



## **Response to Aquaculture and Fisheries Bill consultation**

### **The Salmon & Trout Association**

The Salmon & Trout Association (S&TA), a charity registered in Scotland with the primary objective of the conservation of salmonid fish species and the habitats on which they depend, welcomes the opportunity to respond to this consultation.

The S&TA response to the questions on the future regulation of aquaculture should be seen in the context of the S&TA's belief that efforts to operate the salmon farming industry under a voluntary code of practice have been unsuccessful in protecting wild salmon and sea trout on the west coast and in the islands of Scotland. The S&TA therefore believes that, in the specific case of salmon aquaculture, self-regulation is no longer appropriate and that a level of statutory regulation is essential to minimise environmental damage and to allow the industry to prosper alongside healthy stocks of wild salmonid fish.

### **Section 1 – The Sustainable Development of Aquaculture**

#### **Farm Management Agreements**

*Question 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)*

The S&TA notes that the current Code of Good Practice for Scottish finfish aquaculture (CoGP) is inadequate, both in terms of the thresholds and standards therein and in terms of its voluntary enforcement, to protect wild salmonids and specifically, that Marine Scotland Science recognise that the sea lice thresholds in the Code do not necessarily protect wild emigrating smolts.

Further, the S&TA believes that there are areas on the west coast and in the Western Isles where the elimination of the sea-lice threat posed by fish-farms to wild salmonids, with or without FMAs, is technically impossible without short to medium term relocation of existing farms and their medium to long term replacement with closed containment farms

However, with the caveats expressed above, the S&TA believes that all farms should be compelled to enter into FMAs with neighbouring farms in order to control sea lice epizootics where possible, requiring compulsory synchronised sea lice treatment and stocking of farms as a minimum.

Further, all FMAs should be entirely open to public scrutiny if they are to have any credibility in wild fish and conservation circles. Experience with Area Management Agreements has been very poor in places and the failure of AMAs as the Lorne AMA illustrates that both AMAs and FMAs will only be successful if they are operated entirely openly.

To reiterate, the S&TA is entirely opposed to any level of confidentiality associated with FMAs. In order to ensure full transparency occurs, all proceedings of and data (including farm specific weekly sea-lice count data) held by FMAs should be required by statute to be published or reported to Marine Scotland Science to bring that information within the scope of the Environmental Information (Scotland) Regulations 2004.

### **Appropriate scale management areas (MAs)**

*Question 2:*

*Do you agree that operators should have the primary responsibility for determining the boundaries and other management arrangements for management areas, but with Scottish Ministers having a fall-back power to specify alternative areas? (page 9)*

Yes.

The S&TA believes that management areas should be decided on the basis of available science and not necessarily on the current site and location of existing farms or the areas of operation of particular salmon farming companies.

Therefore, the S&TA believes that it is essential for Scottish Ministers to have powers both to specify MA boundaries, as it may often be in the wider public and environmental interest to set boundaries with which salmon farming companies would not necessarily agree, and to ensure MA boundaries reflect real biological, geographical or environmental boundaries.

The S&TA is particularly concerned that these powers, if given to Ministers, need to be used in the event of significant sea lice problems and significantly challenged wild salmonid populations, as, for example, occurred in 2011 in Two Brooms, where adult fish were transferred mid-growing cycle across Management Area boundaries, apparently with sea lice burdens in excess of CoGP thresholds.

### **Management measures and dispute resolution**

*Question 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, with qualifications.

The S&TA believes that an independent arbitration process should indeed be put in place but questions whether the Scottish Salmon Producers' Organisation is the appropriate body to arrange such an arbitration role, as this may conflict with its main role as general promoter of the Scottish salmon farming industry.

The S&TA would suggest that an arbitrator appointed by Marine Scotland would be a more appropriate vehicle for dealing with disputes between farm operators. An arbitration process run by the SSPO would not enjoy public confidence as the SSPO has historically taken an extremely hostile position against wild fish interests and continues to deny the industry's impact on wild salmonids.

### **Unused consents**

*Question 5:*

*Do you agree we ought to review the question of unused consents? (page 11)*

Yes, with qualifications

The S&TA strongly supports the review of unused consents and believes that unused consents should be revoked automatically in relation to biomass limits as set within Controlled Activities Regulations (CAR) licences. Such 'unused biomass' should be revoked routinely in the circumstances of an unsatisfactory or borderline benthic impact survey or any failures in EQS levels either within the Allowable Zone of Effect (AZE) or beyond for sea lice treatment residues.

If however, unused consents are being held by fish-farmers as legitimate fire-breaks between farms for sea-lice or disease control purposes (and to exclude other operators who would breach those fire-breaks), revocation should only occur with a concurrent commitment by the statutory body concerned that neither the revoked consents (nor any 'geographically similar' consents) will be re-issued to a competitor.

*Question 6:*

*What do you consider are suitable options to promote use or relinquishment of unused consents? (page 11)*

The most appropriate tool for relinquishment of unused consents would be by relatively short time limit, beyond which consents are automatically deemed to be revoked.

Further, if any negative impact or farm management failures have been recorded through benthic survey or similar, Fish Health Inspectorate inspection or self-monitoring by fish farm operators, then there should be a presumption that any unused biomass under CAR, or other relevant unused consents, should be revoked automatically.

*Question 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.

The S&TA strongly believes that Scottish Ministers should be given such powers, for the reasons already given above.

*Question 8:*

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

The S&TA believes that such powers to revoke consents should relate to all consents required for the operation of both marine and freshwater salmon farming operations.

### **Collection and publication of sea lice data**

*Question 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 only acceptable approach is that there should be full and early public access to weekly farm-specific sea-lice count data.

