

Aquaculture and Fisheries Bill Consultation Document

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The Scottish Government, Edinburgh 2011

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AQUACULTURE AND FISHERIES BILL CONSULTATION DOCUMENT

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INTRODUCTION

Background to the consultation

Scotland is home to thriving and important aquaculture and freshwater fisheries. Between them, aquaculture production and salmon and freshwater fisheries are estimated to be worth over £650m (in 2010) to Scotland (substantially more taking into account added value and other benefits). They are critical to the economies of many remote and rural communities and they make important contributions to the wider Scottish economy.

It is important that both sectors – and their interactions - are managed effectively, as part of the wider marine and freshwater environment and to maximise their combined contribution to our aim of sustainable economic growth in Scotland. Recent experience, both at home and abroad, has shown the consequences of failing to do so. Much has been done in Scotland in recent times, and much work continues, to consider, understand and address the key management challenges in both the aquaculture and the freshwater fisheries sectors, and their interactions.

On aquaculture, key work has been taken forward under the auspices of the Ministerial Group on Aquaculture and related working groups, including development of a renewed Strategic Framework for Aquaculture and a Code of Good Practice for Finfish Aquaculture. The industry has flourished and has ambitious aspirations for growth. We want to help it to continue to flourish, and to grow, on a sustainable basis.

On wild salmon and freshwater fisheries, we have the Strategic Framework for Freshwater Fisheries, fishery management plans (developed by fisheries trusts) covering the vast majority of the country, and recommendations for legislative change from the Mixed Stock Salmon Fisheries Working Group Report of March 2010. Together, these provide a sound basis for moving forward.

The possibility of an Aquaculture and Fisheries Bill during the current Parliament provides an opportunity for us to take these issues forward. We are therefore consulting, at this early stage in the new Parliament, on key issues and priority areas for possible legislation. We want to build on best practice and voluntary arrangements where appropriate, providing statutory underpinning and a legislative backstop, where necessary, to protect the interests of those who have invested in the highest standards of management and husbandry. We want to promote openness and transparency, including in the collection and publication of information – and where appropriate, look to examples of international best practice. At the same time, we recognise the need to strike the right balance, respecting and consulting on the interests and perspectives of the range of stakeholders, and avoiding unnecessary or disproportionate new regulatory burdens.

This consultation paper also covers wider measures. We recently issued a separate consultation on a range of proposals offering continued protection to

shellfish growing waters within our wider River Basin Management Planning framework. You may wish to refer to that consultation document alongside this one. This paper describes the proposed legal provisions to support those initiatives.

We also propose to take the legislative opportunity to update some existing enforcement provisions. We propose strict liability arrangements should apply in relation to certain offences; to fill gaps in regulatory and enforcement provisions (including in relation to sea fisheries); to improve provisions for the enforcement of EU requirements beyond fisheries limits; and to extend the scope and scale of Fixed Penalty Notices as an alternative to prosecution. We also propose enabling provisions related to cost-sharing and recovery, for service provision and other benefits.

The relevant pieces of statute are referred to in each section of the consultation document. They can be accessed from www.legislation.gov.uk

This consultation paper does not consider issues and options related to locational policy for fish farms. There is already in place a Scottish 'zonal' policy, with the majority of aquaculture production based on the west coast and the islands and a presumption against marine finfish farm developments on the north and east coasts, as a precautionary measure to safeguard migratory fish species. It is for Planning Authorities, in the first instance, to determine any applications for fish farms in their areas, in the context of national and any local guidelines or plans. In a wider marine planning context, we will be consulting separately on a Draft Scottish National Marine Plan (spring 2012) and work is progressing on implementation of our Marine Nature Conservation Strategy, including work to develop a network of Marine Protected Areas (MPAs). This involves the identification of the proposed network, based on published selection guidelines and involving consultation with industry representatives and other stakeholder groups, prior to wider public consultation on proposed designations.

Strategic Environmental Assessment

We have considered the proposals set out in this consultation in relation to the Environmental Assessment (Scotland) Act 2005. Our initial conclusion is that some of them may give rise to environmental effects. An Environmental Assessment of these proposals is underway. The Environmental Report will be published for consultation during the consultation period on this document.

Business and Regulatory Impact Assessment

The Business and Regulatory Impact Assessment (BRIA) process is a tool used by Government to assess and present the likely costs and benefits and the associated risks of a proposal that might have an impact on the public, private or third sector. It helps Government to understand the issues associated with a proposal and avoid unintended consequences, to weigh up various options for achieving an objective and to understand the consequences of a proposed intervention. A partial BRIA of these proposals is

underway and will be published for consultation during the consultation period on this document.

Who will be interested in this consultation?

This consultation is likely to be of interest to aquaculture (finfish and shellfish), freshwater and sea fisheries stakeholders, consumer organisations and other individuals and organisations who are interested in conservation, animal welfare and protection of the marine and freshwater environment.

What is the closing date for responses?

Consultation responses should be submitted no later than **Friday, 2 March 2012**. It is important that a Respondent Information Form is submitted with consultation responses, so that we can treat responses appropriately.

Please send your response with the completed Respondent Information Form (see "Handling your Response" below) to:

Aquacultureandfisheriesconsultation@scotland.gsi.gov.uk

Or

1B-North, Victoria Quay, Edinburgh EH6 6QQ

Telephone 0131 244 6243

Fax 0131 244 6512

If you have any queries contact Catriona Graham on 0131 244 6243.

Please indicate clearly in your response which questions or parts of the consultation paper you are responding to as this will aid our analysis of the responses received.

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at <http://www.scotland.gov.uk/consultations>

The Scottish Government now has an email alert system for consultations (SEconsult: <http://www.scotland.gov.uk/consultations/seconsult.aspx>). This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). SEconsult complements, but in no way replaces SG distribution lists, and is designed to allow stakeholders to keep up to date with all SG consultation activity, and therefore to be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the [Respondent Information Form](#) at the end of this document as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Will consultation responses be published?

We will provide a link to consultation responses (which are not marked as confidential) on the Scottish Government website within two weeks of the conclusion of the consultation. You will also be able to make arrangements to view responses by contacting the Scottish Government Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

Will an analysis of consultation responses be published?

The responses will be systematically analysed and reported, and key messages from the various stakeholder groups will be highlighted. A report and summary of findings will be published as soon as possible after the end of the consultation period.

What happens after the consultation?

We will analyse all views expressed in the consultation exercise.

Our current intention is to introduce an Aquaculture and Fisheries Bill to the Parliament at a suitable opportunity.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to:

Catriona Graham, 1B-North, Victoria Quay, Edinburgh EH6 6QQ

Telephone 0131 244 6243

Fax 0131 244 6512

SECTION 1: THE SUSTAINABLE DEVELOPMENT OF AQUACULTURE



1. The (finfish and shellfish) aquaculture industry is an important sector of the Scottish economy with excellent prospects and ambitious plans for growth. Those prospects can only be realised and sustained if, amongst other things, the industry adheres to the highest environmental and husbandry standards, and any wider impacts of fish farming are understood, mitigated and managed. Proposals set out below have been developed with those key aims in mind.

2. This section of the consultation paper takes much of its lead from the work of the Ministerial Group on Aquaculture and in particular recommendations of the Healthier Fish Working Group established under the renewed Strategic Framework for Scottish Aquaculture, published in 2009. In some cases we propose to go further than that Group recommended. Where that is the case, the rationale for doing so is explained.

Farm Management Agreements (FMAs)

3. Development of good practice and cooperation between producers is widely recognised as a critical component of good husbandry and in ensuring high standards of farmed fish health. The role of FMAs is reflected in A Code of Good Practice for Scottish Finfish Aquaculture ('the Code'), developed in collaboration between industry, government, regulators and other stakeholders and published in 2006 (revised in 2011). They are a key element in the strategic approach in Scotland to sustainable management.

4. FMAs between marine finfish operators should cover approaches in each area to issues such as:
- stocking;
 - fallowing;
 - husbandry and biosecurity;
 - management practices, including for the control of sea-lice;
 - information sharing.
5. The Code is, however, voluntary: there is no legal requirement for operators to sign up to FMAs, nor any sanctions for failure to do so. There is a risk that those – albeit relatively few operators - operating outside the Code may undermine the efforts of those working on a co-operative basis, under FMAs, with associated risks to those other farmers and the wider environment.
6. We therefore believe that we should consider giving FMAs statutory backing. This would encourage operators to reach agreement on appropriate management arrangements, strengthening the current voluntary fish farming management regime and offering greater security and reassurance to those who currently manage their operations in line with the Code.
7. There is a number of ways in which this might be achieved – for example by Ministers ‘adopting’ the Code (although it covers much more than FMAs and its adoption would imply a need to monitor and enforce, on a statutory basis, the range of issues it covers); or by defining FMAs in statute (but which would require too detailed a level of statutory definition, and provide insufficient flexibility to allow for ease of subsequent changes).
8. ***We therefore propose to create a legal requirement that all finfish operators in the marine environment must participate in a Farm Management Agreement, as recommended by the Healthier Fish Working Group.*** This would mean, amongst other things, existing operators having to take ownership and agree appropriate arrangements to be implemented in their management area; and that any new operators coming in to an area covered by an existing agreement would be required to join in that, or an amended, agreement. This requirement would be backed up by appropriate sanctions – for example, for operating whilst failing to participate in an agreement, for breaching the terms of an agreement etc.
9. We do not underestimate the difficulties involved in such an approach, including the need for individual fish farm operators to agree and work towards appropriate and practical co-ordinated and complementary measures under an FMA. We would need to consider what would constitute acceptable arrangements; and there would need to be certain safeguards - which may include, for example, provisions for acceptable alternative measures to be agreed, and a transitional period for FMA arrangements to be agreed and implemented.

