

AQUACULTURE AND FISHERIES (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the Aquaculture and Fisheries (Scotland) Bill introduced in the Scottish Parliament on 29 June 2006:

- Explanatory Notes;
- a Financial Memorandum;
- an Executive Statement on legislative competence; and
- the Presiding Officer's Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 67-PM.

EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

DEFINITIONS

“the Bill” means the Aquaculture and Fisheries (Scotland) Bill

“the 1937 Act” means the Diseases of Fish Act 1937 (c.33)

“the 1967 Act” means the Sea Fish (Conservation) Act 1967 (c.84)

“the 1981 Act” means the Fisheries Act 1981 (c.29)

“the 1983 Act” means the Diseases of Fish Act 1983 (c.30)

“the 2003 Act” means the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (asp 15)

THE BILL – AN OVERVIEW

4. The Bill is in 5 parts. **Part 1** provides a series of information gathering, inspection and enforcement measures aimed at controlling parasites on fish farms and shellfish farms and at improving, in respect of fish farms only, the containment of, prevention of escape of, and recovery of escaped, fish. It also provides a power for the Scottish Ministers to approve a code of practice giving guidance and promoting desirable practices in respect of (a) the prevention, control and reduction of parasites on fish farms and shellfish farms and (b) in respect of fish farms only, the containment of, prevention of escape of, and recovery of escaped, fish.

5. **Part 2** provides powers for the containment and treatment of the disease causing parasite of salmon *Gyrodactylus salaris*, should it be introduced into Scotland. These include powers to construct barriers, to purchase land compulsorily for the purpose of doing so; to maintain and dismantle any such barriers; and to treat waterways with chemical agents.

6. **Part 3** provides a series of measures in respect of salmon and freshwater fisheries. It also makes an amendment to section 30(1) of the Fisheries Act 1981.

7. **Part 4** provides a series of miscellaneous measures: the regulation of the movement of live fish with a view to preventing the spread of fish diseases; a discretionary power for the Scottish Ministers to make payments in certain circumstances; and the provision of certain information about fish farming and shellfish farming.

8. **Part 5** makes provision in respect of the application of the Bill to the Crown; concerning offences by bodies corporate; in respect of minor and consequential amendments; for the making of ancillary provisions by order; for the exercise of powers conferred by the Bill by statutory instrument; in respect of interpretation of the Bill; and for commencement of provisions of the Bill.

9. The schedule to the Bill contains minor and consequential amendments to other enactments.

PART 1: FISH FARMS AND SHELLFISH FARMS

Information

Section 1 – Information about fish farms and shellfish farms

10. Subsection (1) of section 1 enables the Scottish Ministers to make an order for the purpose of obtaining information in relation to the prevention, control and reduction of parasites on fish farms and on shellfish farms. Subsection (3) enables the Scottish Ministers to make an order for the purpose of obtaining information, in respect of fish farms only, in relation to the containment of fish, prevention of escape of fish, and recovery of escaped fish. The power to make orders under subsections (1) and (3) of section 1 must be exercised by statutory instrument which is subject to annulment in pursuance of a resolution of the Scottish Parliament, by virtue of section 36 (orders) of the Bill.

11. Subsections (2) and (4) of section 1 provide that orders under subsections (1) and (3) may require any person carrying on a business to which the order applies to provide such information as may be specified in the order; to compile such records as may be specified in the order; and to retain such records for such period as is specified in the order, subject to a three year maximum. Subsection (5) of section 1 provides that an inspector may require the production of any record which a person is required to retain by virtue of an order under subsection (1) or (3), and may inspect or take copies of any such records. By virtue of section 12 (interpretation: part 1) of the Bill an inspector is a person authorised by the Scottish Ministers to act as an inspector under the Bill whether generally or for a particular purpose. Section 11(1) (offences: general) of the Bill makes it an offence to fail to comply with a requirement imposed by an inspector under subsection (5) of section 1.

Section 2 – Information: offences

12. Section 2 of the Bill provides that it is an offence for a person to fail to comply, without reasonable excuse, with a requirement of an order made under subsections (1) or (3) of section 1; to knowingly provide information, or to compile a record, which is false in a material particular; or to knowingly alter a record so that it becomes false in a material particular. A person found

guilty of committing any of these offences is liable to a fine not exceeding level four on the standard scale. This currently equates to a maximum fine of £2,500.

Parasites

Section 3 – Inspections: parasites

13. Section 3 provides for an inspector to carry out inspections of fish farms and shellfish farms for the purposes of ascertaining the levels (if any) of parasites and assessing the measures in place for the prevention, control and reduction of parasites. By virtue of section 12 (interpretation: part 1) of the Bill an inspector is a person authorised by the Scottish Ministers to act as an inspector under the Bill whether generally or for a particular purpose. Subsection (3) of section 3 provides that such inspections may include the taking of samples (including samples of or from fish and shellfish), the examination of documents or records, and the taking of copies of such documents or records. Subsection (4) of section 3 permits inspectors to arrange the carrying out tests on samples taken during an inspection carried out under subsection (1). The tests that may be carried out are those which the inspector considers necessary for the purpose of ascertaining the levels (if any) of parasites and assessing the measures in place for the prevention, control and reduction of parasites.

Section 4 – Meaning of parasite in Part 1

14. Subsection (1) of section 4 defines “parasite” for the purposes of Part 1 of the Bill as meaning *Caligus elongatus* and *Lepeophtheirus salmonis*, two species of sea lice that affect salmon on farms and in the wild. Subsection (2) enables the Scottish Ministers to modify the meaning of the term “parasite” in subsection (1) for the purposes of Part 1 of the Bill by making an order. This would allow the provisions of Part 1 of the Bill in respect of parasites to be exercised in respect of such other species of parasite as an order specifies are to be included within the meaning of the term “parasite”. The power to make such an order under subsection (2) of section 4 must be exercised by statutory instrument which is subject to annulment in pursuance of a resolution of the Scottish Parliament, by virtue of section 36 (orders) of the Bill.

Containment and escape: fish

Section 5 – Inspections: containment and escape of fish

15. Subsections (1) and (2) of section 5 provide for an inspector to carry out inspections of fish farms only, for the purposes of ascertaining the risk of escape of fish, and whether fish have escaped, from the fish farm. Such inspections may also be carried out for the purpose of assessing the measures in place for the containment of fish on the fish farm (for example the condition of equipment, such as netting or cages), the measures in place for preventing the escape of fish from the fish farm (for example the regime in place for maintaining equipment, working practices, and the appropriate provision of staff training), and the measures in place for the recovery of any fish which may escape from the fish farm (for example, the availability of suitable nets on the fish farm). Subsection (3) of section 5 provides that inspections under subsection (1) may include the taking of samples (including samples of equipment), the examination of documents or records, and the taking of copies of such documents or records. Subsection (4) of section 5 permits inspectors to arrange the carrying out of tests on samples taken during an inspection carried out under subsection (1). The tests that may be carried out are

those which the inspector considers necessary for the purpose of ascertaining the risk of escape of fish from the fish farm; ascertaining whether fish have escaped from the fish farm; and assessing the measures in place for the containment of fish on the fish farm, the measures in place for preventing the escape of fish from the fish farm, and the measures in place for the recovery of any fish which may escape from the fish farm.

Enforcement

Section 6 – Enforcement notices

16. Subsections (1) and (2) of section 6 provide that the Scottish Ministers may serve an enforcement notice on a person carrying on a business of fish farming in cases where they are satisfied that that person does not have in place satisfactory measures for the purposes of the prevention, control and reduction of parasites or the containment of fish, prevention of escape of fish, or recovery of escaped fish. Subsection (4) provides that such an enforcement notice may require the person on whom the enforcement notice is served to execute such works and take such other steps as Ministers consider necessary for the purposes of the prevention, control and reduction of parasites or the containment of fish, prevention of escape of fish, or recovery of escaped fish.

17. Subsection (3) provides that the Scottish Ministers may serve an enforcement notice on a person carrying on a business of shellfish farming in cases where they are satisfied that that person does not have in place satisfactory measures for the purpose of the prevention, control and reduction of parasites in respect of the shellfish farm. Subsection (5) provides that such an enforcement notice may require the person on whom the enforcement notice is served to execute such works and take such other steps as Ministers consider necessary for the purpose of the prevention, control and reduction of parasites.

18. Subsection (6) requires that an enforcement notice, whether served under subsection (1) or subsection (3), must specify the date by which the requirements specified in the enforcement notice must be fulfilled. Subsection (7) provides that a person who contravenes an enforcement notice without reasonable excuse is guilty of an offence. Subsection (8) provides that a person who is found guilty of committing such an offence is liable to a fine not exceeding level four on the standard scale. This currently equates to a maximum fine of £2,500.