Specifically, there should be no acceptance of industry-led aggregation of weekly farm-specific sea lice count data prior to publication. This would simply hide farm-specific issues in the data and would be completely unacceptable.

There is a clear trend for fish farm applicants to state that they will adhere to the Code of Good Practice with regard to lice levels and the routine response to this by Marine Scotland Science is to state that if the target is met then the impact will be minimal (despite also stating that current industry practice as laid out in the Code of Good Practice is insufficient to protect wild fish). However, at present, there is no way of independently assessing such claims.

The consultation document states that data need to be properly presented, explained and understood, otherwise there is a risk that they may be misinterpreted or misused. While datasets can potentially be misunderstood, that is true of any environmental data, whether it refers to air pollution, species numbers or energy consumption figures, but that cannot be a reason for non-publication of data on sea-lice data, where emission of high numbers of juvenile sea-lice to the wider environment is concerned.

The S&TA strongly objects to any suggestion that raw data needs to be withheld or otherwise sanitised for fear of misinterpretation. There are proper legal means to address misinterpretation, if such misinterpretation is deemed to have crossed appropriate legal thresholds, but removing the opportunity for legitimate public debate and disagreement over what raw data shows should never be acceptable and the S&TA is surprised to see this even suggested in a Scottish Government consultation.

Full public access to raw farm-specific sea lice data is not only consistent with operating in an open and transparent manner - a vital step for an industry with the potential to have significant environmental effects - but it is a matter of trust.

## **Surveillance by security mortality and disease data**

*Question 10:*

*Do you agree that the 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.

The S&TA strongly believes that all the information suggested on pages 14 and 15 of the Consultation Paper should be required of all fish-farm businesses by law under an amended Record Keeping Order.

The S&TA also believes that the Record Keeping Order should be amended specifically to bring those records held by aquaculture businesses, but not necessarily copied to Marine Scotland Science or similar statutory body, within the scope of the Environmental Information (Scotland) Regulations 2004, such that there can be no doubt that the additional information, as well as that already required to be kept by fish farm operators under the existing Record Keeping Order, is subject to the public right of access to information.

On principle, it cannot be correct that emissions and discharges from a fish-farm of chemicals and/or sea lice and the like should not be subject to the public right of access to environmental information that is enshrined in European Directive 2003/04, while similar data on discharges and emissions to sea-lochs from any other intensive farming activity on land, land-based industrial activity regulated under the industrial pollution control regime, or an activity with any discharge regulated under CAR, would fall under the public right of access to environmental information.

*Question 11:*

*What are your views on the timing and frequency of the submission of such data? (page 16)*

The S&TA believes that the advent of readily updatable on-line information systems should make it possible for fish-farm operators to update the information on a weekly basis.

There is no reason why provision of this information to the Scottish Government and to the general public should result in any additional costs for the taxpayer if fish-farm operators are simply required routinely to place this data on publicly accessible websites.

## **Biomass control**

*Question 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)*

Yes, but also for (i) the control of benthic impact in sea-lochs and (ii) the control of sea-lice emissions from farms and their impact on wild fish

(i) Benthic impact

The S&TA strongly agrees that Scottish Ministers should have the power to require SEPA to reduce biomass, but would urge that the power should extend to those situations where a site has a persistent benthic pollution problem, as illustrated by the three Wester Ross Fisheries Limited farms in Two Brooms. Indeed, the S&TA would suggest that SEPA is given Ministerial direction to the effect that there should be a presumption in favour of reduction of allowable biomass limits where benthic surveys or sea-lice chemical residue monitoring indicates poor fish-farm performance.

The S&TA notes that paragraph 36 of the Consultation suggests that SEPA already has powers to reduce a biomass consent in circumstances that are consistent with its role as environmental regulator, but would merely point out that in the case of three farms in Two Brooms, SEPA has failed to use that power in the face of overwhelming evidence (by way of example, see benthic report summary below for Corry fish-farm, Loch Broom).

Summary of disclosure from SEPA received 12<sup>th</sup> September 2011 pursuant to the EC Directive on Freedom of Access to Environmental Information (as implemented in Scotland by the Environmental Information (Scotland) Regulations 2004). Corry salmon farm site, Loch Broom, operated by Wester Ross Fisheries Limited.

DATE	DETAILS
20/11/2001	Benthic survey – <b>unsatisfactory</b>
28/08/2002	Benthic survey – <b>unsatisfactory</b>
27/05/2003	Benthic survey – <b>unsatisfactory</b>
18/09/2003	SEPA benthic audit – <b>borderline</b>
10/2003	Restocked over new seabed area
21/09/2004	Benthic survey – <b>unsatisfactory</b>
05/04/2005	One of three replicates over EQS for emamectin benzoate (Slice) at cages at 7.86ng/g. Tonnage of fish 792t (as compared to licenced 1050t) and 138.6 kg of Slice used to treat 123 days previously. Sampled not analysed until July – October 2007 (over two years after sample taken)
27/05/2005	Benthic survey – <b>unsatisfactory</b> . At time of survey biomass was 563t (as compared to 1050t licenced)
29/06/2005	SEPA audit of site. Shows peak biomass at 777t in March 2005. Holding 604t at time of survey. AZE failed SEPA action level limit (redox) suggesting poor oxygen and presence of sulphide. Overall results of the audit classify this survey as <b>unsatisfactory</b>
19/09/2006	Benthic sampling by consultants concludes that “the sediments seem to have more negative redox than in 2005 and are reported as quite blackish”. At survey, tonnage was 307t (as compared to licenced tonnage of 1050t).
20/09/2006	Benthic survey – <b>unsatisfactory</b> . “this survey is classified as unsatisfactory as impact from the cages appears to be localised but severe”. Tonnage recorded as 308 t (as compared to 1050t licenced)
11/2006	Restocked
05/06/2007	Benthic survey – <b>unsatisfactory</b>

