

AQUACULTURE AND FISHERIES (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Aquaculture and Fisheries (Scotland) Bill introduced in the Scottish Parliament on 29 June 2006. It has been prepared by the Scottish Executive to satisfy Rule 9.3.3(c) of the Parliament's Standing Orders. The contents are entirely the responsibility of the Scottish Executive and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 67-EN.

POLICY OBJECTIVES OF THE BILL

General overview

2. The Scottish Executive's Partnership Agreement (*A Partnership for a Better Scotland: Partnership Agreement*), published on 15 May 2003 included three commitments with regard to aquaculture and freshwater fisheries. In brief, these were in aquaculture, 'to support the aquaculture industry' (No. 327), 'streamlining regulation on the aquaculture industry' (No. 328), and in freshwater fisheries, 'to promote access for anglers' (No. 345).

Aquaculture

3. For aquaculture, the Bill gives powers to help support the aquaculture industry and helps build public and international confidence in fish farming by underpinning the voluntary approach set out in the Scottish finfish aquaculture's and the Scottish shellfish aquaculture's codes of good practice. It underpins the voluntary measures primarily by providing 'backstop' provisions to tackle the long running and difficult issues of control of parasitic sea lice and the containment and prevention of escape of farmed fish which can have a negative environmental impact. Wild salmon and sea trout stocks have declined in recent years on the west coast of Scotland. While there is no substantive evidence that sea lice and escapes from fish farms have an adverse affect on wild stocks, it is accepted that fish farms may contribute towards making a bad situation that much worse.

4. Specifically, the Bill provides powers for inspectors to inspect fish and shellfish farms to assess the measures in place for controlling parasites and for preventing fish escapes and to have the discretion to serve enforcement notices where the measures are found to be insufficient or there are problems which need to be rectified. Companies adhering to the industry standards set out in their codes of good practice are unlikely to have material problems that would require such notices to be served. The fact that action is to be taken only where there are problems takes account of the principle behind Partnership Agreement No. 328 not to increase the regulatory burden on the aquaculture industry.

5. In addition, the Bill provides powers for the Scottish Ministers to approve a code of practice to set out what they believe to be desirable practice by shellfish farmers and fish farmers with respect to parasite control and the containment of fish. The Bill contains powers to serve a notice to require any necessary works to secure compliance with the approved code in any particular respect. A Ministerially approved code would therefore, in effect, be mandatory. The Scottish Executive supports the robust voluntary approach taken by the fish farming industry and the shellfish farming industry in their codes of practice and would only envisage using the power for Ministers to approve a code if problems arose with the industries' codes. The Bill places a duty to consult relevant persons before making an order to approve a code of practice and the Scottish Executive will ensure that any approved code would be drawn up in close liaison with key stakeholders. Finally on aquaculture, the Bill also brings in provisions to regulate the movement of farmed marine fish between specified sea areas to help maintain fish health and restrict the spread of fish disease.

Salmon and freshwater fisheries (game and coarse fishing)

6. Scotland has thriving angling fisheries for salmon and freshwater fish and these can be expanded, particularly where trout and coarse fish are the targets. It is clear, however, that any further development should be undertaken in a way that ensures sustainability. Accordingly, the increased access at the heart of Partnership Agreement No. 345 has to be regulated to ensure long-term benefits. Sustainability requires a more holistic approach and access should therefore be viewed in a comprehensive way to include measures that contribute to the overall ability for fishing activity to be sustained. In order to responsibly promote coarse and game angling in Scotland, steps should be taken to ensure that there are fish present for anglers of a type that anglers wish to fish; that bad practices associated with angling that may injure or kill fish (which are incompatible under "catch and release") are prohibited to reduce unnecessary mortality on fish stocks; that internationally accepted methods of fishing that are currently unlawful in Scotland are made lawful; and that the environment is not despoiled by or to the detriment of fishing.

7. The provisions in the Bill fall into three main categories: improvements to the rules on access; welfare considerations; and conservation measures. Taking access first, by improving the law in certain respects, for example to make certain legitimate fishing practices such as harling clearly lawful instead of arguably lawful or unlawful and by bringing in amendments to legislation to permit the use of normal coarse fishing methods such as the use of rod rests when the angler is in attendance then this type of fishing can be more properly established, promoted and advertised, which should result in increased access and participation.

8. In addition on access, the Bill includes provisions to improve the current system of protection orders. This system will remain in place until such time as new management structures can be developed with stakeholders and brought in to manage freshwater fisheries, at which point the Scottish Ministers have made it clear that the system of protection orders will be revoked.

9. Secondly, on welfare, the Bill prohibits the use of equipment that can damage and injure fish and which is not compatible with a catch and release approach to fishing. The equipment prohibited are gaffs, tailers, pike gags and landing nets and keepnets with mesh that is knotted and/or made with a metallic material.

