



SCOTTISH EXECUTIVE

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23 October 2006

Dear Colleague

CONSULTATION ON PROPOSED LEGISLATION TO IMPROVE REGULATING ORDER ENFORCEMENT

Effective local management through Regulating Orders is a means by which we can work towards a sustainable and viable inshore fishing industry. Given this, I am committed to ensuring that such orders are as effective as possible. Recently, I have taken steps using the Police, Public Order and Criminal Justice (Scotland) Act 2006 to enable the Scottish Fisheries Protection Agency (SFPA) to enforce Regulating Orders to provide for more effective enforcement of Regulating Orders. From 1 September 2006, when the Police, Public Order and Criminal Justice (Scotland) Act came into force either the grantee of a Regulating Order or the SFPA or both can enforce Regulating Orders.

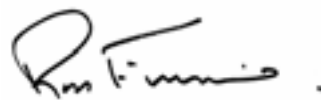
Consideration is now being given to the possibility of making two further improvements to Regulating Order enforcement which it was not possible to do at the same time as the provisions under the Police, Public Order and Criminal Justice (Scotland) Act 2006. This letter seeks your views on these proposed improvements.

The attached consultation paper provides details of the proposals. They are to make it more straightforward for a Regulating Order grantee to revoke a licence and to increase the possible maximum fine which could be imposed in the case of an individual being found guilty of a fisheries offence in a Regulating Order area.

Depending on the responses to this consultation, the intention is to put forward finalised proposals at stage 2 of the Aquaculture and Fisheries Bill which is scheduled for January 2007.

The consultation closes on Friday 29 December 2006. It is designed to provoke discussion and, if there is sufficient demand we will hold meetings locally to foster these discussions and to elicit comments. Details on how to submit your comments are set out in the attached consultation paper.

This is your chance to tell us what you think and your views will be fully considered in finalising our proposals. I look forward to receiving your response.

A handwritten signature in black ink, appearing to read "Ross Finnie", with a small dot at the end.

ROSS FINNIE

CONSULTATION ON PROPOSED LEGISLATION TO IMPROVE POWERS TO ENFORCE REGULATING ORDERS

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1. Purpose

This document invites your comments on proposals for amending existing fisheries legislation to improve the enforcement of Regulating Orders (ROs) and, therefore, strengthen their impact and effectiveness as a local fisheries management tool. It sets out some background on the enforcement of ROs and explains why we are holding this consultation. It sets out two options for change.

Each option for change is followed by a question seeking your views. You do not have to answer the questions; we are equally happy to receive your responses in the form of a letter or email which covers issues of particular interest to you.

2. Process for Responding

2.1 Responding to this consultation

Please respond by Friday 29 December and be sure to include the Respondent Information Form attached at Annex B with your response.

Comments should be sent to:

Regulating Order Consultation
Inshore Fisheries Team
Scottish Executive
Room 506
Pentland House
47 Robbs Loan
Edinburgh
EH14 1TY

or to:

inshorefisheries@scotland.gsi.gov.uk

If you have any queries please contact Josie Swan on 0131 244 6383. Further information about the Scottish Executive consultation process is set out in Annex A.

2.2 Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the Respondent Information Form attached at Annex B as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, subject to the paragraph below and we will treat it accordingly.

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

3. Background and Context

3.1 What is a Regulating Order?

Regulating Orders are made under section 1 of the Sea Fisheries (Shellfish) Act 1967 (“the 1967 Act”) to encourage the maintenance and regulation of local, natural shellfisheries through permits and other management measures.

Orders are granted to a particular person or body (referred to in this document as a “grantee”). They cover named species of shellfish within a specific area of inshore or tidal waters. ROs remain in force for a fixed period not normally exceeding 20 years. They enable the grantee of the RO, with the consent of Scottish Ministers, to impose restrictions and regulations in relation to the dredging, fishing for and taking of shellfish of specified kinds within the defined RO area. There should be clear linkage between stock assessment, the aims of the Order and the proposed regulatory measures. In effect, an RO grants management responsibility for a local shellfishery to the grantee and allows the grantee to issue licences, and/or impose the payment of tolls or royalties before fishermen may be granted access to the regulated fishery.

3.2 Context - Relationship between ROs and IFGs

The Strategic Framework for Inshore Fisheries was published in March 2005 and set out proposals for a network of Inshore Fisheries Groups (IFGs) around the Scottish coast and covering all Scottish inshore waters. The IFGs will be a new management framework that will place fishers at the heart of the decision-making process. They will develop local objectives which reflect local priorities and which are complimentary to high level national objectives. In developing these local objectives, where appropriate, ROs will be one of the tools at the disposal of IFGs as a useful mechanism for regulating and managing local shellfisheries.

It is envisaged that ROs may be used to further the aims of the inshore strategy as a whole and of the aims of local groups in particular.

3.3 Current and Proposed Regulating Orders

The only two existing ROs in Scotland are the Shetland RO, granted in 1999, and the Solway Regulating Order granted in 2006.

