

# **Aquaculture and Fisheries Bill Consultation**

## **Marine Scotland Response October 2012**

# The Consultation Document and Analysis

The Aquaculture and Fisheries Bill – Consultation Document<sup>1</sup> 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.

The Consultation Document was published on the Scottish Government website on 12 December 2011. The document was accompanied by a Strategic Environmental Assessment (SEA) Environmental Report<sup>2</sup> and a partial Business and Regulatory Impact Assessment (BRIA)<sup>3</sup> 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.

Each response received was read and considered by Marine Scotland and informed the development of the Aquaculture and Fisheries Bill and other approaches to policy implementation.

The analysis of consultation responses was undertaken on behalf of Marine Scotland by the Scottish Government’s Environmental Assessment Team, in accordance with Scottish Government’s Good Practice Guidance (May 2010). The detailed findings were presented in the Aquaculture and Fisheries Bill Consultation Analysis – Main Report<sup>4</sup>. A Summary Report<sup>5</sup> was also published.

This report comprises Marine Scotland’s response to the consultation and sets out how each issue will be taken forward.

It is recommended that this report is read alongside the summary report and the policy memorandum accompanying the Bill.

---

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

<sup>2</sup> 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>

<sup>3</sup> 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>

<sup>4</sup> Marine Scotland (2012) Aquaculture and Fisheries Bill Consultation Analysis – Main Report [online] available at <http://www.scotland.gov.uk/Publications/2012/08/4768>

<sup>5</sup> Marine Scotland (2012) Aquaculture and Fisheries Bill Consultation Analysis – Summary Report [online] available at <http://www.scotland.gov.uk/Publications/2012/08/6066>

# Overview of Consultation Questions

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)

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.

## 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?**

Summary: 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.

Scottish Government response: The legal requirement to participate in an appropriate Farm Management Agreement is being taken forward in the Aquaculture and Fisheries Bill.

**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?**

Summary: 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.

Scottish Government response: Following further policy consideration, we consider that the FMA provisions within the Bill have sufficient scope to ensure that operators farm within appropriate areas.

**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?**

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

Summary: 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.

Scottish Government response: Following further policy consideration, we consider that the current non statutory mechanism to resolve disputes remains appropriate, and should continue to be followed, within the proposed FMA statutory framework.

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

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

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

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

Summary: There was overall agreement with the proposals from consultees. A significant proportion of respondents from the freshwater fisheries and other sectors supported this proposal, citing for example the importance of a review in providing an accurate assessment of unused biomass. However, the aquaculture industry was strongly opposed.

Scottish Government response: We do not intend to progress these proposals at this time. We recognise the complexity of the issue of unused consents and that consents may be held for a variety of reasons. We will continue to encourage the aquaculture industry to bring forward non-legislative solutions which maximise the effective use of existing consents.

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

**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?**

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

Summary: There was some support for combined government and aquaculture industry responsibility for data collection and publication. 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.

Scottish Government response: It is anticipated that this proposal will be progressed through non-legislative means, through improved voluntary reporting, in discussion with stakeholders. Alternatively, the Scottish Government has existing powers to progress the proposals through secondary legislation.

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

Summary: 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.

Scottish Government response: SEPA can already reduce biomass consent in certain circumstances. We will consider further non-legislative solutions and have begun discussion with SEPA about these matters.

**Question 13. Do you agree we should make enabling legislation giving Scottish Ministers powers to place additional control requirements on wellboats?**

Summary: There was strong support for this proposal from the freshwater fisheries sector and public bodies, whilst the majority of the aquaculture industry were opposed.

Scottish Government response: This proposal is being taken forward in the Aquaculture and Fisheries Bill.

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

Summary: 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 the aquaculture industry are manageable was also raised by some of these respondents.

Scottish Government response: This is still under consideration, although any conclusions can be progressed through the use of existing powers and we have begun discussion with SEPA about these matters.

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

**Question 16. Do you agree that the most appropriate approach to regulation of this sector would be through marine licensing?**

**Question 17. If not, what alternative arrangements would you suggest?**

Summary: Of those who responded to this question (less than half of all responses), most expressed strong support for a consistent regulatory framework for all seaweed farms. This view extended across the stakeholder groups. There was no consensus on the appropriate regulatory approach for seaweed cultivation.

