

Aquaculture and Fisheries Bill

Consultation Analysis - Summary Report

August 2012

1 The Consultation Document and Analysis

- 1.1 The Aquaculture and Fisheries Bill – Consultation Document¹ set out key issues and priorities in relation to Scotland’s aquaculture, wild salmon and freshwater fisheries industries. The Consultation Document explored possible legislative measures for a potential Aquaculture and Fisheries Bill during the current Parliament. It also covered wider issues, such as provisions to protect shellfish growing waters. The document built on best practice and voluntary arrangements where appropriate, to protect the interests of those who have invested in the highest standards of management and husbandry.
- 1.2 The Consultation Document was published on the Scottish Government website on 6 December 2011. The document was accompanied by a Strategic Environmental Assessment (SEA) Environmental Report² and a partial Business and Regulatory Impact Assessment (BRIA)³ of the proposals, published on 22 and 8 February 2012 respectively. The consultation period was extended from 2 March to 13 April 2012, to provide consultees with additional time to consider the accompanying impact assessments.
- 1.3 This analysis of consultation responses has been undertaken on behalf of Marine Scotland by the Scottish Government’s Environmental Assessment Team. The analysis was undertaken in accordance with Scottish Government’s Good Practice Guidance (May 2010), and the findings are presented in the Aquaculture and Fisheries Bill Consultation Analysis – Main Report.
- 1.4 This report comprises a summary of that report and is structured as follows:
- Section 1 (this section) provides an introduction to the Consultation Document, SEA Environmental Report and Partial BRIA.
 - Section 2 details the types of responses received and the sectors and groups who responded to the consultation.
 - Section 3 provides an overview of the consultation questions and an introduction to the following sections.
 - Sections 4 – 9 provide a summary of the key issues, themes and trends raised by respondents for each of the consultation questions.

¹ Marine Scotland (2011) Aquaculture and Fisheries Bill Consultation Document [online] Available at: <http://www.scotland.gov.uk/Publications/2011/12/06081229/0>

² Marine Scotland (2012) Environmental Assessment (Scotland) Act 2005 Aquaculture and Fisheries Bill Consultation Document Environmental Report [online] Available at: <http://www.scotland.gov.uk/Publications/2012/02/6255/0>

³ Marine Scotland (2011) Aquaculture and Fisheries Bill Consultation Document Partial Business and Regulatory Impact Assessment [online] Available at: <http://www.scotland.gov.uk/Publications/2012/02/8291/0>

- Section 10 provides a summary of additional comments made by the consultees in their responses to the consultation.
- Section 11 summarises the main themes and trends identified in the consultation analysis.

2 Overview Of Respondents

- 2.1 The consultation generated 1,342 responses. These responses represented a good cross-section of interested opinion from the aquaculture, marine, freshwater fisheries, environmental, voluntary and public sectors, with a range of additional responses from interested members of the public and other commercial businesses.
- 2.2 Of these, some 1,193 were in the form of “Interest Group Responses” received from individuals associated with the aquaculture industry and voluntary sector, consisting of letters providing general comments on the paper but not addressing the questions asked in the consultation, and questionnaire proforma endorsing the responses of the respective industry organisations.
- 2.3 A further 149 were in the form of “Detailed Responses” referring to the length and detail of comments on the consultation questions in many of these responses. Most of the detailed responses focused on the consultation questions, although some consultees chose not to answer some of the questions. Many commented on the proposed Bill and the wider industry itself, either in addition or in preference to directly answering the consultation questions.
- 2.4 Each response received for the consultation was read in detail. It was a key principle of the consultation analysis and the Bill development process that each response be given due consideration. However, the main focus of the consultation analysis was on the content of the responses rather than the number, and as such, it was primarily focused on the Detailed Responses.
- 2.5 While the Interest Group Responses received consideration in the consultation process, they were not directly included in the analysis for two reasons:
- The letter-style “Interest Group Responses” did not answer or address the issues raised in the consultation questions, and were limited to general comments and views on the upcoming Bill.
 - The large number of proforma questionnaires submitted contained the same views and content for each respondent. This content also reflected that expressed in Detailed Responses submitted by other respondents, particularly from the aquaculture industry. As the analysis was mainly focused on the content of responses, the proforma questionnaires were not individually considered in this analysis. However, the views contained within them have been captured in several detailed responses
- 2.6 Many respondents endorsed the views of sectoral bodies in their responses. Some freshwater fisheries respondents endorsing the response of the Association of Salmon Fisheries Boards (ASFB) and River and Fishery Trust (RAFTS), and several aquaculture industry respondents endorsing the response of the Scottish Salmon Producers Organisation (SSPO).
- 2.7 Each respondent to the consultation was assigned to one of eight broad stakeholder groups, and also to a further sub-group. Table 2.1 shows the

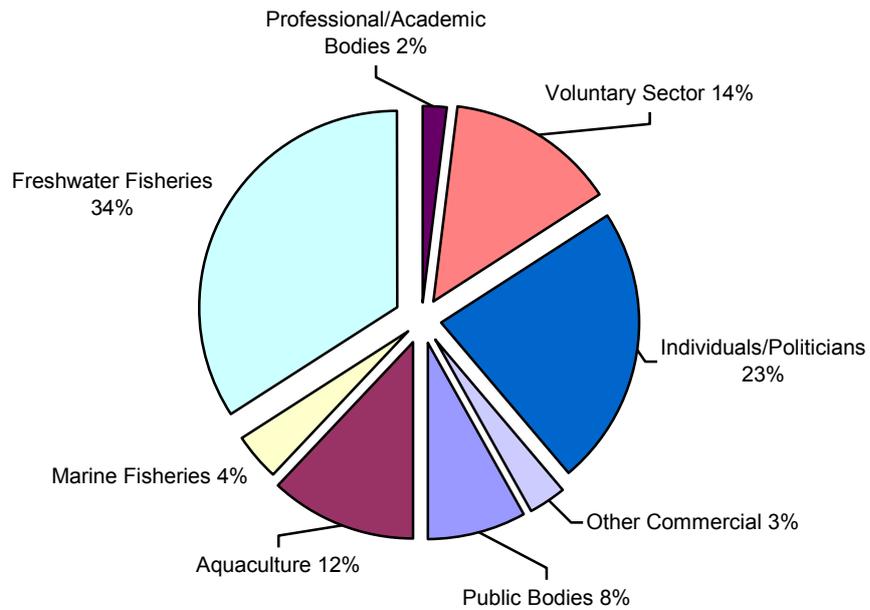
eight groups and 18 sub-group categories used in the consultation analysis; for consistency, these are the same respondent groups used in the consultation analysis undertaken by Marine Scotland for the Aquaculture and Fisheries Bill in 2007.

Table 2.1 – Definitions of Stakeholder Categories

Broad Stakeholder Group	Detailed Stakeholder Group
1. Public Bodies	1.1 Local Authorities
	1.2 SEA Consultation Authorities
	1.3 Other Public Bodies
2. Aquaculture	2.1 Fish Farms
	2.2 Aquaculture Industry Bodies
	2.3 Other Aquaculture Related Businesses
3. Marine Fisheries	3.1 Marine Fisheries Businesses
	3.2 Marine Fisheries Industry Bodies
4. Freshwater Fisheries	4.1 Anglers/Fishermen's Associations
	4.2 District Salmon Fishery Board (DSFB) / Rivers and Fisheries Trusts of Scotland (RAFTS)
	4.3 Other Freshwater Fisheries Related Businesses
5. Professional and Academic Bodies	5.1 Scientists, Universities and Research Units
6. Voluntary Sector	6.1 Campaign Groups
	6.2 Non-Government Organisations (NGO)
7. Individuals and Politicians	7.1 Politicians
	7.2 Private Individuals
8. Other Commercial	8.1 Non-Fisheries Businesses
	8.2 Wider Industry Organisations

2.8 As shown in Figure 2.1, a third of the detailed responses were from the freshwater fisheries sector; just under a quarter were from individuals/politicians; and the voluntary sector and aquaculture sector accounted for 14% and 12% of the detailed responses respectively. The other four stakeholder groups accounted for the remaining 17% of responses.

