



## Aquaculture and Fisheries Bill Consultation

### Overview

#### *General Comments*

##### **Existing activities**

Scottish Water's primary functions are the provision of safe drinking water, and the collection, management, treatment and safe return to the environment of wastewater, which is vital to support a sustainable society.

In the interests of public health, any statutory framework must take into account and balance the legitimate needs of all users of the marine environment. This includes the water industry's requirement to discharge society's treated effluent in compliance with licence conditions. Unlike many other activities that compete for space in the marine environment our coastal and marine infrastructure assets are static and must remain operational 24hrs per day.

##### **Ongoing investment**

Scottish Water continues to progress significant investment under the Scottish Government's Quality & Standards (Q&S) Investment framework. Any changes to legislation requiring further investment to improve water quality must be appropriately promoted within the Q&S investment cycle.

We would wish to emphasise that any changes to legislation which require investment will have to be considered within the regulatory process under which we operate.

##### **Compatibility with other activities**

The legitimate use of the sea to discharge treated sewage effluent and storm sewage is required on a continuous basis and this can make the immediate area of their location incompatible with certain other uses.

We invest in Waste Water Treatment Works (WWTW) to meet regulatory drivers based on a number of criteria, including the status of the receiving waters for the final effluent or discharge. Once an asset has been designed, built and licensed it should not be possible for an incompatible activity to be developed in the mixing zone.

### Detailed Response

#### **Specific Comments**

We note that, at this time the SEA and BRIA are not yet available for comment



Section 1.1 – Section Title

<b>1</b>	<p><b>Farm Management Agreements (FMAs)</b>  <b>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)</b>  <b>YES NO</b></p>
<p>Yes, we agree that this would be good overall for the industry</p>	
<b>2</b>	<p><b>Appropriate Scale Management Areas (MAs)</b>  <b>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)</b>  <b>YES NO</b></p>
<p>Scottish Water would ask whether this issue could be addressed at the planning stage, thereby allowing other stakeholders to have input with regard to their interests. We also consider that it is necessary that Scottish Minister should have powers to specify MA boundaries.</p>	
<b>3</b>	<p><b>Management Measures and Dispute Resolution</b>  <b>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)</b>  <b>YES NO</b></p>
<p>The question on how this would be financed has been touched on however the costs involved have not been considered. As these may be significant we feel they need to be addressed in the decision making process.</p>	
<b>4</b>	<p><b>4. How do you think such a system might best be developed? (Page 10)</b></p>
<p>Scottish Water has no comment</p>	
<b>5</b>	<p><b>Unused Consents</b>  <b>5. Do you agree we ought to review the question of unused consents? (Page 11)</b>  <b>YES NO</b></p>
<p>Yes, we agree that the issue of unused consents does need to be reviewed. Careful consideration of the issues will be required so that the process can operate successfully.</p>	



6	<b>6. What do you consider are suitable options to promote use or relinquishment of unused consents? (Page 11)</b>
Scottish Water has no comment	
7	<b>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)</b> <b>YES NO</b>
Yes, we agree that a power to revoke consents should exist, but appropriate consultation should be in place.	
8	<b>8. Should any such power relate to all or to particular consents (and if the latter, which)? (Page 12)</b>
Scottish Water has no comment	
9	<b>Collection and Publication of Sea-lice Data</b> <b>9. What in your view is the most appropriate approach to be taken to the collection and publication of sea-lice data? (Page 13)</b>
Scottish Water has no comment	
10	<b>Surveillance, Biosecurity, Mortality and Disease Data</b> <b>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)</b> <b>YES NO</b>
Scottish Water has no comment	
11	<b>11. What are your views on the timing and frequency of submission of such data? (Page 16)</b>
Scottish Water has no comment	
12	<b>Biomass Control</b> <b>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)</b> <b>YES NO</b>
Scottish Water has no comment	
13	<b>Wellboats</b> <b>13. Do you agree we should make enabling legislation giving Scottish Ministers powers to place additional control</b>