10. Finally, on conservation, importantly, the Bill provides a series of contingency powers to tackle the virulent parasite *Gyrodactylus salaris*. Experience in Norway and other countries suggests that were *Gyrodactylus salaris* to be introduced into Scotland, it would kill between 90 and 95% of affected salmon, with devastating consequences for the salmon fishing industry if left unchecked. In addition, there are conservation measures to protect indigenous fish stocks from alien and sometimes invasive species. These include a consenting framework for the introduction of live fish into inland waters and an enabling power for the Scottish Ministers to make regulations which prohibit the use of specified baits and lures which may be used to bring in a ban on the use of live vertebrates as bait. Other conservation measures include close times for freshwater fish, a requirement to clear obstructions and powers for the Scottish Ministers to make such regulations as they consider necessary for the conservation of freshwater fish.

Sea fisheries

11. For sea fisheries, the Bill makes some technical amendments to remove some anomalies in existing legislation.

Bill contents

12. The Bill is divided into five parts. **Part 1** deals with fish farms and shellfish farms. It makes provision relating to parasite control and to the containment and prevention of escape of fish from fish farms. It also gives powers for the approval and monitoring of codes of practice for fish and shellfish farming with regard to these two issues. **Part 2** deals with the containment and treatment of *Gyrodactylus salaris*, an exotic parasite of salmon.

13. **Part 3** makes provision in relation to fisheries – mainly to salmon and freshwater fisheries with one section in relation to sea fisheries. **Part 4** of the Bill makes miscellaneous provision, including a power to restrict the movement of fish into specified areas of marine waters; a prohibition on the unauthorised introduction of live fish into inland waters; provision for payments to be made in respect of fish destroyed in pursuance of disease control measures; provision for payments to be made for the purposes of development, promotion, organisation and research in areas related to aquaculture and fisheries; and provision allowing for the compulsory provision of certain information. Finally, **Part 5** of the Bill contains general provision, including introducing a schedule of minor and consequential amendments, a power to make ancillary provision, and provisions in relation to Crown application and the commission of offences by bodies corporate.

Part 1: Fish and shellfish farms – parasite control

14. The Bill provides measures in respect of parasite control. The Scottish Executive is concerned, at the moment, with one particular parasite of fish: sea lice. The Bill therefore defines ‘parasite’ as meaning *Lepeophtheirus salmonis* and *Caligus elongatus*, the two important species of sea louse that affect salmon. Should other parasites become a problem in the future, the definition of the term parasite can be modified by statutory instrument.

15. Sea lice can lower the fitness of salmon – and in some cases be lethal – because they create open lesions on the surface of the fish that compromises its ability to maintain its salt-water osmotic balance. When infection rates are high enough, the parasites feed on the fish at

rates greater than the fish can feed itself, literally eating the fish alive. Young salmon are much more vulnerable due to their small size.

16. In response to the issue of sea lice, the Scottish Executive established the Tripartite Working Group to address problems common to both farming and wild fisheries and to seek solutions to ensure the maintenance of a healthy stock of wild fish whilst at the same time promoting a sustainable aquaculture industry. Tripartite Working Group objectives are delivered at the local level through voluntary Area Management Agreements (“AMAs”) established between the industry and wild fisheries partners. These Agreements endorse best practice such as synchronised fallowing and co-ordinated treatments. A key Area Management Agreement objective is the target of zero ovigerous (egg bearing) female sea lice on farms, particularly during the smolt run between February and June.

17. The salmon farming industry, in conjunction with the Scottish Executive and wild fish interests, has drawn up a *National Strategy for the Control of Sea Lice on Scottish Salmon Farms* (also known as the ‘National Treatment Strategy’) which sets out in detail an agreed treatment approach, including agreed levels of lice that should trigger treatment. The industry has developed the more general *Code of Good Practice for Scottish Finfish Aquaculture* and the National Treatment Strategy forms an integral part of this Code.

18. While the voluntary approach delivered through AMAs is producing positive results, achieving agreement by voluntary means has been a particular problem in some areas and may not be achievable everywhere. The majority of the industry are keen to control sea lice effectively through the requirements specified in their Code of Good Practice to be the solution. However, there remain some elements within the industry that either cannot, or will not, cooperate with best practice treatment regimes in respect of sea lice.

19. The wildfish sector, while recognising the good work of much of the industry, expresses concern that the Code of Good Practice may be weakened if there are no sanctions for non-compliance and queries how the fish farms who do not sign up to the Code of Good Practice and who do not manage sea lice effectively will be able to be dealt with.

20. There is also an issue with the consistency in the collection of sea lice data which the Scottish Executive would like to address by setting rules on standardised techniques for counting lice data.

21. The Bill gives powers for persons authorised by the Scottish Ministers to act as inspectors under the Bill. The Scottish Executive intends in practice to extend the current remit of the Fish Health Inspectorate within the Fisheries Research Services to include parasite control in addition to 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. In summary, 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; and
- 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.

Part 1: Fish farms – containment and prevention of escapes of fish

22. There is a high degree of public interest and concern in Scotland about the number of escapes of salmon and trout from fish farms, and the possible impact of escapes of such fish on wild stocks. There is also continuing interest internationally, from the North Atlantic Salmon Conservation Organisation (NASCO) and the European Commission. For fish farmers, escapes represent a loss of valuable assets, although to some extent this can be offset by insurance. For conservation and wild fish interests, escaped fish have the potential to increase disease risk, compromise genetic integrity and increase competition in the freshwater environment.

