

The Aquaculture Code of Practice: Containment of and Prevention of Escape of Fish on Fish Farms in relation to Marine Mammal Interactions

Business and Regulatory Impact Assessment

September 2021



Scottish Government
Riaghaltas na h-Alba
gov.scot

Business and Regulatory Impact Assessment

Title of Proposal

The Aquaculture Code of Practice: Containment of and Prevention of Escape of Fish on Fish Farms in relation to Marine Mammal Interactions (the “Code”) and the Fish Farming Code of Practice (Scotland) Order 2021 (the “Order”).

Purpose and intended effect

The Code has been developed for Aquaculture Production Businesses (“APBs”) with respect to containment of fish on fish farms and the prevention of escape of fish on fish farms in relation to marine mammal interactions.

The Code provides a combination of guidance for APBs on appropriate measures to ensure containment and prevent escape of farmed fish (referred to as non-lethal measures), together with mandatory standards with which APBs must comply. The Code also introduces a system of monitoring and reporting in order to document the use of containment measures in a systematic way throughout Scotland’s aquaculture industry and to log any killing or injury of marine mammals in the form of bycatch associated with fish farms.

The intended effect of the Code is to enable the aquaculture sector as an essential component of the Scottish economy to contribute to sustainable economic growth in rural and coastal communities.

Background

Marine mammals, in particular grey seals and harbour seals, are commonly found in Scottish waters and may be attracted to fish farms, especially in circumstances where they learn to associate the farmed fish as a potential source of food. Seals are opportunistic hunters and will exploit weaknesses in containment. This can result in damage to nets and other aquaculture equipment which can in turn jeopardise the containment of farmed fish and risk their escape and may also cause stress and welfare issues in farmed fish. Therefore, successful containment at fish farms is essential for minimising the risk of escape of farmed fish.

In the past a combination of lethal and non-lethal management and mitigation measures have been used by APBs to reduce the risks concerning containment and escape of farmed fish arising from marine mammal interactions, particularly those involving seals.

The Code therefore contains measures which seek to reflect existing good practice in the aquaculture industry ensuring the effectiveness of non-lethal alternative

methods of preventing seal damage to the fish farm and enabling the continuation of trade and access to international markets.

Objective

The practical measures identified within the Code are focussed upon addressing the risks concerning containment and escape of farmed fish arising from marine mammal interactions, particularly those involving seals. The potential impact of marine mammals upon fish farms should be mitigated through the adoption of appropriate containment measures, while ensuring that these measures are not harmful to marine mammals (i.e., appropriate non-lethal measures).

The Code's system of monitoring and reporting will enable the documentation of the use of these containment measures in a systematic way throughout Scotland's aquaculture industry, and will log any killing or injury of marine mammals in the form of bycatch associated with fish farms.

Rationale for Government intervention

The aquaculture sector is an essential component of the Scottish economy, contributing to sustainable economic growth in rural and coastal communities. In 2018, Scottish aquaculture and its wider supply chain contributed £880 million GVA to the Scottish economy and supported over 11,700 jobs. The Code is needed in order to ensure the aquaculture sector's growth continues to be sustainable, and to allow continued access to international markets through the provision of comparable standards of non-lethal measures for marine mammal protection and in relation to reporting. For example, adhering to the proposed Code will help to ensure that Scotland's standards are comparable with the United States ("US") Marine Mammal Protection Act 1972.

Consultation

The policy to introduce a statutory code of practice was developed through Marine Scotland's collaborative approach with various Scottish Government departments, trade associations, particularly the Scottish Salmon Producers Organisation ("SSPO") and the British Trout Association whose membership was representative of the industry, as well as regulatory and advisory bodies.

Public Consultation

In accordance with the requirement in section 7(4) of the Aquaculture and Fisheries (Scotland) Act 2007 ("2007 Act"), the Scottish Ministers have consulted such persons as they consider appropriate. A six week targeted consultation on the draft Code and Order was undertaken, ending on 3 August 2021. Business and relevant

stakeholders were also consulted on the partial BRIA as part of the consultation. Comments received during that process have informed the final BRIA.

Within Government

Various Scottish Government departments were consulted on the draft Code including the Scottish Government's Animal Welfare team, Marine Scotland Conservation, Marine Scotland Licensing and Operations Team, Marine Scotland Science, the Fish Health Inspectorate, the Salmon and Recreational Fisheries Policy team, and Marine Scotland – Compliance.

Business

Views have been sought on the likelihood of business and regulatory impacts, from all affected by the Code including: fish farming businesses, fish farm equipment manufacturers such as manufacturers of acoustic deterrent devices (“ADDs”) and or suppliers, the SSPO and the British Trout Association.

Options

Option 1: Introduce a statutory code of practice and approve it by order (preferred option)

The proposed Code provides a combination of guidance and mandatory standards with which APBs in Scotland must comply in order to provide for the containment of fish on fish farms and to prevent their escape. The Code also introduces a requirement for APBs to report on the use of containment measures to deter marine mammals and to monitor and report incidental killing or injury of marine mammals in the form of bycatch, thereby enabling the continuation of trade and access to international markets. By approving the Code by order, this would render the Code subject the monitoring and enforcement powers as provided in the 2007 Act.

Option 2: Do nothing

The alternative to introducing a statutory code of practice for the purpose of giving practical guidance and mandatory standards, including monitoring and reporting requirements, would be to rely upon existing regulatory provisions. This does not meet the policy needs and Scottish businesses would not be able to continue existing trade with international markets.