Q 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 with sanctions for failure to do so, or to adhere to the terms of the agreement?

Appropriate Scale Management Areas (MAs)

10. The Healthier Fish Working Group recommended that management areas should be delineated by the industry, through the Code. This recognised that there was (and there remains) incomplete information and understanding about connectivity between farms and areas and the need for further scientific work and evidence on which to base decisions. Knowledge and evidence is expected to develop, and influence judgements on the most appropriate approaches, over time. Management areas currently in place are set out in the Code.

11. ***We propose that operators should retain primary responsibility for determining the boundaries of MAs. But we also propose that Scottish Ministers should have powers to specify MA boundaries, or other relevant measures, where this is felt necessary and appropriate in the wider public and environmental interest – for example:***

- to ensure appropriate disease firebreaks between adjacent areas;
- where there are serious or persistent significant disease or parasite issues in a particular area or areas, which are not being adequately addressed;
- if evidence emerges of connectivity between sites (for example through parasite and disease information or from bathymetric and sea lice dispersal modelling) and management areas;
- if there are significant sea lice problems and significantly challenged wild salmonid populations, and evidence of connectivity between sites, which would suggest that a larger (or different) management area is likely to help address these issues.

12. It is envisaged that these powers would be used on a precautionary or reserve basis, possibly in conjunction with other measures.

Q 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?

Management Measures and Dispute Resolution

13. As indicated above, we believe operators, rather than government, are best placed to determine the scale and the most appropriate management arrangements for a particular Farm Management Area/Agreement. We recognise, however, that there may be instances where, for a variety of operational or other reasons, it may not be possible for operators readily to agree mutually acceptable arrangements.

14. ***We therefore propose that there should be an independent process, with statutory backing, for arbitration between interested parties where it has not been possible for agreement to be reached.*** There are a number of ways in which this could be taken forward. We could, for example, provide for Ministers to maintain a panel of arbiters from which the parties involved would be able to select (see, by way of comparison, arrangements in agriculture and proposals related to salmon and freshwater fisheries later in this document); or for them to appoint an arbiter (and/or to delegate that responsibility to a third party).

15. The Scottish Salmon Producers' Organisation (SSPO), which is a "Producer Organisation" established under European law with the ability to take on certain quasi-regulatory functions, has suggested it might take responsibility for developing arrangements for access to an independent arbitration process, the outcomes of which would be binding on the parties involved.

16. There are a number of related considerations, including how we might give any such approach statutory backing; detailed (including funding) arrangements; and the need for assurances that any such system would operate in a fair and transparent way. We would welcome views on these issues.

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

Q How do you think such a system might best be developed?

Unused Consents

17. We set out in the pre-consultation draft of Scotland's National Marine Plan an objective to address the issue of unused fish and shellfish farm consents (i.e. seabed leases, planning consents, biomass and discharge consents, marine licences etc).

18. The Locational Guidelines for the Authorisation of Marine Fish Farms in Scottish Waters provide guidance on the environmental suitability of coastal areas for fish farming, taking into consideration the discharge consents granted. The potential impacts of the consents granted are taken into account,

irrespective of whether every consent is actively being used or not. In practice this can complicate management of the sector as a whole and constrain production in particular areas or overall (since, for example, the amount of biomass authorised for production, and taken into account in impact assessment, exceeds considerably the amount of biomass that is actually being produced). There is an evident need to review this approach, alongside other issues set out in this consultation document, in the interests of sustainable growth of the industry.

19. We are aware that the issue is complex. Consents for unused sites may be held for a variety of reasons, including:

- to hold sites as buffer zones, as part of management area arrangements to assist in fish health and disease management;
- to facilitate fallowing, with operators utilising different sites as part of a rotational production cycle;
- pending the acquisition of other consents necessary, in addition to those already acquired, to develop and operate sites for aquaculture;
- since the sites and related consents comprise in effect a commercial asset belonging to the company/operator;
- as a consequence of an operator stopping farming and pending the relinquishment of existing consents.

20. It should be acknowledged that there are some existing incentives to develop unused sites, such as the Crown Estates' charging regime. Other possible incentives that might be considered could include, for example:

- withdrawing consents for sites where they have not been used for a period of time (such as the 3 year rule imposed by Shetland Islands Council for rescinding the Works Licence), or if they have fallen derelict;
- considering the scope for further charges (in a similar way to those imposed by the Crown Estate) if a site lies inactive/unproductive for a defined period of time;
- placing conditions on consents to develop sites within a given period (say 3 years);
- reducing the amount of biomass consented (in relation to a discharge consent) for inactive/unproductive sites after a period of time;
- revoking unused consents.

Q Do you agree we ought to review the question of unused consents?

Q What do you consider are suitable options to promote use or relinquishment of unused consents?

21. We believe that, ultimately, it would be appropriate for the Scottish Ministers, and/or the Planning Authorities, to have the power to revoke consents, at least in certain circumstances (for example, where the owner of a site may not be traceable). This could help to ensure that sustainable developments in aquaculture are not constrained by lack of access to

appropriate sites for development. Similarly, revoking an unused biomass consent could mean, in effect, freeing up an equivalent amount of biomass production. The power to revoke consents may also be a helpful and necessary option as our understanding of the impacts, interactions and management of aquaculture improve and we develop our locational policies and approaches.

Q Do you agree that Scottish Ministers should be given powers, ultimately, to revoke, or to require or request others to revoke, consents? Should any such power relate to all or to particular consents (and if the latter, which)?

Collection and Publication of Sea-lice Data

22. The question of access to sea-lice data was perhaps the most contentious faced by the Healthier Fish Working Group: its recommendations are set out, for ease of reference, at Annex A. The issue remains a key area of contention between aquaculture and salmon and freshwater fisheries interests.

23. The Group recommended a two-pronged approach, based on an industry-run database which would provide publicly facing reports on sea-lice numbers, aggregated over six regional zones, tied to a new statutory reporting requirement to the Scottish Ministers for sea-lice treatment failures.

24. There are arguments for the provision and publication of more detailed data, including in the interests of openness and transparency; and to aid understanding of the incidence and potential impacts of sea-lice and the consequent need and options for management measures.

25. On the other hand, issues surrounding sea-lice, their impacts and management are highly complex. Data need to be properly presented, explained and understood, otherwise there is a risk that they may be misinterpreted, or indeed misused and misrepresented.

26. For strategic and research purposes, Marine Scotland does not require detailed data on a real time, or near real-time, basis: nor could we resource substantive new systems and arrangements to collect and analyse detailed data. We do however want to ensure that sea-lice issues are properly understood and managed: and that we maintain our position in Scotland as at the forefront of best international practice in aquaculture management.

27. There are numerous examples of sea-lice data collection and reporting internationally, which it may be appropriate to consider. For example:

- In Norway, fish farmers report data on mortality, slaughter and biomass on a monthly basis and are also required to report other data, including treatments against sea-lice and development of resistance to such treatments. Farmers producing Atlantic salmon and trout are required

to report sea-lice numbers on a weekly basis to the Norwegian Food Safety Authorities (NFSA). Sea-lice statistics are published on a webpage each month, with a public report (which includes wider information) published by the NFSA approximately quarterly. Data are published at a County level, although further detail may be made available on request under freedom of information arrangements;

- Ireland collects and makes available more sea-lice data than we do at present, or would following implementation of the Healthier Fish Working Group's proposals (see for example "National Survey of Sea Lice on Fish Farms in Ireland" at <http://www.marine.ie/NR/rdonlyres/1D6D8C2D-E10C-47BD-99D5-592FE9A725EB/0/B22.pdf>)
- Arrangements in Canada are evolving, with different arrangements in different Provinces. Companies operating in British Columbia, for example, must report sea lice monitoring results monthly on a site by site basis to the Federal Government's Fisheries and Oceans Canada (DFO). DFO will publish this information every quarter. It should be noted that about 70% of Canada's farmed Atlantic salmon production occurs in British Columbia – mainly by companies also operating in Scotland and Norway. Further information is available at: <http://oar.marine.ie/bitstream/10793/104/1/IFB%20no.%2034.pdf>

28. Beneath these headline arrangements, however, lie many detailed issues - for example about what data are collected, and how they are analysed, utilised and presented.

29. ***We recognise there is unlikely to be consensus on every issue, but we invite views on the most appropriate approach to collection and publication of sea-lice data.***

Q. What in your view is the most appropriate approach to be taken to the collection and publication of sea-lice data?

Surveillance, Biosecurity, Mortality and Disease Data

30. In light of recent changes in aquatic animal health regulation through the introduction of European Directive 2006/88/EC and the Aquatic Animal Health (Scotland) Regulations 2009 (SSI 2009/85), routine aquatic animal health surveillance has evolved from active/targeted to a risk based approach. Both intelligence and passive surveillance are necessary components to supplement aquatic animal health surveillance in Scotland and have value in assisting with the early detection of notifiable and emerging diseases.