	“the dominance of the enrichment polychaete, Capitella, at all transect stations indicates enrichment at all these stns”. Redox failure. Unsatisfactory for both faunal data and chemistry. At time of survey 513t (as compared to 1050t licensed). 18 months continuous use.
11/2007	Restocked
30/09/2008	Benthic survey – <b>unsatisfactory</b> “at 50m out, there were still high numbers of enrichment polychaetes – enough to exceed the threshold”. 655t on site (as compared to 1050t licensed). “The cages should be repositioned at the end of this current growing cycle”.
24/03/2009	Benthic survey – <b>unsatisfactory</b> Based on faunal data this survey is unsatisfactory and borderline for chemistry. 578 t at time of survey (as compared to 1050t licensed)
09/2009	Restocked
10/11/2009	Restocked (but see 09/2009 - ? dates recorded incorrectly)
18/01/2011	Benthic survey – <b>unsatisfactory</b> . “due to presence of enrichment at the AZE stations, this survey is classed as unsatisfactory based on the faunal data... due to redox failure at the AZE stations , this survey is classified as unsatisfactory for marine chemistry”. At time of survey 603 t biomass (as compared to 1050t licenced)

The S&TA knows of no instance of a reduction in permitted biomass on any fish-farm required by SEPA on grounds of unacceptable benthic pollution.

- (ii) The control of sea-lice emissions from farms and their impact on wild fish

The S&TA has recently confirmed with Marine Scotland Science / Fish Health Inspectorate that the 2007 Act powers cannot be used to control sea-lice on fish-farms specifically for the benefit of wild fish or to reduce emissions of juvenile sea-lice to the wider sea loch environment.

The Fish Health Inspectorate believes that the 2007 Act deals only with controlling the impact of lice on the farmed fish. While the 2007 Act permits inspectors to use powers to control sea-lice number *on farms*, the Fish Health Inspectorate has confirmed its view that the Act does not permit it to control of sea-lice emissions *from farms*.

There is, however, a widespread - and apparently erroneous - belief, for example, among the planners, that the 2007 Act does act to protect wild fish from sea-lice produced by fish-farms. It has to be recorded that this belief has in part been promoted by the industry and by Scottish Government itself to reassure wild fish interests that the sea-lice issue is already covered by law.

It is now clear that there is a major lacuna in the law and that this is caused by the failure to regard the emission from fish-farms of huge numbers of juvenile sea-lice as ‘pollution’.

Merely because the agent of harm is biological (live sea lice) as opposed to chemical (for example, sea lice treatment chemicals) does not make the need for control, and a control system which enjoys proper public scrutiny, any less necessary.

By way of an example of this lacuna in effect, the S&TA would like to draw attention to the set of circumstances that occurred in 2011 in Little Loch Broom, near the Ardessie fish farm, which breached the CoGP thresholds during 2011 (as did the two other Wester Ross Fisheries farms at Corry and Ardmair).

Fyke-netting of wild salmonids at the mouth of the Dundonnell River revealed very high lice infestation of wild salmonids in late summer in Two Brooms in 2011. Fish Health Inspectors visited the farms but confirmed later that they were unable to order sea-lice treatments on the farms concerned to protect wild fish as that was not within their remit.

The S&TA believes therefore that the most logical way to control sea-lice impacts on wild fish and to 'plug the legal gap' is to use powers to order a reduction in biomass and, specifically, to require SEPA to use the Controlled Activities Regulations to set controls on the emission of juvenile lice into the wider environment in such a way to ensure that these emissions do not impact upon wild fish.

### **Wellboats**

*Question 13:*

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

Yes, with qualifications.

The S&TA strongly agrees that wellboats do indeed require additional control and would question whether Scottish Ministers should not move straight to placing those additional controls on wellboats rather than introducing enabling legislation only.

The S&TA would strongly recommend that, if enabling powers only are to be taken by Scottish Ministers in the forthcoming Aquaculture and Fisheries Bill, then secondary legislation must follow extremely shortly thereafter to bring wellboats under proper control.

### **Processing facilities**

*Question 14:*

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

Yes.

The S&TA believes that the possibility that the spread of sea lice or pathogens through discharges associated with processing plants may need control merely illustrates that the discharge or emission of sea lice and other pathogens *from the marine fish farm cages themselves* should be treated as 'pollution' and brought under the appropriate statutory pollution control regime, the Controlled Activities Regulations (see Question 12 above).

### **Section 3 - Fish farming and wild salmonid interactions**

#### **Sea lice**

*Question 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 the wider suite of protection measures? (page 23)*

Yes.

The S&TA strongly believes there is a case for giving Scottish Ministers powers to determine a lower threshold above which remedial action needs to be taken.

The S&TA repeats its answer to Question 12 above, our part (ii).

#### **Containment and escapes**

*Question 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 contents of the standard would be defined separately). (page 25)*

Yes.

The S&TA strongly supports the imposition of a Scottish technical standard on the structure and operation of fish farming equipment and would point to the loss of an entire farm in Shetland in the recent storms as evidence for the need for an extremely strict Scottish technical standard to be applied to all fish farms which are sited in waters off the west coast of Scotland and in the Western Isles which are regularly subjected to extreme storm events.

Further, the S&TA believes that the medium to long-term future of the aquaculture industry must be to secure production in systems that place a biological barrier between wild and farmed fish, both in fresh and marine waters. This is the only secure sustainable solution to the interactions between wild and farmed fish and continuing negative impacts on wild salmonids.