19. Subsection (9) provides that where the Scottish Ministers are satisfied that an enforcement notice is contravened in respect of the prevention, control and reduction of parasites they may authorise an inspector to take any action that Ministers consider necessary to fulfil the requirements of the enforcement notice. Subsection (10) provides for the recovery of expenses reasonably incurred by an inspector in taking action authorised by the Scottish Ministers to fulfil the requirements of the enforcement notice.

20. Subsection (11) permits the serving of an enforcement notice to be publicised as widely, in such manner and in such form as the Scottish Ministers think fit.

Code of practice

Section 7 – Code of practice

21. Section 7 enables the Scottish Ministers to approve, by order, all or part of a code of practice (whether issued by them or by any other person) for the purposes of giving guidance and promoting desirable practices in respect of (a) the prevention, control and reduction of parasites on fish farms and shellfish farms and (b) in respect of fish farms only, the containment of fish, prevention of escape of fish, and recovery of escaped fish. Subsection (3) enables the Scottish Ministers, by order, to modify an approved code or to withdraw approval of an approved code or an approved modification of such a code

22. The term “approved code” is defined in section 12 (interpretation: part 1) of the Bill for the purposes of Part 1 of the Bill as meaning a code of practice approved under section 7 of the Bill, including any part or modification of an approved code of practice. The power to make orders under subsections (1) and (3) of section 7 approving a code, or modifying a code, or withdrawing approval of an approved code or an approved modification of such a code must be exercised by statutory instrument which is subject to annulment in pursuance of a resolution of the Scottish Parliament, by virtue of section 36 (orders) of the Bill. Subsection (4) of section 7 requires the Scottish Ministers to consult such persons as they consider appropriate before making such an order.

Section 8 – Monitoring and enforcement: code of practice

23. Subsection (1) of section 8 imposes an obligation upon the Scottish Ministers to monitor compliance with any code approved by them under section 7 of the Bill.

24. Subsections (2) and (3) of section 8 provide that the Scottish Ministers may serve a notice on a person carrying on a business of fish farming or shellfish farming where they are satisfied that that person is not complying, or is not likely to comply, with a code approved under section 7 (code of practice) of the Bill in a material regard. Such a notice may require the person on whom the notice is served to execute such works and take such other steps as Ministers consider necessary for securing compliance with the approved code in any particular respect (subsection (4)).

25. Subsection (5) of section 8 applies the provisions of subsections (6) to (11) of section 6 (enforcement notice) of the Bill to a notice served under subsections (2) and (3) of section 8 of the Bill in the same way as they apply to enforcement notices served under section 6. Accordingly, notices served under subsections (2) and (3) of section 8 must specify the date by which the requirements specified in them must be fulfilled (section 6(6) of the Bill, as applied); a person who contravenes a notice served under subsection (2) or (3) of section 8 is guilty of an offence (section 6(7) of the Bill, as applied); a person who is found guilty of committing such an offence is liable to a fine not exceeding level four on the standard scale, which currently equates to a maximum fine of £2,500 (section 6(8) of the Bill, as applied); where the Scottish Ministers are satisfied that a notice served under subsection (2) or (3) of section 8 is contravened in respect of the prevention, control and reduction of parasites they may authorise an inspector to take any action that Ministers consider necessary to fulfil the requirements of the notice (section 6(9) of the Bill, as applied); expenses reasonably incurred by an inspector in taking action authorised by

the Scottish Ministers to fulfil the requirements of such a notice may be recovered by the Scottish Ministers from the person upon whom the notice was served (section 6(10) of the Bill, as applied); the serving of a notice under subsection (2) or (3) of section 8 may be publicised as widely, in such manner and in such form as the Scottish Ministers think fit (section 6(11) of the Bill, as applied).

Powers of inspectors and offences

Section 9 – Powers of inspectors: entry

26. Subsection (1) of section 9 provides that an inspector may enter any fish farm or shellfish farm for the purpose of ascertaining whether any power conferred on the inspector under Part 1 of the Bill should be exercised and for the purpose of the inspector doing anything in pursuance of the exercise of that power. Subsection (2) requires an inspector entering a fish farm or shellfish farm under the power of entry bestowed by subsection (1) to produce evidence of the inspector's authority to act as an inspector, namely the authorisation to act as an inspector given by the Scottish Ministers (see the definition of the term "inspector" given in section 12 (interpretation: part 1) of the Bill for the purposes of Part 1 of the Bill). Subsection (3) requires that any power of entry conferred on an inspector by or under Part 1 of the Bill must be exercised at a reasonable hour, unless the inspector considers the case is an urgent one.

Section 10 – Entry: supplementary

27. Subsection (1) of section 10 applies section 10 to any inspector exercising any power of entry conferred on that inspector by or under Part 1 of the Bill. Subsection (2) provides that such an inspector may take with that inspector any other persons and any equipment and vehicles as the inspector considers necessary. Subsections (2) and (3) provide that such an inspector may require reasonable assistance to be provided to that inspector by the person who carries on the business of fish farming or shellfish farming; by any other person appearing to the inspector to be under the direction or control of the person who carries on the business of fish farming or shellfish farming; and by any other person who appears to that inspector to be concerned with the operation of the fish farm or shellfish farm. Section 11(1) (offences: general) of the Bill makes it an offence to fail to comply with a requirement imposed by an inspector under subsection (3) of section 10.

Section 11 – Offences: general

28. Subsection (1) of section 11 provides that it is an offence for a person to fail, without reasonable excuse, to comply with a requirement imposed by an inspector by virtue of Part 1 of the Bill. Accordingly, this is the provision which makes it an offence for a person to fail to comply with a requirement imposed by an inspector under section 1(5) (information about fish farms and shellfish farms) and section 10(3) (entry: supplementary) of the Bill.

Interpretation of Part 1

Section 12 – Interpretation: Part 1

29. This section provides definitions for certain terms used in Part 1 of the Bill.

PART 2: GYRODACTYLUS SALARIS: CONTAINMENT AND TREATMENT

30. This Part of the Bill makes provision in relation to the containment and treatment of *Gyrodactylus salaris* should this parasite of salmon be introduced into Scotland.

Order under section 2 of the 1937 Act: additional powers

Section 13 – Order under section 2 of the 1937 Act: additional powers

31. Section 13 inserts section 2ZA into the 1937 Act. Section 2 (power to designate areas) of the 1937 Act enables Ministers, where they have reasonable grounds for suspecting that certain waters are or may become “infected waters” (as that term is defined in section 10 (interpretation) of the 1937 Act) to make an order designating those waters and such adjacent land as Ministers consider appropriate. Such an area is known in section 2 of the 1937 Act as a “designated area”. Under section 2 of the 1937 Act, in respect of a designated area Ministers may prohibit or regulate the taking into or out of the designated area of live fish and live fish eggs and foodstuff of fish and regulate movement of those things within the designated area. New section 2ZA provides additional powers where Ministers designate an area under section 2 of the 1937 Act where they suspect that the waters are or may become infected waters by reason of the presence of the parasite *Gyrodactylus salaris*.

32. These additional powers include prohibiting the taking into or out of the designated area by any person, other than an inspector or other person exercising functions by arrangement with the Scottish Ministers in relation to the 1937 Act, of any vehicle, or description of vehicle, and such equipment, material or substance not falling within section 2(2)(a) of the 1937 Act (i.e. live fish, live eggs of fish and foodstuff of fish) as may be specified in the order designating the area, unless the vehicle, equipment, material or substance concerned is subjected to a specified process of disinfection immediately before being taken in to or, as the case may be, out of the designated area (new section 2ZA(a)). These additional powers also include prohibiting or regulating the taking into or out of the designated area of dead fish (section 2ZA(b)) and regulating entry to and exit from the designated area (section 2ZA(c)).

Preliminary designation of area by order

Section 14 – Preliminary designation of area by order

33. Section 2 of the 1937 Act permits an order to be made only in relation to waters which the Scottish Ministers have reasonable grounds for suspecting are, or may become, infected waters. Section 14 inserts section 2ZB into the 1937 Act immediately after section 2ZA, which is inserted by section 13 of the Bill. Section 2ZB(1) provides that if at any time the Scottish Ministers have reasonable grounds for suspecting that any of the inland waters of, or marine waters adjacent to, the United Kingdom (the terms “inland waters” and “marine water adjacent to the United Kingdom” are defined for the purposes of section 2ZB(1) in section 2ZB(6)) are “infected waters” (as that term is defined in section 10 of the 1937 Act) by reason of the presence of the parasite *Gyrodactylus salaris*, they may by order made by statutory instrument designate such part, or all, of the inland waters of Scotland and the marine waters adjacent to Scotland (as defined by section 2ZB(6)) as they consider appropriate. The power is triggered where the Scottish Ministers have reasonable grounds for suspecting that any of the marine or inland waters of the United Kingdom are “infected waters” by reason of the presence of the

parasite *Gyrodactylus salaris*, and does not require that they have grounds to believe that the particular Scottish waters to be designated are at specific risk of infection, the purpose of a designation under section 2ZB(1) being to impose temporary measures to limit the spread of infection while the scale of any outbreak, and thus the need for designations under section 2 of the 1937 Act, can be assessed. So were the Scottish Ministers to learn of a suspected outbreak of *Gyrodactylus salaris* in waters in England, for example, they would be able to use section 2ZB(1) to impose restrictions upon Scottish waters while the scale of the outbreak was investigated.