31. We believe it is desirable, to facilitate intelligence and passive led surveillance, that ***additional data and information from fish farms need to be made available to Marine Scotland***. The data requirements would apply to all authorised aquaculture production businesses (APBs). The table below sets out the types of data and information we envisage is needed, and the

rationale for these requirements. Again, we would propose **sanctions for non-compliance or for providing false or misleading information.**

Requirement	Rationale
1. Mortality data	<p>Improved response time to mortality events; facilitates passive surveillance and the rapid detection of notifiable and emerging disease; allows monitoring of any problem on site closer to real time; alerts Marine Scotland to problems/issues as they emerge and develop.</p> <p>Additional data requirements could be delivered in a variety of ways. We suggest two key options:</p> <p>1. The recommendation from the Healthier Fish Working Group http://www.scotland.gov.uk/Resource/Doc/1062/0103264.pdf is that Marine Scotland should be informed of extraordinary mortality events. This reporting would be site specific and would take two forms: a) a weekly site mortality outwith a specified maximum; b) a rolling 5 week site mortality outwith a specified maximum. Reporting maxima would be lifecycle specific and apply to a site 6 weeks after its original stocking. Farmers would report only by exception (i.e. unless a report is submitted it is deemed that the site has a weekly mortality and rolling 5 week mortality below required reporting triggers).</p> <p>The mortality maxima would be:</p> <ul style="list-style-type: none"> - Fish under 750g: 1.5% (weekly), 6% (rolling 5 weeks); - Fish 750g+: 1% (weekly), 4% (rolling 5 weeks). <p>These figures were established for marine salmon. Reporting thresholds would be established for other stages and species.</p> <p>2. Reporting all mortality on a regular (for example, weekly) basis. This goes further than the Healthier Fish Working Group recommendations that mortality events above specified thresholds should be reported to Marine Scotland.</p>
2. Movement record data	<p>Used to direct investigation and contain notifiable disease through identification of contact sites and application of movement controls; to facilitate epizootic investigations in response to outbreaks of notifiable or emerging disease; to facilitate annual update of risk-based surveillance assessment.</p>

3. The results of external surveillance	Facilitates decision-making in response to increased mortality; offers the potential for quicker detection of emerging disease and trends in the industry in terms of clinical/post-mortem observations and histopathology. Marine Scotland already has powers to examine the results of external fish health surveillance during a site visit. What is envisaged here is the automatic submission of this information, or the ability to call it in on request. This would also provide additional information when faced with disease outbreaks – assisting in epidemiological investigations without the need to visit sites to collect the information.
4. Treatment notification	<p>The Healthier Fish Working Group http://www.scotland.gov.uk/Resource/Doc/1062/0103264.pdf recommended that successive delousing efficacy failures should require a mandatory notification to Marine Scotland. Failure is defined as 2 successive treatment efficacies of less than 50% removal of <i>Lepeophtheirus salmonis</i> (Leps, at all stages).</p> <p>In addition, a record of treatments made to control sea-lice is important for strategic research, for example in the validation of hydrodynamic models. Records need not be provided in real time but could be provided, for example, on an annual basis when requested.</p>
5. Fish farm production data	<p>Currently provided on a voluntary basis but a statutory requirement could increase efficiency of the scheme.</p> <p>It would also enable new types of data to be collected, including the numbers of fish present at each farm, which are required for sea-lice research and the advice provided to Government from that. It would enable sea-lice numbers to be better estimated.</p>

32. There remains the question of the timing and frequency of data provision. Some of the data are of use periodically (for example, annually) or when called in for a particular need (such as notifiable disease investigation). Other data will be of more use closer to “real time”, giving greater scope for issues and the need for any remedial action to be identified at an early stage. However, the submission of very frequent and large volumes of data could place large burdens on both industry and regulators (who need to be able to analyse and act upon it, in addition to other tasks).

33. Further discussion and consideration of the most appropriate approach – including more detailed arrangements for the submission of data - is required. We believe it is likely that some of the data we envisage being required are already being maintained by businesses, whose records may

facilitate easy transfer and sharing with the appropriate regulators. We welcome views on these issues.

Q 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?

Q What are your views on the timing and frequency of submission of such data?

Biomass Control

34. As more data emerge it is possible they may highlight particular management issues on particular sites or in particular Management Areas. In such an eventuality we believe Scottish Ministers (through Marine Scotland Science) should have the ***power to require SEPA to reduce on a temporary or permanent basis the limit on biomass in the site licence*** (the total allowable volume of salmon on the site) for the farm in question.

35. This will have the effect of creating a link between the licensed biomass for a site and the required volume of therapeutant and/or the successful management of sea-lice. The absence of information available to regulators at the moment means that we do not know the implications of current practice whereby a site may in certain circumstances be licensed to hold a large tonnage of salmon, but only to use a small amount of therapeutant. This may mean that treatments may be ineffective and/or that operators may be tempted to consider inappropriate approaches to managing sea-lice, with associated fish health, environmental and reputational risk.

36. While SEPA already has powers to reduce a biomass consent, it can only do so in circumstances that are consistent with its role as environmental regulator. We want the ability to take action based on a wider marine management perspective and this proposal would constitute an additional power with the aim of improving sea-lice control.

Q 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?

Wellboats

37. Wellboats are a key component in aquaculture operations at an international scale, but also a significant potential vector for parasite and disease and other biota transfer over large distances. They were implicated in the spread of Infectious Salmon Anaemia (ISA) in the 1998/99 outbreak in Scotland and the Code aims to address many of the risks. The issue is one of the areas for mutual consideration and co-operation in taking forward our Memorandum of Understanding with Norwegian counterparts to help raise standards of biosecurity, and to improve monitoring of fish movements by

wellboat and wellboat/discharging activities within and across national boundaries.

38. Annex 10 of the Code provides guidance on minimising risks in wellboat operations. While this provides a foundation, we believe we need to consider going further to ensure adequacy of regulation and controls. Further consideration and discussion is needed on the detail of such controls, but we envisage enabling powers for Ministers to require such provisions as:

- satellite monitoring of wellboat movements (as for fishing vessels);
- additional controls on discharges, whether at sea or to land (for example, with related lice filtration/destruction requirements);
- remote monitoring of wellboat activity, including fish movements/discharges;
- additional information/controls on movements of fish.

39. The costs, benefits and practicalities of additional measures would need to be carefully assessed. As an interim step we would propose to make enabling legislation, to allow Scottish Ministers to provide for ***control requirements on wellboats through secondary legislation***.

Q Do you agree we should make enabling legislation giving Scottish Ministers powers to place additional control requirements on wellboats?

Processing Facilities

40. Some concerns have also been raised with us about the possibility of, for example, spread of lice or pathogens through discharges associated with processing plants, either directly from the plant or from associated transportation vehicles and vessels. Where fish may have been brought in from outside the local area for processing, this could undermine otherwise effective local Farm Management Agreement/Management Area practices and controls.

41. There are existing controls and it may be that some of them could be better utilised to help address any such concerns (at least in part). But it may be more appropriate and safer to seek specific additional powers for Ministers – for example to insist on arrangements for filtration of lice, or other treatments, to minimise potential harm from discharges. Powers already exist to ensure biosecure operation at primary processing plants where there are issues around notifiable diseases which are being eradicated. This would constitute an extension of those arrangements.

Q Do you think Scottish Ministers should be given additional powers to place controls on processing plants?

Seaweed Cultivation

42. A few small-scale seaweed cultivation sites have recently been established in Scotland. The product from these seaweed farms is likely to be used in a number of ways, including for food, animal feed, nutraceuticals (food products that provide health and medical benefits), extra co-digest for aerobic digestion plants (which create biogas for energy), and fertilisers. This sector is expected to grow along with integrated multi-trophic aquaculture, where the by-products from one species are recycled to become inputs for another (e.g. finfish aquaculture can be combined with seaweed or shellfish). Large scale offshore cultivation for the primary production of biofuels is currently limited by feasibility and economic considerations and we believe is therefore unlikely to develop in the near future. Overall, however, we expect the seaweed cultivation sector to grow as product demand increases and as integrated multi-trophic aquaculture benefits are realised.

43. We are progressing a Strategic Environmental Assessment (SEA) to identify environmental interactions and inform a sector framework. It is not yet clear what this will show - for example whether environmental impact is beneficial, low or nil, or may depend on location. There may also be differences currently in how seaweed farms are regulated - depending on whether the site is new, or has been previously farmed for mussels and appropriate equipment is already in the water.

44. We believe that we should take the legislative opportunity to provide for appropriate regulation of seaweed farming, including ensuring that all plans to farm seaweed are regulated in the same manner. We believe the most effective way to do this is would be to ***regulate seaweed farming through Marine Licensing arrangements set out in the Marine (Scotland) Act 2010.***

Q Do you agree that the regulatory framework should be the same for all seaweed farms?

Q Do you agree that the most appropriate approach to regulation of this sector would be through marine licensing? If not, what alternative arrangements would you suggest?

