

CONSULTATION QUESTIONS

SECTION 1 - THE SUSTAINABLE DEVELOPMENT OF AQUACULTURE

Farm Management Agreements (FMAs)

- 1. Do you agree that we should, subject to appropriate safeguards, make it a legal requirement for marine finfish operators to participate in an appropriate Farm Management Agreement (FMA), with sanctions for failure to do so, or to adhere to the terms of the agreement? (Page 9)**

YES

Appropriate Scale Management Areas (MAs)

- 2. Do you agree that operators should have primary responsibility for determining the boundaries (and other management arrangements) for Management Areas, but with Scottish Ministers having a fallback power to specify alternative areas? (Page 9)**

NO

Management Measures and Dispute Resolution

- 3. Do you agree that an independent arbitration process should be put in place (with statutory underpinning) to resolve disputes related to Farm Management Agreements? (Page 10)**

YES

- 4. How do you think such a system might best be developed? (Page 10)**

<p>There are 2 possible approaches: an arbitration panel could comprise stakeholders e.g. SG, SSPO and RAFTS – like the unfortunately abandoned TWG approach or alternatively it could involve entirely independent actors such as a panel of academics. In either case the group will require some public funding and very clear terms of reference.</p>

Unused Consents

- 5. Do you agree we ought to review the question of unused consents? (Page 11)**

YES

6. What do you consider are suitable options to promote use or relinquishment of unused consents? (Page 11)

It depends on the reasons for their unuse. If they are inappropriately situated or do not have the carrying capacity for economic salmon culture they could be offered to the non-salmon sector – shellfish and seaweed. If they are there as firebreaks to prevent another operator acquiring a site to the detriment of existing operators then they should be relinquished and if the case is made that they are not in the interests of the existing salmon owners the areas should be designated under Locational Guidelines as unsuitable for further expansion of the salmon industry.

7. Do you agree that Scottish Ministers should be given powers, ultimately, to revoke, or to require or request others to revoke, consents? (Page 12)

YES

8. Should any such power relate to all or to particular consents (and if the latter, which)? (Page 12)

The power to revoke a consent should apply to all unused sites but should only be exercised when there is a clear argument that to do so would be in the general interest of enhancing the sustainability (in all dimensions) of the aquaculture industry and all other stakeholders as a whole. Thus the exercise of these powers would have to be accompanied by a detailed account of how such a revocation maximises sustainability across the interested parties and does not compromise ecological or disease control aspects.

Collection and Publication of Sea-lice Data

9. What in your view is the most appropriate approach to be taken to the collection and publication of sea-lice data? (Page 13)

All summary data should be published online at farm level but with a delay to protect operators from interference in operations at a micro-level. The industry is clearly wary of how the data will be used by critical parties who may have no immediate stake. However, keeping the data confidential enhances the view that there is something to hide that is not being addressed seriously. The public release of data on a farm by farm basis would provide many more benefits than problems within a very short time. There would be a small amount of pain initially for a continuing increased gain that the whole industry would benefit from. It would also relieve the absolute nonsense that the government cannot access vital information of parasite burdens for fear of an FOI request. Even if ministers decide not to demand transparency of lice data, the FOI issue must be overcome such that SG can access the data and retain this confidentially until the commercial and operational sensitivity has diminished - probably about one year.

Surveillance, Biosecurity, Mortality and Disease Data

10. Do you agree that aquaculture businesses ought to be required to provide additional information on fish mortality, movements, disease, treatment and production as set out above? (Page 16)

YES

11. What are your views on the timing and frequency of submission of such data? (Page 16)

The timing and frequency of submission of the various types of data are clearly different and should be set for each data type such that they provide maximum regulatory benefit while imposing the minimum burdens on the industry. In any case the various frequencies of reporting different data types must be allowed to be variable by negotiation to ensure that these remain optimal.