34. Section 2ZB(2) provides that an order under section 2ZB(1) designating an area may also prohibit or regulate the taking into or out of the area designated such live fish, live fish eggs and foodstuff of fish (or such description of those things) as may be specified in the order and regulate the movement within the area designated of such of those things (or description of things) as may be specified in the order until the expiry of the period of thirty days from the day the order was made.

35. Section 2ZB(3) provides for the making of a further order, before the expiry of the thirty day period relating to an order under section 2ZB(1), extending the effect of the first order for a further period of thirty days from the day upon which it would otherwise have ceased to have effect.

36. Section 2ZB(4) provides that such orders, whether made under section 2ZB(1) or (3) are to be made by statutory instrument which is to be laid before the Scottish Parliament.

37. Section 2ZB(5) makes it an offence for any person to intentionally contravene any provision of an order made under either section 2ZB(1) or (3).

Containment and treatment: additional powers

Section 15 – Construction of barriers to movement of fish, treatment of waters with chemical agents etc.

38. Section 15 inserts two new sections into the 1937 Act, conferring additional powers for the containment and eradication of the parasite *Gyrodactylus salaris*.

39. Inserted section 5A of the 1937 Act makes provision for the construction of barriers to the movement of fish. Subsection (1) of section 5A provides that the Scottish Ministers may arrange for the construction of barriers to the movement of fish in any inland waters (as defined in section 2ZB(6) of that Act) for the purposes of preventing the spread of the parasite *Gyrodactylus salaris* or of facilitating treatment with chemical agents with a view to eradicating the parasite from the waters concerned. A barrier can prevent the spread of the parasite into waters lying upstream of the barrier by preventing the upstream migration of fish of species which might act as hosts for the parasite. In the case of chemical treatment (authorised by section 5B of the 1937 Act, which is also inserted by this section of the Bill), the construction of a barrier would enable chemical treatment to be administered to a restricted part of a watercourse rather than having to be applied to the whole watercourse, the area downstream of a barrier being treated with chemical agents.

40. Subsection (2) of inserted section 5A of the 1937 Act provides that the power to arrange for the construction of barriers shall include power to maintain and dismantle the barriers, and subsection (3) provides that the Scottish Ministers may purchase land compulsorily for the purpose of enabling them to construct barriers. Compulsory purchase would follow the standard procedure set out in Schedule 1 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947. Paragraph 2 of the schedule to the Bill amends section 1(1) of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 to provide for the application of schedule 1 of that Act to acquisitions under section 5A(3) of the 1937 Act.

41. Inserted section 5B of the 1937 Act provides for the Scottish Ministers to arrange for the treatment with chemical agents of any waters which have been designated by an order under section 2 of that Act (power to designate areas) in relation to *Gyrodactylus salaris* with a view to eradicating the parasite. The power would be exercised only after consultation aimed at those who might be affected by the chemical treatment of the waters concerned, and after having obtained all necessary statutory permissions (for instance under the Water Environment (Controlled Activities) (Scotland) Regulations 2005)

Section 16 – Further powers by regulations under section 31(1) of the 2003 Act

42. This section inserts a new paragraph (g) into subsection (1) of section 31 (salmon fishing: general regulations) of the 2003 Act. Prior to this amendment, regulations under section 31(1) could make provision with respect to the construction and alteration of dams, lades or water wheels so as to afford a reasonable means for the passage of salmon (section 31(1)(c)). Inserted paragraph (g) allows regulations under section 31(1) to provide for the closure or alteration of any means for the passage of salmon through, round or over dams, lades or water wheels. This power is intended to be used, should *Gyrodactylus salaris* be introduced to Scottish waters, to restrict the movement of fish for the same purposes as a barrier might be constructed under section 5A of the 1937 Act (inserted by section 15 of the Bill).

Section 17 – Clearance of certain fish farms

43. This section inserts two new sections into the 1937 Act, immediately after section 5B (as inserted by section 15 of the Bill).

44. Inserted section 5C gives the Scottish Ministers power to serve a notice upon the operator of a fish farm situated in waters which have been designated under section 2 of the 1937 Act in relation to *Gyrodactylus salaris*. Such a notice may impose any of the requirements listed in subsection (3), namely: the withdrawal of all fish from the farm; draining and disinfection of pools and cages; destruction of dead fish, fish showing signs of gyrodactylosis caused by the parasite *Gyrodactylus salaris* and fish showing signs of the presence of the parasite; the cleaning and disinfection or destruction of equipment, material or substances liable to be contaminated with the parasite *Gyrodactylus salaris*; and requiring that the farm not be repopulated with fish until a further notice has been served to this effect. A person who intentionally contravenes any requirement of a notice under section 5C(1) is guilty of an offence, punishable on summary conviction by a fine not exceeding level 4 on the standard scale (the level of penalty is set by section 8(1) of the 1937 Act; level 4 is currently equivalent to £2,500).

45. Inserted section 5D provides that where a person fails to comply with any requirement of a notice under section 5C, an inspector may enter the fish farm to which the notice relates and take such steps as the inspector considers necessary to ensure compliance with the requirement or to remedy the consequences of a failure to comply, and allows for the Scottish Ministers to recover the inspector's reasonable costs from the person upon whom the notice was served.

Section 18 – *Gyrodactylus salaris*: Scottish Ministers' powers to take other measures

46. Section 18 inserts new section 5E into the 1937 Act, immediately after section 5D (as inserted by section 17 of the Bill). Inserted section 5E(1) gives the Scottish Ministers power to take such other measures as they consider appropriate for the purpose of eradicating *Gyrodactylus salaris* or of preventing or limiting its spread in inland waters in Scotland or in marine waters adjacent to Scotland (which terms have the same meaning as in new section 2ZB(6), inserted by section 14 of the Bill: new section 5E(2)).

Section 19 – *Gyrodactylus salaris*: Scottish Ministers' power to make payments

47. Section 19 inserts new section 5F into the 1937 Act, immediately after section 5E (as inserted by section 18 of the Bill). Section 5F gives the Scottish Ministers power to make payments in respect of the exercise of their powers under new sections 2ZA, 2ZB, 5A, 5B, 5C or 5E of the 1937 Act, in accordance with schemes made by them by order, and in relation to such matters as may be specified by order. The section would enable schemes to be made for the payment of compensation to those affected by the exercise of the Scottish Ministers' powers in relation to *Gyrodactylus salaris*. Payments in respect of fish which have been destroyed in the exercise of the Scottish Ministers' powers under the new sections referred to above are excluded by subsection (2), as provision for payments in respect of fish destroyed is made in section 29 of the Bill. Any orders which the Scottish Ministers propose to make under section 5F(1) will require to be laid before the Scottish Parliament in draft, and approved by a resolution of the Parliament before they can be made and come into force (section 5F(5)).

PART 3: FISHERIES

Salmon and freshwater fisheries

Section 20 – Use of gaff, tailer or landing net

48. Section 1 (methods of fishing: salmon) of the 2003 Act prohibits fishing for salmon in certain waters except by rod and line and certain other specified means. Section 2 (methods of fishing: freshwater fish) of the 2003 Act prohibits fishing in inland waters except by rod and line. Section 4 (meaning of "rod and line") of the 2003 Act provides the definition for the term "rod and line". Section 3 (use of gaff, tailer or landing net) of the 2003 Act provides that nothing in section 1 or 2 of the 2003 Act shall be construed as prohibiting the use of a gaff, tailer or landing net as auxiliary to the taking of fish by rod and line. Accordingly, the use of any instrument as auxiliary to the taking of fish by rod and line is prohibited by sections 1 and 2 of the 2003 Act, except, by virtue of section 3 of the 2003 Act, for the use of a gaff, tailer or landing net

49. Section 20 of the Bill amends section 3 of the 2003 Act by removing references to gaff and tailer and substituting a reference to "knotless non-metallic". Section 3 of the 2003 Act, as

amended by section 20 of the Bill, will provide that nothing in sections 1 or 2 of the 2003 Act shall be construed as prohibiting the use of a knotless non-metallic landing net as auxiliary to the taking of fish by rod and line. Accordingly, this amendment will make knotless non-metallic landing nets the only instrument that is not prohibited as auxiliary to the taking of fish by rod and line. The amendment of section 3 of the 2003 Act will effectively prohibit the use of a gaff or a tailer as auxiliary to the taking of fish by rod and line. This section, the effect of which is to prohibit the use of certain products, shall be notified to the European Commission in accordance with Directive 98/34/EC, as amended by Directive 98/48/EC.