Figure 2.1 - Response Rates by Stakeholder Group



3 Overview of Consultation Questions

- 3.1 The Consultation Document contained 48 questions and was set out in six sections:
- Section 1 – The Sustainable Development Of Aquaculture (Questions 1 – 18)
 - Section 2 – Protection Of Shellfish Areas (Question 19)
 - Section 3 – Fish Farming And Wild Salmonid Interactions (Questions 20 – 22)
 - Section 4 – Salmon And Freshwater Fisheries Management (Questions 23 – 36)
 - Section 5 – Modernising Enforcement Provisions (Question 37 – 45)
 - Section 6 – Paying For Progress (Questions 46 – 48)
- 3.2 Of the 48 questions, 38 were closed questions (i.e. „yes’ or „no’ questions) and ten were questions where consultees were asked for their views or suggestions on a range of issues. Consultees were also invited to provide comments on any issues which they considered were not covered by the Consultation Document, and/or should be considered for inclusion in the legislation.
- 3.3 The responses to the consultation questions and additional comments made in the consultation are summarised in Sections 4 – 10. For each closed question, the summary is accompanied by a breakdown of the number of responses by respondent sector.

4 Section 1 – The Sustainable Development Of Aquaculture

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

Sector	Yes	No	No comment
1. Public Bodies	11	0	1
2. Aquaculture	2	14	2
3. Marine fisheries	3	0	3
4. Freshwater fisheries	36	2	12
5. Professional/Academic Bodies	1	2	0
6. Voluntary Sector	14	0	7
7. Individuals/Politicians	14	6	14
8. Other Commercial	2	2	1
Overall	83	26	40

- 4.1 There appeared to be general support from the majority of respondents. Support focused around the need for good husbandry and management of fish farms to be practised consistently across the sector.
- 4.2 Although the concept of FMAs was generally supported by the aquaculture industry, they significantly opposed the proposal to make FMAs a legal requirement. This was supported by the wider campaign responses.
- 4.3 Key issues discussed by consultees included the extent to which a FMA should be compulsory or voluntary, who should be involved, and the need for further thinking on other more detailed aspects of the arrangements.

Question 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 fall back power to specify alternative areas?

Sector	Yes	No	No comment
1. Public Bodies	8	3	1
2. Aquaculture	1	15	2
3. Marine fisheries	3	0	3
4. Freshwater fisheries	17	20	13
5. Professional/Academic Bodies	0	3	0
6. Voluntary Sector	6	8	7
7. Individuals/Politicians	4	15	15
8. Other Commercial	0	4	1
Overall	39	68	42

- 4.4 There was significant opposition to this proposal. Opposition fell primarily into one of two categories: opposition to the definition of boundaries by operators, or opposition to the proposed fallback power for Ministers.
- 4.5 Views on who should define the boundaries varied significantly and there was no consensus on this issue. Whilst some felt that the public sector has an important role to play in setting boundaries or having the final decision in consultation with other parties, others are strongly opposed to what they perceive to be interference in the private sector.
- 4.6 The aquaculture industry was strongly opposed to what they view as interference in the process. Some of those who supported the definition of boundaries by operators attached caveats to this support, mainly around a requirement for aquaculture operators to demonstrate that appropriate MAs have been adopted, with several also suggesting the benefit of a Ministerial power in instances where industry do not fulfil this responsibility.
- 4.7 Respondents raised a number of ways in which the boundaries of these areas could be defined (e.g. on ecological grounds rather than geographical, to consider biological, geographical, and environmental issues; taking account of cumulative and in-combination effects; good husbandry and biosecurity; etc).

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

Sector	Yes	No	No comment
1. Public Bodies	10	0	2
2. Aquaculture	1	15	2
3. Marine fisheries	3	0	3
4. Freshwater fisheries	35	1	14
5. Professional/Academic Bodies	1	1	1
6. Voluntary Sector	14	0	7
7. Individuals/Politicians	12	7	15
8. Other Commercial	2	2	1
Overall	78	26	45

Question 4. How do you think such a system might be best developed?

90 responses

4.8 There was general support for development of a dispute resolution process. Most of those supporting the proposal indicated their preference for independent arbitration in one form or another. For example, some felt that existing legislation under the Arbitration (Scotland) Act 2010 could resolve FMA disputes by arbitration, while others raised a number of options for an arbitration process to be developed.

4.9 In contrast, the aquaculture industry was strongly opposed to the proposal, and several of these respondents were critical of the Scottish Government's halting of the Tripartite Working Group. Instead, aquaculture industry respondents supported an arbitration system proposed and arranged by the SSPO.

Question 5. Do you agree we ought to review the question of unused consents?

Sector	Yes	No	No comment
1. Public Bodies	11	0	1
2. Aquaculture	1	16	1
3. Marine fisheries	3	0	3
4. Freshwater fisheries	33	2	15
5. Professional/Academic Bodies	2	0	1
6. Voluntary Sector	13	1	7
7. Individuals/Politicians	12	8	14
8. Other Commercial	2	2	1
Overall	77	29	43

Question 6. What do you consider are suitable options to promote use or relinquishment of unused consents?

95 responses

4.10 There was overall agreement with the proposal from consultees. A significant proportion of respondents from the freshwater fisheries and

- other sectors supported this proposal, citing for example the importance of such a review in providing an accurate assessment of unused biomass. However, the aquaculture industry was strongly opposed.
- 4.11 Most of the detailed responses emphasised that this issue is complex, although some suggested ideas on how a review could be achieved.
- 4.12 The aquaculture industry considers the right to use or not use consents to be an industry matter, and many respondents highlighted the various reasons for unused consents being in place. The industry is largely opposed to what it perceives as outside interference on this issue and several respondents felt that the Audit and Review process should be completed before a review of unused consents is undertaken. Despite its opposition, the industry supports the principle of incentives to resolve this issue.
- 4.13 Respondents identified numerous options to promote the use or relinquishment of unused consents including introducing incentives, attaching time limits for site development, and allowing for market-led solutions.
- 4.14 The reasons for sites being unused was considered by many to be an important issue. Several considered that the reasons for the non-use of a site should be considered prior to revocation of consent. Others considered that all unused sites should be incorporated back into the planning process or that consents should be revoked where sites are closed or left derelict, or whose owners are no longer operating, or where unused sites are detrimental to other operators in a MA.
- 4.15 Several respondents considered the case where an unused site is utilised as a firebreak or buffer zone. Some felt that such ad hoc measures were inappropriate, and that the planning system and FMAs should effectively manage the size and distance between farms without the need for firebreaks. Some suggested that unused sites that have been used as firebreaks should be preserved as such after revocation of consents, while others felt that unused sites should be re-evaluated for their suitability prior to being re-consented.
- 4.16 Some respondents felt that communication was important, with several stating that additional consultation should be undertaken on this issue, and others suggesting that communication between stakeholders, e.g. about site following practices, could be improved and that this may help to resolve the situation.

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

Sector	Yes	No	No comment
1. Public Bodies	9	2	1
2. Aquaculture	1	17	0
3. Marine fisheries	3	0	3
4. Freshwater fisheries	35	2	13
5. Professional/Academic Bodies	1	1	1
6. Voluntary Sector	13	1	7
7. Individuals/Politicians	13	7	14
8. Other Commercial	2	2	1
Overall	77	32	40

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

90 responses

- 4.17 There was support amongst a range of respondents for the introduction of these powers. Opposition to the proposal mainly came from the aquaculture industry. Discussion ranged around whether such powers should be granted, who would exercise them, the conditions in which they would be applied, and which consents should be covered.
- 4.18 Key issues for the aquaculture industry were 'giving powers to use in undefined situations' and concerns that this approach would be heavy-handed. One respondent was also concerned that such powers may be a potential deterrence for investment in the industry. A significant number of respondents felt that discussion between industry and regulators/other stakeholders would be a preferred approach, at least in the first instance.
- 4.19 Several consultees felt that there is already sufficient existing legislation in place to revoke consents. In contrast, some respondents from the freshwater fisheries sector expressed concern about the lack of existing powers, given that planning permission is permanent in nature and therefore cannot take account of the developing understanding of the interactions between aquaculture and wild salmon.
- 4.20 There was some discussion around who should have the powers to revoke consents: Scottish Ministers, the consenting authority, or an independent third party were included in the suggestions.
- 4.21 Respondents provided a range of suggestions about the application of these powers including: where sites lie unused for a specific time period (1 - 8 years); where consent conditions have been breached; and where the site is unsuitable for use for environmental and/or sustainability reasons. Some felt that these powers should only be exercised under exceptional circumstances; others considered that, as a pre-requisite, the site owner should be willing to relinquish the site.
- 4.22 Over half of the respondents felt that these powers should apply to all consents, and some requested that this should relate to both marine and

freshwater consents. The aquaculture industry raised concerns about orphaned CAR consents and legacy sites.