Commercially Damaging Species

45. A 'commercially damaging species' in this context means one which may displace or prejudice the commercial production of traditionally farmed species, with associated costs for remediation, but which itself has no commercial value.

46. While stringent controls exist in legislation in relation to notifiable and emerging diseases affecting aquaculture, as well as controls on invasive non-native species in wider environment legislation, existing controls on potentially commercially damaging native species are not comprehensive. For example, a recent project '*Mytilus trossulus*: Managing impact on sustainable mussel

production in Scotland' considered the issue of statutory powers to control movements of mussels and determined that there is currently nothing on the statute books that could be applied to that species.

47. We think it important to close that loophole. If a commercially damaging native species becomes a significant concern, we suggest it would be useful to have a possible range of control measures, such as:

- power to prevent movement of the species, movement of other species or equipment from the same site/area. This could include the use of “stop notices”;
- power to define or specify in subordinate legislation what constitutes a commercially damaging species;
- powers to require notification if specified species or suspected species are found at an aquaculture site;
- power to require a company or individual to undertake particular control action, or to permit access by others to undertake the specified action;
- power for authorised officers (e.g. Fish Health Inspectors) to look for the specified species when carrying out inspections;
- requirements for molecular analysis and a surveillance programme if stock movements are going to occur in areas where the specified species is known or suspected to be present.

Q Do you agree that we should provide for additional powers for Scottish Ministers in relation to commercially damaging native species?

SECTION 2: PROTECTION OF SHELLFISH GROWING WATERS

48. Good water quality is essential for the production of high quality shellfish. The Scottish Government is committed to helping the shellfish sector expand in a sustainable way. A key requisite is sufficient areas of good water quality in which to locate.

49. Water bodies can be impacted by pollution from various sources such as run-off from agricultural land or discharges from sewage treatment works. The Shellfish Waters Directive (SWD) currently offers protection to designated shellfish areas, by requiring action plans to meet relevant environmental standards to be put in place. However the SWD is being repealed in 2013.

50. The Water Framework Directive (WFD) established a legal framework for the protection, improvement, and sustainable use of Europe's water environment. In response to the WFD, we have through River Basin Management Plans (RBMPs) put in place an integrated framework to help deliver Ministers' aims for Scotland's water environment. In order to ensure that shellfish water quality continues to be protected after the SWD is repealed, we propose to incorporate the aims of the SWD into our WFD implementation framework. In order to take this forward we shall require new legal powers.

We propose to introduce the following legal provisions:

- a power for Ministers to identify areas for the purpose of the protection of economically significant shellfish. This should enable Ministers to designate and de-designate areas as appropriate;
- a power to set out the objectives and environmental standards that would apply in those waters;
- a duty to consult interested parties and relevant public bodies before any designations/ de-designations are made, or objectives set;
- a duty on SEPA to secure such monitoring as necessary to assess the condition of shellfish waters and the effectiveness of any measures taken for their protection;
- a duty to classify the designated waters in line with specified environmental standards.

51. Our recently published consultation entitled 'An integrated approach to protection of shellfish waters' provides full details of our proposals to help the shellfish sector continue to grow in a sustainable manner. The paper can be found at <http://www.scotland.gov.uk/Publications/2011/10/03120828/0>, and you may wish to read that document in tandem with this section.

Q Do you agree with the introduction of provisions to protect shellfish growing waters and support the sustainable growth of the shellfish industry?

SECTION 3: FISH FARMING AND WILD SALMONID INTERACTIONS

52. There are essentially two critical issues around interactions between aquaculture and the wild salmon and freshwater fisheries sector: the potential impacts of sea lice; and the potential impacts of escapes from fish farms.

Sea-lice

53. A number of the measures set out in section 1 of this consultation document are relevant to consideration of sea-lice management, as part of a wider, strategic approach to sustainable aquaculture management.

54. The industry Code sets out the approach to managing sea-lice, including (at Annex 11) the National Strategy for Sea-Lice Control. This includes non-therapeutic management and lice treatments, on a co-ordinated basis, with an objective to prevent the development of gravid females. If this strategic approach to 'prophylactic' treatments is effective, there is a reduced risk of infection of wild salmonids from fish farms.

55. The Code currently suggests the criterion for triggering sea-lice treatment during the period 1st February to 30th June inclusive as an average of 0.5 adult female *Lepeophtheirus salmonis* per fish: and, during the period 1st July to 31st January inclusive, an average of 1.0 adult female *L. salmonis* per fish. A key objective of the strategy is to minimise adult female lice on farmed fish in the Spring as this is when wild salmon and sea trout smolts leave fresh water and enter the sea.

56. There are some associated risks of increasing resistance to therapeutants and tensions with fish health and welfare considerations, but we believe there is a case for additional measures. We believe that Scottish Ministers should have the **power to determine a lower threshold above which remedial action needs to be taken** in these months in, for example, key areas of Scotland with significant wild fisheries and/or where fish farming involves high biomasses of fish (meaning the overall burden of lice may be significant), subject to consultation with appropriate local interests in the areas concerned. We envisage that it might be possible in certain Farm Management Areas in relatively few parts of Scotland, where wild populations might warrant additional protection, that trigger points could be lower than the norm. This step would be expected to be utilised as part of a suite of protective measures to be taken by both wild fisheries and fish farming interests. It is also consistent with similar practices in Norway and in Canadian provinces.

57. The intention would be for there to be discussions between Marine Scotland, the relevant farm operator and their veterinary advisor about options for measures to address the lice burden on the farm, taking into account both farmed fish welfare and wider environmental impact considerations.

Q 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?

Containment and Escapes

58. Tackling fish farm escapes has been identified as a key priority in A Fresh Start - the renewed Strategic Framework for Scottish Aquaculture. Concerns relate to perceived impacts of escaped fish through behavioural and ecological interactions and through competition for food and habitat - for example, farmed salmonids escaping directly into salmon and sea trout habitat and then 'homing' to these spawning grounds and interbreeding with native fish. As well as the well-publicised escape events involving medium to large numbers of fish, there is also anecdotal evidence suggesting ongoing 'leakage' of small numbers of fish, over time, into the freshwater system. It has been suggested that, despite greatly reduced levels of reported escapes, these 'drip' losses of fish pose a threat to the gene pool of wild salmon.

59. The Improved Containment Working Group, established in September 2009 under the auspices of the Ministerial Group on Aquaculture, is making significant progress on a range of actions to improve containment. This, along with increased awareness of containment issues, Marine Scotland Science's containment inspection regime, and significant investment by the salmon farming industry in new equipment, has led to the lowest reported fish farm escapes in 2010 since statutory reporting began in May 2002. Reported escapes in 2011 are at a similar level.

60. This progress is very welcome, but it is vital as part of the aquaculture industry's sustainable development that the level of escapes is minimised – in particular where they may be due to equipment which is inappropriate or unsuitable for the location in which the farm is operating. This has been recognised and is being addressed by the industry.

Establishing a Scottish Technical Standard for fish farm equipment

61. Continuing progress we believe requires clearly defined and auditable standards to be put in place. This would provide clarity for both industry and regulators, planners and equipment suppliers. It would also bring Scotland into line with best international practice: Norway already has a technical (NYTEK) standard in place (since 2003) which took over 10 years to develop and implement and was further updated in 2010.

62. Through the Improved Containment Group, industry has agreed to a Scottish Technical Standard for fish farm equipment. We propose to make this a statutory requirement, with sanctions for non-compliance. The standard would apply to all Scottish freshwater and marine finfish farms and would cover nets, pens and mooring systems. It would be site specific and cover physical considerations such as wave height, wind and current speeds. There would also need to be an appropriate lead-in period to allow for existing equipment to be replaced during business cycles.

63. There is a number of reasons for introducing a Scottish Technical Standard:

- the current system in Scotland relies on recommendations in industry's voluntary Code of Good Practice that '*Installations, facilities, moorings, pens and nets etc should be fit for purpose for the site conditions and installed by an appropriately qualified person.*' There is currently no defined standard and no robust audit process;
- to provides greater certainty as to what is and what is not suitable. Anecdotal evidence suggests that companies will balance risk with equipment quality and, ultimately, cost. The larger companies can generally afford higher specification equipment but some operators may risk using unsuitable or lower quality material. This will be more of an issue when farm gate prices of fish are lower and businesses have limited capital to invest in new and replacement equipment;
- it is also common practice for businesses to rotate equipment between sites – sometimes with very different environmental conditions. This is based mainly on experience and local knowledge. A defined standard that states exactly what equipment is suitable for specific conditions would give confidence to the business but also to planners, regulators and insurers;
- under existing powers in the Aquaculture and Fisheries (Scotland) Act 2007, Fish Health Inspectors inspect sites to ensure that measures are in place to contain fish and prevent escapes. However, they are not engineers and can only conduct an above-water-line check for obvious equipment failures. Inspectors will also check records for attestations from manufacturers that the equipment is fit for purpose, but cannot be expected to identify below-water-line failures or whether equipment is appropriately set up. A standard would help address this, at least to an extent;
- industry have, in the past suggested that planning authorities have been reluctant to approve new sites, particularly where there may be local concerns about potential escapes and impacts on the environment. The current system relies on companies asking suppliers for attestations that the equipment is “fit for purpose”. Having a standard in place would help reassure planners, decision makers and the public about the suitability of equipment;
- Norwegian government and industry have advised that NYTEK raised the level of awareness around escapes and forced farm managers to improve training of personnel and to be more demanding towards equipment suppliers. We would anticipate similar benefits in Scotland;
- work is well underway on developing global aquaculture equipment standards through an international standards technical working group (ISO 234). It is possible that these will be adopted by the EU. Scotland (through the UK – British Standards Institute) is now represented on the group and

will have the opportunity to ensure development of complementary standards.