23. The issue of the containment of farmed fish on fish farms and escapes of such fish is a key priority of the *Strategic Framework for Scottish Aquaculture*. Since the Strategic Framework was published in 2003 a *Containment Working Group* of key stakeholders including fish farming industry and wild fish interests has drafted new *Containment Guidance* for regulators and industry, the relevant parts of which are included in section 4 of the new finfish aquaculture industry Code of Good Practice.

24. The measures provided in the Bill relating to containment are concerned primarily with the prevention of escapes from fish farms in both freshwater and the marine environment. 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.

Part 1: Enforcement notices – appeals

25. There is no right of appeal against the serving of an enforcement notice in the Bill. There is similarly no right of appeal in any existing legislation concerned with fish health. The nature of the works which would be required by an enforcement notice is such that delay in undertaking the works (as would be caused by an appeal procedure) would have serious consequences for disease control and the environment. The Scottish Executive does not believe it is appropriate for the execution of the necessary works to be delayed by an appeal procedure.

26. Although there is no appeal from an enforcement notice, a notice may only be served in relation to works which the Scottish Ministers consider to be necessary for the particular purposes relating to parasite control and containment set out in the Bill. Before authorising the serving of a notice, the Scottish Ministers must be satisfied as to the necessity of serving that notice on the basis of objective coherent evidence. If recipients of a notice believe they are being required to take actions that are inappropriate or unreasonable they can seek judicial review.

27. For the purposes of transparency, to ensure that it is clear to everybody concerned how an inspector would come to a decision about whether the measures in place on a farm were satisfactory, the Scottish Executive intends to issue guidance as to the factors that would be taken into account in determining to whether or not to serve an enforcement notice. Such a guidance document would be made available to the public.

Part 1: Fish farms and shellfish farms – codes of practice

28. In addition to the specific measures referred to above, the Bill provides an enabling power for the Scottish Ministers to approve, by means of a statutory instrument, all or part of a code of practice, whether written by them or by a third party, with respect to parasite control and the containment and prevention of escape of fish from fish farms. The text of the approved code would be specified in the Statutory Instrument. The Bill places an obligation on the Scottish Ministers to monitor compliance with any code of practice they have approved, and gives them discretion to serve notices upon any person who carries on a business of fish and shellfish farming requiring that person to execute such works and take such other steps as they consider necessary for securing compliance with the approved code. This would have the effect of making any adopted code mandatory so this power is reserved only for the issues of parasites and fish escapes.

29. A notice could only be served if a person was likely not to comply with any approved code in a material regard. The Scottish Ministers must act reasonably and for them to be satisfied of a material breach of an approved code they would have to come to that conclusion on the basis of objective evidence. The way the Scottish Ministers would get such evidence would be by way of inspections. As a matter of administrative law, inspectors acting on the behalf of

the Scottish Ministers are obliged take into account all factors which are relevant and must discount all factors which are irrelevant.

30. The Scottish Executive supports the robust voluntary approach taken by the fish farming industry and the shellfish farming industry in their codes of practice and would only envisage using the power for the Scottish Ministers to approve a code of practice if problems arose with the operation of the industries' codes. The Bill places a duty to consult relevant persons before making an order to approve a code of practice and the Scottish Executive is clear that to have authority, any approved code would have to be drawn up in close liaison with key stakeholders.

Part 2: Salmon and freshwater fisheries – *Gyrodactylus salaris*

31. *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; experience in Norway and other countries suggests that between 90 and 95% of salmon affected by *Gyrodactylus salaris* would be killed by the effects of the parasite.

32. Existing powers under the Disease of Fish Acts can go some way towards limiting an outbreak of *Gyrodactylus salaris* although there is a need to enhance the powers for designating areas. Moreover, there is nothing in present legislation which would enable the Scottish Ministers to take steps to eradicate or control the spread of the parasite should it be detected in Scotland. Accordingly the provision in the Bill would assist in preventing the spread of *Gyrodactylus salaris* and would also allow for proactive measures to be taken for its treatment.

33. The measures 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 upstream 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. There is also a power for the mandatory clearance of fish farms in bodies of water where treatment is to be undertaken - this section does not prevent the sale of healthy fish to market where there are disease control measures in place.

34. The Bill also includes an enabling power to allow the Scottish Ministers to establish a scheme to make payments to those who suffer losses as a consequence of the Scottish Ministers exercising their powers in relation to aspects of *Gyrodactylus salaris*. The power to make payments for fish destroyed is covered separately, in part 4 of the Bill.

35. The exercise of the powers for eradication of *Gyrodactylus salaris* would have serious and long-lasting effects upon the ecology of rivers and the activities of those who make use of inland waters, from fishermen to canoeists and those who make use of water in manufacturing

(for example distilleries). The Scottish Ministers would not authorise any treatment programme unless a detailed planning exercise and extensive consultation with the full range of affected stakeholders had been undertaken. Such an exercise would probably require a period of at least a year or two to complete. The Scottish Ministers would wish to assess in great detail the effects that their actions would have, and carefully balance the importance of eradicating the parasite *Gyrodactylus salaris* and preserving the long-term future of wild Atlantic salmon stocks in Scotland against the significant effects on other interests. The planning phase of an eradication programme would also need to ensure that any proposed treatment was lawful under other applicable domestic legislation and relevant Community law such as The Water Environment (Controlled Activities) (Scotland) Regulations 2005, the Habitats Directive and the Water Framework Directive. These require that relevant economic, social and environmental considerations are fully taken into account before taking action.