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

105 responses

- 4.23 There was some support for combined government and industry responsibility for data collection and publication.
- 4.24 The timing and frequency of data reporting was discussed by many respondents. Suggestions ranged from real-time to annual reporting, with most focusing on weekly, quarterly or monthly reporting. However, some consultees suggested that this was not as important as the publication, availability and use of information collected.
- 4.25 Many respondents support the publication and verification of disaggregated data, but this was strongly opposed by the aquaculture industry who preferred regional data and supported the current system using an SSPO Health Database.
- 4.26 Public access to information was discussed by a range of stakeholders, with no consensus on this issue. Some called for improved accessibility, with several suggesting that Scottish Government/Marine Scotland involvement was necessary to ensure fairness and transparency.
- 4.27 There was strong support for adopting similar systems to those used in other countries (i.e. Norway, Canada (British Columbia) and Ireland).

Question 10. Do you agree that aquaculture business ought to be required to provide additional information on fish mortality, movement, disease, treatment and production as set out above?

Sector	Yes	No	No comment
1. Public Bodies	9	0	3
2. Aquaculture	1	16	1
3. Marine fisheries	3	0	3
4. Freshwater fisheries	38	0	12
5. Professional/Academic Bodies	1	2	0
6. Voluntary Sector	14	0	7
7. Individuals/Politicians	10	10	14
8. Other Commercial	2	2	1
Overall	78	30	41

Question 11. What are your views on the timing and frequency of submission of such data?

103 responses

- 4.28 There was strong support for additional information to be provided, as proposed in the Consultation Document. However, there was also strong opposition to this proposal from the aquaculture sector.

- 4.29 Several respondents consider that powers and mechanisms for data collection already exist. Concerns were expressed about the costs associated with obtaining additional information, „with no perceptible benefit’. Several respondents felt that the recommendations of the Healthier Fish Working Group were fit for purpose and that additional information, as proposed by the Consultation Document, was not necessary.
- 4.30 There were several suggestions as to which organisation should be responsible for holding submitted data, including Marine Scotland, SEPA, and the SSPO, and that data should be verified. However, some consultees raised concerns over the ability of some organisations charged with holding this data to maintain confidentiality, particularly in relation to Freedom of Information requests.
- 4.31 Few of the respondents who supported the proposal expressed views about the frequency of data collection. Rather, they tended to focus on the level of detail (site-specific vs. area-based, in the main) or on the frequency of reporting. As with sea-lice data (Question 9), the frequency of data reporting was discussed by many respondents, and while suggestions ranged from real-time to annual reporting, most focused on real time, weekly, quarterly or monthly reporting. Overall, the responses suggest that a flexible approach may be suitable, with the benefits of frequency to highlight issues requiring prompt action needing to be balanced with the costs of data collection.
- 4.32 Several respondents felt that Scotland’s practices should be in line with those of other countries, with strong support amongst these for adopting the Norwegian approach.

Question 12. Do you agree that Scottish Ministers should have the powers to require SEPA to reduce biomass consent where it appears to them necessary and appropriate – for example to address concerns about fish health and welfare?			
Sector	Yes	No	No comment
1. Public Bodies	7	3	2
2. Aquaculture	1	16	1
3. Marine fisheries	4	0	2
4. Freshwater fisheries	36	2	12
5. Professional/Academic Bodies	1	2	0
6. Voluntary Sector	14	0	7
7. Individuals/Politicians	13	11	10
8. Other Commercial	2	2	1
Overall	78	36	35

- 4.33 There was strong support from many respondents, except the aquaculture industry, for powers to reduce biomass of sites, particularly to ensure the effective treatment of sea-lice and reduce benthic pollution.
- 4.34 Some respondents discussed the use of sea-lice treatment medicines, and considered that this is not taken into account in the process of setting the biomass of a site. There was some disagreement about the potential for

alignment of biomass and therapeutant consents. Some felt that the biomass should be reduced to match the volume of therapeutant permitted; others considered that the permitted volume of therapeutant should be increased instead. Others questioned the link between improving fish health and reducing biomass.

- 4.35 Some respondents, predominantly from the aquaculture industry, felt that fish health matters are the responsibility of site operators and their veterinary surgeons and that the proposed powers would be inappropriate. Concerns were also expressed that biomass reductions could lead to significant costs to farm operators and result in job losses.

Question 13. Do you agree we should make enabling legislation giving Scottish Ministers powers to place additional control requirements on wellboats?			
Sector	Yes	No	No comment
1. Public Bodies	10	0	2
2. Aquaculture	6	11	1
3. Marine fisheries	4	0	2
4. Freshwater fisheries	36	2	12
5. Professional/Academic Bodies	2	1	0
6. Voluntary Sector	13	0	8
7. Individuals/Politicians	10	10	14
8. Other Commercial	3	1	1
Overall	84	25	40

- 4.36 There was strong support for this proposal from the freshwater fisheries sector, public bodies and individual respondents. Several felt that a Technical Working Group on wellboat design to consider the requirements of Scottish and international markets could be helpful.
- 4.37 However, there was also significant opposition to this proposal from the aquaculture industry and individual respondents. In particular, there was opposition to „undefined enabling legislation without a clear view of purpose or application’, as well as concerns about new measures burdening the industry.
- 4.38 Monitoring of wellboat operations was discussed by several consultees, with some supporting tighter discharge conditions and use of monitoring systems (i.e. VMS, GPS, status of valves) for wellboats.
- 4.39 The locations of wellboat discharges were also raised, with some calling for on-site discharges after treatments, and others calling for set up of pre-determined discharge areas located off-shore.
- 4.40 Several respondents felt that additional discussion between stakeholders on this issue is required, and asked for clarification on a number of factors related to the proposal (i.e. timescales, legislation).

Question 14. Do you think Scottish Ministers should be given additional powers to place controls on processing plants?

Sector	Yes	No	No comment
1. Public Bodies	10	0	2
2. Aquaculture	3	14	1
3. Marine fisheries	3	0	3
4. Freshwater fisheries	37	1	12
5. Professional/Academic Bodies	1	1	1
6. Voluntary Sector	13	0	8
7. Individuals/Politicians	8	10	16
8. Other Commercial	1	3	1
Overall	76	29	44

4.41 While there was support for the extension of these powers, largely to improve biosecurity (i.e. sea-lice, disease), the need to ensure that the associated costs to industry are manageable was also raised by some of these respondents.

4.42 There was significant opposition from the aquaculture industry and some individual respondents. Some respondents questioned what evidence there was to show that processing plants are contributing to the spread of sea-lice.

4.43 Several respondents felt that sufficient controls already exist through environmental and fish health legislation, and SEPA's current powers. Others felt that the proposal should be extended to cover all diseases, not just sea-lice.

Question 15. Do you agree that the regulatory framework should be the same for all seaweed farms?

Sector	Yes	No	No comment
1. Public Bodies	11	0	1
2. Aquaculture	14	2	2
3. Marine fisheries	3	1	2
4. Freshwater fisheries	10	2	38
5. Professional/Academic Bodies	2	0	1
6. Voluntary Sector	9	2	10
7. Individuals/Politicians	14	1	19
8. Other Commercial	2	0	3
Overall	65	8	76

4.44 Of those who responded to this question (less than half of all responses), most expressed strong support for this proposal. This view extended across the stakeholder groups.