Scottish Government response: We have determined not to make any changes through the Bill. Further discussions are taking place regarding the regulation of seaweed and what might constitute the most appropriate regulatory framework. We are of the view that any changes to the regulatory regime (if considered desirable) can be dealt with by secondary legislation. We intend to consult on a Seaweed Policy Statement and Strategic Environmental Assessment (SEA) in the autumn and will provide further detail on the issue of regulation at this point.

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

Summary: 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, the aquaculture industry had concerns with regard to the provisions of any open-ended powers but supported proposals to manage *Mytilus trossulus*, which is an identified problem

Scottish Government response: This proposal is being taken forward in the Aquaculture and Fisheries Bill.

## 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?**

Summary: Of those who responded, nearly all supported this proposal.

Scottish Government response: This proposal will be taken forward in the Aquaculture and Fisheries Bill. Further details are set out in Part 2 of the Scottish Government's Consultation Analysis: Delivering Scotland's River Basin Management Plans: An integrated approach to the protection of shellfish growing waters published in May 2012 <http://www.scotland.gov.uk/Publications/2012/05/8479/downloads>

## 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?**

Summary: While most respondents who answered this question supported the proposal, there was strong opposition from the aquaculture industry.

Scottish Government response: Following further consideration we believe that this can be achieved through existing powers and through the provisions contained in the Bill.

**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)**

Summary: There was strong support for introduction of a technical standard across all stakeholder groups.

Scottish Government response: This proposal is being taken forward in the Aquaculture and Fisheries Bill.

**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?**

Summary: 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. The aquaculture industry and other commercial industry respondents were strongly opposed to these additional powers.

Scottish Government response: This proposal is being taken forward in the Aquaculture and Fisheries Bill.

## **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?**

Summary: 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.

Scottish Government response: This proposal is being taken forward in the Aquaculture and Fisheries Bill.

**Question 24. Do you agree that there should be a Code of Practice for wild salmon and freshwater fisheries?**

**Question 25. If yes, should such a Code of Practice be statutory or non-statutory?**

Summary: While introduction of a Code of Practice was strongly supported across the stakeholder groups, there was opposition from many to making it statutory.

Scottish Government response: The Scottish Government acknowledges the existing Code of Good Practice developed by the Association of District Salmon Fishery Boards which offers guidance to Boards on fulfilling their duties and we anticipate that this sector-led Code will continue to exist and be updated by ASFB to reflect the proposed new responsibilities placed on Boards by the Aquaculture and Fisheries Bill.

**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?**

Summary: There was strong support for powers to introduce a carcass tagging system in Scotland, with respondents recognising numerous benefits from the proposal.

Scottish Government response: This proposal is being taken forward in the Aquaculture and Fisheries Bill.

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

Summary: There was strong support for this proposal, but the aquaculture industry and other commercial sector respondents were largely opposed.

Scottish Government response: This proposal is being taken forward in the Aquaculture and Fisheries Bill.

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

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

Scottish Government response: This proposal is being taken forward in the Aquaculture and Fisheries Bill.

**Question 29. Do you agree that Scottish Ministers should be able to promote combined salmon conservation measures at their own hand?**

Summary: While the majority of respondents to this question supported the proposal, there was strong opposition from DSFBs/RAFTS consultees.

Scottish Government response: The proposal is being taken forward in the Aquaculture and Fisheries Bill. There is a need to ensure Scottish Ministers have appropriate powers to act in cases of national interest or contingency.

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

Summary: There was strong support across all stakeholder groups for this proposal.

Scottish Government response: This proposal is being taken forward in the Aquaculture and Fisheries Bill.

**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?**

Summary: Overall there were mixed views on this proposal. Only the public and voluntary sectors were strongly supportive; the aquaculture industry was strongly opposed.

Scottish Government response: The Scottish Government notes the mixed reaction to this proposal and will consider the issue as part of further work to modernise management structures for salmon and freshwater fisheries.

**Question 32. Do you agree that there should be a legal requirement to provide comprehensive effort data for rod fisheries?**

Summary: There was strong support for the collection of comprehensive rod effort data from all the stakeholder groups.

Scottish Government response: Scottish Ministers have existing powers to require effort data for rod fisheries under the Salmon and Freshwater Fisheries

(Consolidation) (Scotland) Act 2003. The issue will be looked at as part of considerations for a national data collection workstream.

**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?**

Summary: The majority of respondents generally agreed with the principle of providing additional information on both fish and fisheries.

Scottish Government response: The consultation generated a number of suggestions for additional information. These will be looked at in the context of considerations for a national data collection workstream and the development of a national policy position on introductions / stocking.