Section 21 – Rod and line

50. Section 21 inserts section 3A into the 2003 Act. Section 3A(1) provides that a person shall be treated as fishing by rod and line for the purposes of the 2003 Act in the circumstances set out in section 3A(2), (3) and (4).

51. Section 3A(2) provides that a person will be treated as fishing by rod and line for the purposes of the 2003 Act where that person is fishing for or taking salmonids (defined in section 3A(5)) and is not doing so from a boat, subject to the condition that the person is using on a single rod and line which rod and line is being held by that person

52. Section 3A(3) provides that a person will be treated as fishing by rod and line for the purposes of the 2003 Act where that person is fishing for or taking freshwater fish other than salmonids (“freshwater fish” is defined in section 69 of the 2003 Act) and is not doing so from a boat, subject to the condition that the person uses no more than four rods and line at any one time.

53. Section 3A(4) provides that a person will be treated as fishing by rod and line for the purpose of the 2003 Act where that person is fishing for or taking fish (whether salmonids or not) and is doing so from a boat, subject to the condition that no more than four rods and line are used on the boat at any time.

54. Section 21(2) repeals the word “single” in section 4(1) of the 2003 Act and substitutes the term “foul hooking” for the words “pointing or by striking or dragging fish” where they appear in section 4(1) of the 2003 Act. The term “foul hooking” is defined in section 21(2)(b) (inserted subsection (3)). The effect of these amendments is to make it clear what is meant by foul hooking and that foul hooking is unlawful. Section 21(2)(b) (inserted subsection (3)) also provides a definition of “set line” as a fishing line left unattended in water and having attached to it one or more baited hooks. Accordingly, it is prohibited to leave any fishing line with one or more lures or baited hooks in water unattended.

Section 22 – Prohibition against using pike gags and certain keepnets

55. Section 22 inserts section 5A into the 2003 Act. Section 5A(1) makes it an offence for a person to use a pike gag in relation to fishing for or taking fish. The term “pike gag” is defined in section 5A(4). A person found guilty of such an offence is liable to a fine not exceeding level three on the standard scale, which currently equates to a maximum fine of £1,000.

56. Section 5A(2) makes it an offence for a person to use a keep net the mesh of which is either knotted or made of metallic material. A person found guilty of such an offence is liable to a fine not exceeding level three on the standard scale, which currently equates to a maximum fine of £1,000.

57. Section 5A(3) provides that a person who attempts to commit, or takes steps preparatory to the commission of an offence, under section 5A(1) or (2) is guilty of an offence. A person found guilty of such an offence is liable to a fine not exceeding level three on the standard scale, which currently equates to a maximum fine of £1,000. This section, the effect of which is to prohibit the use of certain products, shall be notified to the European Commission in accordance with Directive 98/34/EC, as amended by Directive 98/48/EC.

Section 23 – Close times for freshwater fish

58. Section 23 inserts sections 17A and 17B into the 2003 Act.

59. Section 17A(1) enables the Scottish Ministers, having consulted such persons as they consider appropriate, to make an order specifying a weekly close time for freshwater fish (defined in section 69(1) of the 2003 Act). The power to make an order under section 17A(1) must be exercised by statutory instrument which is subject to annulment in pursuance of a resolution of the Scottish Parliament, by virtue of section 68 (orders and regulations) of the 2003 Act. Section 17A(2) permits such an order to make different provision for different species of freshwater fish. Section 17A(6) permits such an order to specify the part or area of Scotland in respect of which it is to have effect.

60. Section 17A(3) prohibits any person from fishing for or taking freshwater fish specified in such an order in relation to the close time specified in that order. Section 17A(4) makes it an offence to contravene such an order. Section 17A(4) provides that a person found guilty of such an offence is liable to a fine not exceeding level three on the standard scale, which currently equates to a maximum fine of £1,000. Section 17A(5) provides that a person may be convicted of such an offence on the evidence of one witness.

61. Section 17B(1) enables the Scottish Ministers, having consulted such persons as they consider appropriate, to make an order specifying an annual close time for freshwater fish (defined in section 69(1) of the 2003 Act) other than trout (section 17 of the 2003 Act makes provision in respect of an annual close time for trout). The power to make orders under section 17B(1) must be exercised by statutory instrument which is subject to annulment in pursuance of a resolution of the Scottish Parliament, by virtue of section 68 (orders and regulations) of the 2003 Act. Section 17B(2) permits such an order to make different provision for different species of freshwater fish. Section 17B(7) permits such an order to specify the part or area of Scotland to which it is to have effect.

62. Section 17B(3) provides that any person who, during an annual close time specified in such an order, in relation to the species of freshwater fish specified in such an order, fishes for or takes such fish in any inland waters (as defined in section 69(1) of the 2003 Act) or is in possession of such fish, is guilty of an offence. Such a person is liable on conviction to a fine not level three on the standard scale, which currently equates to a maximum fine of £1,000.

Section 17B(6) provides that a person may be convicted of such an offence on the evidence on one witness. Section 17B(5) provides exceptions to the offence provision.

Section 24 – Exemption from certain offences

63. Section 24(1) amends section 28(2)(a) to extend the exemption from certain offences in respect of acts done for scientific and other purposes to offences under inserted sections 17A and 17B.

64. Section 30 (exemptions in relation to fish farming) of the 2003 Act exempts any act or omission which takes place within, and in the course of the operation of, a fish farm from constituting an offence under certain specified provisions of the 2003 Act. Section 24(2) of the Bill amends section 30 of the 2003 Act to exempt such acts and omissions from certain other specified provisions of the 2003 Act: namely, sections section 6 (fishing for salmon without right or permission), 8 ((taking of dead salmon or trout), 23 (young salmon and spawning beds) of the 2003 Act and sections 17B(3)(b) (annual close time for freshwater fish other than trout) of the Bill.

Section 25 – Freshwater fish conservation regulations

65. Section 25 inserts new section 51A into the 2003 Act, which enables the Scottish Ministers to make regulations for the conservation of freshwater fish. The power conferred upon the Scottish Ministers by new section 51A is similar to that which they already have, by virtue of section 38 of the 2003 Act, to make regulations for the conservation of salmon. Before making any regulations under the section, the Scottish Ministers must have regard to any representations made to them by any person having an interest in fishing for or taking freshwater fish, or in the environment (subsection (3)). Subsection (7) provides for regulations to confer enforcement powers upon constables and water bailiffs, and to make different provision in relation to different stretches of water, different seasons and different cases. Subsection (8) provides that contravention of regulations under inserted section 51A, or failure to comply with a requirement imposed by such regulations, is an offence punishable on summary conviction by a fine not exceeding level 4 on the standard scale (presently £2,500), and subsection (9) provides that a person may be convicted of such an offence on the evidence of one witness. Subsection (10) provides that the procedure set out in paragraphs 9A and 11 to 15 of Schedule 1 to the 2003 Act – which require publicity to be given to any proposal for regulations, and opportunity to be given for representations and the holding of inquiries – shall apply to the making of regulations under section 51A. (Paragraph 9A of Schedule 1 to the 2003 Act is inserted by paragraph 5(b) of the Schedule to the Bill).

Sea fisheries

Section 26 – Enforcement of Community obligations

66. This section amends section 30(1) of the Fisheries Act 1981 (enforcement of Community rules) to apply the provisions of that subsection to enforceable Community obligations (for example, the obligation on certain fishing vessels to have a working satellite tracking device on board) as well as enforceable Community restrictions.

PART 4: MISCELLANEOUS

Section 27 – Unauthorised introduction of fish into certain marine waters

67. Section 27 inserts new section 2C into the 1937 Act. Section 2C(1) enables the Scottish Ministers, by order made by statutory instrument, to specify parts of marine waters adjacent to Scotland (which term has the same meaning as in new section 2ZB(6) of the 1937 Act, inserted by section 14 of the Bill) as they consider appropriate. Section 2C(3) makes it an offence to introduce into such a “specified area” any fish of a specified species which originates from outside that area and which has been in salt water in any area of UK waters designated by the Scottish Ministers, unless that introduction has the prior written consent of the Scottish Ministers. Section 2C(4) gives the Scottish Ministers power to make regulations in relation to the manner of applying for this consent, it being intended that applications should be accompanied by a risk assessment similar to that which is presently required under the industry’s own code of practice.