3.4 Current Enforcement Position

The purpose of enforcement of a RO is to ensure compliance with a regulatory system, itself designed to achieve stated local fishery management purposes. The Scottish Executive Environment and Rural Affairs Department (SEERAD) had been aware for some time that, in Scotland, the 1967 Act provided insufficient enforcement powers in relation to ROs. To address this improved enforcement powers have been made available to the SFPA and Regulating Order grantees. These new powers came into force on 1 September 2006 as part of provisions contained in the Police, Public Order and Criminal Justice (Scotland) Act 2006.

4. General Policy Intention

The policy intention is that these proposals to improve the enforcement of ROs would build on the Police, Public Order and Criminal Justice (Scotland) Act 2006 provisions to further discourage illegal fishing and allow grantees to concentrate on developing the fishery. Ensuring closer compliance with ROs would allow for the improved, sustainable management of fisheries covered by these arrangements.

5. Proposed Options for Change

5.1 Increased Maximum Fine Level

The first proposal is to increase the current maximum fine level for an offence under an RO from a maximum of £5000 to £50,000. The intention is to make the maximum fine level an effective deterrent to illegal fishing, particularly in those Regulating Order areas which have lucrative fisheries. The proposal reflects the potential gravity of the offences and would bring the maximum fine level into line with that available to breaches of quota and other fisheries offences.

QUESTION 1 : Is it your view that the current maximum fine level of up to £5000 should be increased for the most serious offences under an RO to up to £50,000?

5.2 Revocation of Licences

The second proposal is to improve the process for the revocation of licences under a Regulating Order. Currently, licences can only be revoked if a licence holder is convicted of **two offences**, dies or hands the licence back or where there is a scientific case for reducing the number of licences.

The view is that this “two strikes and you are out” arrangement means that some licence holders are more likely to take the risk of fishing illegally as, even if they are caught and prosecuted, they will retain their licences.

The proposal is to amend the Sea Fisheries (Shellfish) Act 1967 to allow for the revocation of a licence by a grantee where the licence holder is convicted of **one** fisheries offence as opposed to two convictions required at present

QUESTION 2 : Is it your view that a RO licence should be revoked if a licence holder is convicted of one offence rather than two?

6. Conclusions and Next Steps

We welcome your comments on the issues raised in this paper. You can respond by writing a letter or sending an email to us with your comments by **Friday 29 December 2006** to either of the addresses set out at paragraph 2.1.

Please ensure that you include the Respondent Information Form at Annex B with your response and **thank you for taking the time to respond.**

Where you have given permission for your response to be made public (see the attached Respondent Information Form at Annex B), these will be made available to the public in the Scottish Executive Library by late January 2007. We will check all responses where agreement to publish has been given for any potentially defamatory material before logging them in the library or placing them on the website. You can make arrangements to view responses by contacting the SE Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

Following the closing date, all responses will be analysed and considered. We aim to issue a report on this consultation process by February 2007 .

If you have any comments about how this consultation exercise has been conducted, please send them to Josie Swan at either of the addresses at paragraph 2.1 above.

ANNEX A - THE SCOTTISH EXECUTIVE CONSULTATION PROCESS

Consultation is an essential and important aspect of Scottish Executive working methods. Given the wide-ranging areas of work of the Scottish Executive, there are many varied types of consultation. However, in general, Scottish Executive consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Executive encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.

Typically Scottish Executive consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Executive web site enabling a wider audience to access the paper and submit their responses¹. Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Executive library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4565).

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

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

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

¹ <http://www.scotland.gov.uk/consultations>

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

ANNEX B: RESPONDENT INFORMATION FORM

RESPONDENT INFORMATION FORM: POWERS TO ENFORCE REGULATING ORDERS

Please complete the details below and return it with your response. This will help ensure we handle your response appropriately. Thank you for your help.

Name:

Postal Address(including telephone number and email address where possible):

1. Are you responding: (please tick one box)
- (a) as an individual go to Q2a/b and then Q4
- (b) **on behalf of** a group/organisation go to Q3 and then Q4

INDIVIDUALS

- 2a. Do you agree to your response being made available to the public (in Scottish Executive library and/or on the Scottish Executive website)?

Yes (go to 2b below)

No, not at all We will treat your response as confidential

- 2b. **Where *confidentiality is not requested***, we will make your response available to the public on the following basis (**please tick one** of the following boxes)

Yes, make my response, name and address all available

Yes, make my response available, but not my name or address

Yes, make my response and name available, but not my address

ON BEHALF OF GROUPS OR ORGANISATIONS:

- 3 The name and address of your organisation ***will be*** made available to the public (in the Scottish Executive library and/or on the Scottish Executive website). Are you also content for your **response** to be made available?

Yes

No We will treat your response as confidential

SHARING RESPONSES/FUTURE ENGAGEMENT

- 4 We will share your response internally with other Scottish Executive policy teams who may be addressing the issues you discuss. They may wish to contact you again in the

future, but we require your permission to do so. Are you content for the Scottish Executive to contact you again in the future in relation to this consultation response?