Part 3: Salmon and freshwater fisheries – miscellaneous amendments to salmon and freshwater fisheries legislation

36. The Bill makes provision for a series of measures and amendments to salmon and freshwater fisheries legislation. The provisions were drawn up in close liaison with the Freshwater Fisheries Forum and fall into three main categories: improvements to the provisions on access; welfare considerations; and conservation measures.

Access: protection orders

37. Anglers need fish to be present in rivers and lochs to be able to pursue their sport. Healthy fisheries need healthy fish populations. Conservation and exploitation are interdependent and there is a balance to be struck between fishing effort and protection of the resource. Sections 48 to 51 of, and Schedule 3 to, the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (“the 2003 Act”) make provision for the Scottish Ministers to make an order referred to as a “protection order”. Schedule 3 to the 2003 Act makes detailed provision in relation to the making, variation and revocation of protection orders.

38. The system of protection orders has encountered considerable criticism from a small minority over the years and this was repeated by many of those who responded to the Scottish Executive’s consultation paper *Protecting and Promoting Scotland’s Freshwater Fish and Fisheries*. The Scottish Ministers have made it clear that they intend to repeal the provisions in legislation that relate to protection orders. However, over the past year, the Freshwater Fisheries Forum, a group which represents salmon and freshwater interests, including the vast majority of anglers, has been looking at the issue of the conservation, management and exploitation of freshwater fisheries stocks. It has become clear from the many stakeholders through the work of the Forum that until a replacement structure for the management of freshwater fisheries is in place, it would be unwise to revoke protection orders, a view that was endorsed by the results of the consultation exercise on this Bill.

39. The Bill therefore contains provisions to amend the protection orders system to make it more flexible and responsive to the needs of both anglers and riparian owners. The provisions in summary are as follows: the requirement for applicants to advertise an application for, and for the Scottish Ministers the making of, a protection order in the Edinburgh Gazette will be repealed; a protection order need not apply to all the land enclosed by its boundaries, i.e. there

can be “holes” in a protection order area; and fisheries can be removed from the prescribed area of a protection order for non-compliance with the requirement to increase access to fishing.

40. Initial work on developing a future management structure for freshwater fisheries has already begun and this will be taken forward in liaison with stakeholders over the next two or more years.

Access: definition of rod and line

41. In the Executive’s Green Paper *Scotland’s Freshwater Fish and Fisheries: Securing their Future* (published in 2001) it was acknowledged that the current definition of “rod and line”, given that it refers to single rod and line used otherwise than as a set line, prohibits the use of more than one rod, and the setting of rods on rod rests. The Scottish Executive recognised that this provision had the effect of making certain commonly accepted methods of fishing unlawful, namely ledgering and, arguably, fishing from boats with multiple rods and lines (commonly referred to as harling or trolling depending on the kind of fish being fished for).

42. Ledgering using a set rod is a common practice in coarse fishing. A bait is fished using a line and weights with the rod being set on a rod rest. It is also common practice for coarse fishermen to set more than one line and hence to set more than one rod. It is also common practice amongst anglers when fishing from boats for either salmonids or coarse fish to use more than one rod and line, the baits and lures being trailed behind the boat.

43. When fishing from a boat (whether for salmonids or coarse fish), the Bill therefore sets a limit such that no more than 4 rods may be used for fishing from that boat at any time, irrespective of how many anglers there are on board the boat (i.e. the maximum number of rods is in respect of the boat itself). The rods used may be held in position in the boat by rod rests (although the angler is not obliged to use a rod rest; for example, it would be acceptable for the angler to hold the rod in position by any other means, such as passing the rod through the jaws of a rowlock). The key point is that while the angler using the rod(s) need not retain the rod(s) in his hands, the angler should be able to retrieve a rod as soon as practicable should a fish take the bait or lure attached to the line associated with any rod.

44. When fishing otherwise than from a boat for freshwater fish other than salmonids, the Bill sets a limit such that no individual angler may use more than 4 rods and associated rod rests. Although the angler need not retain the rods in his hands (which would not be practicable if there were 4 rods in use at one time) the angler must remain in attendance to ensure that he or she is able to retrieve the rod as soon as practicable should a fish take the bait or lure attached to the line associated with any rod.

Welfare: use of gaffs, tailers and knotted/metallic landing nets

45. A gaff is a large, barbless hook attached to a handle which can be used to hook a fish through the muscle in order to bring it ashore. A tailer is a length of multi-stranded wire usually attached to a handle, with a small hoop fixed to the free end of the wire. When the hoop is fixed and a large loop is formed in the wire, it may be passed over the tail of a salmon. This can then be drawn tight and the salmon removed from the water by its tail. Landing nets can be used to assist the landing of fish and to retain them briefly prior to dispatch or release. Knots in the

mesh of such nets can damage the skin of fish and leave them vulnerable to infection. Nets made of a metallic material can similarly be very abrasive and damaging to a fish's skin.