Section 28 – Unauthorised introduction of fish into inland waters

68. This section repeals section 24 of the 2003 Act (which prohibited the introduction of salmon into inland waters without appropriate consent) and introduces a new section 33A into the 2003 Act. Subsection (1) of inserted section 33A creates an offence of intentionally introducing any live fish or live spawn of fish into inland waters, and subsection (2) an offence of possession of live fish or live spawn of fish with the intention of introducing it into inland waters. The offences do not apply to introduction into the waters of a fish farm (subsection (3)(a)) or where the Scottish Ministers or, in the case of salmon, the relevant District Salmon Fishery Board have consented in writing. An offence under subsection (1) or (2) is punishable on summary conviction by a fine not exceeding level 3 on the standard scale (presently equivalent to £1000).

Section 29 – Payments in respect of fish destroyed

69. This section enables the Scottish Ministers to make payments in accordance with a scheme made by them by order to make payments in respect of any fish destroyed in pursuance of the exercise of such of the Scottish Ministers’ fish disease control powers as may be specified in the order (for instance, the power to require the clearance of fish farms in terms of section 5C(1) of the 1937 Act, as introduced by section 17 of the Bill). Subsection (2) gives the Scottish Ministers power in particular to include in an order provision regulating applications for payment, method of payment, the amounts payable and the basis upon which such amounts are to be ascertained, and conditions upon which payments will depend. Any order under section 29 will require to be laid in draft before the Scottish Parliament, and approved by a resolution of the Parliament before it can be made and come into effect (see section 36(3)(a) of the Bill).

Section 30 – Payments for certain purposes

70. This section enables the Scottish Ministers to make funds available for the purposes of developing, promoting, organising or researching aquaculture, sea fisheries, the sea fish industry, salmon fisheries and freshwater fisheries.

Section 31 – Information about fish farming and shellfish farming: economic, social and environmental aspects

71. Subsection (1) of section 31 enables the Scottish Ministers to make an order for the purpose of obtaining information in relation to the economic, social and environmental aspects of fish farming and shellfish farming. The power to make orders under subsection (1) must be exercised by statutory instrument which is subject to annulment in pursuance of a resolution of the Scottish Parliament, by virtue of section 36 (orders) of the Bill.

72. Subsection (2) of section 31 provide that orders under subsections (1) may require any person carrying on a business of fish farming or shellfish farming to provide such information as may be specified in the order; to compile such records as may be specified in the order; and to retain such records for such period as is specified in the order, subject to a three year maximum. Subsection (3) of section 31 provides that an inspector may require the production of any record which a person is required to retain by virtue of an order under subsection (1), and may inspect or take copies of any such records (subsection (7) provides that “fish farming”, “inspector” and “shellfish farming” have the same meanings as in Part 1; so by virtue of section 12 (interpretation: part 1) of the Bill an inspector is a person authorised by the Scottish Ministers to act as an inspector under the Bill whether generally or for a particular purpose.)

73. Subsection (5) makes it an offence to fail without reasonable excuse to comply with a requirement of an order under section 31, or to provide false information or falsify a record. Such offences are punishable on summary conviction by a fine not exceeding level 4 on the standard scale (presently equivalent to £2,500).

PART 5: GENERAL

Section 32 – Crown application

74. This section provides that the Bill binds the Crown. Amendments to other Acts will have the same application to the Crown as the other provisions of the Acts amended: the 1937 Act does not bind the Crown, and the Crown application of the 2003 Act is governed by section 67 of that Act. Subsections (2) and (3) of section 32 provide that nothing in the Bill will render the Crown criminally liable, but that the Court of Session may make a declaration, on the application of the Lord Advocate, of the unlawfulness of any contravention by the Crown of the Bill’s provisions.

Section 33 – Offences by bodies corporate etc.

75. This section means that where an offence is committed by a body corporate (such as a company), by a Scottish partnership or by an unincorporated association, certain officers of the body corporate, partners or managers of the association may in certain circumstances be held to have committed the offence and are liable to be proceeded against and punished accordingly.

Section 34 – Minor and consequential amendments

76. This section introduces the schedule to the Bill, which contains minor and consequential amendments to other enactments.

Section 35 – Ancillary provision

77. This section permits the Scottish Ministers to make by order such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of this Act. It would permit amendments to be made to legislation which required to be amended in consequence of the provisions of the Bill, but which had for whatever reason been omitted from the schedule.

Section 36 – Orders

78. This section specifies the Parliamentary process for Statutory Instruments made under this Bill.

Schedule – Minor and consequential amendments

79. The schedule contains minor amendments and amendments consequential on the Bill.

80. Paragraph 1 of the schedule makes a number of amendments to the 1937 Act, including amendments to the powers of inspectors to allow them to exercise powers of entry for inspecting land for the purposes of the *Gyrodactylus salaris* provisions introduced by Part 2 of the Bill, and making it clear that inspectors may be accompanied by such persons as may be required and bring with them such equipment and vehicles as may be required.

81. The effect of the amendment to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 introduced by paragraph 2 of the schedule is to apply the procedure in Schedule 1 to that Act to any compulsory purchase which might be sought under section 5A(3) of the 1937 Act (as inserted by section 15 of the Bill).

82. Paragraph 3 repeals subsections (9A) and (9B) of section 4 the 1967 Act, which required that any fish taken in an area specified by an order under that section as closed to fishing be returned to the sea forthwith, and made it an offence to fail to do so.

83. Paragraph 4 introduces a technical amendment, correcting an error in subsection 5(b) of section 30 of the 1981 Act.

84. Paragraph 5 introduces a number of amendments to the 2003 Act, including modifications to the procedure relating to protection orders made under section 48 of that Act (sub-paragraphs (4) and (6) to (8)), including provision for such orders to be varied by a further order made by the Scottish Ministers without the need for an application to be made to them.

FINANCIAL MEMORANDUM

INTRODUCTION

85. This document relates to the Aquaculture and Fisheries (Scotland) Bill introduced in the Scottish Parliament on 29 June 2006. It has been prepared by Ross Finnie, who is the member in charge of the Bill, to satisfy Rule 9.3.2 of the Parliament's Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

86. The purpose of this Financial Memorandum is to set out the expected costs associated with the measures associated with the Bill. This document addresses the aquaculture and fisheries elements of the Bill separately.

AQUACULTURE

Parasites

87. The measures provided in the sections relating to parasite control, while drafted for parasites in general, were drawn up with protecting the welfare of farmed fish and mitigating the threat that sea lice on farmed fish may pose to wild fish in mind. The Bill consequently defines 'parasite' as meaning the two important species of sea louse that affect salmon. Should other parasites become a problem in the future, this can be changed by statutory instrument.

88. The management of sealice is already undertaken on the majority of salmon farms by a variety of means, notably the national treatment strategy on sea lice, the fish industry's Code of Good Practice (which incorporates the national treatment strategy) and voluntary arrangements which endorse best practice such as synchronised fallowing and co-ordinated treatments.

Costs on the Scottish Executive

89. The Bill gives powers for persons authorised by the Scottish Ministers to act as inspectors under the Bill. The Scottish Executive intends to extend the current remit of the Fish Health Inspectorate within the Fisheries Research Services to include parasite control in addition their duties in respect to disease control under existing fish health legislation. The proposals broadly mirror powers and duties placed upon the Fish Health Inspectorate by existing fish health legislation. With respect to parasites, authorised inspectors may:

- require production of, inspection of and copying of records in relation to the control of parasites;
- carry out inspections (including the taking of samples) for the purposes of assessing the levels (if any) of parasites and the measures in place for the control of parasites

and the Scottish Ministers may:

- require, by means of a statutory instrument, the compilation and provision of information in relation to the control of parasites;
- serve an enforcement notice to require the taking of such measures as the Scottish Ministers consider necessary for the control of parasites;

- where such an enforcement notice has been contravened, the Scottish Ministers may authorise an inspector to take such action as they consider necessary to fulfil the requirements of that notice with regard to the control of parasites and to recover any reasonable expenses in so doing.

90. The Scottish Executive envisages additional running costs to the Fisheries Research Services as a direct result of the new responsibilities placed upon them in the area of parasite control. The Fisheries Research Services Fish Health Inspectorate's mission is to support a healthy sustainable aquaculture industry and to safeguard the health of wild fish stocks, through regulation and scientific advice backed by high quality research. The Fish Health Inspectorate's main objective is to prevent the introduction and spread of serious fish and shellfish diseases in Scotland. Fish health inspectors are appointed by the Scottish Ministers to act as veterinary inspectors under current fish health legislation. The Fish Health Inspectorate currently incurs costs of around £1.2 million and employs 16 staff.