Biomass Control

12. Do you agree that Scottish Ministers should have powers to require SEPA to reduce a biomass consent where it appears to them necessary and appropriate – for example to address concerns about fish health and welfare? (Page 16)

YES

Wellboats

13. Do you agree we should make enabling legislation giving Scottish Ministers powers to place additional control requirements on wellboats? (Page 17)

YES

Processing Facilities

14. Do you think Scottish Ministers should be given additional powers to place controls on processing plants? (Page 17)

YES

Seaweed Cultivation

15. Do you agree that the regulatory framework should be the same for all seaweed farms? (Page 18)

YES

16. Do you agree that the most appropriate approach to regulation of this sector would be through marine licensing? (Page 17)

YES

17. If not, what alternative arrangements would you suggest? (Page 18)

Marine licensing is more appropriate than local planning for this sector and for every other aquaculture sector. The connectivity of the marine environment means that only local terrestrial issues relating to aquaculture should be dealt with through local planning. Ministers should use this opportunity to revise planning regulations which did not adequately foresee the more holistic approach to marine planning under the Marine Act.

Commercially Damaging Species

18. Do you agree that we should provide for additional powers for Scottish Ministers in relation to commercially damaging native species? (Page 19)

YES

SECTION 2 - PROTECTION OF SHELLFISH GROWING WATERS

19. Do you agree with the introduction of provisions to protect shellfish growing waters and support the sustainable growth of the shellfish industry? (Page 21)

YES

SECTION 3 - FISH FARMING AND WILD SALMONID INTERACTIONS

Sea-lice

20. Do you agree that there is a case for giving Scottish Ministers powers to determine a lower threshold above which remedial action needs to be taken, in appropriate circumstances and potentially as part of a wider suite of protection measures? (Page 23)

YES

Containment and Escapes

21. Do you agree we should provide powers for Scottish Ministers to require all finfish farms operating in Scotland to use equipment that conforms to a Scottish Technical Standard? (The technical content of the standard would be defined separately.) (Page 25)

YES

Tracing Escapes

22. Do you agree that there should be additional powers for Scottish Ministers to take or require samples of fish from fish farms, for tracing purposes? (Page 26)

YES

SECTION 4 - SALMON AND FRESHWATER FISHERIES MANAGEMENT

Modernising the Operation of District Salmon Fishery Boards

23. Do you agree that we should introduce a specific duty on Boards to act fairly and transparently? (Page 29)

YES

24. Do you agree that there should be a Code of Good Practice for wild salmon and freshwater fisheries? (Page 29)

YES

25. If yes, should such Code of Good Practice be statutory or non-statutory? (Page 29)

YES

Statutory Carcass Tagging

26. Do you agree that Scottish Ministers should have powers to introduce a statutory system of carcass tagging for wild Atlantic salmon and sea trout? (Page 31)

YES

Fish Sampling

27. Do you agree that Scottish Ministers should have powers to take or require fish and/or samples for genetic or other analysis? (Page 32)

YES

Management and Salmon Conservation Measures

28. Do you agree that Scottish Ministers should have powers to initiate changes to Salmon District Annual Close Time Orders? (Page 32)

YES

29. Do you agree that Scottish Ministers should be able to promote combined salmon conservation measures at their own hand? (Page 32)

YES

30. Do you agree that Scottish Ministers should be able to attach conditions, such as monitoring and reporting requirements, to statutory conservation measures? (Page 32)

YES

Dispute Resolution

31. Do you agree that we should introduce statutory provisions related to mediation and dispute resolution, to help resolve disputes around salmon conservation, management and any related compensation measures? (Page 33)

YES

Improved Information on Fish and Fisheries

32. Do you agree that there should be a legal requirement to provide comprehensive effort data for rod fisheries? (Page 34)

YES

33. What additional information on the fish or fisheries should proprietors and/or Boards be required to collect and provide; and should this be provided routinely and/or in specific circumstances? (Page 34)

The most important information is that relating to restocking – the scientific evidence is that, except in circumstances of effective extinction where a more complex analysis is required, restocking is likely to do more harm than good even if local broodstocks are used. Salmon and sea trout are perfectly capable of reproducing naturally provided that they are not overfished at sea or in rivers, exposed to excessive parasites or disease challenges and have sufficient high quality freshwater habitat. Rapid climate change is a serious issue for salmon and it may be that in future salmon suffer excessively during the marine phase and will require to be maintained artificially - but that time is not yet nor is it inevitable

34. Should Scottish Ministers have powers to require Boards and/or proprietors or their tenants to investigate and report on salmon and sea trout and the fisheries in their district? (Page 34)

YES

Licensing of Fish Introductions to Freshwater

35. Do you agree that Scottish Ministers should have powers to recall, restrict or exclude the jurisdiction of Boards in relation to fish introductions, in certain circumstances? (Page 35)

YES

36. If so, why and in what circumstances? (Page 35)

To reduce restocking unless the local strain are effectively extinct.