4.45 Some respondents felt that planning consents for seaweed, finfish and shellfish farms should be with the same planning authority.

- 4.46 However, a few respondents considered that the regulatory framework for seaweed farms should differ depending on the size and scale of operations, with tighter controls on larger, industrial-scale sites.

Question 16. Do you agree that the most appropriate approach to regulation of this sector would be through marine licensing?			
Sector	Yes	No	No comment
1. Public Bodies	6	5	1
2. Aquaculture	3	14	1
3. Marine fisheries	4	0	2
4. Freshwater fisheries	12	1	37
5. Professional/Academic Bodies	1	1	1
6. Voluntary Sector	10	1	10
7. Individuals/Politicians	7	8	19
8. Other Commercial	0	2	3
Overall	43	32	74
Question 17. If not, what alternative arrangements would you suggest?			
60 responses			

- 4.47 There was no consensus on the appropriate regulatory approach for seaweed cultivation.
- 4.48 Of those who responded to this question (around half of all responses), just over half expressed support for marine licensing. This view extended across the stakeholder groups but rested primarily with the marine fisheries, voluntary and freshwater fisheries sectors.
- 4.49 There was strong opposition from the aquaculture industry, who felt that unless all aquaculture development is moved to the marine licensing system, all planning consents should be with the Local Authority currently responsible for aquaculture developments.
- 4.50 Several local authorities supported regulation of seaweed cultivation through the planning system, indicating that existing frameworks were in place to address this issue.
- 4.51 However, some consultees supported a move to marine licensing for both seaweed cultivation and other types of aquaculture. Some felt that licensing would be the most appropriate system to deal with marine development, and that planning should focus on terrestrial development.
- 4.52 Others considered that there was no need for a single regime. One respondent suggested that seaweed farms should be covered by the CAR, as opposed to either marine licensing or planning.
- 4.53 Some consultees commented on the need to avoid undue regulation, and highlighted the need for a proportionate approach on this issue.
- 4.54 One respondent considered that the proposal to regulate seaweed cultivation should be widened to include seaweed harvesting.

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

Sector	Yes	No	No comment
1. Public Bodies	10	0	2
2. Aquaculture	5	11	2
3. Marine fisheries	3	0	3
4. Freshwater fisheries	17	2	31
5. Professional/Academic Bodies	2	0	1
6. Voluntary Sector	6	5	10
7. Individuals/Politicians	6	8	20
8. Other Commercial	2	0	3
Overall	51	26	72

- 4.55 There was support for this proposal amongst those who responded to this question (just over half of all responses), including strong support from the freshwater fisheries sector. However, there was strong opposition from the aquaculture industry.
- 4.56 Several respondents were uncertain about the definition and context of „commercially damaging native species’, asking for additional explanation and discussion with industry and other stakeholders. Some considered that this term could be understood to include otters, marine mammals and native freshwater fish, and concerns were expressed that the powers could be used to control native species growing under natural conditions.
- 4.57 There was concern amongst respondents, predominantly from the aquaculture industry, regarding the introduction of „open-ended enabling powers’ for Ministers.
- 4.58 Some respondents supported the use of powers in some circumstances, particularly for identified problems such as „Mytilus trossulus’ (bay mussel).

5 Section 2 – Protection Of Shellfish Areas

Question 19. Do you agree with the introduction of provisions to protect shellfish growing waters and support the sustainable growth of the shellfish industry?			
Sector	Yes	No	No comment
1. Public Bodies	11	0	1
2. Aquaculture	15	1	2
3. Marine fisheries	3	0	3
4. Freshwater fisheries	18	0	32
5. Professional/Academic Bodies	2	0	1
6. Voluntary Sector	12	0	9
7. Individuals/Politicians	14	2	18
8. Other Commercial	2	0	3
Overall	77	3	69

- 5.1 Of those who responded, nearly all supported this proposal.
- 5.2 This was based on an agreed need to restore the protection provided by the (to be repealed) Shellfish Waters Directive.
- 5.3 Some respondents expressed concerns about the potential designation criteria. One in particular was concerned about benefits accruing to shellfish operators resulting in constraints on onshore development.
- 5.4 One respondent suggested that the regulations be implemented through the marine planning system. Others suggested that the global Bivalve Aquaculture Standards be used as a guide for regulation of shellfish aquaculture.

6 Section 3 – Fish Farming And Wild Salmonid Interactions

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

Sector	Yes	No	No comment
1. Public Bodies	9	1	2
2. Aquaculture	1	15	2
3. Marine fisheries	3	0	3
4. Freshwater fisheries	39	1	10
5. Professional/Academic Bodies	1	2	0
6. Voluntary Sector	14	0	7
7. Individuals/Politicians	11	12	11
8. Other Commercial	1	3	1
Overall	79	34	36

- 6.1 While most respondents who answered this question supported the proposal, there was strong opposition from the aquaculture industry.
- 6.2 Support for the proposal centred on the protection of wild fish from sea-lice emanating from finfish aquaculture sites, with a particular emphasis on using the industry CoGP as a minimum standard.
- 6.3 There was concern amongst some respondents about any increase in treatments and consequent effects such as increased resistance of sea-lice populations, effects on marine ecology, impacts on non-target species, and costs to the industry.
- 6.4 While some respondents felt that a lower threshold may be useful in some circumstances (i.e. during the salmon migration season), there was a preference for other non-therapeutic measures to be used first.
- 6.5 The aquaculture industry considered that the proposal has the potential to increase problems of sea-lice management, particularly through increasing resistance to therapeutants, and that the proposed powers have already been debated by the Healthier Fish Working Group.

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

Sector	Yes	No	No comment
1. Public Bodies	10	0	2
2. Aquaculture	17	0	1
3. Marine fisheries	3	0	3
4. Freshwater fisheries	42	0	8
5. Professional/Academic Bodies	2	0	1
6. Voluntary Sector	15	0	6
7. Individuals/Politicians	17	2	15
8. Other Commercial	3	0	2
Overall	109	2	38

- 6.6 There was strong support for introduction of a technical standard across all stakeholder groups.
- 6.7 Some respondents suggested what the standard should contain, including specifics (e.g. cage types and dimensions, markings and moorings, training requirements, etc.) and more general approaches (e.g. flexible, use of site assessments).
- 6.8 Some industry respondents had concerns over some farm sites, e.g. those with a good record of containment being penalised for not meeting the standard, and suggested that transitional procedures be used for its introduction.
- 6.9 Several respondents noted that they would prefer the use of closed containment systems in finfish aquaculture.
- 6.10 Several respondents noted the work of the Improved Containment Working Group in working towards this standard.

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

Sector	Yes	No	No comment
1. Public Bodies	10	0	2
2. Aquaculture	2	15	1
3. Marine fisheries	3	0	3
4. Freshwater fisheries	41	1	8
5. Professional/Academic Bodies	1	1	1
6. Voluntary Sector	14	0	7
7. Individuals/Politicians	15	8	11
8. Other Commercial	1	2	2
Overall	87	27	35

- 6.11 There was overall support amongst respondents for this proposal. Several respondents were of the view that this measure could enable the tracing of escaped farmed fish.
- 6.12 However, the aquaculture industry and other commercial industry respondents were strongly opposed to these additional powers. Opponents suggested that progress has been made in controlling escapes, that impacts of escaped farmed fish on wild salmon have not been demonstrated, and that this “research” would not be a good use of public funds.
- 6.13 One respondent felt that powers or procedures are already in place for the Scottish Government to take or to require samples of fish from farms to be taken for tracing purposes. Another questioned why the testing of retained samples of fish could not be done under procedures that are already in place.
- 6.14 Several suggested that the ability to carry out genetic identification should be established before introducing these powers.
- 6.15 Several alternatives were suggested, including retention of frozen samples from each batch, using the existing procedures and tagging farmed fish.
- 6.16 The need for additional discussion on this issue was identified by a number of respondents.