The S&TA believes that the Scottish Government should take powers to require the use of particular minimum standard production systems to enable the Fish Health Inspectorate and/or SEPA to require some form of closed containment operation at sites where benthic impact, sea lice treatment residues, juvenile sea lice production or fish farm escapes represent an unacceptable threat to either the marine environment or, specifically, wild salmonids.

Evidence already produced by Marine Scotland Science suggests that farms in the mouths of wild salmonid rivers or within 14 kilometres of the emigration routes for wild smolts pose a potential threat to wild salmonids.

Further, the Habitats Directive requires strict protection to be put in place for wild salmonids where Special Areas for Conservation (SACs) have been designated pursuant to the Habitats Directive.

The S&TA believes that the Bill should therefore contain a clause allowing Ministers to set minimum standards for the equipment used in aquaculture, to include, if necessary, a requirement for a farm to enter closed containment production, as might be laid down in an industry-wide standard with statutory backing.

### **Tracing escapes**

*Question 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.

The S&TA strongly believes that inspectors from the Fish Health Inspectorate/Marine Scotland Science should have the power to require or take samples of fish from both marine and freshwater fish farm cages and that there should be an additional power for district salmon fishery boards to request that Fish Health inspectors take appropriate samples where the district salmon fishery board concerned has evidence that, or reasonable belief that, an escape has occurred.

This would assist in the identification of fish using either genetic or other identification tools.

The recent events in Loch Shin, where smolts clearly of farmed origin could not be traced to one of a number of smolt farm operations, illustrate that this power is needed as the farms concerned declined to provide samples to the district salmon fishery board for cross matching with the escapee smolts.

The S&TA notes that the power suggested for Ministers is to be used on a targeted basis and would suggest that the provision of reasonable evidence of, or suspicion of an escape, by a district salmon fishery board should trigger such sampling.

Consideration should also be given to requiring all fish-farms (marine and freshwater) to retain frozen samples of each batch of farmed fish for a period at least ten years. In that way, sample material could then be called on immediately with no costs involved in collection by inspectors.

## Section 4 - Salmon and Freshwater Fisheries Management

### General

The S&TA is a UK wide organization, but with a strong Scottish Committee. This affords the S&TA an excellent opportunity to compare national fisheries management systems.

There is no doubt that localised management, run locally and funded locally is far preferable to a centralised system. The current DSFB organisational structure provides highly effective management of Atlantic salmon and sea trout fisheries. Its strengths lie in its local self-financing structure which is highly respected and envied by many in England. It is capable of reacting swiftly to changing circumstances and yet no changes to individuals' rights can be made without the sanction of the Minister. Scotland benefits hugely from the management of fisheries by DSFBs. DSFBs are funded by fishery proprietors in the district, to a value exceeding £3.5m in 2010, in the interests of the overall management of the fishery. In addition, DSFB members give their time on an entirely voluntary basis. To replicate this management model in the public sector would be massively expensive to the Scottish public purse.

The optimistic view painted in paragraph 74 demonstrates that the present management structure is effective. However, it would be wrong to assume that all runs of salmon in all rivers are at their optimum level. Whilst 2010 did indeed see the highest total rod and line catch on record (since 1952) it is important, when drawing comparisons with the past, that one compares like with like. In the 1960s, half a million fish or more were caught annually in Scottish coastal and estuary nets, before salmon were able to access their natal rivers. There was also a catch of over 3000 tonnes at Greenland and the Faroes. The number of salmon returning to Scottish waters is clearly hugely reduced from sixty years ago. Despite strong grilse and summer salmon runs in many parts of Scotland in 2010, it was another poor year for spring salmon. Conversely, in 2011, whilst the spring runs recovered to a degree, the grilse runs were late and weak. Fishery managers manage the resource based on individual stock components (such as spring salmon) rather than on total numbers of fish returning to the river. A healthy run of fish, returning throughout the entire season, contributes to a long angling season which secures employment and is important to the local angling-related economy. Protection of such stocks may, on occasion, require the intervention of Scottish Ministers, via statutory conservation measures.

Paragraph 75, sets out the retention of fish in the fixed engine (15,577), net and coble (11,738), and rod (32,712) fisheries in 2010, but does not comment on the sustainability of these catches, or indeed the contribution to fisheries management arising from these catches. It should be noted that net fisheries accounted for over 45% of the retained catch (19.8% of the total catch), but only contributed 1.3% of the total funding raised by DSFBs for fishery management. This situation is clearly inequitable and should be addressed by the forthcoming legislation. Equally, the bald figures in Paragraph 75 do not reflect the local influence of net fisheries. In the South Esk District in 2010, over 90% of salmon and grilse killed, were taken by nets, and yet contributed only 10% of the levy.

Together with our colleagues in the ASFB, the S&TA welcomes many of the proposals laid out in this section as is confident that DSFBs can demonstrate accountability and transparency via its recently updated Code. The S&TA is comfortable with the availability of additional powers to Scottish Ministers, but believes that these should provide a safety net, **not** a parallel management framework. Should Scottish Ministers elect to take such

powers, there are associated financial implications, a point which is particularly relevant given the reduction in public sector budgets highlighted in section 6. The consultation document does not clarify what alternative arrangements would be put in place should Scottish Ministers take these powers.

One of the great advantages of the current structure of fisheries management in Scotland is that the resource is managed at a local catchment scale rather than centrally, and funding raised locally is spent locally. The S&TA believes that this principle of local management should remain the foundation of effective fisheries management in Scotland.

*Question 23:*

*Do you agree that we should introduce a specific duty on Boards to act fairly and transparently?*

The S&TA recognises the obligation of all public or statutory organisations to act fairly and transparently.

The S&TA believes adherence to the ASFB's Code negates the need for the specific duty of fairness and transparency to be introduced. The S&TA also is unsure how DSFBs would be able to demonstrate adherence to such a duty. Notwithstanding, if the Scottish Government feels such an obligation should be placed on DSFBs, then the S&TA can see few DSFBs if any failing such an obligation.