	<p><b>requirements on wellboats? (Page 17)</b> <b>YES NO</b></p>
	<p>Scottish Water has no comment to make in relation to additional controls on wellboats other than to highlight the potential biosecurity risks associated with this activity.</p>
14	<p><b>Processing Facilities</b> <b>14. Do you think Scottish Ministers should be given additional powers to place controls on processing plants? (Page 17)</b> <b>YES NO</b></p>
	<p>Scottish Water considers that this is a reasonable measure to protect the sustainable future of the industry and to ensure that all legitimate use of the sea is regulated proportionately and fairly.</p>
15	<p><b>Seaweed Cultivation</b> <b>15. Do you agree that the regulatory framework should be the same for all seaweed farms? (Page 18)</b> <b>YES NO</b></p>
	<p>The regulatory framework should reflect the emerging nature of the sector, to allow flexibility in research and development and to encourage stakeholder involvement to flourish.</p>
16	<p><b>16. Do you agree that the most appropriate approach to regulation of this sector would be through marine licensing? (Page 17)</b> <b>YES NO</b></p>
	<p>Scottish Water considers that existing regulatory bodies should be responsible for regulation. It would seem reasonable to expect Marine Scotland to be the lead regulatory body.</p>
17	<p><b>17. If not, what alternative arrangements would you suggest? (Page 18)</b></p>
	<p>Scottish Water has no comment</p>
18	<p><b>Commercially Damaging Species</b> <b>18. Do you agree that we should provide for additional powers for Scottish Ministers in relation to commercially damaging native species? (Page 19)</b> <b>YES NO</b></p>
	<p>Scottish Water has no comment</p>
19	<p><b>19. Do you agree with the introduction of provisions to protect shellfish growing waters and support the sustainable growth of</b></p>



	<b>the shellfish industry? (Page 21)</b> <b>YES NO</b>
Please note that Scottish Water responded in some detail to the consultation 'An integrated approach to the protection of shellfish water' which closed on 27/12/11. It should be noted that this consultation highlighted a limited impact of WWTWs on shellfish water.	
20	<b>Sea-lice</b> <b>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)</b> <b>YES NO</b>
Scottish Water has no comment	
21	<b>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)</b> <b>YES NO</b>
Scottish Water has no comment	
22	<b>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)</b> <b>YES NO</b>
Scottish Water has no comment	
23	<b>23. Do you agree that we should introduce a specific duty on Boards to act fairly and transparently? (Page 29)</b> <b>YES NO</b>
Yes, as District Salmon Fishery Boards have significant interest and influence and are considered 'other water users' under Controlled Activities Regulations (CAR), Scottish Water agrees with the introduction of a specific duty on Boards to act fairly and transparently.	
24	<b>24. Do you agree that there should be a Code of Good Practice for wild salmon and freshwater fisheries? (Page 29)</b> <b>YES NO</b>
Scottish Water has no comment	
25	<b>25. If yes, should such Code of Good Practice be statutory or non-statutory? (Page 29)</b>



	<b>YES NO</b>
Scottish Water has no comment	
26	<b>Statutory Carcass Tagging</b> <b>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)</b> <b>YES NO</b>
Scottish Water has no comment	
27	<b>Fish Sampling</b> <b>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)</b> <b>YES NO</b>
Scottish Water has no comment	
28	<b>Management and Salmon Conservation Measures</b> <b>28. Do you agree that Scottish Ministers should have powers to initiate changes to Salmon District Annual Close Time Orders? (Page 32)</b> <b>YES NO</b>
Scottish Water has no comment	
29	<b>29. Do you agree that Scottish Ministers should be able to promote combined salmon conservation measures at their own hand? (Page 32)</b> <b>YES NO</b>
Scottish Water has no comment	
30	<b>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)</b> <b>YES NO</b>
Scottish Water has no comment	
31	<b>Dispute Resolution</b> <b>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)</b> <b>YES NO</b>



Yes, Scottish Water is generally supportive of introducing a statutory provision for mediation and dispute resolution; we consider that it may be useful where determination of licence or licence conditions applied may be overly influenced by other interests. However the question of cost and benefit would have to be addressed.

32	<p><b>Improved Information on Fish and Fisheries</b>  <b>32. Do you agree that there should be a legal requirement to provide comprehensive effort data for rod fisheries? (Page 34)</b>  <b>YES NO</b></p>
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Yes, Scottish Water considers that there should be a legal requirement to provide comprehensive effort data for rod fisheries; this would be useful in showing actual activity in watercourses instead of anecdotal/historical reports.