7 Section 4 – Salmon And Freshwater Fisheries Management

Question 23. Do you agree that we should introduce a specific duty on Boards to act fairly and transparently?			
Sector	Yes	No	No comment
1. Public Bodies	9	1	2
2. Aquaculture	17	0	1
3. Marine fisheries	3	0	3
4. Freshwater fisheries	34	15	1
5. Professional/Academic Bodies	2	0	1
6. Voluntary Sector	12	3	6
7. Individuals/Politicians	19	4	11
8. Other Commercial	3	1	1
Overall	99	24	26

- 7.1 Many consultees across the stakeholder groups, particularly aquaculture and the public sector, were supportive of the proposal for a duty for Boards to act fairly and transparently.
- 7.2 However, some consultees were not convinced that a specific duty was the best way of achieving this. Some freshwater fisheries respondents in particular held the view that Boards already act in a fair and transparent manner. Others suggested adherence to a Code of Practice (CoP) as a preferable alternative.
- 7.3 Some questioned the practicalities of implementation of such a duty, and asked for clarification of definitions and criteria.
- 7.4 Consultees made several suggestions as to what should be included in the implementation of such a duty, e.g. advance publishing of plans, making DSFBs subject to FoI and environmental regulations, consideration of other (non-migratory) fish species, using a phased approach and making provision for compensation .

Question 24. Do you agree that there should be a Code of Practice for wild salmon and freshwater fisheries?			
Sector	Yes	No	No comment
1. Public Bodies	9	0	3
2. Aquaculture	16	0	2
3. Marine fisheries	3	0	3
4. Freshwater fisheries	49	1	0
5. Professional/Academic Bodies	2	0	1
6. Voluntary Sector	14	0	7
7. Individuals/Politicians	21	2	11
8. Other Commercial	3	1	1
Overall	117	4	28
Question 25. If yes, should such a Code of Practice be statutory or non-statutory?			
Sector	Yes	No	No comment
1. Public Bodies	2	6	4
2. Aquaculture	4	11	3
3. Marine fisheries	2	1	3
4. Freshwater fisheries	12	36	2
5. Professional/Academic Bodies	1	1	1
6. Voluntary Sector	7	7	7
7. Individuals/Politicians	13	8	13
8. Other Commercial	1	2	2
Overall	42	72	35

- 7.5 While introduction of a Code of Practice (CoP) was strongly supported across the stakeholder groups, there was opposition from many to making it statutory.
- 7.6 However, several respondents considered that development of a new CoP was not necessary. Some respondents noted that codes of practice already exist, including the ASFB-developed CoP which is being followed by a number of DSFBs, and a Code of Best Practice (CoBP) for Fisheries Management which is under development. Some considered that their current adherence to the existing CoP was sufficient.
- 7.7 Several aquaculture respondents felt that aspects of the CoP for finfish aquaculture could be useful in the development of the new CoP.
- 7.8 Most respondents suggested a non-statutory code, but there was also support for a non-statutory code with a reserved legal power in instances of non-compliance. Others queried what action could be taken against those who did not comply with a non-statutory CoP.
- 7.9 Several respondents discussed the scope of the CoP and made suggestions about its contents, including consultation and transparency of meetings and accounts, and inviting evidence/submissions from the public. Several felt that a „one size fits all’ approach would not be appropriate across the DSFB network.

- 7.10 Some felt that those responsible for managing trout or non-salmonid fisheries should not be exempt from fishery management controls. Several felt that the CoP should also cover protection of coarse fish species.

Question 26. Do you agree that Scottish Ministers should have powers to introduce a statutory system of carcass tagging for wild Atlantic salmon and sea trout?			
Sector	Yes	No	No comment
1. Public Bodies	9	0	3
2. Aquaculture	17	0	1
3. Marine fisheries	3	0	3
4. Freshwater fisheries	45	2	3
5. Professional/Academic Bodies	2	0	1
6. Voluntary Sector	12	0	9
7. Individuals/Politicians	22	3	9
8. Other Commercial	3	0	2
Overall	113	5	31

- 7.11 There was strong support for powers to introduce a carcass tagging system in Scotland, with respondents recognising numerous benefits from the proposal. These included (amongst others) provision of information on salmon migratory habits, reducing the potential market for illegally caught fish, and securing conservation benefits for wild salmon, as well as bringing Scottish legislation into line with English and Welsh legislation. Some preferred an extension of the voluntary scheme currently operating in some parts of Scotland, including an extension to rod and line fisheries through local initiatives.
- 7.12 Opposition to the proposal was based on potential additional administrative and financial burdens for local fisheries. Some respondents also questioned the benefits relative to the costs.
- 7.13 Some emphasised the importance of additional discussion and local consultation on this issue.

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

Sector	Yes	No	No comment
1. Public Bodies	9	0	3
2. Aquaculture	5	12	1
3. Marine fisheries	3	0	3
4. Freshwater fisheries	46	1	3
5. Professional/Academic Bodies	1	1	1
6. Voluntary Sector	13	0	8
7. Individuals/Politicians	13	8	13
8. Other Commercial	1	3	1
Overall	91	25	33

7.14 There was strong support for this proposal, but the aquaculture industry and other commercial sector respondents were largely opposed. Some respondents linked their responses to those of Question 22, which proposes similar powers for taking samples from farmed fish for tracing purposes.

7.15 Opposition was largely based around several issues, including some consultees feeling that Ministers already have powers for this, disagreement with powers requesting others to take samples, and some preferring this practice to remain voluntary.

7.16 Some respondents emphasised that genetic samples could be taken without killing the individual fish, but added that if this was not the case, the respective DSFB should be consulted prior to sampling.

Question 28. Do you agree that Scottish Ministers should have the powers to initiate changes to Salmon District Annual Close Time Orders?

Sector	Yes	No	No comment
1. Public Bodies	4	1	7
2. Aquaculture	16	0	2
3. Marine fisheries	1	0	5
4. Freshwater fisheries	34	9	7
5. Professional/Academic Bodies	2	0	1
6. Voluntary Sector	10	2	9
7. Individuals/Politicians	12	10	12
8. Other Commercial	3	0	2
Overall	82	22	45

7.17 There was strong support for Ministerial powers to change Annual Close Time orders across nearly all of the stakeholder groups.

7.18 Some supporters felt that this power could be used in situations such as when there are no DSFBs in place, when a DSFB is not fulfilling its duties, or when Marine Scotland has significant concerns about the status of salmon stocks. However, the question of how concerns about stock status would be gauged was also raised.

- 7.19 Some respondents felt that this issue should be subject to further debate.
- 7.20 The potential financial implications of introducing such a power were also raised as a concern.

Question 29. Do you agree that Scottish Ministers should be able to promote combined salmon conservation measures at their own hand?			
Sector	Yes	No	No comment
1. Public Bodies	4	1	7
2. Aquaculture	16	0	2
3. Marine fisheries	2	0	4
4. Freshwater fisheries	17	26	7
5. Professional/Academic Bodies	2	0	1
6. Voluntary Sector	9	3	9
7. Individuals/Politicians	13	8	13
8. Other Commercial	3	0	2
Overall	66	38	45

- 7.21 While the majority of respondents to this question supported the proposal, there was strong opposition from DSFBs/RAFTS consultees.
- 7.22 Those disagreeing with the proposal considered that continuation of the current system would be more appropriate (i.e. applications for conservation measures from the local Board to Ministers), that combined measures should be undertaken by local Boards, and that such a power should only be used in cases where there is no DSFB in place.
- 7.23 Others were concerned about a lack of background information to justify the proposed measure. It was suggested that the proposed powers should also include all aspects of all species' spawning times, and not just those of salmon and sea trout.
- 7.24 Some respondents considered that, if such powers were introduced, Ministers should undertake consultation with local Boards prior to implementation.