The S&TA recognises that this question will have arisen from the concerns of some stakeholders that their interests are being harshly treated. No DSFB has legal powers to make statutory regulations. A DSFB can apply to the Minister, who may grant them, but that application can only be submitted once it has been proved that there is a demonstrable support, which cannot be obtained without acting fairly and transparently.

The S&TA believes the best means of achieving fairness and transparency is adherence to the Code (see below).

*Question 24:*

*Do you agree that there should be a Code of Good Practice for wild salmon and freshwater fisheries?*

ASFB finalised an updated version of the Code of Good Practice for Boards ("the Code") in November 2011 and therefore S&TA strongly agrees that there should be provision for such a code in the Bill.

The Code is designed to ensure a rigorous and consistent approach, but one which allows solutions to be tailored to local conditions and catchment management. Through experience of dealing with DSFBs in Scotland, and after discussions with the ASFB, the S&TA would comment:

- *Hold annual open meetings i.e. in addition to the statutory requirement on Boards to call an annual meeting of proprietors.*

The S&TA is not aware of any DSFB refusing to hold an open meeting, or refusing to meet with relevant stakeholders.

- *Hold Board meetings in public, unless there is a good reason not to*

The demand for open board meetings is not evident to S&TA. With open meetings and the publishing of minutes, whatever demand would be reduced. There may also be some logistical problems with this proposal.

- *Publish summary reports and/or minutes of meetings*

This is included as a recommendation in the latest version of the Code (November 2011).

- *Invite evidence from members of the public on matters of public concern*

The S&TA believes any DSFB adhering to the Code would welcome evidence from the public. Many DSFBs already include local councillors, SNH, SEPA etc. amongst their members.

- *Consult stakeholders on a wide range of issues*

The S&TA would have no difficulty with this in principle. However, it is not clear from the consultation what aspects DSFBs are being asked to consult on. DSFBs cannot make legally binding decisions without the approval of Scottish Ministers, a procedure with an in-built consultation process. If the consultation document is referring to pre-application consultation, the S&TA would be supportive of this in principle, but would again highlight that this may prove disproportionately expensive for some of the smaller DSFBs.

- *Make their Annual report and audited accounts widely available e.g. by publishing on web sites and local distribution*

This is included as a recommendation in the latest version of the Code.

*Question 25:*

*If yes, do you think such a Code of Good Practice should be statutory or non-statutory?*

The S&TA believes that, similar to the Code of Good Practice for Scottish Finfish Aquaculture, the Code should be non-statutory in the first instance. However, the S&TA would be content if there was a power for Scottish Ministers to adopt the Code should they wish to do so in future.

*Question 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?*

Yes.

Such powers should be taken and a carcass-tagging scheme implemented as soon as possible.

A carcass tagging scheme has been in operation in England and Wales since January 2009. Any salmon and sea trout caught by means other than rod and line (i.e. by licensed net or trap) must be tagged with a uniquely numbered Environment Agency

carcass tag. This must be attached immediately after capture and remain attached until the fish is processed. Details of the fish and the tag reference numbers must be recorded in an annual log-book (supplied) and returned to the Environment Agency at the end of the year. Similar schemes have been in operation in the Republic of Ireland since 2001 and Northern Ireland since 2002. Carcass tagging has been considered both as a quality control measure and as a means to minimise the possibility of illegally caught fish reaching markets or dealers. In combination with the ban on sale of rod caught fish across the UK, any untagged fish would be made unmarketable and clearly identifiable as illegally taken.

It is of note that the EA has identified a loophole in their system that, in the absence of a mandatory carcass tagging system in Scotland and in the Tweed District, illegally caught English fish are reaching the market masquerading as Scottish produce. There are also a number of potential routes for illegally caught Scottish fish to reach the market. Marine Scotland Compliance has noticed a recent upturn in illegal gill netting in Scottish inshore waters. Between June 2009 and August 2010, 17 illegal gillnets were seized by FPV Minna (average length 47m; range 11-87m). In addition, there is the continuing, significant problem of wildlife crime - the illegal taking of salmon within rivers and estuaries. During 2010, bailiffs employed by 28 of the 41 DSFB's across Scotland (including the River Tweed Commission) seized a further 166 nets of which 49 were recovered in-river and 117 were recovered in estuaries/coastal waters. Declared net catches for 2007-2009 (January-April) were 86, 80 and 145 respectively. However it is difficult to reconcile these figures with the amount of wild Scottish salmon reaching the market prior to the end of April. For example, the number of boxes of "Scotch Wild" salmon (containing on average five, 10lb salmon per box) arriving at Billingsgate Market in London suggests that somewhere between 300 to over 1000 more Scottish salmon are sold than are declared according to the Statistical Bulletin. These figures are estimates as no records are kept as to how many of the fish boxes are full to capacity. However, given that only 30-40% of Scottish spring salmon are estimated to be sold through Billingsgate, it is clear that illegally caught salmon reaching the market is a significant problem. The reduction of such illegal activity, by significantly reducing the potential market for illegally caught fish, would have a significant conservation benefit for wild salmonids.

A number of distinct carcass-tagging schemes are already operated by individual netting operations. While these are non-numbered schemes, operated purely for marketing purposes, the fact that such schemes are in operation demonstrates that these schemes are of value to the netsmen. However, unless such schemes are mandatory across Scotland and use uniquely numbered, recorded tags, the problems outlined above cannot be addressed.

In 2011, relevant District Salmon Fishery Boards applied for a Salmon Conservation Order to introduce a statutory system of carcass tagging for all net caught fish, in line with the rest of the UK.

