry if it is to have any credibility outside of the industry. For this reason it may be worthwhile considering the alternative of appointing or advertising for a fully independent arbitration provider to fulfil this function. A panel of 3 arbitrators would be the best structure. It should be low cost, and therefore avoid legal representation and operate without a cost awards system. For this reason, submission of the arguments by written documents may be the better approach.

Unused Consents

5. Do you agree we ought to review the question of unused consents? (Page 11)

YES

6. What do you consider are suitable options to promote use or relinquishment of unused consents? (Page 11)

Consents that have not been used for any form of production or stock holding for more than 3 consecutive years should be subject to an automatic review with the presumption in favour of relinquishment unless the holder can provide convincing and relevant arguments / evidence in favour of continuance.

7. Do you agree that Scottish Ministers should be given powers, ultimately, to revoke, or to require or request others to revoke, consents? (Page 12)

YES but they should only have the power to request the revocation in the first instance and not require it. There should be a legal or similar process before the Minister can require the revocation.

8. Should any such power relate to all or to particular consents (and if the latter, which)? (Page 12)

The powers should apply equally to all consents.

Collection and Publication of Sea-lice Data

9. What in your view is the most appropriate approach to be taken to the collection and publication of sea-lice data? (Page 13)

The majority of the Scottish salmon industry is owned by Norwegian companies or has related operations there, and these companies are required to publish openly sea lice data in Norway. Scotland should follow the Norwegian example and apply the same standards for data collection and publication. The industry is nervous about 'misuse' of the data, but greater transparency would serve to show clearly the advances that have been and are being made in sea lice control.

Surveill

10. Do you agree that aquaculture businesses ought to be required to provide additional information on fish mortality, movements, disease, treatment and production as set out above? (Page 16)

YES

11. What are your views on the timing and frequency of submission of such data? (Page 16)

There are trade-offs between ensuring better biosecurity and over burdening the industry with paperwork. Routine submissions should be every 6 months. However, notification within 24 h should be required for events outside of the ordinary. These are to be defined in consultation with the industry and appropriate standards set for each aquaculture species.

Biomass Control

12. Do you agree that Scottish Ministers should have powers to require SEPA to reduce a biomass consent where it appears to them necessary and appropriate – for example to address concerns about fish health and welfare? (Page 16)

NO SEPA should set its consents in accordance with the best scientific evidence that it can gather. Should Ministers wish to reduce biomass consents on a site for other reasons they should seek alternative powers to do so.

Wellboats

13. Do you agree we should make enabling legislation giving Scottish Ministers powers to place additional control requirements on wellboats? (Page 17)

YES but there must be safeguards to ensure due process. The driver to exercise such powers must be evidence based, robust and testable.

Processing Facilities

14. Do you think Scottish Ministers should be given additional powers to place controls on processing plants? (Page 17)

YES but there must be safeguards to ensure due process. The driver to exercise such powers must be evidence based, robust and testable.

Seaweed Cultivation

15. Do you agree that the regulatory framework should be the same for all seaweed farms? (Page 18)

YES

16. Do you agree that the most appropriate approach to regulation of this sector would be through marine licensing? (Page 17)

YES

17. If not, what alternative arrangements would you suggest? (Page 18)

Macro-algae cultivation for any purpose should be consented in the same way as any other aquatic farm.
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Commercially Damaging Species

18. Do you agree that we should provide for additional powers for Scottish Ministers in relation to commercially damaging native species? (Page 19)

YES but there must be safeguards and they must be overseen / scrutinised by a process independent of government. The powers must not be able to compromise the biodiversity and conservation considerations that should be accorded to a native species that may have a restricted range or habitat requirement. They should and must not be used to seek or ensure the extinction of any native species deemed to be detrimental to commercial interests. If they are to be granted, the powers should also have a legally binding requirement to invoke positive measures to conserve the previously troublesome native species should its existence become threatened.

SECTION 2 - PROTECTION OF SHELLFISH GROWING WATERS

19. Do you agree with the introduction of provisions to protect shellfish growing waters and support the sustainable growth of the shellfish industry? (Page 21)

YES

SECTION 3 - FISH FARMING AND WILD SALMONID INTERACTIONS

Sea-lice

20. Do you agree that there is a case for giving Scottish Ministers powers to determine a lower threshold above which remedial action needs to be taken, in appropriate circumstances and potentially as part of a wider suite of protection measures? (Page 23)

YES but there should be safeguards. Any use of the power, if granted, should be based on the scientific data and evidence based. It should not be driven by anecdote, sentiment, lobbying or other considerations

Containment and Escapes

21. Do you agree we should provide powers for Scottish Ministers to require all finfish farms operating in Scotland to use equipment that conforms to a Scottish Technical Standard? (The technical content of the standard would be defined separately.) (Page 25)

YES as the minimum technical standard

Tracing Escapes

22. Do you agree that there should be additional powers for Scottish Ministers to take or require samples of fish from fish farms, for tracing purposes? (Page 26)

YES

SECTION 4 - SALMON AND FRESHWATER FISHERIES MANAGEMENT

Modernising the Operation of District Salmon Fishery Boards

23. Do you agree that we should introduce a specific duty on Boards to act fairly and transparently? (Page 29)

YES they should be completely transparent in all that they do.