46. The above items have previously been permitted as auxiliaries to the taking of fish by rod and line under section 3 of the 2003 Act. The Bill therefore amends this section so that the use of gaffs, tailers and knotted and/or metallic landing nets is prohibited.

Welfare: use of pike gags and knotted/metallic keepnets

47. A pike gag is a device used to hold a pike's mouth open after capture so that the hook can be removed (pike have significantly sharp teeth). It has a very strong spring that forces the mouth of the pike open and may cause severe injury, including broken and dislocated jaws. Responsible pike fishermen do not use pike gags. Keepnets are used to hold live fish in the water once caught before, say, weighing at the end of a day's competition and returning the fish to the river. As with landing nets, knots in the mesh of keepnets can damage the skin of fish and leave them vulnerable to infection. Similarly, metallic mesh can be very abrasive and damaging to a fish's skin.

48. The Bill specifically prohibits the use of pike gags and knotted and/or metallic keepnets.

Conservation: weekly close times for freshwater fish and annual close times for freshwater fish other than trout

49. The 2003 Act contains provisions for annual and weekly close times for salmon fishing and an annual close time for fishing for trout. No close times are provided for in respect of fishing for any other species of freshwater fish. The Bill includes provision for annual and weekly close times for other freshwater fish species and includes trout in the provision allowing weekly close times to be made. This is because there is a real possibility of over-exploitation of the stocks of fish other than salmon. These are enabling powers because the precise close times and the precise species will be determined on the basis of future evidence of the status of individual stocks.

Conservation: conservation regulations for freshwater fish

50. Interest in fishing for freshwater fish is growing year on year and in order to ensure that such fisheries can be developed in a sustainable manner it is necessary to have powers available to regulate them. In particular, it is helpful to extend the ability to specify particular baits and lures that may be used for salmon (section 33 of the 2003 Act) to other freshwater fish. This enabling power may be considered in the first instance to implement the Executive's policy of prohibiting the use of live vertebrates as bait throughout Scotland.

51. These powers enable the Scottish Ministers to prohibit the removal in specified areas of certain species of fish unwanted by some people but for which access is sought by other anglers. The powers also enable the Scottish Ministers to prohibit adversely affecting the environment in certain areas to the detriment of specified fish species. For example, a number of coarse fish species in particular require littoral vegetation in which to spawn, or as a nursery area for juveniles. It has been known for attempts to be made to remove this vegetation to adversely affect spawning and juvenile development of particular species of fish unwanted by some. Similarly, if a loch or a pond level can be manipulated by means of a sluice, the status of these

littoral areas can be compromised by lowering the water level at crucial times in the life history of certain fish species to the detriment of those local stocks.

52. By this means, the practice by some species-specific anglers of manipulating the local eco-system in favour of their prey and to the detriment of other fish will be controlled. The provisions will also improve access on a diverse fishery basis (by preventing riparian owners from deliberately removing fish they do not want, so denying access and enjoyment to anglers who wish to fish for the fish in question. The powers will also act as a conservation measure to support biodiversity and to protect specific species in given locations.

Part 3: Sea fisheries

53. Experience with enforcement of the Sea Fish Licensing Order 1992 has led the Scottish Executive to take the view that licence conditions, which are enforced under section 4(6) of the Sea Fish (Conservation) Act 1967, are sufficient to prohibit fishing in a specified area for a specified description of sea fish, and to require prohibited species be returned to the sea forthwith. In these circumstances section 4(9A) of the Sea Fish (Conservation) Act 1967 (which requires any fish taken on board a boat in breach of an order under that section to be returned to the sea forthwith) is now redundant and the Bill therefore revokes that subsection and related subsection (9B).

54. Section 30(1) of the Sea Fisheries Act 1981 makes provision in relation to the enforcement of Community legislation and allows immediate enforcement of Community *restrictions* relating to sea fishing (e.g. a limit on the number of days a fishing vessel can spend at sea) until such time as an order can be made under section 30(2) of the Act. As well as transposing Community restrictions, section 30(2) enables the transposition of Community *obligations* in relation to sea fishing (e.g. a requirement for a vessel of a certain size to carry satellite location-reporting equipment) into Scottish secondary legislation. To allow the Scottish Executive to comply with the Common Fisheries Policy both restrictions and obligations relating to sea fishing should apply immediately once they come into effect under Community law. The Bill amends section 30(1) of the 1981 Act so that both terms are covered.

Part 4: Miscellaneous provisions

Unauthorised introduction of live fish into specified marine waters

55. The movement of fish from farm to farm poses a significant risk of the spread of fish disease. One of the biggest factors in the outbreak of infectious salmon anaemia in the late 1990s was the rapid spread of the disease throughout much of Scotland as a result of fish movements. Since then, the finfish aquaculture industry has identified a number of marine “farm management areas”, which are areas agreed by the fish farmers who share the area. The current finfish aquaculture Code of Good Practice sets out recommendations on seawater to seawater fish movements, which mean that all such movements should be subject to a documented risk assessment.