64. Preliminary work on developing a draft standard is well underway. In late 2010, Thistle Environmental were appointed, through the Scottish Aquaculture Research Forum (SARF), to develop the draft technical standard in conjunction with industry. The team included specialist Scottish and Norwegian aquaculture engineers and looked closely at existing standards and protocols, including the Norwegian Standard NS9415 and the accompanying NYTEK legislation; identified which sections are transferable; and highlighted additional considerations for the unique Scottish circumstances. The project team is expected to deliver two key documents to SARF: a draft Scottish technical standard; and a gap analysis report recommending further information required to develop the standard (which will also include recommendations for inspection, certification and accreditation methods).

65. This process to date has been steered by representatives of the Improved Containment Working Group and involved close dialogue with Atlantic salmon and rainbow trout farmers; trade associations; pen, net and mooring manufacturers; engineers and Scottish Government. This is to ensure that the standard is developed appropriately and will be fit for purpose.

Q 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.)

Tracing Escapes

66. Despite progress and efforts towards technical solutions etc, escapes may not be totally eradicated. We therefore suggest some additional measures.

67. As genetic marking and tracing methods develop it is expected that it may become easier to trace escaped fish back to their farm of origin, so that the fish-farmer in question can be notified and if necessary take remedial action. Future methodological developments may allow tracing by a number of different means and we believe it would therefore be appropriate not to restrict any power to a specific type of sample.

68. While section 5 (3) (a) of the Aquaculture and Fisheries (Scotland) Act 2007 provides a power for inspectors to take samples of fish from farms for the purposes of ascertaining whether fish have escaped from that farm, these powers are tightly drawn and no specific power exists for Inspectors to take samples upon which future investigations and tracing could be based. We therefore propose to create a more general ***power for authorised officers to take or require samples of fish from farms.***

Q 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?

69. For clarity, it is the intention that these powers would be used on a targeted basis. It is not the intention to undertake universal sampling and to create a national database of genetic samples, which would be impractical, unaffordable and unnecessary.

SECTION 4: SALMON AND FRESHWATER FISHERIES MANAGEMENT



70. We are committed to supporting and protecting our famous and valuable wild salmon and freshwater fisheries. At the heart of this is our commitment to modern, evidence-based management of the fisheries, harnessing their social and economic potential for the good of local communities.

71. We want to ensure management structures that are fit for purpose in the 21st Century. At the same time, we do not want to undermine the commitment and enthusiasm of the many who actively support improvements and demonstrate consistent good management practice in partnership with local communities and stakeholders. The proposals outlined below build on earlier work and have been developed in line with that over-arching aim. We see them as the first step towards modernising and improving arrangements for managing our salmon and freshwater fisheries. We will consider the case for further measures, in light of experience, later in the term of this Parliament.

72. The Strategic Framework for Freshwater Fisheries published in July 2008, <http://www.scotland.gov.uk/Publications/2008/06/26110733> contained a range of 'priorities for action'. These are initiatives designed to help fill gaps in our knowledge and allow Scotland to move towards its shared vision for freshwater fisheries that:

Scotland will have sustainably managed freshwater fish and fisheries resources that provide significant economic and social benefits for its people.

73. Improvements have been secured through a variety of means, drawing on for example the efforts of the locally based network of rivers and fisheries

trusts, as well as angling improvement associations and others. The fisheries trusts sector has been at the forefront of developing modern, non-statutory fishery management plans covering up to 90% of mainland Scotland and the Outer Hebrides and Skye.

74. In 2010 the total rod and line catch (retained and released) of salmon of 110,496 was the highest on record and showed an increase of 31% from the previous 5-year average. Rod catch constituted 80% of the total Scottish catch compared to 11% when records began in 1952. Catch and effort in both net fisheries - the fixed engine net fishery in the near coastal waters and the net and coble fishery - were less than 7% of the maximum recorded since records began. Fishing effort in both net fisheries remains at historically low levels.

75. In 2010 the fixed engine net fishery reported a catch of 15,577 wild salmon and grilse, the net and coble fisheries 11,738 and the rods retained 32,712 fish with a further 77,784 reported as released. Catch and release in the rod and line fishery continues to increase. Overall in 2010, 70% of the annual reported rod catch was released with 86% of the rod catch of spring salmon released.

Modernising the Operation of District Salmon Fishery Boards

76. Boards are described in the 2003 Act as committees of the association of salmon fisheries proprietors in the district. Reflecting the historical nature of District Salmon Fishery Boards, the 2003 Act gives Boards certain powers but relatively few duties. For example Boards are required to co-opt representatives of salmon anglers and tenant netsmen, appoint a clerk and may appoint water bailiffs. Boards are subject to certain duties regarding the preparation each year of a report, and a statement of accounts which has to be audited. While there is a duty on the Board's clerk to call an annual meeting of proprietors to consider the report and audited accounts there is no obligation to publish the report or accounts more widely.

77. All public bodies, and those with public law functions, should operate in an open and transparent manner. For example the Ethical Standards in Public Life etc (Scotland) Act 2000 demonstrates the commitment of Scottish Ministers and the Scottish Parliament to high standards of conduct of those in public life such as councillors in local authorities and members (such as board members) of certain public bodies. The 2000 Act makes provision for the issue of Codes of Conduct to assist those in public life in the conduct and discharge of their functions. We want to ensure that the principles and practices of good governance are demonstrated by District Salmon Fishery Boards in the operation of their functions in their local communities.

78. One option to underpin current good practice might be to update the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 to place ***a new duty on Boards to act fairly and transparently***. This proposed duty could be supported by a non-statutory, sector-developed Code of Good

Practice on the operation of Boards. Such a code could include, for example, recommendations for Boards to:

- hold Annual Open Meetings i.e. in addition to the statutory requirement on Boards to call an annual meeting of proprietors;
- hold Board meetings in public, unless there is good reason not to;
- publish summary reports and/or minutes of meetings;
- invite evidence from members of the public on matters of public concern;
- consult stakeholders and users on a wide range of issues; and
- make their Annual Report and audited accounts widely available e.g. by publishing on web sites and local distribution.

79. The Association of Salmon Fishery Boards (ASFB) and the Rivers and Fisheries Trusts of Scotland (RAFTS) have developed their own guidance on fisheries administration and on other management issues, such as stocking. Other representative bodies such as the Association of Scottish Stillwater Fisheries (ASSF), the Scottish Federation for Coarse Angling (SFCA) and the Institute of Fisheries Management (IFM) have similarly developed or are developing codes of practice for their sectors.

80. By way of a parallel, there has been a considerable investment by industry and government in developing A Code of Good Practice for Scottish Finfish Aquaculture, which has encouraged the development and dissemination of good practice and has formed a platform for a number of further measures set out elsewhere in this consultation paper.

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

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

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

Enhancing the Management of Salmon Fisheries (Including Mixed Stock Salmon Fisheries)

81. One of the priorities for action from the Strategic Framework for Freshwater Fisheries was to develop a strategy for mixed stock salmon fisheries. The report of the stakeholder working group, under independent chairmanship, was published in March 2010.

82. In the light of the Executive Committees of key organisations on the Mixed Stock Fisheries Working Group being unable to endorse a package of recommendations that others could accept, the Chairman took responsibility for the recommendations in the report. A number of those recommendations would require new primary or secondary legislation to implement. This section of the consultation therefore invites views on those recommendations.

83. The aims and interests of angling proprietors and net fishermen are fundamentally different. Angling proprietors seek to manage wild salmon and sea trout fisheries for abundance of angling opportunity and enjoyment. Netting interests seek a fair share of fishing opportunities in the lawful exercise of their heritable legal right to fish.

84. There have been calls from some in the domestic and international angling and salmon conservation community for the complete and immediate closure of the net fisheries in Scotland's near coastal waters, with compensation payable to netsmen. Netsmen, in turn, may be expected to object to any interference with their legal rights to fish for wild salmon and sea trout.

85. Our aim is to manage stocks sustainably, in the interests of both sectors. We - along with rod fishery, net fishery, conservation, angling and the wider stakeholder community - recognise that on occasion there may be a need to reduce all forms of exploitation, for compelling and urgent conservation reasons. Our strong preference is for voluntary, locally developed conservation measures. This accords with the very welcome voluntary restraint shown by rod and line interests – for example, in the high levels of practice of catch and release, actions by the members of the Salmon Net Fishing Association of Scotland in voluntarily delaying the start of their fishing from February to 1 April and other voluntary measures which have seen the commencement of some net fisheries delayed until 1 May. 70% of annual rod catch of salmon were released in 2010 compared to less than 8% in 1994 and for spring fish, anglers released 86% of their catch compared to less than 1% in 1994.