SECTION 5 - MODERNISING ENFORCEMENT PROVISIONS

Strict Liability for Certain Aquaculture Offences

37. Do you agree that strict liability criteria should apply – where they capable of being applied – for offences related to Marine Licensing requirements insofar as the apply to aquaculture operations and, potentially, in other situations? (Page 37)

YES

Widening the Scope of Fixed Penalty Notices

38. Do you agree that we should extend the use of fixed financial penalties as alternatives to prosecution in relation to marine, aquaculture and other regulatory issues for which Marine Scotland has responsibility? (Page 38)

YES

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

YES

40. Are there particular regulatory areas that merit a higher or lower maximum sum? (Page 39)

YES

Enforcement of EU Obligations Beyond British Fisheries Limits

41. Do you agree that we should amend section 30(1) of the Fisheries Act 1981 as proposed? (Page 40)

YES

Powers to Detain Vessels in Port

42. Do you agree that sea fisheries enforcement officers should be given specific power to allow vessels to be detained in port for the purposes of court proceedings? (Page 41)

YES

Disposal of Property/Forfeiture of Prohibited Items

43. Do you agree that sea fisheries enforcement officers should be able to dispose of property seized as evidence when it is no longer required, or forfeit items which would be illegal to use? (Page 41)

YES

Power to Inspect Objects

44. Do you agree that sea fisheries enforcement officers should have the power to inspect objects in the sea and elsewhere that are not obviously associated with a vessel, vehicle or relevant premises? (Page 42)

YES

Sea Fisheries (Shellfish) Act 1967

45. Do you have any views on the proposals to amend the Sea Fisheries (Shellfish) Act 1967 to help make its application clearer? (Page 42)

YES

SECTION 6 - PAYING FOR PROGRESS

46. Do you agree that there should be enabling provisions for Scottish Ministers to provide, through secondary legislation, for both direct and more generic charges for services/benefits arising from public sector services and activities? (Page 43)

Yes and NO

47. If you do not agree that there should be charging provisions, how do you envisage ongoing and new work to assist in management and development of the aquaculture and fisheries sectors should be resourced? (Page 43)

Services where the benefit is specifically limited to particular sectors can be considered for appropriate charging. However, many such services would not be seen by the sector as being in their immediate commercial interest – eg. providing additional data and paying for the additional cost of its analysis by government. In many cases there is a clear public interest and therefore it is right that the public purse should pay proportionally. Also in environmental matters the Government has taken obligations to EU Directives and so improvements in environmental performance give Government (and hopefully the general public) benefits. Where charges are made there needs to be a clear rationale for the way the costs are shared between different sectors. The government must maintain its commitment to reduce the red-tape burden on industry.

48. If no new way of resourcing such activity can be found, what activities do you suggest might be stopped to free up necessary funds? (Page 43)

There are a whole range of government functions that are, debatably, not cost efficient but to point to these specifically opens up arguments beyond the scope of this consultation. Within the fisheries sector, the government should examine whether the very costly business of individual fish stock assessment is justified on ecological or management grounds. Replacing this with a more ecosystem-based approach might be more effective at managing UK fisheries but also might reduce costs. But the analogy with commercial fisheries goes further – what proportion of Scottish Gov expenditure on Fisheries and Aquaculture is spent on Fisheries? And how much of that vast expense is levied from the fishing industry? Aquaculture is penalised unfairly as a newcomer where its environmental issues are scrutinised in great detail but the massively greater ecosystem damages caused by fishing are effectively ignored. So if SG charges the aquaculture industry and Fisheries Boards for services they must also extract proportional charges from the marine fisheries sector.