56. The provisions in the Bill enable the Scottish Ministers to make statutory instruments designating “specified areas” of marine waters and requiring all parties who intend to transfer live fish into the specified area to seek prior written consent from the Scottish Ministers. As a

matter of good practice, the Scottish Ministers would consult fish farming stakeholders before drawing up any statutory instrument defining specified areas. The fish farming industry's existing marine farm management areas referred to above would make a logical basis for the specified areas to be defined by order. Movements between farms within a specified area will be unaffected by this provision.

Unauthorised introduction of live fish into inland waters

57. The introduction of fish into inland waters to which they are not native can have damaging environmental consequences. It risks the transmission of disease and disruption to and displacement of native species. The Bill brings in a new offence of intentionally introducing live fish or spawn into inland waters (other than the waters of a fish farm) without the prior written consent of the Scottish Ministers or, for salmon, the relevant district salmon fishery board.

Discretionary power to make payments in respect of fish destroyed

58. At the time of the infectious salmon anaemia outbreak in 1998/99 there was no compensation for losses due to Scottish Executive disease controls. Companies' insurance can cover the loss of fish that die of disease, but there is at present no mechanism to make payments for the loss of fish that are destroyed due to government controls intended to prevent the spread of disease.

59. The Bill therefore contains a discretionary enabling power such that the Scottish Ministers could, if they saw fit and without obligation, set up a scheme by Statutory Instrument to pay compensation of such amount and in such circumstances as the Scottish Ministers prescribe for any fish destroyed for the purposes of disease controls. 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.

60. Statutory Instruments are the best vehicle for delivering the detail of a scheme for payments for fish destroyed. It would be unnecessarily limiting to define the compensation in primary legislation. To do so would remove the possibility of tailoring any payments to the specific circumstances of any given outbreak of disease and would rob the Scottish Executive of the flexibility to adapt to conditions that change over time. A Statutory Instrument made in respect of payments must be made by affirmative resolution, which gives the Scottish Parliament the right to scrutinise any payment scheme at time it is being proposed so that the Scottish Parliament can assess for itself whether the scheme is in the right terms given the factors involved at that time.

Payments for certain purposes

61. 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. The Bill contains provisions to support such activities as there are no existing powers currently in place to allow Scottish Ministers to support such activities. For example, with respect to freshwater fisheries,

no powers exist to permit Ministers to make payments except to organisations which not only develop and improve fisheries but also make them available for letting or fishing by persons authorised to fish. This precludes payments to organisations that do not themselves operate fisheries, but gather the scientific information necessary for sound management, and implement habitat and fishery improvement measures.

Mandatory information collection: economic, social and environmental aspects of fish farming and shellfish farming

62. The Scottish Executive currently collects very little information on the aquaculture industry apart from that required by the Registration of Fish Farming and Shellfish Farming Businesses Order 1985 as amended and the voluntary annual shellfish and finfish production surveys undertaken by Fisheries Research Services.

63. 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 (examples include the measures in the strategic framework for Scottish aquaculture and the provision of grants under the Financial Instrument for Fisheries Guidance – a European Structural Fund which will be replaced during 2007 by the European Fisheries Fund) and it is therefore important that the Scottish Ministers have the means of collecting information to justify/assist public sector involvement.

64. The provision in the Bill will enable the Scottish Ministers to introduce secondary legislation which will require fish farmers and shellfish farmers to submit such information as the Scottish Ministers deem necessary and appropriate in relation to the economic, social and environmental aspects of fish farming and shellfish farming.

ALTERNATIVE APPROACHES

65. Alternative policy approaches to primary legislation were considered. For aquaculture, two alternatives were considered: one, to take no legislative action and instead rely entirely on the industry's voluntary code of good practice and two, to introduce a licensing scheme. For freshwater fisheries, some suggested postponing legislation until the management and funding issues were resolved and drafting a Bill to cover all the aspects of freshwater fisheries, including new management structures.

Aquaculture: code of practice

66. The option of relying on the voluntary approach delivered through the finfish farming and the shellfish farming industries' codes of good practice was considered. These will clearly produce positive results and the Scottish Executive supports the industries' moves towards improving practice in fish farming and shellfish farming. That said, relying wholly on a voluntary approach leaves unanswered the question of how to tackle farms which do not sign up to or adhere to the codes of good practice. As yet not every fish farmer has signed up to adhering to the Code and there is no mechanism to force adherence. Also, even a farmer who has signed up to the Code may not meet the requirements and the only sanction we are aware of at this time is the potential to publish which companies have been judged through audit procedures

to meet the standards set out. A further sanction of expulsion could be taken by the bodies promoting compliance with the code of good practice but that would not necessarily play any parting rectifying bad or poor practice.

Aquaculture: licensing scheme

67. Another alternative approach to legislation that was considered was the introduction of a licensing scheme, with the ultimate sanction for repeated breaches of the code of practice being loss of licence. However, applying for a licensing scheme would impose up front costs on the farmer and managing and policing a scheme would add to the costs on the Scottish Executive. This proposal also raised the question of which authority would consider and issue fish farm licences. It was considered that imposing a general licensing scheme for fish farming would be a burden on the fish farming and shellfish farming industries and would run directly contrary to Partnership Agreement No. 328.