**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?**

Summary: There was overall support amongst most stakeholder groups for this proposal, with the exception of freshwater fisheries and DSFB/RAFTS respondents.

Scottish Government response: Proposals to require additional information from fisheries are being taken forward in the Aquaculture and Fisheries Bill.

**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?**

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

Summary: There was strong support for the proposal amongst all stakeholder groups, and particularly for greater transparency in introduction / stocking activities.

Scottish Government response: This proposal is being taken forward in the Aquaculture and Fisheries Bill.

## **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?**

Summary: While many of those who responded to this question supported this proposal, there was strong opposition from the aquaculture and other commercial businesses stakeholder groups.

Scottish Government response: This proposal is not being progressed for the time being.

**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?**

Summary: Less than half of consultees answered this question, and there were mixed views on the use of fixed penalties amongst those that did answer.

Scottish Government response: This proposal is being taken forward in the Aquaculture and Fisheries Bill.

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

**Question 40. Are there particular regulatory areas that merit a higher or lower maximum sum?**

Summary: 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. There was no consensus amongst respondents on whether there was a case for higher fixed penalty sums in certain regulatory circumstances

Scottish Government response: This proposal is being taken forward in the Aquaculture and Fisheries Bill.

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

Summary: Those who responded to this question (around a third of all respondents) largely supported the proposed amendment.

Scottish Government response: This proposal is being taken forward in the Aquaculture and Fisheries Bill.

**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?**

**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?**

**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?**

Summary: While almost two-thirds of consultees declined to answer these questions, there was strong support for the proposal to allow vessels to be detained in port for the purposes of court proceedings, with some considering it as a necessary change to close a loophole which could allow foreign nationals to evade justice. There was also strong support for powers to inspect objects in the sea and elsewhere, with many recognising that it may be of assistance in the enforcement of un-licensed fishing.

Scottish Government response: The proposals in Questions 42, 43 and 44 are being taken forward in the Aquaculture and Fisheries Bill

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

Summary: While over two-thirds of respondents declined to answer this question, there was general support across most stakeholder groups who did respond. There were some concerns, however, amongst some sea fisheries respondents and some individuals and political representatives.

Scottish Government response: This proposal is being taken forward in the Aquaculture and Fisheries Bill.

## 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?**

**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?**

**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?**

Summary: 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.

Scottish Government response: The proposals detailed in questions 46-48 will be taken forward in the Aquaculture and Fisheries Bill. Further consultation would take place before the introduction of any charging regime.

## Other Comments and Issues Raised

Many respondents provided additional comments on wider issues relating to aquaculture and freshwater fisheries in their responses. In summary, these included (with Scottish Government response where appropriate):

- **Disagreement with information in and/or conclusions of the SEA.**
- **Support for changes in farming practices (i.e. closed containment, production and technical innovations).**
- **Suggesting further consultation and collaboration on the operation of MAs, particularly regarding salmon farming practices and sea-lice treatments.**
- **Suggestions for further action on escapes (i.e. requirement for remedial action by operators, genetic sterilisation and preventing site development in offshore locations).**
- **Support for presumption against or powers to limit fish farm developments in areas of importance to wild salmonids.**
- Scottish Government response: A number of proposals regarding farm management are being progressed through provisions within the Bill.
- **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.**
- **Several suggestions for further legislative change in relation to salmon and freshwater fisheries. These included proposed changes affecting the operation of, and management regime for, salmon net fisheries.**
- Scottish Government response: It is anticipated that these issues will be considered as part of further work to modernise the management structures for salmon and freshwater fisheries.
- **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.**
- Scottish Government response: It is anticipated that these issues will be considered as part of further work to modernise the management structures for salmon and freshwater fisheries.

- **Recommendation for a review of the Scottish Aquaculture CoGP.**
- Scottish Government response: The Scottish Government is represented on the CoGP Working Group which regularly reviews the effectiveness of the Code.
- **Support for inclusion on a range of additional provisions (i.e. pollution, seal shooting, acoustic deterrent devices, locational planning issues amongst others).**



© Crown copyright 2012

You may re-use this information (excluding logos and images) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or e-mail: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

ISBN: 978-1-78256-147-7 (web only)

The Scottish Government  
St Andrew's House  
Edinburgh  
EH1 3DG

Produced for the Scottish Government by APS Group Scotland  
DPPAS13455 (10/12)

Published by the Scottish Government, October 2012

w w w . s c o t l a n d . g o v . u k