Yes

No

ANNEX C – LIST OF CONSULTEES

Aberdeen City Council
Aberdeenshire Council
Aberdeen Fish Curers & Merchants
Aberdeen Fish Producers' Organisation Ltd
Aberdeen Fish Salesmen's Association Ltd
Aberdeen Inshore Fishselling co Ltd
Anglo Scottish Shellfishermen's Association
Anglo-Scottish Fish Producers' Organisation
Anglo- Scottish Fishermens' Association
Angus Council
Annan Fishermen's Association
Arbroath Fishermen's Association Ltd
Argyll and Bute Council
Association of Scottish Shellfish Growers
Austen Brown
Berneray (North Uist) Fishermen Ltd
Brian Anderson, Acting Superintendent, Dumfries and Galloway Police
Caley Fisheries (Peterhead)
Carradale Fishermen Ltd
Clyde and South West Static Gear Association
Clyde Estuary Forum
Clyde Fishermen's Association
Community of Arran Seabed Trust (COAST)
Cockenzie & Port Seton Fishermen's Association
Comhairle Nan Eilean Siar
Convention of Scottish Local Authorities (COSLA)
Croan Seafoods Ltd
Crown Estate Office
Crown Office
DEFRA (Fisheries Directorate)
Denholm Fishselling Ltd (Edinburgh)
Don Fishing Company Ltd
Dumfries and Galloway Council
Dumfries and Galloway Police
East Coast Licensed Small Boats Association
East Lothian Council
Federation of Highland & Islands Fishermen
Fife Council
Fife Creel Fishermen's Association
Fife Fish Producers' Organisation Ltd
Fife Fishermen's Association
Fishermen's Association Ltd (FAL)
Fishermen's Fishselling
Fishermen's Mutual Association (Eyemouth) Ltd
Food Standards Agency
Fraserburgh Inshore Fishermen Ltd
Fraserburgh Trawlers

Galloway Static Gear Fishermen's Association
Grampian Sea Fishing Ltd
Hebridean Whale and Dolphin Trust
Herring Buyers' Association
Highlands and Islands Enterprise (HIE)
Highland Council
Highland Shellfish Management Organisation
Highlands & Islands Fishermen's Association
Hooktone
Kirkcudbright Scallop Gear
Live Shellfish Traders Association
Loch Linnhe Fishermen's Association
Lochcarron Community Council
Lunar Fishing Co
MacKinnons (Secretaries for SFPA)
Mallaig & North West Fishermen's Association
Mallaig Harbour Authority
Marine Conservation Society
Marine Laboratory
Moray Seafoods Ltd
Mousset M Michel
Mull and Iona Community Trust
Mull Aquaculture Fisheries Association
Mull Fishermen's Association
National Federation of Fishermen's Organisation
North Atlantic Fisheries College
North East of Scotland Fishermen's Organisation Ltd
North Sea Commission Fisheries Partnership
Northern Producer's Organisation Ltd
Orkney Creel Fishermen's Organisation
Orkney Fish Producers' Organisation
Orkney Islands Council
Ross of Mull and Iona Fishermen's Association
Royal Society for the Protection of Birds (RSPB)
Royal Society of Edinburgh
Scottish Association of Fish Producers' Organisations Ltd
Scottish Borders Council
Scottish Coastal Forum
Scottish Enterprise
Scottish Enterprise Dumfries and Galloway
Scottish Environment Link
Scottish Environment Protection Agency (SEPA)
Scottish Fishermens' Federation
Scottish Fishermen's Organisation Ltd
Scottish Fishing Services Association
Scottish Food and Drink Federation
Scottish Natural Heritage
Scottish Pelagic Fishermen's Association
Scottish Scallop Fishermens' Association
Scottish Seafood Processors Federation (SSPF)

Scottish Shellfish Marketing Group Ltd
Scottish White Fish Producers Association
Sea Fish Industry Authority
Seafood Scotland
Secretary of State's Advisory Group on Sustainable Development
Scottish Fisheries Protection Agency (SFPA)
Shetland Fish Producers' Organisation Ltd
Shetland Fish Products Ltd
Shetland Fishermen's Association
Shetland Islands Council
Shetland Oceans Alliance
Shetland Shellfish Management Organisation
Skye and Lochalsh Fishermen's Association
Solway Firth Handgatherers & Tractor Dredgers Federation
Solway Firth Partnership
Solway Shellfish Association
Solway Shellfish Hand Operators Federation
Solway Shellfish Management Association
Stornoway fishermen's Co-operative Ltd
Tarbert- Argyll Fishermen Ltd
Ten Metre and Under Association
Ullapool and Assynt Fishermen's Association
West Coast Sea Products
West of Scotland Fish Producers' Organisation Ltd
West of Four Fisheries Management Group
Western Isles Fishermen's Association
Westray Processors Ltd (Shellfish)
Wigtown Fishermen's Association
World Wildlife Fund (WWF) Scotland
Youngs Bluecrest Seafood Ltd

All Fishery Offices
Scottish Parliament Information Centre (SPICe)
Environment and Rural Development Committee
Scottish Executive Library