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

Sector	Yes	No	No comment
1. Public Bodies	5	0	7
2. Aquaculture	16	0	2
3. Marine fisheries	2	0	4
4. Freshwater fisheries	39	5	6
5. Professional/Academic Bodies	2	0	1
6. Voluntary Sector	12	0	9
7. Individuals/Politicians	17	4	13
8. Other Commercial	3	0	2
Overall	96	9	44

- 7.25 There was strong support across all stakeholder groups for this proposal.
- 7.26 As an alternative to the use of conditions, a partnership approach was recommended, involving DSFBs, Fishery Trusts, SEPA, Marine Scotland Science and universities, amongst others. Others felt it should be supported by the DSFB and RAFTS networks.
- 7.27 Several respondents preferred a local management approach to Ministerial intervention, and the importance of securing the agreement of the Fishery Trusts and Boards prior to the attaching of conditions was emphasised.
- 7.28 Several respondents emphasised the importance of a proportionate approach, and raised concerns about the potential expense of new monitoring and reporting requirements and/or expertise required by DSFBs.

Question 31. Do you agree that we should introduce statutory provisions related to mediation and dispute resolution, to help resolve disputes around salmon conservation, management and any related compensation measures?

Sector	Yes	No	No comment
1. Public Bodies	8	1	3
2. Aquaculture	2	14	2
3. Marine fisheries	2	0	4
4. Freshwater fisheries	24	23	3
5. Professional/Academic Bodies	1	1	1
6. Voluntary Sector	11	2	8
7. Individuals/Politicians	9	12	13
8. Other Commercial	1	2	2
Overall	58	55	36

- 7.29 Overall there were mixed views on this proposal. Only the public and voluntary sectors were strongly supportive; the aquaculture industry was strongly opposed.
- 7.30 A range of respondents, as for Questions 3 and 4, felt that this proposal was not necessary, as there is already adequate provision under existing

Scottish arbitration law and / or that this is already a function of the (former) Tripartite Working Group and FMAs.

- 7.31 Some respondents supported the proposal for a mediation process but felt that such mediation would be better undertaken by parties other than Ministers, e.g. at the local level or through the ASFB. Several identified the types of disputes where mediation would be helpful. Some respondents suggested that the scope of mediation should extend to disputes between parties about migratory species and other fish species. Others wanted Ministers to make the final decision in the event of mediation being unsuccessful.
- 7.32 The scope of mediation was also discussed. Some respondents felt that mediation should only consider disputes about compensation.
- 7.33 The benefits of the proposal, compared to its costs, were questioned. Compensation was discussed by some consultees. There were also suggestions for the costs of mediation to be shared or based on the ability of an applicant to pay.

Question 32. Do you agree that there should be a legal requirement to provide comprehensive effort data for rod fisheries?			
Sector	Yes	No	No comment
1. Public Bodies	7	1	4
2. Aquaculture	16	0	2
3. Marine fisheries	3	0	3
4. Freshwater fisheries	38	8	4
5. Professional/Academic Bodies	2	0	1
6. Voluntary Sector	12	1	8
7. Individuals/Politicians	16	6	12
8. Other Commercial	3	0	2
Overall	97	16	36

- 7.34 There was strong support for the collection of comprehensive rod effort data from all the stakeholder groups. The benefits of this requirement were considered to include, for example, the strengthening of the assessment of salmon and sea trout stocks.
- 7.35 Some consultees suggested the DSFBs, Fishery Trusts and MSS should undertake the data collection, with one suggesting that co-operation between them could help to obtain consistent and useable data.
- 7.36 Some respondents questioned the value of this information, and highlighted the need for careful interpretation until fuller trend data is established. Difficulties in collecting rod data were raised, including the objectivity of data, the need for verification and willingness to provide the information.
- 7.37 Some respondents expressed concerns about potential costs arising from this level of data collection. A voluntary scheme for data collection was suggested as an alternative.

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

95 responses

- 7.38 The majority of respondents generally agreed with the principle of providing additional information on both fish and fisheries. However, a smaller number had reservations about this and considered that there was no need for further information provision.
- 7.39 A need for information on fish introductions, restocking activities and hatchery operations was expressed by many respondents, based on a view that there is a lack of transparency about activities and impacts. Several respondents suggested specific information to be included in the data collection, ranging from data on stock and management, to fishing activity and associated environmental conditions. Information on disease and stock condition was also supported by several consultees. Some also sought further financial information.
- 7.40 Some respondents suggested an integrated national data collection strategy and database/public register for fish movements and introductions.
- 7.41 Several respondents felt that data collected should be published and made available for scrutiny in a consistent manner. Suggestions included publication on Marine Scotland's website.
- 7.42 Some consultees recommended additional consultation on this issue. Several noted the importance of reaching agreement on the collection of any additional information with proprietors, Boards and regulatory authorities beforehand.
- 7.43 Several respondents highlighted the potential for significant cost implications for Boards and Fishery Trusts.

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

Sector	Yes	No	No comment
1. Public Bodies	6	2	4
2. Aquaculture	16	0	2
3. Marine fisheries	3	0	3
4. Freshwater fisheries	18	24	8
5. Professional/Academic Bodies	2	0	1
6. Voluntary Sector	11	1	9
7. Individuals/Politicians	16	5	13
8. Other Commercial	3	0	2
Overall	75	32	42

- 7.44 There was overall support amongst most stakeholder groups for this proposal, with the exception of freshwater fisheries and DSFB/RAFTS

respondents. Some respondents felt that this proposal would duplicate existing data collection by Boards and Fishery Trusts.

- 7.45 Some consultees suggested that a CoP for DSFBs could help to ensure that this information is provided in a consistent manner.
- 7.46 Other suggestions for the collection of data included the provision of information to a national agency or using an outside party or organisation to report rather than Boards and/or proprietors. Others suggested that the Scottish Government should be directly involved.
- 7.47 Several respondents discussed cost implications of this proposal, and raised questions about funding. Others emphasised that any such power should be used in a proportionate way.
- 7.48 The inclusion of comparable measures for brown trout as well as sea trout was suggested by two aquaculture industry respondents.

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

Sector	Yes	No	No comment
1. Public Bodies	10	0	2
2. Aquaculture	16	0	2
3. Marine fisheries	2	0	4
4. Freshwater fisheries	35	9	6
5. Professional/Academic Bodies	2	0	1
6. Voluntary Sector	11	1	9
7. Individuals/Politicians	16	5	13
8. Other Commercial	3	0	2
Overall	95	15	39

Question 36. If so, why and in what circumstances?

96 responses

- 7.49 Respondents had mixed views on fish stocking/ introductions; some opposed the practice and others supported it. These views influenced the responses to Question 35. Those who opposed introductions cited adverse effects on local fish populations and/or ecology, including the genetic integrity of fish populations, and the introduction of non-native or non-indigenous species. Those who supported the practice considered that stocking was a valuable and necessary wild fisheries management tool, particularly in instances where natural recruitment is limited.
- 7.50 There was strong support for the proposal amongst all stakeholder groups, and particularly for greater transparency in introduction/ stocking activities. A small number of respondents disagreed with the proposal, and felt that this should be left to the local level, e.g. Boards, local fishery managers and River Trusts. Others felt that the proposed Ministerial powers would be a safety net for cases where DSFBs are not fulfilling their responsibilities, where environmental damage is proven or where there are conflicts of interest, e.g. Boards authorising their own actions.

- 7.51 Several respondents noted that the ASFB and RAFTS have developed guidance on fish stocking practices, as well as guidance for undertaking stocking programmes in Special Areas of Conservation.
- 7.52 Many respondents, predominantly from the aquaculture industry, suggested that all fish introductions, whether for fish farming or freshwater fisheries restocking, should be brought within the existing legislation for aquaculture. Many considered that an assessment of the effects of stocking practices on wild fish should be carried out as a matter of course within fisheries management.
- 7.53 Others felt that Ministers should undertake a review of introduction and stocking practices, and of decision making by Boards and MSS on these activities.