Statutory Carcass Tagging

86. We welcome the initiatives taken by some members of the Salmon Net Fishing Association of Scotland and others, such as independent netsmen, to pilot voluntary carcass tagging. These initiatives build on the long standing legal requirement in section 21 of the 2003 Act for all packages of wild salmon and sea trout to be marked conspicuously on the outside with the name and address of the sender; and are in line with Scottish Government's Food Strategy for Scotland. Voluntary carcass tagging of wild salmon and sea trout consigned for sale enhances traceability and strengthens the reputation of Scottish wild salmon as a food of unique quality and provenance.

87. ***We propose powers to introduce statutory carcass tagging of wild Atlantic salmon and sea trout, with sanctions for non-compliance.*** We believe this has the support of angling and conservation interests, will further enhance traceability, including for Scottish net caught fish and is in line with our support for voluntary trials of carcass tags by a number of netting businesses.

Q Do you agree that Scottish Ministers should have powers to introduce a statutory system of carcass tagging for wild Atlantic salmon and sea trout?

88. We will continue to work with all stakeholders on traceability and quality assurance as well as in support of the relevant authorities in the enforcement of the existing criminal law on fishing for, the possession of, or attempted illegal sale of wild salmon and sea trout.

Fish Sampling

89. At present net and rod fishery proprietors are under no legal obligation to provide genetic samples for scientific analysis, but many do so willingly and have done so for many years.

90. To underpin such current co-operation, reflecting proposals set out earlier in this document for farmed fish and to ensure that Scotland can access a full range of scientific tools to support evidence based management of wild Atlantic salmon and sea trout and the fisheries, ***we propose to create powers for Ministers to take or require fish and/or samples for genetic or other analysis*** from any fishery.

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

Management and Salmon Conservation Measures

91. At present, under Part 2 of the 2003 Act, where there is a District Salmon Fishery Board, Ministers can only make an Annual Close Time Order following an application to them by the Board. Where there is no Board, two proprietors can apply for such an Order.

92. This leaves Ministers with no role or discretion to take, or to require, action in circumstances where they may feel this necessary – for example, in a district with no Board and where there are significant concerns about the status of the stocks. We propose to give them ***powers to initiate changes to Close Time Orders*** where they feel it is necessary and appropriate to do so.

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

93. There is no current provision to ***enable Ministers to promote combined conservation measures*** - for example for Annual Close Time Orders under section 37 of the 2003 Act, combined with conservation regulations under section 38.

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

94. Nor is there provision to ***allow Ministers to attach conditions to salmon conservation measures*** - for example, requiring Boards as local managers to carry out monitoring and reporting on the implementation of salmon conservation measures and the status of stocks or the fisheries.

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

Dispute Resolution

95. Differences of interest and perspective, for example between rod and line fishermen and netmen, can, despite the efforts of the parties concerned, sometimes impede the ability for local interests to reach agreement on voluntary and statutory salmon conservation measures; and on any associated compensation for fishing opportunities foregone.

96. The Mixed Stock Salmon Fisheries Working Group recommended the introduction of statutory mediation – which could cover disputes between Boards and netmen on salmon conservation measures and the basis and amount of compensation for netmen affected by voluntary or statutory salmon conservation measures.

97. New powers would be required for ***Scottish Ministers to establish and maintain a panel of independent mediators***, from which Boards would be required to appoint and pay for a mediator to investigate and report on the case for conservation measures proposed by a Board, and on the basis and amount of compensation for fishing opportunities foregone, for example by netmen. Ministers recognise that there may also be a wider role for independent mediation or facilitation in matters to do with the management of wild salmon and freshwater fisheries - for example in relation to proposals for an extension to the rod fishery season or to restrict the use of particular baits or fishing methods.

98. By way of example, the Land Reform (Scotland) Act 2003 section 88 requires Scottish Ministers, on accepting an application from a crofting community to buy croft land, to appoint a suitably qualified and independent person with knowledge and experience of valuing land or sporting interests to assess the value of croft land being acquired under the community right to buy. The appointee acts as an expert, not an arbiter.

99. We believe ***powers for Scottish Ministers to prescribe, in regulations, procedures for statutory mediation*** could be helpful to support the use of mediation by Boards and local interests, to resolve disputes related to salmon conservation measures and any associated compensation arrangements as well as potentially of wider application in freshwater fisheries management.

Q 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?

Improved Information on Fish and Fisheries

100. At present, section 64 of the 2003 Act gives Ministers powers to conduct inquiries and investigations into questions of practical or scientific importance to salmon and freshwater fisheries. It confers powers of entry and

powers to conduct necessary operations in any fishery provided that no damage shall be done to the fishery and that there is no interference with the rights of the owner or occupier of the fishery.

101. Section 64 also gives powers to Ministers to collect such statistics relating to the number of salmon and sea trout caught in any salmon fishery and the species, description and weight, and method and date of capture as they may consider necessary.

102. Marine Scotland Science carries out an annual survey of salmon and sea trout catch data, including information on effort in the net fisheries but not in the rod fisheries. The absence of effort data (along with gaps in other data) limits the value of the rod catch data for assessing the status of stocks. There may be ways of obtaining, and developing, effort data for particular rod fisheries - for example using historical records maintained by proprietors for their beats or focused improvements in data gathering on rivers having counters and/or good electro-fishing coverage to agreed standards. However we believe there may be a case for ***extending the present annual catch survey to include effort data on the rod fisheries*** on a mandatory and comprehensive basis. There would be associated sanctions for failure to comply, or for providing false or misleading data.

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

103. The 2007 Act introduced new order-making powers for Ministers to obtain information on the economic, social and environmental aspects of fish farming and shellfish farming. These include powers to require information to be provided in writing and for the compilation and retention of records. The Act also gave powers for an inspector to require the production of, inspect and take copies of any records retained under the record keeping requirement.

104. Comparable ***record keeping, reporting and inspection requirements*** on the exercise by Boards of, for example, their licensing functions on the introduction of salmonids to freshwater, under section 33 A of the 2003 Act, could enhance the robustness of the new licensing regime in the interests of biodiversity and promote greater openness and transparency. Similarly there may be a public interest in more accessible and consistent information on the use of broodstock and hatcheries to enhance stock. This could also help to provide more sound evidence and inform local management and assessment of the fish and fisheries.

Q 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?

Q 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?

Licensing of Fish Introductions to Freshwater

105. In salmon districts with a Board, the Board is the licensing authority for the introduction of salmon or salmon spawn. In all other cases (including for salmon in salmon districts with no Board) Marine Scotland Science acts as the licensing authority on behalf of the Scottish Ministers.

106. The licensing regime came into operation on 1 August 2008. While it is still early days for a full assessment of the operation of the regime, there seems a case for ***new reserve powers for Scottish Ministers to recall, restrict or exclude the jurisdiction of Boards***. This could be in circumstances where the Board is authorising its own actions or, for example, where the inland waters are in, or may affect, a designated site for salmon or other protected species under the Habitats Directive.

Q 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? If so, why and in what circumstances?

SECTION 5: MODERNISING ENFORCEMENT PROVISIONS

107. We intend to make improvements to enforcement provisions in two specific areas. The first is a series of improvements in the area of aquaculture and wider marine-related offences. The second relates to specific changes that apply in relation to the enforcement of sea fisheries regulations only.

108. The proposed improvements on wider marine enforcement are:-

- making certain aquaculture offences strict liability;
- providing for Fixed Penalty Notices as alternatives to prosecution for aquaculture and other marine offences;
- increasing the maximum sum that can be levied under a Fixed Penalty Notice.

Strict Liability for Certain Offences Related to Aquaculture Operations

109. Generally speaking, taking enforcement action where there is suspected non-compliance involves investigators establishing through the collection of evidence what happened and, where this behaviour constitutes a criminal offence, who was directly responsible and criminally liable for the illegal activity.

110. The nature of aquaculture activity means that, for logistical and other reasons, it may not always be possible to determine who was directly responsible and ought to be held liable for apparent illegal activity. The regulatory bodies concerned have experience of situations (related to the formerly Food and Environment Protection Act 1985 (Part 2), now Marine Licensing arrangements) where this has acted as a barrier to appropriate enforcement action, with evident implications for our marine management responsibilities.

111. A potentially simpler and more effective model is one where strict liability for any non compliance rests with persons in a particular position or capacity. The practical effect of this is that for relevant offences, investigators need only to pursue one avenue of enquiry to gather sufficient evidence to establish what happened, as there would be no requirement to demonstrate intent on the part of the accused. Where evidence proves that an offence has been committed, certain persons are guilty of that offence by virtue of the capacity or office they hold at the time of the offence. We are aware there are relatively few strict liability offences currently in Scots law, as strict liability for offences alters the normal rules relating to the creation of offences by removing the need for prosecutors to demonstrate intent on the part of the accused. However, strict liability for regulatory non-compliance is commonly applied in marine matters in relation to commercial fishing activity where criminal liability normally rests with the master and owner of the fishing vessel concerned.

112. We therefore believe it would be appropriate to apply strict liability arrangements for offences related to breach of requirements for, or conditions of, Marine Licensing requirements (under the Marine (Scotland) Act 2010), insofar as they apply to aquaculture operations – and, potentially, in other, similar situations.

Q 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?