24. Do you agree that there should be a Code of Good Practice for wild salmon and freshwater fisheries? (Page 29)

YES

25. If yes, should such Code of Good Practice be statutory or non-statutory? (Page 29)

STATUTORY

Statutory Carcass Tagging

26. Do you agree that Scottish Ministers should have powers to introduce a statutory system of carcass tagging for wild Atlantic salmon and sea trout? (Page 31)

YES

Fish Sampling

27. Do you agree that Scottish Ministers should have powers to take or require fish and/or samples for genetic or other analysis? (Page 32)

YES

Management and Salmon Conservation Measures

28. Do you agree that Scottish Ministers should have powers to initiate changes to Salmon District Annual Close Time Orders? (Page 32)

YES but there should be safeguards and it should be based on scientific data.

29. Do you agree that Scottish Ministers should be able to promote combined salmon conservation measures at their own hand? (Page 32)

YES they should be able to promote but not require or impose.

30. Do you agree that Scottish Ministers should be able to attach conditions, such as monitoring and reporting requirements, to statutory conservation measures? (Page 32)

YES

Dispute Resolution

31. Do you agree that we should introduce statutory provisions related to mediation and dispute resolution, to help resolve disputes around

salmon conservation, management and any related compensation measures? (Page 33)

YES

Improved Information on Fish and Fisheries

32. Do you agree that there should be a legal requirement to provide comprehensive effort data for rod fisheries? (Page 34)

YES

33. What additional information on the fish or fisheries should proprietors and/or Boards be required to collect and provide; and should this be provided routinely and/or in specific circumstances? (Page 34)

Data collection requirements should be set by regular consultation between Marine Scotland Science, Scottish Natural Heritage, the Institute of Fisheries Management and fish conservation bodies. All data should be legally required to be provided on an agreed regular timeframe. All data should be freely publically available, as required for fish farms.

34. Should Scottish Ministers have powers to require Boards and/or proprietors or their tenants to investigate and report on salmon and sea trout and the fisheries in their district? (Page 34)

YES

Licensing of Fish Introductions to Freshwater

35. Do you agree that Scottish Ministers should have powers to recall, restrict or exclude the jurisdiction of Boards in relation to fish introductions, in certain circumstances? (Page 35)

YES

36. If so, why and in what circumstances? (Page 35)

To prevent or control the introduction of non-native species or the deposit of non-indigenous or locally absent (having due regard to previous distribution data) native species. Consideration should also be given to preventing or controlling the introduction of sub-species, variants or bloodlines that may serve to dilute or decrease the genetic integrity of individual stocks in an area.

SECTION 5 - MODERNISING ENFORCEMENT PROVISIONS

Strict Liability for Certain Aquaculture Offences

37. Do you agree that strict liability criteria should apply – where they capable of being applied – for offences related to Marine Licensing requirements insofar as they apply to aquaculture operations and, potentially, in other situations? (Page 37)

YES but there should be the Right of Appeal and other safeguards.

Widening the Scope of Fixed Penalty Notices

38. Do you agree that we should extend the use of fixed financial penalties as alternatives to prosecution in relation to marine, aquaculture and other regulatory issues for which Marine Scotland has responsibility? (Page 38)

YES but there should be the Right of Appeal and other safeguards.

39. Do you agree that we should increase the maximum sum that can be levied through a fixed penalty notice to £10,000? (Page 39)

YES

40. Are there particular regulatory areas that merit a higher or lower maximum sum? (Page 39)

YES and some consideration may be given to imposing higher fines where multiple or repeat offences are committed.

Enforcement of EU Obligations Beyond British Fisheries Limits

41. Do you agree that we should amend section 30(1) of the Fisheries Act 1981 as proposed? (Page 40)

YES

Powers to Detain Vessels in Port

42. Do you agree that sea fisheries enforcement officers should be given specific power to allow vessels to be detained in port for the purposes of court proceedings? (Page 41)

YES

Disposal of Property/Forfeiture of Prohibited Items

43. Do you agree that sea fisheries enforcement officers should be able to dispose of property seized as evidence when it is no longer required, or forfeit items which would be illegal to use? (Page 41)

YES but there should be a Right of Appeal to the courts for which no legal aid is available and full costs should be automatically awarded against an unsuccessful appellant.

Power to Inspect Objects

44. Do you agree that sea fisheries enforcement officers should have the power to inspect objects in the sea and elsewhere that are not obviously associated with a vessel, vehicle or relevant premises? (Page 42)

YES

Sea Fisheries (Shellfish) Act 1967

45. Do you have any views on the proposals to amend the Sea Fisheries (Shellfish) Act 1967 to help make its application clearer? (Page 42)

YES it should be simplified in line with the proposal.

SECTION 6 - PAYING FOR PROGRESS

46. Do you agree that there should be enabling provisions for Scottish Ministers to provide, through secondary legislation, for both direct and more generic charges for services/benefits arising from public sector services and activities? (Page 43)

YES

47. If you do not agree that there should be charging provisions, how do you envisage ongoing and new work to assist in management and development of the aquaculture and fisheries sectors should be resourced? (Page 43)

Charges should be set in consultation with industry and should aim to be cost neutral, with no profit element, if they are provided by the public sector. Where industry seeks the continuance of a service or requests an additional service from the public sector, it should be made aware that the charge for that service will be £x per sample, visit etc. The industry may then decide whether to take it up. Where a service is statutory, the initial cost to industry and the automatic annual review / adjustment mechanism (eg independently assessed inflation within that particular sphere / service area) should be clearly defined in the legislation that introduces the charge. Statutory services already mandated to the public sector should have charges phased in over an agreed period (ie 100% in year x) if they are imposed.

48. If no new way of resourcing such activity can be found, what activities do you suggest might be stopped to free up necessary funds? (Page 43)

Discretionary services that industry is unwilling to fund should be discontinued by the public sector. If industry wants those services it can seek them in the private sector. Statutory services should be paid for as above.