8 Section 5 – Modernising Enforcement Provisions

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

Sector	Yes	No	No comment
1. Public Bodies	8	0	4
2. Aquaculture	1	16	1
3. Marine fisheries	3	0	3
4. Freshwater fisheries	33	1	16
5. Professional/Academic Bodies	1	1	1
6. Voluntary Sector	13	0	8
7. Individuals/Politicians	11	10	13
8. Other Commercial	0	2	3
Overall	70	30	49

- 8.1 While many of those who responded to this question supported this proposal, there was strong opposition (amongst those who responded) from the aquaculture and other commercial businesses stakeholder groups.
- 8.2 Several respondents suggested circumstances where the proposal could be usefully applied, e.g. escapes of farmed fish from aquaculture facilities.
- 8.3 There were, however, strong views from opponents that this proposal was disproportionate to the perceived problem, may be unfair and ineffective, and could have damaging impacts on the aquaculture industry. They also questioned the need for this measure.
- 8.4 One respondent requested further information on statutory defences that may also be introduced by the Bill.

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

Sector	Yes	No	No comment
1. Public Bodies	8	0	4
2. Aquaculture	2	15	1
3. Marine fisheries	3	3	0
4. Freshwater fisheries	13	0	37
5. Professional/Academic Bodies	2	0	1
6. Voluntary Sector	7	3	11
7. Individuals/Politicians	6	13	15
8. Other Commercial	0	1	4
Overall	41	35	73

- 8.5 Less than half of consultees answered this question, and there were mixed views on the use of fixed penalties amongst those that did answer.
- 8.6 Some of those in favour of the proposal felt that it could be widened beyond the aquaculture industry and suggested public disclosure of offences.
- 8.7 Some expressed concerns about this becoming a normal business cost or a means of reducing the administrative burden.
- 8.8 There was strong opposition from the aquaculture industry to the proposal. These respondents felt that it would be disproportionate and also questioned the evidence base to justify it.

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

Sector	Yes	No	No comment
1. Public Bodies	7	0	5
2. Aquaculture	1	15	2
3. Marine fisheries	1	4	1
4. Freshwater fisheries	10	1	39
5. Professional/Academic Bodies	1	1	1
6. Voluntary Sector	8	2	11
7. Individuals/Politicians	9	8	17
8. Other Commercial	0	1	4
Overall	37	32	80

- 8.9 Less than half of the consultees answered this question. There were mixed views on increasing the maximum sum for fixed penalty notices amongst those who did respond.
- 8.10 Aquaculture and marine fisheries industry respondents were strongly opposed, questioning what evidence there was to support the proposal. Several respondents considered that the maximum limit would be disproportionate to any non-compliance, and felt that a modern risk-assessed regulatory approach is needed.

- 8.11 There was a range of views on the penalty value, with some supporting a higher figure, and others questioning the potential impact of the proposed amount on smaller businesses. A proportionate approach was again suggested.

Question 40. Are there particular regulatory areas that merit a higher or lower maximum sum?			
Sector	Yes	No	No comment
1. Public Bodies	2	5	5
2. Aquaculture	2	15	1
3. Marine fisheries	2	2	2
4. Freshwater fisheries	9	1	40
5. Professional/Academic Bodies	1	1	1
6. Voluntary Sector	8	1	12
7. Individuals/Politicians	7	9	18
8. Other Commercial	0	1	4
Overall	31	35	83

- 8.12 Over half of respondents elected not to answer this question.
- 8.13 There was no consensus amongst respondents on whether there was a case for higher fixed penalty sums in certain regulatory circumstances. Many referred to their responses to Question 39.
- 8.14 Several consultees suggested circumstances where higher penalties could be merited, including those relating to environmentally sensitive areas, escapes and persistent breaches of regulations.

Question 41. Do you agree that we should amend section 30(1) of the Fisheries Act 1981 as proposed?			
Sector	Yes	No	No comment
1. Public Bodies	8	0	4
2. Aquaculture	2	0	16
3. Marine fisheries	3	3	0
4. Freshwater fisheries	10	0	40
5. Professional/Academic Bodies	2	0	1
6. Voluntary Sector	9	0	12
7. Individuals/Politicians	7	1	26
8. Other Commercial	0	0	5
Overall	41	4	104

- 8.15 Those who responded to this question (around a third of all respondents) largely supported the proposed amendment.
- 8.16 Some felt that this would bring Scottish provisions into line with the requirements of the Marine and Coastal Access Act 2009 in England and Wales.

- 8.17 Some respondents suggested that the Fisheries Act 1981 could be further amended to place an emphasis on an ecosystem-based approach to sustainable fisheries management in some sections.

Question 42. Do you agree that sea fisheries enforcement officers should be given specific power to allow vessels to be detained in port for the purposes of court proceedings?			
Sector	Yes	No	No comment
1. Public Bodies	8	0	4
2. Aquaculture	2	0	16
3. Marine fisheries	3	3	0
4. Freshwater fisheries	13	0	37
5. Professional/Academic Bodies	2	0	1
6. Voluntary Sector	9	0	12
7. Individuals/Politicians	10	0	24
8. Other Commercial	0	0	5
Overall	47	3	99

- 8.18 While almost two-thirds of consultees declined to answer this question, there was strong support for the proposal from those who did.
- 8.19 While few additional comments were received on this proposal, support for it was based on the closure of a loophole for foreign vessels, and bringing powers into line with those in England and Wales.
- 8.20 One respondent felt that it was imperative that enforcement officers are given sufficient resources for this.
- 8.21 One respondent who opposed the proposal stated that vessels should be allowed to return to sea.

Question 43. Do you agree that sea fisheries enforcement officers should be able to dispose of property seized as evidence when it is no longer required, or forfeit items which would be illegal to use?			
Sector	Yes	No	No comment
1. Public Bodies	8	0	4
2. Aquaculture	2	0	16
3. Marine fisheries	4	2	0
4. Freshwater fisheries	14	0	36
5. Professional/Academic Bodies	2	0	1
6. Voluntary Sector	9	0	12
7. Individuals/Politicians	10	0	24
8. Other Commercial	0	0	5
Overall	49	2	98

- 8.22 While almost two-thirds of consultees declined to answer this question, there was strong support for the proposal from those who did. The marine fisheries sector was the only group with mixed views.

- 8.23 Several respondents felt that there should be regulation of gill netting, that illegal netting should be targeted, and that it should be illegal to sell equipment that is not legal in the UK (specifically monofilament gill nets).

Question 44. Do you agree that sea fisheries enforcement officers should have the powers to inspect object in the sea and elsewhere that are not obviously associated with a vessel, vehicle or relevant premises?			
Sector	Yes	No	No comment
1. Public Bodies	7	0	5
2. Aquaculture	1	1	16
3. Marine fisheries	4	2	0
4. Freshwater fisheries	13	0	37
5. Professional/Academic Bodies	2	0	1
6. Voluntary Sector	9	0	12
7. Individuals/Politicians	9	1	24
8. Other Commercial	0	0	5
Overall	45	4	100

- 8.24 While almost two-thirds of consultees declined to answer this question, there was strong support for the proposal from those who did.
- 8.25 A respondent discussed procedures for undertaking these inspections, requesting that officers have reasonable cause for an inspection and that those parties responsible be given an opportunity to be involved.

Question 45. Do you have any views on the proposals to amend the Sea Fisheries (Shellfish) Act 1967 to help make its application clearer?			
Sector	Yes	No	No comment
1. Public Bodies	7	2	3
2. Aquaculture	2	2	14
3. Marine fisheries	2	4	0
4. Freshwater fisheries	8	1	41
5. Professional/Academic Bodies	2	0	1
6. Voluntary Sector	5	3	13
7. Individuals/Politicians	4	5	25
8. Other Commercial	0	0	5
Overall	30	17	102

- 8.26 While over two-thirds of respondents declined to answer this question, there was general support across most stakeholder groups who did respond. The marine fisheries sector were largely opposed.
- 8.27 One shellfish industry respondent felt that the Act was sufficiently defined and opposed any amendment on the grounds that it would incur unnecessary costs.
- 8.28 Some respondents felt that the Act should be made „fit for purpose’, with several suggesting the definition of shellfish be made consistent across

regulatory regimes, and that any amendments should support regulating orders to implement regional management systems within inshore waters.