Whatever legal mechanism the Scottish Government uses - the existing power to make Orders or the new Bill - a system needs to be introduced in Scotland at the earliest possible opportunity.

*Question 27:*

*Do you agree that Scottish Ministers should have powers to take or require fish and/or samples for genetic or other analysis?*

Yes. This was a recommendation of the mixed stock fisheries working group. The S&TA agrees that the Scottish Government should have the power to ensure that fish genetic samples can be produced where necessary from any salmon fishery. Genetic analysis is a key tool in modern fisheries management, and it is therefore important that such information is fully available to DSFBs in line with evidence-based management of the fishery.

The S&TA further believes that DSFBs should also be given this power, or at least the right to apply to the Minister for such a power.

*Question 28:*

*Do you agree that Scottish Ministers should have powers to initiate changes to Salmon District Annual Close Time Orders?*

The S&TA believes that such powers should only be used where there is no DSFB in place.

Where a DSFB is in place, and is complying with good practice as set out in the Code, then changes to annual Close Time Orders should be initiated only on the application of the DSFB.

*Question 29:*

*Do you agree that Scottish Ministers should be able to promote combined salmon conservation measures at their own hand?*

The consultation document does not set out the basis or need for combined salmon conservation powers. DSFBs across Scotland have applied for both close time orders and conservation measures, sometimes in combination, and the Association is not aware of a particular problem with this arrangement.

*Question 30:*

*Do you agree that Scottish Ministers should be able to attach conditions, such as monitoring and reporting requirements, to statutory conservation measures?*

This is a given and is consistent with evidence based management. There would need to be a degree of proportionality in placing monitoring requirements on a DSFB, due to the potential expense and/or expertise required to carry out such monitoring. A partnership approach, between DSFBs, Fishery Trusts and MSS would appear to be a sensible approach here.

*Question 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?*

Having discussed this with individual Boards and ASFB, S&TA cannot see the relevance of mediation on a statutory basis. Fisheries management in Scotland largely progresses on a consensual basis. Where it is not possible to reach agreement on a voluntary solution, the legislation allows for DSFBs to apply to Scottish Ministers for e.g. conservation measures, reduction of exploitation (rod and/or net fisheries), methods of fishing etc. The ultimate decision rests with the minister, who will only act after consultation. Furthermore, as previously discussed, no application can be made without proving that attempts have been made to find a voluntary solution. Assuming that DSFBs are acting in accordance with the Code, and that decisions are therefore justifiable, the S&TA believes that it is entirely appropriate for Scottish Ministers ultimately to make such decisions. With regard specifically to compensation arrangements, mediation may prove useful in some instances, but we are not convinced for the need for statutory provisions in this regard.

Contrary to what is stated in the Consultation Document, in para 96, the Mixed Stock Working Group of which S&TA was a member did not recommend statutory mediation. This suggestion was resisted by three of the members as being unnecessary.

## **Improved Information on Fish and Fisheries**

### **General**

The S&TA agrees that there is a need for improved information on fish and fisheries. Between the DSFBs, Fisheries Trusts and MSS there is a significant resource which could be deployed in a more integrated and efficient manner to ensure data collection (whether from catch returns, electrofishing or counters) is consistent and useable. For

instance, catch statistics are currently collected by MSS, by DSFBs and by the District Assessor. There should be a national strategy for the collection of fish data to provide the evidence required for appropriate fisheries management. Such a strategy could be drawn together using the existing structures of the Strategic Framework for Scottish Freshwater Fisheries. For a DSFB to operate effectively, using an evidence-based system of management, it must have access to robust information (e.g. adult returns, juvenile numbers & factors affecting them). A national strategy for the collection of data would identify the roles of Marine Scotland Science, DSFBs, Trusts and individual proprietors in providing this information, and this could be defined through the relevant code of practice or statute. It is important that this information is used to inform stakeholders and members of the public. Such a strategy would need to be sensitive to the variable resources available to DSFBs/Fishery Trusts across Scotland.

*Question 32:*

*Do you agree that there should be a legal requirement to provide comprehensive effort data for rod fisheries?*

The S&TA believes that there would be value in collecting effort data, if it could be clearly demonstrated that such data will significantly add to the understanding of fish stocks. Stock assessment from catch statistics is a blunt weapon, and any refinement is welcomed. The S&TA believes that refinement can be done on specific test sites, and thus avoid the significant extra effort and cost involved in collecting this data nationally.

There are a number of potential variables in collecting effort data: the experience of the angler; the familiarity of the angler with the river; whether fishing effort has occurred during optimal or sub-optimal fishing conditions; if the fishing effort occurred in the presence or absence of an experienced ghillie. In looking at historic records, it should also be noted that changes in technology now mean that an angler using new equipment can cover a greater area of river than before – essentially there can now be greater effort per angler. The S&TA is not clear how these factors could be accounted for in what is likely to be a relatively basic measure of effort.

The S&TA believes it would also be useful for more information and data to be collected from netting interests; all species caught, netting effort (not simply the monthly mean), keep-ins and specific catches from specific nets should all be recorded

*Question 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?*

Please see comments above on a national strategy for the collection of fish data.

*Question 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?*

The S&TA believes it is incumbent on DSFBs to report all relevant information, as it should be on the Government where there are no boards. This would be covered in the Code.

*Question 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?*

As highlighted in the consultation document, ASFB and RAFTS have developed guidance on stocking. ASFB have also developed specific guidance on stocking programmes in Special Areas of Conservation which is currently with SNH for comment. Adherence to this policy is a requirement of the Code and therefore S&TA believes that issues relating to stocking practice should be dealt with through the Code. Where DSFBs are not fulfilling their duties such a power may be useful as a safety net.