33	<p><b>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)</b></p>
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Scottish Water has no comment

34	<p><b>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)</b>  <b>YES NO</b></p>
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Scottish Water has no comment

35	<p><b>Licensing of Fish Introductions to Freshwater</b>  <b>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)</b>  <b>YES NO</b></p>
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Yes, Scottish Water considers that there may be emerging situations where this power may be required e.g. in relation to Bio Security issues. Fish introductions may be encouraged due to improvements in river quality, or may bring an expectation of improvements in river quality. We would wish to highlight our comments made under general comments section above with regard to the Q&S process.

36	<p><b>36. If so, why and in what circumstances? (Page 35)</b></p>
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Consultation answer



<b>37</b>	<p><b>Strict Liability for Certain Aquaculture Offences</b>  <b>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 the apply to aquaculture operations and, potentially, in other situations? (Page 37)</b>  <b>YES NO</b></p>
<p>The consultation proposes to make certain aquaculture offences strict liability. As stated in the consultation document, the effect of this is that there will be no requirement to demonstrate intent on the part of the accused. In order to balance this, Scottish Water would ask whether provision is to be made for defences in certain circumstances - i.e. where breach is caused by accident, natural causes or other force majeure?</p>	
<b>38</b>	<p><b>Widening the Scope of Fixed Penalty Notices</b>  <b>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)</b>  <b>YES NO</b></p>
<p>The Consultation proposes to widen the scope of offences for which FPNs can be used to include all marine, aquaculture and other regulatory issues for which Marine Scotland has a compliance, monitoring and enforcement role. Scottish Water requests further clarification on how these penalties will be used and further consultation with those who may be affected. We would also ask whether it is envisaged that this move will increase the level and amount of enforcement action taken, i.e. will there be more fixed penalty notices served than reports previously made to the Procurator Fiscal? This could increase the regulatory burden on business. Is there an option to consider use of enforcement notices as a first stage enforcement action?</p> <p>The consultation also proposes to increase the maximum penalty which can be offered through a fixed penalty notice to £10,000. Scottish Water would ask whether guidance will be given to Marine Scotland in the application of such penalties - i.e. how they intend to take into account points in mitigation and other factors etc?</p>	
<b>39</b>	<p><b>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)</b>  <b>YES NO</b></p>
<p>Scottish Water would ask if the details of the statutory instrument described in section 122 would be consulted on at a later date?</p>	
<b>40</b>	<p><b>40. Are there particular regulatory areas that merit a higher or lower maximum sum? (Page 39)</b>  <b>YES NO</b></p>



Scottish Water has no further comments at this time.	
41	<p><b>Enforcement of EU Obligations Beyond British Fisheries Limits</b>  <b>41. Do you agree that we should amend section 30(1) of the Fisheries Act 1981 as proposed? (Page 40)</b>  <b>YES NO</b></p>
Yes, Scottish Water supports alignment with England & Wales in this matter, but has no further comment to make.	
42	<p><b>Powers to Detain Vessels in Port</b>  <b>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)</b>  <b>YES NO</b></p>
Yes, Scottish Water supports alignment with England & Wales in this matter, but has no further comment to make.	
43	<p><b>Disposal of Property/Forfeiture of Prohibited Items</b>  <b>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)</b>  <b>YES NO</b></p>
Yes, Scottish Water supports alignment with England & Wales in this matter, but has no further comment to make.	
44	<p><b>Power to Inspect Objects</b>  <b>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)</b>  <b>YES NO</b></p>
Yes, Scottish Water supports alignment with England & Wales in this matter, but has no further comment to make.	
45	<p><b>Sea Fisheries (Shellfish) Act 1967</b>  <b>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)</b>  <b>YES NO</b></p>
Yes, Scottish Water supports alignment with England & Wales in this matter, but has no further comment to make.	



46	<p><b>SECTION 6 - PAYING FOR PROGRESS</b></p> <p><b>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)</b></p> <p><b>YES NO</b></p>
<p>Yes, Scottish Water is generally supportive of these proposals and we would wish to be consulted on the enabling legislation.</p>	
47	<p><b>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)</b></p>
<p>Scottish Water has no comment</p>	
48	<p><b>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)</b></p>
<p>Scottish Water has no comment</p>	