68. In addition, the penalty of losing a licence (which would mean the farm would no longer be able to operate) for breaching sensible but precautionary measures may be difficult to justify. There is no provision for the closure of farms in the Bill because there is no objective evidence to support such a measure. The use of a license scheme would be a draconian measure if it resulted in closure of farms, it is better to use inspectors to advise, if necessary issue notices and only then move to court action to ensure that appropriate steps are taken by the farmer.

Freshwater fisheries

69. The main alternative policy approach to primary legislation in the current session of the Scottish Parliament with regard to freshwater fisheries was to wait until new management structures were in place before bringing forward the revisions to freshwater fisheries legislation that are aimed at improving access, sustainability and conservation. However, the Scottish Executive believes that while there is more to do in the field of freshwater fisheries, particularly as regards future management structures, the provisions in the Bill are sufficiently important to merit action now. For example, it became clear during the consultation process that reliance on voluntary observance of issues such as those proposed in relation to fishing for salmon and freshwater fish would be unlikely to be of benefit. In particular, the unregulated movement of fish between river catchments has already led to introductions of fish that are not native to the receiving waters, to the detriment of the native fish and the fisheries that depend upon them. Changes to the provisions on lawful fishing methods are necessary because some of the commonly used practices are simply unlawful at the moment.

CONSULTATION

70. The *Aquaculture and Fisheries Bill – Consultation Paper and Draft Regulatory Impact Assessment* sought views on the Executive's proposals for the Aquaculture and Fisheries (Scotland) Bill, planned for introduction in June 2006. The Consultation Paper was published on 16 December 2005, with responses requested by 27 February 2006, this was subsequently extended to 3 March 2006.

71. The Scottish Executive issued over 2,000 copies of the consultation paper and questionnaire to over 900 individuals and organisations throughout Scotland. The consultation

paper and questionnaire were also available online in two formats. All references contained within the consultation paper were also accessible on the Executive's Fisheries Bill web pages. The consultation paper contained 51 numbered questions and a total of 436 responses had been received by the end of the consultation period. Two additional responses were received after the extended closing date for submissions.

72. The Scottish Executive also conducted a series of public meetings as part of the consultation exercise to give members of the public an opportunity to meet SEERAD officials and put forward their views on the proposals in person. The Executive had planned 8 such meetings, throughout Scotland, but this was expanded to 10 meetings due to demand. The meetings were held between mid-January and early-February 2006. More than 400 people attended the meetings. The proceedings of each meeting can be found online at: www.scotland.gov.uk/Topics/Fisheries/afBill/

73. The figure of 436 responses is significantly higher than many other recent Scottish Executive consultation exercises. It would appear that direct contact with stakeholders, coupled with the series of public meetings and the availability of documents on the internet and at the public meetings had an overall beneficial effect on the overall number of returns.

74. The analysis of consultation responses was published on 15 May and can be found online also at: www.scotland.gov.uk/Topics/Fisheries/afBill/

75. The broad response to the consultation was one of agreement with the Scottish Executives proposals. However it was clear from the consultation that whilst most respondents agreed with the general thrust of what was proposed in the consultation there was a great deal of debate about how each proposal might be taken forward through the Bill. The Scottish Executive took cognisance of these views in the course of drafting the Bill. Further detail about the consultation, including the Analysis of Responses and the Scottish Executive's Response to the Consultation can be found on the Scottish Executive Website: www.scotland.gov.uk/topics/fisheries/afbill. Some of the proposals that were outlined in the Consultation on the Bill were not taken forward by the Scottish Executive even though there was broad support for them. For example, the proposals on strict liability offence for fish farm escapes was not taken forward because many respondents to the consultation pointed out that the proposals would be difficult to enforce and discourage the reporting of escapes.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

76. The Scottish Ministers have reaffirmed their commitment to consideration of equality provisions in legislation. This part of the Policy Memorandum has been prepared by the Scottish Executive to assist consideration by the Scottish Parliament of the impact on equal opportunities by the Aquaculture and Fisheries (Scotland) Bill. It responds to the six standard equalities questions as endorsed by the Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission in 1999 and as used by the Scottish Executive.

1. *What is the policy for? Who is the policy for? What are the desired and anticipated outcomes?*

77. This Bill is about fish, fish farming and fishing, notably angling. The policy is for all fish farmers and shellfish farmers, for fishermen, for all anglers, for those who live in rural communities who benefit from a healthy rural community, supported by jobs in the aquaculture and angling and associated tourism sectors and, ultimately, for everyone who eats fish. In particular, anybody can be an angler and many people in Scotland, from all walks of life, are. Overall, the policies in the Bill are intended to benefit the people of Scotland through contributing to a safe, sustainable and healthy food supply, as well as healthy stocks of freshwater fish and access for those who wish to fish for them responsibly.