91. The meaning of parasites in the Bill is limited to sealice, which means that only marine fish farms will be affected by the provisions relating to parasites.

92. The tables below illustrate three possible scenarios for the inspection of marine fish farms with respect to sea lice control. They show the range of costs that could be incurred by the Fish Health Inspectorate in the course of carrying out its new duties.

93. **Table 1** outlines a *de-minimus* approach, whereby the rate of inspection is based on inspecting only farms that have not signed up to the industry's code of practice and farms where there is reason to suspect that there may be a problem with sea lice control. This is expected to be no more than 10% of marine fish farms or 30 site visits per year. An estimate for repeat visits where problems are found is factored in to the costs.

Table 1

Fish Health Inspector half time (½ x B2 grade)	£38,000
Travel & Subsistence and overtime	£5,500
Annual Running Cost	£43,500

(Figures based on gross staff costs at 2007/08 rates and numbers of registered marine fish farms, as at January 2006)

94. **Table 2** outlines a wider risk-based approach, whereby in addition to inspecting the farms that have not signed up to the industry's code of practice and where intelligence indicates there may be a problem with sea lice control, inspections are extended to include a random sampling of other farms. This is estimated at 20% of marine fish farms or 60 site visits per year. An estimate for repeat visits where problems are found is factored in to the costs.

Table 2

Fish Health Inspector (1 x B2 grade)	£76,000
Travel & Subsistence and overtime	£11,000
Annual Running Cost	£87,000

(Figures based on gross staff costs at 2007/08 rates and numbers of registered marine fish farms, as at January 2006)

95. **Table 3** illustrates a more intensive approach, whereby inspections are based on visiting all farms during the second year of their production cycle (which is when sea lice are a problem). Taking into account farms that are fallowing and farms with juveniles, such an intensive inspection regime would cover no more than 50% of marine fish farms or 150 site visits per year. An estimate for repeat visits where problems are found is factored in to the costs).

Table 3

Fish Health Inspector (1 x B2 grade)	£76,000
Fish Health Inspectors (2 x B1 grade)	£128,500
Travel & Subsistence and overtime	£18,000
Annual Running Cost	£225,500

(Figures based on gross staff costs at 2007/08 rates and numbers of registered marine fish farms, as at January 2006)

96. Taking into account its view that the Bill is intended to be a backstop to the industry's voluntary code of practice, the Scottish Executive believes that a risk-based approach is preferable to the more intensive approach illustrated at Table 3. While the exact degree of coverage that would be deemed appropriate for a risk-based approach is likely to be the subject of debate, the Scottish Executive believes that the final costs of inspections will lie somewhere between the figures in Tables 1 and 2. The above estimated annual costs are likely to first arise during the financial year 2007/2008.

97. The Scottish Executive also envisages an additional one-off cost to train Fish Health Inspectorate staff in sea lice identification monitoring and management, amounting to £6,000 (although this could be dependent on staff turnover).

Costs on local authorities

98. The Scottish Executive does not anticipate that the provisions should impose any additional costs on local authorities.

Costs on other bodies, individuals and businesses

99. Because the Bill proposals represent backstop provisions that are not as wide ranging as those in the industry's own code of practice, the Scottish Executive believes that the Bill will not impose any additional costs on fish farming businesses. The only possible exception to this is where inspectors determine that action is required to reduce sea lice levels on the fish farm. However, any direction to treat will be served on the basis that the fish farmer has not monitored and controlled sea lice effectively i.e. has not done what should have been done under accepted

norms of good practice. This means that any costs of complying with the notice are costs that would normally fall to a farmer following good practice. The overall costs to the fish farmer of mandatory treatment should therefore be neutral.

100. Costs of treatment are difficult to generalise, as approaches to sea lice management vary. In feed treatments cost approximately £30 per tonne of fish, equating to around £22,500 for a 750 tonne salmon farm, £30,000 for a 1000 tonne salmon farm, and £45,000 for a 1500 tonne salmon farm. Bath treatments are volume based and cost approx. £1500 for an 18m/7600m³ cage. The amount of treatment required depends on the number of occupied cages on a fish farm. An 800 tonne farm could typically contain 10 such cages, leading to a treatment cost of £15,000.

101. It is also envisaged that many of the inspections with regard to sea lice could take place in the context of the Fish Health Inspectorate's annual inspections so that the new parasite inspection regime does not add an additional burden to fish farms.

Containment and prevention of escapes

102. Escaped fish have the potential to spread disease, compromise the genetic integrity of wild fish stocks and increase competition habitat and food. The measures provided in the sections relating to containment are concerned primarily with the prevention of escapes from fish farms in both freshwater and marine environment. The measures provided also relate to situations where a fish farm escape has taken place.

Costs on the Scottish Executive

103. As described for parasite control above, the Scottish Executive intends to extend the current remit of the Fish Health Inspectorate and appoint specialist inspectors with regard to the containment of fish and the prevention of the escape of fish. The Fish Health Inspectorate currently has a role with respect to the statutory notification procedures for fish escapes, investigates the possible causes of escapes incidents and may recommend remedial action on behalf of the Scottish Ministers.

104. With respect to the containment of fish and the prevention of the escape of fish, authorised inspectors may:

- require the production of, inspection and copying of records in relation to containment and escapes (for example, equipment maintenance records and wave-height analyses of the site);
- carry out inspections (including the taking of samples and the examination of documents and records) for the purposes of ascertaining the risk of escape of fish from a fish farm, ascertaining whether fish have escaped from a fish farm, and assessing the measures in place for the containment of fish on a farm and the prevention of escapes of fish from the fish farm;

and the Scottish Ministers may:

- require by means of statutory instrument, the compilation and provision of information in relation to the containment of fish on fish farms, the prevention of escape of fish from fish farms and the recovery of escaped fish;
- serve an enforcement notice to require the taking of such measures as the Scottish Ministers consider necessary for the containment of fish on a farm and the prevention of escapes of fish from the fish farm.

105. The Scottish Executive envisages additional running costs to the Fisheries Research Services as a direct result of the new responsibilities placed upon them in this area. The Scottish Executive envisages any new staff to be appropriately qualified and have the expertise to deal with fish farm structures and questions of engineering.

106. The provisions on containment and escapes cover freshwater fish farms as well as marine on the basis that fish escapes are serious no matter where they occur. Therefore, this Financial Memorandum concerns itself with the costs of inspecting freshwater and marine fish farms.

107. **Table 4** illustrates the likely costs where 20% of fish farms (or 100 sites) are visited on an annual basis (with a factor for repeat visits included).

Table 4

Fish Farm Inspector (1 x C1 Grade)	£139,000
Travel and subsistence/overtime	£6,100
Annual running cost	£145,100

(Figures based on gross staff costs at 2007/2008 rates and numbers of registered fish farms, as at January 2006)

108. **Table 5** shows the costs where half of all fish farms (some 250 farms) are visited on an annual basis (with a factor for repeat visits included).

Table 5

Fish Farm Inspector (2½ x C1 Grade)	£347,500
Travel and subsistence/overtime	£15,500
Annual running cost	£363,000

(Figures based on gross staff costs for 2007/2008 rates and numbers of registered fish farms, as at January 2006)

109. There may be circumstances where a site inspection requires the use of divers. The Scottish Executive envisages this happening in no more than five percent of site visits. It is difficult to give an precise assessment of costs as the workload will vary from site to site. We estimate costs in the region of £2000 per inspection by divers. These estimates are based on hiring teams of four divers (including travel expenses).

110. The costs of using divers therefore would amount to £10,000 in the scenario outlined in Table 4 and £25,000 in the scenario outlined in Table 5.

111. Taking into account that it is in fish farmers' own interests to contain fish and prevent their escape, and the fact that inspections for containment measures are likely to be quite detailed, the Scottish Executive believes that an inspection rate nearer the 20% estimate (i.e. every farm to be inspected in detail once every five years) is more likely than the biannual inspections suggested by the 50% rate. It must not be forgotten that inspectors will be visiting fish farms for other reasons and any obvious faults noticed then could cause a more detailed visit to be scheduled. . The above estimated annual costs are likely to first arise during the financial year 2007/2008.

Costs on local authorities

112. The Scottish Executive does not anticipate that the provisions should impose any additional costs on local authorities.

Costs on other bodies, individuals and businesses

113. The Bill should not result in any additional costs for fish farms, except where there are containment standards or operations deemed unacceptable by inspectors and/or where there has been an escape of farmed fish and/or where an enforcement notice has been served upon the fish farm operator to remedy deficiencies.