Scottish Firms Impact Test

Through the public consultation, we aimed to understand the impact from the implementation of the Code and the Order on specific industries, firm types and businesses of different sizes through the following questions.

With respect to the Code for the containment and prevention of escape of fish on fish farms in relation to marine mammal interaction:

1. What Sector does your Business represent?
2. Do you anticipate that the implementation of the Code of Practice will have a negative impact for your business and why?
3. Are there any benefits to your company from introducing the Code?
4. If you are a fish farm equipment manufacturer or supplier - do you anticipate that the implementation of the Code of Practice will limit the ability of manufacturer suppliers to compete?
5. Do you consider that implementation will increase or reduce the costs of operations, for your company and why?
6. Do you consider that compliance with the Order is difficult?
7. Do you consider that the reporting of incidental bycatch at Finfish Farms form is clear, simple and easy to complete? (only to be completed by APBs)
8. Do you consider that implementation of the Code will require increased resourcing?
9. Do you consider that implementation of the Code will require additional staff training?
10. Do you have any comments on the content of the Code including the enforceable measures?
11. Do you have any further comments on the potential socio-economic and environmental impacts that may be incurred from implementing the Code?

With regard to Option 1, all affected fish farming businesses were asked through the partial BRIA questionnaire to “test run” the form for the reporting of incidental bycatch at finfish farms and legislative requirements at the consultation stage. The proposed reporting forms have been clarified and simplified to ensure that they provide the information required in the most efficient manner.

Costs/benefit analysis

The potential for any impacts was assessed at the scoping stage to be limited to marine finfish farming businesses and ADD manufacturers and fish farm equipment suppliers. In response to the public consultation, no ADD manufacturers or fish farm equipment suppliers identified any impacts.

With respect to Option 1, five respondents to the public consultation (three APBs and two representative bodies) identified the potential for increased costs to fish farms through administration, staff training and compliance measures. Based on the qualitative information provided, the impact is assessed to be minor. In response to detailed comments provided, particularly with respect to reporting, changes to the final reporting requirements will deliver efficiencies to APBs. Following these

changes, the overall impact to APBs associated with Option 1 is assessed to be negligible.

No responses from the public consultation were received that specifically addressed the potential costs associated with Option 2. Continued access to the US market is worth over £100 million annually for the Scottish farmed salmon sector (source UK trade information – HMRC¹). The impact of Option 2 is assessed to be very significant for APBs, resulting in the potential loss of a key market.

Competition Assessment

No impacts on the ability of APBs to access markets, or that placed Scottish firms at any disadvantage, were identified under Option 1 of implementing the Code and approving it by Order. Option 2 of not taking forward the Code risks reducing access to the US market, putting aquaculture businesses at a serious disadvantage.

Consumer Assessment

No impacts from the implementation of this Code and Order on consumers were identified.

Legal Aid Impact Test

Once approved by Order, the mandatory standards within the Code are subject to monitoring and enforcement processes as provided in the 2007 Act. Under section 8 of the 2007 Act, the Scottish Ministers may serve notice on a person who carries on a business of fish farming where it appears to them that that person is not complying with, or is likely to not comply with, the Code in a material regard. It is an offence for a person to contravene a notice issued under section 8 and any person who commits such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale. Such an offence falls under the existing offences set out in the 2007 Act, and it is not a new offence. It is assessed to be unlikely Option 1 will give rise to an increase in the use of legal processes as industry is supportive of the continuity of trade and a high level of compliance is expected.

Enforcement, sanctions and monitoring

Under Option 1, monitoring, and enforcement will be carried out by Scottish Ministers in accordance with the 2007 Act, including ensuring that valid returns are received from APBs for all sites to which the Code relates. Based upon discussions and

¹ UK trade information can be found here: [Overseas trade data table - UK Trade Info](#) (all salmon exports figures here refer to HS code 03021400 – Fresh/Chilled Atlantic salmon).

consultation with the Scottish aquaculture industry, compliance levels are expected to be very high.

Under section 8 of the 2007 Act, the Scottish Ministers may serve notice on a person who carries on a business of fish farming where it appears to them that that person is not complying with, or is likely to not comply with, the Code in a material regard. It is an offence for a person to contravene a notice issued under section 8 and any person who commits such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale.. The costs associated with implementation of monitoring and enforcement are not considered significant and will be delivered using existing resources within Marine Scotland.

Implementation and delivery plan

Under Option 1, the Code would be published on 21 September 2021 and the Order made on 23 September 2021, with an entry into force date of 22 November 2021.

Post-implementation review

Under Option 1, post implementation review of the Code will take place as new knowledge and technologies come available for the purpose of containment of fish at fish farms in relation to marine mammal interactions and the prevention of escapes. Any future changes to the Code will be informed by public consultation and a revised BRIA.

Summary and recommendation

It is recommended that Option 1 is adopted to implement the Code and to make the Order approving the Code.

Declaration

I have read the Business and Regulatory Impact Assessment, and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

A handwritten signature in black ink, appearing to read 'Mairi Gougeon', written in a cursive style.

Date: 13th September 2021

Cabinet Secretary's name: Mairi Gougeon



Scottish Government
Riaghaltas na h-Alba
gov.scot

© Crown copyright 2021

OGL

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: 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.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at

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

ISBN: 978-1-80201-399-3 (web only)

Published by The Scottish Government, September 2021

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS942106 (09/21)

W W W . g o v . s c o t