9 Section 6 – Paying For Progress

Question 46. Do you agree that there should be enabling provisions for Scottish Ministers to provide, through secondary legislation, for both direct and more generic charges for services/benefits arising from public sector services and activities?			
Sector	Yes	No	No comment
1. Public Bodies	10	0	2
2. Aquaculture	1	16	1
3. Marine fisheries	1	4	1
4. Freshwater fisheries	37	3	10
5. Professional/Academic Bodies	0	2	1
6. Voluntary Sector	11	2	8
7. Individuals/Politicians	7	11	16
8. Other Commercial	0	2	3
Overall	67	40	42

- 9.1 While many consultees supported the proposal for enabling powers to allow for charges for public services, there was strong opposition from the aquaculture and marine fisheries industries.
- 9.2 Some consultees felt that additional consultation should be undertaken on this issue. They asked for clarification of the services and benefits to be provided, as well as the charging regime.
- 9.3 The scale of this payment was the subject of much discussion. Freshwater fisheries respondents were concerned about generic charges, and asked for a proportionate approach to reflect the finances of DSFBs.
- 9.4 Concerns were raised about the ability to identify and attribute 'direct and exclusive benefits' and there was a view that activities 'for the common good' should be funded largely from general taxation.
- 9.5 Industry was concerned that they could be charged for 'additional public sector scrutiny' which they felt was neither necessary nor requested.
- 9.6 Some suggested use of a levy system based on applications made and service standards, along the lines of the SEPA model.

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

69 responses

- 9.7 Aquaculture industry respondents felt that they were already doing some of this work, and were concerned about potential cost burdens. There was concern about any additional bureaucracy, and the potential duplication of existing work between the aquaculture and freshwater fisheries sectors.
- 9.8 Many respondents outside the aquaculture industry were reasonably supportive of using public funding for some activities, but opinions varied over what should be covered in this way.
- 9.9 Support was based on the assumption that there would be a need for fair charging of the aquaculture industry, along with recognition that the public should not subsidise private enterprise.
- 9.10 Some DSFB respondents were concerned about potential impacts of this proposal on their operations, particularly in financial and resource terms.
- 9.11 Several respondents felt that such charging should be considered on a case-by-case basis, and others felt that additional consultation was required prior to any changes to the current system.
- 9.12 Many aquaculture industry respondents questioned the current role of Marine Scotland, and requested a public review of its operations.
- 9.13 There were further suggestions for implementing a charging system, including an annually reviewed and agreed system and one modelled on CEFAS in England and Wales.
- 9.14 Two respondents suggested that rod licences could be a source of funding, but added that any income raised should be returned in proportion to the areas where it was raised.
- 9.15 Some respondents also suggested options for raising funds or cutting costs in addition, or as an alternative, to the proposal.

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

65 Responses

- 9.16 There was some support for the placement of additional charges on the aquaculture industry (i.e. higher fixed penalties, fees and licence charges). However, this support was not shared by the industry itself.
- 9.17 There was strong support amongst respondents for making savings through improving efficiency in governance. Suggestions included:
- Addressing duplication of activities between government and agencies.
 - Closer liaison and co-ordination between stakeholders (i.e. SEPA, SNH, MSS, Local Authorities, DSFBs and the aquaculture industry).
 - Discontinuing discretionary public sector services that the industry is unwilling to fund.
 - The need for a better understanding of the roles and needs of both Marine Scotland and industry operators, and the services and benefits provided by the proposals was emphasised.
 - Adoption of a national strategy for data collection was suggested.
 - Several aquaculture industry respondents questioned the role of Marine Scotland, and suggested the following: i) separation of Marine Scotland research and FHI functions; ii) clear specification of FHI responsibilities and review of its role by an independent committee; and iii) independent review of Marine Scotland's research programmes to assess relevance and determine if they can be delivered more effectively and cost efficiently.

10 Other Comments and Issues Raised

10.1 Many respondents provided additional comments on wider issues relating to aquaculture and freshwater fisheries in their responses. In summary, these included:

- Disagreement with information in and/or conclusions of the SEA.
- Support for the recommendations of the Mixed Stock Salmon Fisheries Working Group.
- Support for changes in farming practices (i.e. closed containment and production innovations).
- Suggestions for further action on escapes (i.e. requirement for remedial action by operators, genetic sterilisation, stopping movement of cages into open waters).
- Support for presumption against or powers to limit fish farm developments in areas of importance to wild salmonids.
- Suggestion for the provision of additional scope for DSFBs (i.e. include all species of trout, notification of developments impacting on river systems, include as a consultee for planning permission applications).
- Suggestion for the adoption of an ecosystem approach for fisheries management.
- Suggesting further consultation and collaboration on the operation of MAs, particularly regarding salmon farming practices and sea-lice treatments.
- Several suggestions for reviewing or changing weekly close times for net fishing and correcting the current imbalance in financial contributions from net fisheries to fishery management.
- Concern that the proposals in the Consultation Document may adversely impact the coarse angling and aquaculture industries.
- Support for changing the use of Protection Orders (POs) where risk to native species or the environment can be demonstrated.
- Recommendation for a review of the Scottish Aquaculture CoGP.
- Support for inclusion on a range of additional provisions (i.e. pollution, seal shooting, acoustic deterrent devices, locational planning issues amongst others).

11 Key Issues and Trends

- 11.1 Overall, opinions on most of the issues in the Consultation Document were strongly divided between the aquaculture industry and freshwater fisheries/other environmental stakeholders.
- 11.2 With a small number of exceptions, the aquaculture industry was largely critical of many of the proposed Bill provisions, with most aquaculture industry respondents aligning themselves with the response provided by the SSPO. The opposition appeared to relate to concerns about excessive regulation of the industry, and adding unnecessary red tape to a growing industry. Several felt that the Scottish Government was sending out mixed signals, with aspirations for industry growth being undermined by proposals for tighter regulation. The industry was generally supportive of many of the proposals outlined in Section 4 of the Consultation Document.
- 11.3 Concerns also related to perceived financial and reputational damage to the industry and the likely increases in cost burdens and reduced ability to be competitive in worldwide markets. A potential increase in liability of aquaculture industry operators and their workers resulting from strict liability and fixed penalties was also highlighted by both company responses and individuals working within the industry.
- 11.4 In contrast, freshwater fisheries bodies were largely supportive of proposals for the Bill, with the exception of some opposition to the proposals in Section 4 of the Consultation Document (i.e. relating to salmon and freshwater fisheries management). The freshwater fisheries respondents largely referred to the response of the ASFB, with several consultees adding additional comments on specific issues.
- 11.5 There were also contrasting views between the coarse angling/mixed fishery industry operators and a number of DSFBs. Several anglers requested greater involvement in DSFB activities. Some were disappointed that other fish species are not included in the Bill provisions, raising concerns about the potential loss of these fisheries.
- 11.6 The existing and proposed measures in Scotland were often compared with those in other countries. Several respondents suggested adopting measures or systems currently used in Canada (British Columbia), Norway or Ireland. These suggestions related largely to data collection and publication, site monitoring and arbitration. Several respondents argued that most of the aquaculture industry firms operating in Scotland are multi-national and would be familiar with other regulatory regimes, Norway in particular.
- 11.7 The potential financial implications of the Bill were also raised by a range of stakeholders. Many were concerned at likely increases in costs associated with the adoption and implementation of the proposals in the Bill and questioned who will pay for them. Aquaculture industry respondents, including the SSPO, highlighted large potential losses to the aquaculture industry in meeting the proposed requirements, although most did not state a particular monetary figure. Possible costs to the public sector were also raised, specifically relating to implications for the budgets of SEPA and

DSFBs arising from increased requirements and responsibilities under the proposals.

- 11.8 Several respondents, from across the stakeholder groups, called for additional consultation on some provisions in the Bill. These included arbitration, unused consents, collection of samples, wellboat controls, carcass tagging, conservation measures, data collection, paying for progress, strict liability and fixed penalty notices.



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The Scottish Government
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EH1 3DG

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