*Question 36:*

*If so, why and in what circumstances?*

It might be appropriate for Scottish Ministers to use such powers where DSFBs can be demonstrated as not fulfilling their duties. Scottish Ministers already have jurisdiction over fish introductions in those parts of Scotland which are not covered by DSFBs. In addition, Scottish Ministers have jurisdiction over introductions of other freshwater species throughout Scotland. That aside the S&TA is not aware of any evidence to suggest that the use of regulatory powers is significantly better in those areas of Scotland under the jurisdiction of Scottish Ministers. In the specific example of introductions of freshwater fish (other than salmon and sea trout), the S&TA believes that DSFBs should be consulted prior to any introductions of fish within that district.

## **Section 5 - Modernising enforcement provisions**

### **Strict Liability for Certain Aquaculture Offences,**

#### *Question 37:*

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

All aquaculture activities capable of incurring strict liability, however they are currently controlled by existing statutory or regulatory regimes, should of course incur such liability.

The S&TA is particularly concerned that escapes of farmed salmon, both from freshwater open floating-cage smolt farms and from marine cage fish farms on the west coast and in the Western Isles, represent a threat to the genetic integrity of wild salmon populations.

The threat of genetic introgression caused by the inter-breeding of largely Norwegian origin farmed fish with Scottish wild salmon are significant.

The Environmental Liability Directive imposes strict liability, pursuant to Article 3(1)a, for all activities listed in Annex III of that Directive. Annex III of the Directive includes activities governed by industrial pollution control regimes such as integrated pollution prevention and control, waste management, the discharge of dangerous substances and other activities as might be governed by the Controlled Activities Regulations in Scotland. Paragraph 11 of Annex III also deals with the release of genetically modified organisms.

The S&TA believes that, in principle, there is no reason why strict liability should not also be applied to any damage as may be caused by, for example, escapee fish from salmon aquaculture.

The legitimate concern of wild fish interests and conservation groups and the available scientific evidence suggesting that escapes pose significant threats to wild salmonids should be recognised in law and this is best done by adopting strict (no fault) liability for any wider damage caused by escapes on those conducting marine aquaculture operations using open-net cage systems. The S&TA would therefore suggest that the Bill contain a clause expressly imposing liability on the industry for any damage caused by farmed fish escapes.

#### *Question 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?*

Whilst S&TA has no specific opinion on this and subsequent questions, the fact that they are being asked suggests that there is a problem. If there is, it follows that suitable measures should be put in place to rectify that problem. What is inescapable is that the onus of responsibility for misconduct, and the effects of that misconduct must, as stated

above, be placed at the door of the miscreant, with strict liability for the damage caused by that action.

*Question 39:*

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

See above

*Question 40:*

*Are there particular regulatory areas that merit a higher or lower maximum sum?*

See above

*Question 41:*

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

See above

*Question 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?*

See above

*Question 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?*

See above

*Question 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?*

See above

*Question 45:*

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

See above

## **Section 6: Paying for Progress**

### *Question 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?*

The S&TA is unsure as to what is being asked. It would have been useful if the consultation document had highlighted exactly which services/benefits are being referred to in relation to salmon and sea trout fishery management.

It would seem reasonable for charges to be levied for services/benefits and SEPA provides a model for such a system. For generic services such as setting up the framework of Controlled Activities Regulations, data collections standards etc. there is no charge. However, where a specific application is made, SEPA then levy a charge. In operation this appears equitable and proportionate.

It is also worth noting that the current CAR regime provides for the waiving of the application fee for an activity which delivers an environmental benefit. It would therefore seem logical that, where there is an application for e.g. conservation measures (where there is likely to be an environmental benefit) there should be no charge. In line with the SEPA model, the S&TA would also expect Scottish Government to meet certain performance requirements. Specifically, applications to Scottish Ministers should be dealt with, within a statutory timeframe and the Act should reflect this.

If the question is intended to be more encompassing, and include charges for research etc undertaken through MSS, then it would only be right that far greater scrutiny of the projects undertaken by MSS was encouraged.

### *Question 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?*

It is relevant that Scotland gets a huge benefit from the management of fisheries by DSFBs. DSFBs are funded by fishery proprietors in the district, to a value exceeding £3.5m in 2010. DSFB members give their time on an entirely voluntary basis. To replicate this management model in the public sector would be massively expensive to the Scottish public purse. In addition, DSFBs are consulted on, and expend significant time and effort in responding to, planning applications for wind farms, run of river hydro developments, marine renewable developments, fish farm developments and other developments with the potential to impact on the freshwater or marine environment. Any decisions on the level of charges, or indeed the need for charges, should be taken in the light of the considerable value already provided by DSFBs.

In the opinion of the S&TA, there is insufficient cooperation between the private and public sectors, and an example of how this can be rectified is given in the next answer.

### *Question 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?*

There are a number of ways in which funds could be freed up. In the general comments before Question 32 above, a proposal is made for a national strategy for the collection of fish data. This would refine the operations of MSS, thereby freeing up staff time. Clearly, a closer working relationship between DSFBs and MSS, SEPA and SNH would be valuable in this regard.

The S&TA also suggests below that the period in which DSFBs can authorise certain activities without applying to Scottish Ministers should be extended. This again would free up scarce Government resources.

The S&TA believes that with the emergence of RAFTS and local trusts and the employment of biologists throughout Scotland, there is an ideal opportunity for the private sector and the public sector to collaborate with positive results.

## **Section 7: Any Other Issues**

### **Powers of DSFBs outside the netting season**

At present, the powers of DSFBs are restricted to the dates set for the traditional netting season. Outwith those times, DSFBs need to apply to Scottish Ministers for authorisation.