Widening the Scope of Fixed Penalty Notices

113. There have been a number of major and significant reforms to the criminal justice process in Scotland in recent years. The Criminal Proceedings etc (Reform) (Scotland) Act 2007 is an example of such reform, the origins of which can be found in a review of the summary justice system carried out by an independent committee chaired by the late Sheriff Principal John McInnes. The McInnes Report brought forward recommendations that are at the core of the reforms contained within the 2007 Act including extending the range of alternatives to prosecution that can be offered.

114. In a wider UK context, there had been the earlier reports looking principally at regulatory justice which were carried out by Sir Philip Hampton in 2004, and Professor Richard Macrory in 2006.

115. The Hampton Review proposed that any penalty regime should be based on the risk of re-offending and the impact of the offence, with a sliding scale of penalties that are quick and easier to apply for most breaches, with tougher penalties for persistent rule breakers. That recommendation was subsequently considered by Professor Richard Macrory in his report which looked at making sanctions effective. Both the Hampton and Macrory reports are concerned with better regulation and achieving outcomes in a way that minimises the burdens imposed on businesses.

116. Macrory's vision for a penalties system was one which breaks with the tradition of relying on the criminal courts as the default means of punishing business non-compliance with regulatory obligations. He urged that regulators should adopt a transparent system of sanctions that would permit a range of regulatory offences to be handled other than by means of criminal prosecution. Improving the ability of regulators to apply appropriate sanctions ought to improve overall compliance and add credibility to the regulatory regime and means that minor breaches are treated as such.

117. Section 25 of the Aquaculture and Fisheries (Scotland) Act 2007, makes provision for enforcement officers to issue Fixed Penalty Notices ("FPNs") in certain circumstances as an alternative to prosecution in the criminal courts. At present an FPN may only be offered as an alternative to prosecution for offences under sea fisheries enactments. ***We propose 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. This will mean that enforcement officers have access to a common set of options to deal with non-compliance.

118. The practical effect of the proposal is that, where appropriate, offenders may be given the option of paying a fixed financial penalty as an alternative to a report being submitted to the Procurator Fiscal for prosecution. If the fixed penalty is paid within the period given, then that is the end of the matter. The fixed penalty is not a criminal conviction nor can it be treated as such. Of course, the offender does not need to accept and pay the fixed penalty. By not paying the fixed penalty within the deadline given they can effectively elect to have the matter dealt with in the criminal courts. The advantage for businesses within the fixed penalty system is certainty around what the punishment will be, and that the matter can be dealt with quickly. Operators can reduce costs normally associated with the criminal justice process including legal costs and the time required to attend court in person. Offenders can also avoid acquiring a criminal record, and in certain circumstances the possibility of a custodial sentence, if they are not prosecuted in the criminal courts.

119. The increased use of fixed financial penalties will also help free up time in the criminal courts for more serious offences.

Q 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?

120. We also think there is a case to increase the maximum penalty which can be offered through a fixed penalty and, through making this change, the number of offences that can be dealt with by way of an FPN.

121. The maximum penalty that can be offered currently is capped at a sum not exceeding 80% of level 4 on the standard scale (currently £2,500). The practical effect of this currently is a maximum penalty of £2,000. We consider that while this level of penalty may be sufficiently punitive in certain circumstances, it may not be appropriate or represent a sufficient deterrent for more serious offences or in the case of, for example, large businesses where the benefits of non-compliance may significantly outweigh the potential penalty.

122. **We therefore propose increasing the maximum penalty to a sum equal to twice level 5 on the standard scale (£10,000).** This does not mean that all fixed penalties would be set at £10,000. We would be able to prescribe, through a statutory instrument, different scales of fixed penalty for each marine regulatory area. At present, for example, a range of fixed penalties is used in relation to sea fisheries set at £250, £500, £1,000, and £2,000. Fixed penalties used for sea fisheries offences are capable of being doubled up in certain circumstances, to deal with repeat offending. So

someone who has already been given a fixed penalty for say £250 and commits a further infringement of the same rule will trigger a doubling of the second fixed penalty to £500. Limits may also be imposed on the number of fixed penalties that may be offered before the matter must be referred to the Procurator Fiscal. At present, for example, in relation to sea fisheries offences, no more than two fixed penalties can be offered for the same type of infringement meaning that the third infringement automatically requires the submission of a report to the Procurator Fiscal. In this way the criminal courts are preserved for only the most serious offences or cases involving habitual repeat offending.

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

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

Changes to Sea Fisheries Legislation

123. We also propose to make some amendments to sea fisheries legislation. These relatively minor changes are intended to improve the current arrangements. They will also further align fisheries legislation with that elsewhere in the UK.

124. The proposals, which are discussed in greater detail below, are to:-

- amend section 30(1) of the Fisheries Act 1981, insofar as it relates to Scottish vessels and nationals, to create offences and provide enforcement powers for the enforcement of EU fishing restrictions and obligations beyond the 200 mile limit;
- provide specific powers to detain vessels for the purposes of court proceedings;
- provide specific powers to allow enforcement officers to dispose of property and forfeit prohibited items;
- provide enforcement officers with the power to inspect objects in the marine environment;
- amend Section 1 of the Sea Fisheries (Shellfish) Act 1967 to apply that Act to all shellfish specified in an Order; and
- amend paragraph 4(2) of Schedule 1 to the Sea Fisheries (Shellfish) Act 1967 to remove the reference to actions by Scottish Ministers in light of material concern.

Enforcement of EU Obligations Beyond British Fisheries Limits

125. Section 30(1) of the Fisheries Act 1981 creates offences and gives powers to inspectors for the enforcement of contraventions of EU restrictions and obligations on fishing. It provides for effective enforcement of EU obligations on sea fishing where an order has not been made under Section 30(2) of the Act. In its present form, the scope of section 30(1) is confined to activity which takes place within British Fisheries Limits. Section 30(1) was amended as regards England and Wales by the Marine and Coastal Access Act 2009 to create offences for English and Welsh vessels and nationals beyond British Fisheries Limits. ***We propose to amend section 30(1) insofar as it relates to Scottish vessels to create offences and provide enforcement powers for the enforcement of EU fishing restrictions and obligations beyond the 200 mile fisheries limit.*** The proposed amendment will also mean that fewer statutory instruments are required in future to transpose EU restrictions and obligations on commercial fishing.

126. This proposal mirrors changes that have already been made for England and Wales through the Marine and Coastal Access Act 2009.

127. If the proposed changes are not made, there is a risk that the Scottish Government may not fully meet obligations under the Common Fisheries Policy to control the activity of Scottish vessels engaged in commercial fishing activity.

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

Powers to Detain Vessels in Port

128. Sea fisheries enforcement officers have the power in certain circumstances to direct a vessel to port and order the master of the vessel to detain the vessel in port while they make any necessary enquiries.

129. This power is most commonly used when non-compliant foreign vessels are encountered. Where non-compliance is detected on a Scottish or other UK vessel, evidence of the infringement is gathered at the scene where this is possible and the facts are then subsequently reported to the Procurator Fiscal. Vessels are only escorted to port where evidence cannot be gathered at sea, for example where it might be necessary to weigh the catch. Where the Procurator Fiscal instigates criminal proceedings, the accused person is normally cited to appear in court on a given date. Where foreign vessels or individuals who live abroad are involved in the commission of offences, a rather different approach is required. Here, vessels are normally directed to port and detained whilst enquiries are made. Reports are 'fast tracked' to the Procurator Fiscal, and the accused person appears in the earliest possible court diet on a quasi-custody basis, while the relevant fishing vessel remains detained. The rationale for the detention is to avoid the vessel sailing and accused persons attempting to evade being brought to justice. There is

ambiguity regarding the scope of existing statutory provisions to detain vessels beyond the point where a report has been submitted to the Procurator Fiscal.

130. ***We therefore propose to introduce a specific power to allow enforcement officers to detain a vessel in port to ensure that any suspect appears in court.*** This proposal mirrors changes that have already been made for England and Wales through section 279 of the Marine and Coastal Access Act 2009.

Q 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?

Disposal of Property/Forfeiture of Prohibited Items

131. As a generality, sea fisheries enforcement officers have powers to seize evidence including nets and other fishing equipment. They do not, however, have any authority to dispose of such items unless they are forfeited by the courts and at the end of proceedings or, if no proceedings are taken, they may have to return property which would be illegal to use in commercial sea fisheries.

132. ***We propose to provide the necessary power to dispose of property or forfeit items which are of themselves illegal.*** The process will include any necessary safeguards. A practical example of this proposed power would see enforcement officers able to return under-sized lobsters to the sea where they may continue to grow, or to retain equipment used in the illegal practice of electro-fishing in coastal or marine waters which is prohibited under EU rules.

133. This proposal mirrors changes that have already been made for England and Wales through sections 270-278 of the Marine and Coastal Access Act 2009.

Q 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?

Power to Inspect Objects

134. Enforcement powers currently available to sea fisheries enforcement officers are generally predicated around inspection scenarios involving vessels, vehicles or premises. There is a gap in enforcement powers when dealing with circumstances not involving a vessel, a vehicle, or relevant premises. Officers may encounter objects in the sea, or in harbours, or on the foreshore which clearly relate to sea fishing activity but they are not at that time associated with one of the inspection scenarios envisaged. An example of this is the many keep creels that are used by fishermen to store lobsters

before they are taken to market or to processors to be sold. These may be encountered buoyed at sea, or within the confines of a harbour.