2. *Do we have full information and analyses about the impact of the policy upon all equalities groups? If not why not?*

78. The effects of the provisions in the Bill have been carefully considered in relation to their potential impacts on different equality groups. The policies to be implemented through the Bill will apply across all of Scotland. Although nothing in the Bill will have a direct impact on tackling discrimination, there is no intention that any of the Bill's provisions will have a differential or discriminatory impact on equality groups. It is the Scottish Executive's view that the Bill does not impact in any differential or discriminatory sense upon groups which are defined by personal attributes or characteristics such as gender, marital status, age, race, disability, religion, sexual orientation, language, social origin or political belief.

3. *Has the full range of options and their differential impacts on all equality groups been presented?*

79. The policies being pursued in the Bill have been the subject of full and comprehensive consultation with a wide range of stakeholders. In the case of the provisions on freshwater fisheries, these were worked up over the past year in close liaison with the Freshwater Fisheries Forum, a group representing the vast majority of anglers and other freshwaters stakeholders and whose plenary meetings are open to any member of the public. In addition to undertaking a comprehensive written consultation exercise, officials held a series of ten roadshows throughout Scotland, including on two major Scottish islands, in order to hear the views of stakeholders personally.

80. A wide range of equalities and religious groups were contacted during the consultation process including the African and Caribbean Network, the Church of Scotland Offices, the Commission for Racial Equality, the Disability Rights Commission, the Equal Opportunities Commission, the Evangelical Alliance Scotland, the Scottish Churches Parliamentary Office, the Scottish Disability Sport Angling Committee, the Scottish Inter Faith Council, the Scottish Women's Convention, and the Scottish Youth Parliament. In addition, as many angling clubs as possible were contacted. Angling clubs are open to all and many count disabled anglers in particular amongst their members, who would have pointed out any inadvertent discrimination in any of the freshwater fisheries policies.

81. Wherever possible throughout the policy development process that led to the production of this Bill, the views of minority and special interest groups were actively sought to ensure that policies take account of their views.

4. *What are the outcomes and consequences of the proposals? Have the indirect, as well as the direct, effects of the proposals been taken into account?*

82. The outcomes and consequences of the policies in the Bill are outlined in the answer to question number one in this sequence, in paragraph 77 above. As far as possible, both the direct and indirect effects of the policies have been taken into account. In angling, for example, by making it explicitly legal to use a rod rest, the needs of certain disabled anglers who would find it difficult to actively cast a rod on a continuous basis have been addressed.

5. *How have the policy makers demonstrated they have mainstreamed equality?*

83. As discussed elsewhere in this Policy Memorandum, the policy provisions in the Bill have been the subject of extensive consultation. Throughout the policy development process, the Scottish Executive has been careful to check for the possibility of inadvertently discriminatory or significantly differential impacts. Moreover, the Scottish Executive has received no representations in response to its consultation paper on the Aquaculture and Fisheries (Scotland) Bill to suggest that the provisions of this Bill will impact negatively upon equality interests.

6. *How will the policy be monitored and evaluated? How will improved awareness of equality implications be demonstrated?*

84. The Scottish Executive is committed to monitoring the outcome of all its new legislation. For the Aquaculture and Fisheries (Scotland) Bill this will be undertaken mainly through ongoing close contact with stakeholders.

Human rights

85. The Scottish Executive is of the view that the Bill is compatible with the European Convention on Human Rights and that there are no human rights issues. In formulating the policy behind the Bill, we carefully considered the compatibility of our proposals with human rights, concluding in each case that the measures proposed were compatible. For instance, a number of provisions in the Bill impose controls on the use of property - e.g. the prohibition on the use of pike gags, gaffs and tailers introduced by Part 3 of the Bill - or confer powers which have the potential to interfere with the enjoyment of property (for example, a number of the powers to control and eradicate *Gyrodactylus salaris*). Such measures fall to be considered in terms of Article 1 of the First Protocol to the European Convention on Human Rights, which protects the peaceful enjoyment of possessions and permits interference with this right only to the extent that the interference is justified in the public or general interest and lawful. In each case we take the view that this test is met, and that the measures contained in the Bill represent proportionate measures in pursuit of legitimate objectives (in the examples above, the promotion of the welfare of fish and the control of fish disease, respectively).

Impact on island communities

86. Many fish farms and much freshwater fishing is located in Scotland's islands. The provisions are aimed at supporting and building confidence in the aquaculture industry and at improving the sustainability of and access to, freshwater fisheries, and the Scottish Executive is of the opinion that the Bill works in support of island communities.

Impact on local government

87. This Bill has no impact on local authorities.

Impact on sustainable development

88. The provisions in the Bill work in support of sustainable development. For aquaculture they help support the aquaculture industry by helping tackle the issues of parasitic sea lice and the prevention of escape of farmed fish which can have a negative environmental impact, the Bill helps ensure that development in aquaculture takes place in a sustainable manner.

89. Coarse and game fishing in Scotland can be developed. For this to happen in a sustainable manner, the Bill helps ensure that access to fisheries is enjoyed responsibly, that fish stocks are not endangered by bad practices or over-fishing and that the environment is not despoiled by or to the detriment of fishing.

This document relates 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

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