Whilst the definition of the salmon season based on salmon netting may have made sense historically, when salmon netting was the major part of the sector, this is no longer the case.

Indeed, the vast majority of DSFBs have little or no netting interests within their districts. It seems incongruous, and a waste of scarce Government resources, for DSFBs to have to apply to Scottish Ministers to electro-fish or take brood stock for hatchery operations outwith the netting season, when they do not have to do so within the netting season. This places an unnecessary burden on DSFBs and Scottish Government. The S&TA therefore proposes that DSFBs should be given powers to undertake these activities throughout the year.

### **Relocation of existing fish-farms**

The S&TA notes that relocation of fish-farms to protect wild salmonids has been discussed a great deal over the last 10 years or so. For example, in 2006 a Strategic Environmental Assessment was conducted into the potential for relocation of inappropriately located salmon farms where those farms presented a real or potential threat to wild salmonid populations. It is a matter of deep regret that very little relocation has actually occurred since then and that, if anything, permitted fish-farm biomass in those sensitive areas has been allowed to increase.

With the relatively recent change in the law to allow permanent planning permission to be granted to fish farms, including many of those farms that wild fish interests or conservation interests regard as being in 'sensitive' locations, there is now the need for Scottish Ministers to take appropriate powers to require the relocation of farms should they later be deemed to be inappropriately sited, even if they have already been granted permanent planning permission.

As wild fish and conservation interests expressed strongly at the time, the changing of the law to allow the granting of permanent planning permission to marine fish farms was an unfortunate step and the S&TA fears, that without express powers, the Scottish Government will find itself in difficulties promoting or finally compelling the relocation of fish farms where permanent planning permission has already been secured.

The S&TA believes that relocation should ideally be achievable by negotiation, but would recommend that a "long stop" power for Scottish Ministers will be required in order to focus attention on the need to relocate farms that may be identified by regulators, planners, district salmon fishery boards or others as requiring relocation. Therefore, the S&TA would urge the Scottish Government to introduce a clause into the Aquaculture and Fisheries Bill to permit Ministers to promote and, if necessary, ultimately order the relocation of inappropriately located fish farms in order to protect (i) wild salmonids or (ii)

the wider marine environment, such clause to state expressly that the power can be exercised even where permanent planning permission has been granted.

### **Coastal netting – weekly close time infringements**

It is an offence to fish or take salmon during the weekly close time for net fisheries (6pm Friday – 6am Monday). In the case of fixed engine salmon fisheries (bag or stake nets), this is achieved by removing the ‘leader’, a net positioned perpendicular to the shore which diverts fish into the salmon net. Removal of the leader prevents some but not all fish from entering the nets.

It has become apparent that, in some parts of Scotland, the weekly close time is often not observed if, for example, rough sea conditions make it too dangerous to remove the leader. The S&TA is aware that Usan Fisheries near Montrose failed to remove the leaders on their nets on 12 out of 18 weekends in 2011 – equating to a significant increased exploitation of fish throughout the season. Changed working practices (no longer servicing the netting stations from a nearby slipway) have resulted in a longer passage through open sea.

The S&TA is concerned at the potential for the current exception to the weekly close time to be exploited. The weekly close times were put in place for sound conservation reasons. Where the close time cannot be adhered to for reasons of health and safety, the leaders should be removed for a corresponding period at the earliest next opportunity.

Implicit in this, is the need for a requirement for netsmen to report all such occurrences when leaders are not removed.

### **Dormant netting stations**

The North Atlantic Salmon Conversation Organisation has successfully negotiated reductions in salmon fisheries in their marine feeding grounds in the North Atlantic.

Recently, MSFs have come under increased International scrutiny. NASCO’s success in achieving tight restriction of traditional high seas MSFs near Greenland and the Faroes has led to increasing pressure on all parties to the Convention to address MSFs in their home waters.

If Scotland expects Greenland and the Faroes to adhere to the current tight restrictions on their fisheries, Scotland must keep its own house in order.

The extent of *active* net fisheries in Scotland has declined, particularly since the 1970s when the advent of salmon farming and the availability of cheaper farmed fish to the consumer had a marked effect on the commercial viability of salmon netting for wild stocks. However, there remain a large and undefined number of inactive netting stations in Scotland, for which the netting rights still exist. The 1997 Report of the Scottish Salmon Strategy Task Force recognised that it would be inappropriate to prohibit the operation of active net fisheries, but that a mechanism should be established to prevent any increase in fishing effort, in line with our International commitments. The report therefore recommended that ‘*All net fisheries (both outside estuary limits and net and coble fisheries above the head of the tide) operated or genuinely let in any two years in*

*the period 1993 to 1996, inclusive, should be registered, and only those that are so registered should be permitted to continue operating'. The report also recommended that 'The number of traps fished at a bag-net or stake-net station, or the number of crews working a net and coble station outside estuary limits, should not be greater than those qualifying for registration'.*

Finally, the S&TA believes that when netting stations come up for potential sale, or are to be leased to a third party (someone other than the proprietor), the relevant district salmon fishery board should have the opportunity to buy out the netting rights on conservation grounds. Scottish Minister should do this by way of granting DSFBs a statutory right of pre-emption

### **Inequality of the burden of conservation**

The Chairman of the MSF Working Group recognised that there was an unfair distribution of the burden of conservation. In 2010, the South Esk District netting stations killed over 90% of the total salmon and grilse killed in that District while paying for only 10.3% of the assessment. This disparity is clearly shown by the recently agreed level of compensation which equates 25% of the total fisheries valuation for that District for a cessation of fishing for the period 16<sup>th</sup> February to 30<sup>th</sup> April. The S&TA notes that this imbalance is a source of considerable resentment and would suggest the Bill presents an opportunity to deal with this imbalance.