114. Where the Fish Health Inspectorate decides that there is a need for the fish farm operator to take action then it is possible that the fish farming industry may face costs in areas such as: replacing nets or equipment such as cages or moorings; training operatives; improving supervision of high risk activities; and ensuring regular equipment maintenance. Potential costs to industry will range from a few thousand pounds for training and equipment maintenance to several hundred thousand pounds for the replacement of cages, nets and moorings. Any action required by the Fish Health Inspectorate for training, repair and maintenance would, in practice, not attract additional costs to a fish farm operator, where that fish farm operator was already required to comply with the industry's own Code of Good Practice.

115. Section 8 of the Bill also provides monitoring and enforcement powers for the Scottish Ministers with respect to any code of practice in relation to the prevention, control and reduction of parasites and the containment of fish, approved by order under the terms of section 7 of the Bill. However, the Scottish Executive does not envisage such orders being made to approve a code of practice unless problems arise with the aquaculture industry's code of practice over the next few years. There are therefore no estimates for the costs of monitoring and enforcing an approved code of practice in this Financial Memorandum.

Mandatory information provision

116. At the moment, the Scottish Executive collects very little information on the aquaculture industry apart from that required by the Business Registration Order 1985 (SI 1985/1391) and the voluntary annual shellfish and fish production surveys undertaken by the Fisheries Research Services.

117. As the aquaculture industry in Scotland has grown in size and economic importance it becomes increasingly important to formalise the survey data collection, to protect and where

necessary develop the dataset. The Scottish Executive supports the aquaculture industry in many ways and it is therefore important that the Scottish Ministers have the means of collecting information to justify/assist public sector involvement.

118. Section 31 of the Bill will enable the Scottish Ministers to introduce secondary legislation which will require the aquaculture industry to submit information in relation to the economic, social and environmental aspects of fish farming and/or shellfish farming. Such information is intended to assist the Scottish Ministers in ensuring that the policy of support to the aquaculture industry is evidence-based.

Costs on the Scottish Executive

119. The current annual shellfish and fish production surveys are administered by the Fisheries Research Services. This costs about £25,000 per annum (around a third the cost of a B2 Fish Health Inspector). One official within the Scottish Executive Environmental and Rural Affairs Department has a role in finalising the production surveys and submitting them to the Scottish Ministers, tending to take no more than five working days per year to do so.

120. The Scottish Ministers are confident that at the very most the time devoted to administering data collection will take up no more than 50% of a B2 Fish Health Inspector's time, this equates to an additional **£13,000 per annum** (*based on gross staff costs for 2007/2008*). This estimated annual cost is likely to first arise during the financial year 2007/2008.

Costs on local authorities

121. The Scottish Executive does not anticipate that the provisions should impose any additional costs on local authorities.

Costs on other bodies, individuals and businesses

122. The Scottish Executive believes that any additional costs to other bodies, individuals and businesses are unlikely to be beyond the costs that are currently incurred by the aquaculture industry under existing arrangements, which may amount to one person, per company, per year. There could be a modest rise in the costs to the industry should it be decided to extend the scope of the surveys in future. Detailed costs of any detailed provisions will be calculated by the Scottish Executive in the course of preparing any Statutory Instrument made under this provision, and in discussions with the aquaculture industry.

Discretionary power to make payment in respect of fish destroyed

123. At the time of the infectious salmon anæmia outbreak in 1998/99 there was no compensation for losses due to Scottish Executive disease controls. It became clear that investor confidence in the fish farming industry can be considerably dented where there is no safety net for the effects of government controls. In particular, companies' insurance can cover the loss of diseased fish, but there is at present no mechanism to make payments for the loss of fish that are destroyed to prevent the spread of disease, but which do not show clinical signs of disease.

Costs on the Scottish Executive

124. The Bill includes an enabling power such that the Scottish Ministers may if they saw fit and without obligation, set up a scheme to make payments in respect of any fish destroyed as a result of the exercise of fish disease control powers by the Scottish Executive. Such a scheme could specify the amount payable and the basis on which those amounts are ascertained; describe the circumstances where payments would or would not be made; and prescribe the conditions under which payments would be made. The cost to the Scottish Executive will therefore depend on the scope of any scheme introduced by the Scottish Ministers as well as the severity of any outbreak of disease.

125. For illustrative purposes if a 1,000 tonne farm suffered an outbreak of disease, and if that disease were within the scope of the compensation scheme then the fish farm business could be eligible for compensation. Assuming all the fish had to be destroyed and that the risk was shared between the Scottish Executive and the fish farm on a 50/50 basis, then the Scottish Executive would effectively be covering the value of 500 tonnes of salmon.

126. If the salmon were at marketable size and the price was assessed as £2 per kilo, then the potential cost to the public purse would be around £1 million for that farm. This would very much be an upper limit as it is very unlikely that all the fish on a farm would have to be destroyed. However, the picture is complicated by the degree of spread of the disease and the number of fish farms that could be affected.

127. If there were an outbreak of fish disease in the future, the Scottish Ministers would take all relevant factors into account when designing any scheme for payments under these powers. Such factors could include: the severity and spread of the disease; the likely costs to the public purse for that particular outbreak; and the financial state of the aquaculture industry. In addition, any statutory instrument introducing a scheme for payment in respect of fish disease would be subject to scrutiny by the Scottish Parliament and would be subject to affirmative resolution.

Costs on local authorities

128. The Scottish Executive does not anticipate that the provisions should impose any additional costs on local authorities.

Costs on other bodies, individuals and businesses

129. The Executive does not envisage that the provisions should impose any additional costs on other bodies, individuals and businesses.

Introduction of fish into certain marine waters

130. Since the last infectious salmon anaemia outbreak, the aquaculture industry has identified a number of marine “farm management areas”. These are areas agreed by the fish farmers who share the area. The current fish aquaculture code of good practice sets out recommendations on seawater to seawater fish movements, which means that all such movements should be subject to a documented risk assessment. The proposals in the Bill underline the importance that the Scottish Executive attaches to disease prevention by requiring all parties who propose to transfer

live fish (which have at any time been in salt water) into a farm management area to submit a risk assessment, and seek written consent from the Scottish Ministers.

Costs on the Scottish Executive

131. It is not clear to the Scottish Executive how many fish movements currently take place between or into farm management areas. Compliance checks on the Infectious Salmon Anæmia Code of Practice suggest that most farms do not move fish to, or receive fish, from other marine sites. Both the Fish Health Inspectorate and the Freshwater Fisheries & Aquaculture Division within the Scottish Executive currently give permission for fish movements but only with respect to notifiable fish diseases and only for movements into and out of infected areas. A Fish Health Inspector generally spends around two hours considering an application, with administrators in the Scottish Executive spending around half an hour on the same application. So far this year the Scottish Executive and the Fisheries Research Services have dealt with only one application to move fish into a seawater site.

132. It is therefore highly unlikely that any increase in the number of applications under the new powers will result in the need for additional staff, and the Scottish Executive therefore envisages no additional costs for these provisions.

Costs on local authorities

133. The Scottish Executive does not anticipate that the provisions should impose any additional costs on local authorities.

Costs on other bodies, individuals and businesses

134. The aquaculture industry will only be affected where fish farmers operate in the marine environment, and only where they move fish that have previously been in salt water into a farm management area. Movements within a farm management area will not be affected. The Scottish Executive envisages that the statutory instrument (introduced as a result of the enabling provisions in the Bill) is likely to permit the fish farms to submit one individual application for several fish movements, for a certain period of time, rather than a new application for every proposed movement. There are no plans to charge for the processing of movement applications. The additional cost burden on the industry is expected to be minimal as a result.

FRESHWATER FISHERIES

Gyrodactylus salaris

135. *Gyrodactylus salaris* is an external parasite which affects the skin, gills and fins of salmon in freshwater, causing the disease Gyrodactylosis. Although the parasite cannot survive in full strength sea water it has been known to persist in brackish environments. It kills salmon and other species can act as carriers. It is exotic to Great Britain, and its introduction would have devastating consequences for wild salmon stocks.

136. Existing powers under the Disease of Fish Acts are probably adequate to limit an outbreak of *Gyrodactylus salaris*. However there is nothing in present legislation which would enable the Scottish Ministers to take steps to eradicate or control the parasite should be detected

in Scotland. Accordingly the provision in the Bill would assist in preventing the spread of *Gyrodactylus salaris* and would also allow for active measures to be taken for its treatment.

137. The proposals give Scottish Ministers powers to construct and maintain barriers to prevent the spread of the parasite and/or to facilitate treatment. The proposals also include a power of compulsory purchase, a power to require the closure of fish passes in existing dams to prevent the upward migration of fish and a power of access, both to evaluate land for compulsory purchase and to effect treatment. The measures also include powers to restrict the movement into or out of an area of specified materials, equipment or substances liable to transmit disease. This would apply where *Gyrodactylus salaris* is either suspected or confirmed. The measures also include a power to undertake the eradication of *Gyrodactylus salaris* by treating rivers with chemical agents.