135. ***We propose to provide the necessary power to allow sea fisheries officers to examine relevant objects*** which are not directly associated with one of the three classic enforcement scenarios.

136. This proposal is similar to changes that have already been made for England and Wales through the Marine and Coastal Access Act 2009.

Q 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?

Sea Fisheries (Shellfish) Act 1967

137. We propose to make the application of the Sea Fisheries (Shellfish) Act 1967 clearer by ensuring that the Act applies to all shellfish as opposed to certain listed shellfish and by simplifying the role of Scottish Ministers in relation to the appointment of an inspector to undertake an inquiry into a proposed order. The amendments would make the use of the Act more straightforward in future without removing any safeguards. They would also bring the legislation into line with that in England and Wales.

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

SECTION 6: PAYING FOR PROGRESS

138. Many of the issues set out in this consultation paper, and indeed much ongoing activity (such as scientific research and analysis, inspection and enforcement regimes etc) necessary to ensure sustainable operations, developments and improvements in aquaculture and all fisheries, require substantial and increasing resources.

139. We recognise that stakeholders in the respective sectors may contribute to necessary work, whether directly or indirectly, in a number of ways: and that their ability to do so differs. Nonetheless, related public sector costs and contributions are substantial, with increasing demands for additional work/resources at a time when public sector budgets are being severely reduced. In many cases, work and/or 'services' which provide direct benefits to individual businesses, or to a particular sector, are provided by the public sector free of charge or at less than full resource cost. The budgets for these services have been largely protected but we expect they will need to rise in order to comply with ongoing regulatory requirements and the demands of growing marine industry sectors.

140. This is not a sustainable position. We need to review our approach to cost sharing and recovery, so that those who benefit from particular work and services pay a fair share of the costs: and in line with wider public sector finance policy and the 'beneficiary pays' principle. But in return we recognise that we would require to deliver an appropriate standard of service to those individuals and businesses subject to any charge.

141. The rationale and detailed arrangements for charges need to be considered and justified on a case by case basis. However, we consider it would be sensible to make ***enabling provisions in legislation for a) direct charges for services from which individuals/businesses gain a direct benefit; and b) within the scope of devolved powers, more generic charges which might be applied at a broader (sectoral) level***, reflecting the more generic benefits to a group or sector arising from public sector expenditure and resource commitment.

Q 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?

Q 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?

Q If no new way of resourcing such activity can be found, what activities do you suggest might be stopped to free up necessary funds?

SECTION 7: ANY OTHER ISSUES

142. If there are any issues not covered in this consultation paper on which you would like to comment, and/or you think we should consider for legislation, you may set them out below.

ANNEX A

RECOMMENDATIONS OF HEALTHIER FISH WORKING GROUP RELATING TO SEA-LICE DATA

Industry has already stated a robust methodology for counting, frequency and intensity of counting, seasonal threshold lice burdens and recommended practical action. For SSPO members this is subject to external audit; for Tripartite Working Group (TWG) Area Management Agreement (AMA) participants this data is often openly provided & subject to stakeholder review on a site by month & by treatment basis.

Of critical interest to neighbouring sites and businesses is that treatments designed to bring about compliance with the Code should be successful. Non-efficacious treatments are reportedly rare but where they occur they represent a threat to continued sea-lice control within a management area. It is possible, while not inevitable, that serial “failed” treatment indicates an underlying desensitization to applied medicines. TWG AMA stakeholders are already provided with treatment efficacy data but not all farming areas subscribe to the AMA process and the quality of data released varies.

It is proposed that successive delousing efficacy failures should require a mandatory notification to MSS. Failure is defined as two successive treatment efficacies of less than 50% *Lepeophtheirus salmonis* (Leps, all stages) removal.

It will be necessary to agree:

- (i) Baseline lice burden: “the site average Lep burden the week preceding treatment”
- (ii) Post treatment burden: “the site average Lep burden a week post treatment”
- (iii) Cages sampled pre & post treatment to be identical (as far as practical)
- (iv) Lack of efficacy must be reported regardless of the delousing medicine used
- (v) Efficacy calculation to be the % reduction in site average Lep
- (vi) The operating company must have formally allocated responsibility for the review & reporting of sea-lice efficacy data to a named individual.
- (vii) Reporting of two successive non-efficacious treatments (as defined above) to be made within 14 days of the second treatment.

This proposal is in no way intended to replace the voluntary Suspected Adverse Reaction Surveillance Scheme (SARS) operated by the Veterinary Medicines Directorate (VMD), which serves wider purposes than that

focussed on here. Nevertheless a range of information provided to the VMD under SARS should be of interest to MSS and we would encourage the development of links between the organisations where appropriate.

Alongside the above requirement to report, the SSPO is developing a database system to allow it to gather information on sea lice. This will have two purposes:

- Firstly, the analysis of data submitted by companies on a farm by farm basis will be used to provide information and support for those currently involved in, and in the process of developing, FMAs in order to improve the flow of information within and between areas and to provide early warning of potential problems with e.g. the efficacy of treatments. This will also provide an overview of the sea lice situation across the industry as a whole. The data provided to SSPO will be covered by confidentiality agreements and raw data will not be available other than to the companies providing it and the SSPO. Processed data, showing patterns and trends, will be supplied to those involved in FMAs, most probably through area coordinators.
- Secondly, the database will allow the publication of information which might be of interest to external stakeholders and the general public. Information on mean sea lice numbers and related information across six areas of Scotland will be published on the SSPO website. When live, the system will include data gathered from the beginning of January 2010. The database will be extended to include other important industry information covering fish health and other aspects of production in due course.

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. The requirements of those operating on a small scale should be recognised and given equal status to larger operators, who may find it easier to fallow sites due to have sites at different locations. Fish farm debris is a major hazard to users of the marine environment, suitable identification of equipment to identify ownership should be a condition of FMA. Furthermore, a bond should be lodged as part of the planning process to provide funding for recovery of debris and for decommissioning of sites

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.

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 SSPO seems to be the logical Organisation to take forward responsibility for developing arrangements which would be take forward through an approved independent arbitration process

Unused Consents

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

Yes. In particular, sites that have never been developed by the original applicant. Undeveloped sites should not become a tradeable commodity and if lying dormant for more than 2 years after planning has been approved, should revert back to the Crown.

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

Unused contents should be relinquished after 2 years and this would improve management of areas and provide a more transparent and open approach to who owned sites.

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.

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

Should relate to sites where there has been clear breach of agreed management procedures.

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 collection and publication of sea-lice data should be open and transparent and should be updated on a monthly basis. Access to that information should be readily available on a Government website on a site by site basis. Sea-lice infestation and the constant use of chemicals are of serious concern to the commercial shellfish sector who fear that regular use of chemicals is having a detrimental impact on shellfish recruitment, in inshore waters.

Surveillance, Biosecurity, Mortality and Disease Data

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)

Information on fish mortality should be provided to Marine Scotland within 48 hours. Advance notification of movements and disease treatments should be sent to Marine Scotland, so that independent random compliance monitoring can be undertaken periodically.

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)

Yes.

Wellboats

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

Yes. It should be compulsory for wellboats to have similar VMS aboard to similar sized fishing vessels. When salmon are treated for disease aboard wellboats, that water should only be discharged in pre-designated areas well offshore. Wellboat activity should be monitored by Marine Scotland Compliance officers, who have the experience of inspections at sea.

Processing Facilities

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

Yes.

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)

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.

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. There is clear evidence within Western Isles sea lochs that chemicals used for sea-lice treatments at salmon farms have had a negative impact on crustacean recruitment in some areas.

Furthermore, stored lobsters in Loch Carnan, South Uist have died the day after salmon were treated in cages 800 metres away from the stored lobsters. More use should be made of wellboats for treatments, so that water quality can be maintained in the sheltered waters that are of such economic importance to the small static gear shellfish fleet.

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. All the equipment should be clearly identified and tagged to a site, so that any debris from site can be identified and a recovery claim made against the owners of the equipment. Fish farm debris and broken cages pose a serious threat to other marine users and this matter will be raised at the relevant Western Isles MCA Safety Committee, where Marine Scotland Compliance officers will be in attendance.

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.

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)

Non-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)

Not relevant to fishing industry.

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

Not relevant to fishing industry

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)

Not relevant to fishing industry.

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)

Not relevant to fishing industry.

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. All other commercial fisheries have to provide information which can be used to verify economic importance and state of stocks.

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)

Accurate catch rates, sizes and value of sector.

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)

Where a Salmon Board is authorizing its own actions

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 the apply to aquaculture operations and, potentially, in other situations? (Page 37)

Yes.

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.

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)

No.

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

No.

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)

No. The vessel should be allowed to return to sea if a suitably qualified skipper is available to take the vessel back to sea to resume fishing.

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.

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)

No.

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)

No. Further more detailed consultation would be required to investigate possible alternative funding sources. Fishing industry already operating with lower profit margins due to high fuel costs, additional electronic monitoring costs, VMS, E-logs. Any additional costs will make recruitment to sector more difficult.

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)

More detailed discussions and options to be considered.

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)



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