Costs on the Scottish Executive

138. Where containment or eradication is deemed appropriate by the Scottish Ministers then there will be a cost to the public purse. This will depend very much on the extent of any containment or eradication programme. At this stage it is very difficult to be precise about what these costs might be. They would depend on the scale of an initial outbreak at the point of its first discovery, the speed of response and whether the parasite had spread before being discovered. An isolated occurrence could perhaps be successfully contained at a cost of some thousands of pounds but any need for a widespread eradication would require substantially higher expenditure likely to be in the region of several millions.

139. Before deciding to use the powers for eradication of *Gyrodactylus salaris* the Scottish Ministers would assess the effects that their actions would have, taking into account economic, social and environmental considerations and may, for example, decide that eradication is not a viable option.

140. The Scottish Executive has commissioned an independent report to investigate the economic impact of *Gyrodactylus salaris* to the Scottish economy and this will include a detailed assessment of the likely annual costs of controlling or eradicating *Gyrodactylus salaris* should it be introduced into Scotland.

Costs on local authorities

141. The Scottish Executive does not anticipate that the provisions should impose any additional costs on local authorities.

Costs on other bodies, individuals and businesses

142. The Scottish Executive does not envisage any additional costs to bodies, individuals and business over and above any costs they may face as a result of the presence of *Gyrodactylus salaris*. The presence of *Gyrodactylus salaris* will have a significant impact on those businesses that depend on the salmon fishery, which currently contributes around £70 million to the rural economy annually. At this stage it is difficult to be precise about the costs that containment and eradication measures will have on other bodies, individuals and businesses. Costs would depend on the scale of such measures. A small localised outbreak could cost thousands of pounds

whereas an outbreak over a wide area in a large salmon river (e.g. Tay) could cost businesses millions of pounds.

Other freshwater proposals

143. The remainder of the proposals relating to freshwater fisheries reflect the consensus reached by freshwater fisheries stakeholders through the work of the Freshwater Fisheries Forum and its Steering Group. Most of the proposals amend existing salmon and freshwater fisheries legislation in areas such as; the rules on protection orders, baits and lures, rod & line, foul hooking, rules for fish conservation and close times. A proposal to control fish movements is new and would prohibit the introduction into any inland water (unless it is a fish farm) of, live fish or live spawn of fish, without the prior written consent of the Scottish Ministers.

Costs on the Scottish Executive

144. The Scottish Executive does not envisage any extra costs for any of the above proposals except for the provisions relating to fish movements.

145. The costs to the public purse will be for the administration of a fish movement control scheme. A similar system has operated in England and Wales for almost 30 years, with the Environment Agency reporting administrative costs in the region of £400,000 for some 10,000 individual fish movements per annum.

146. The Scottish Executive proposes to introduce a scheme which provides consents for fish movements. Consents will, in a majority of cases, apply to multiple movements rather than for individual movements. This will substantially reduce the burden on both the public and private sectors. However, the number of movements of live fish into inland waters is currently unknown, making the likely demand for and the cost of a consent scheme in Scotland difficult to estimate. It is envisaged that Fisheries Research Services will consider such applications.

147. Taking the costs of administration of a similar scheme by the Environment Agency in England and Wales as a guide, the Scottish Executive estimates that the additional costs to the Fisheries Research Services of administering a consent scheme could range from £40,000 for 1,000 fish movements to £200,000 for 5,000 fish movements. The above estimated annual costs are likely to first arise during the financial year 2008/2009.

Costs on local authorities

148. The Scottish Executive does not anticipate that the provisions should impose any additional costs on local authorities.

Costs on other bodies, individuals and businesses

149. There may be some costs to the freshwater fisheries community, but these are not likely to be significant. In addition, there is broad agreement among stakeholders that these changes would be advantageous to the angling community and to fisheries managers. It is accepted that the slight increase in paperwork is outweighed by the environment benefits, with greater protection afforded to those species that are not already covered by existing legislation. The

Scottish Executive envisages that consents will, in a majority of cases, apply to multiple movements rather than for individual movements, so further reducing the costs to businesses.

SEA FISHERIES

150. The Bill makes provision for two technical amendments in relation to the enforcement of existing Sea Fisheries legislation.

Costs on the Scottish Executive

151. The enforcement of sea fisheries legislation in Scotland is carried out by the Sea Fisheries Protection Agency. The proposals will not add to the running costs of the agency.

Costs on local authorities

152. The Scottish Executive does not anticipate that the provisions should impose any additional costs on local authorities.

Costs on other bodies, individuals and businesses

153. The Scottish Executive does not anticipate that the provisions should impose any additional costs on bodies, individuals and businesses.

GENERAL

Payments to bodies concerned with aquaculture and fisheries

154. There are a large number of bodies involved in the aquaculture, sea fishing and freshwater fishing sectors that pursue activities which are consistent with the Scottish Executive's policy for these areas. It is the Scottish Executive's policy, as set out in the Strategic Framework for Scottish Aquaculture, the Strategic Framework for Inshore Fisheries and the Strategic Framework for Scottish Sea Fisheries to support such work.

Costs on the Scottish Executive

155. The proposals seek to put beyond doubt the power of the Scottish Ministers to make funding decisions for the purposes of developing, promoting, organising or researching aquaculture, sea fisheries, inshore fisheries and salmon & freshwater fisheries. These proposals place no additional costs in themselves. Any additional spending would be dependent on the priorities of the Scottish Ministers which will be provided for as part of the routine budget setting and will depend on the funding priorities of the Scottish Executive at any given moment in time, but any spending is very likely to be in the range of £1m to £2m per annum.

Costs on local authorities

156. The Scottish Executive does not anticipate that the provisions will impose any additional costs on local authorities.

Costs on other bodies, individuals and businesses

157. The Executive does not envisage that the provisions will impose any additional costs on other bodies, individuals and businesses.

SUMMARY TABLES OF COSTS

AQUACULTURE

SUMMARY OF COSTS TO THE SCOTTISH EXECUTIVE

Proposals\Costs	Recurring	Non-recurring
Parasite Control (paragraphs 87-101)	Estimated at between £43,500 and £225,500	Estimated at £6,000
Containment (paragraphs 102-115)	Estimated at between £145,100 and £363,000 for inspections plus between £10,000 and £25,000 for divers.	
Discretionary Powers to make payment in respect of fish destroyed (paragraphs 123-129)	None	Estimated at up to £1 million for a not atypical 1,000 tonne salmon farm. Amount for an outbreak covering multiple farms could be several million pounds
Introduction of fish into certain marine waters (paragraphs 130- 134)	None	None
Information Provision (paragraphs 116 - 120)	Estimated at £13,000	None
Estimated Total Costs	Between £211,600 and £626,500.	Between £6,000 and several million pounds.

FRESHWATER FISHERIES

SUMMARY OF COSTS TO THE SCOTTISH EXECUTIVE

Proposals\Costs	Recurring	Non-recurring
<i>Gyrodactylus salaris</i> (paragraphs 135 - 142)	Between zero if no parasite to several millions if present.	Between zero if no parasite to several millions if present.
Other Freshwater Proposals (paragraphs 143 -144)	None	None
Fish Movements (paragraphs 145 -149)	Estimated to be at between £40,000 and £200,000	None
Estimated Total Costs	Between £40,000 and several million pounds.	Between zero and several million pounds.

SEA FISHERIES

SUMMARY OF COSTS TO THE SCOTTISH EXECUTIVE

Proposal\Costs	Recurring	Non-recurring
Technical amendments to sea fisheries legislation (paragraphs 150 - 153)	None	None

GENERAL

SUMMARY OF COSTS TO THE SCOTTISH EXECUTIVE

Proposal\Costs	Recurring	Non-recurring
Payment to bodies concerned with aquaculture and fisheries (paragraphs 154 -157)	None	Creates no additional costs in itself. Spending would be dependent on the priorities of the Scottish Ministers.

EXECUTIVE STATEMENT ON LEGISLATIVE COMPETENCE

158. On 29 June 2006, the Minister for Environment and Rural Development (Ross Finnie MSP) made the following statement:

“In my view, the provisions of the Aquaculture and Fisheries (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

159. On 28 June 2006, the Presiding Officer (Right Honourable George Reid MSP) made the following statement:

“In my view, the provisions of the Aquaculture and Fisheries (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

These documents relate to the Aquaculture and Fisheries (Scotland) Bill (SP Bill 67) as introduced in the Scottish Parliament on 29 June 2006

AQUACULTURE AND FISHERIES (SCOTLAND) BILL

EXPLANATORY NOTES (AND OTHER ACCOMPANYING DOCUMENTS)

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Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by Astron.

ISBN 1-4061-2424-9



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