

## AQUACULTURE AND FISHERIES BILL 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**

**~~NO~~**

Yes – It should be a legal requirement for marine fish farm operators to participate in appropriate Farm Management Agreements, and we welcome this approach as a minimum requirement. However the Council is of the view that Scottish Government should go further and make it a legal requirement for fish farmers and relevant wild fisheries interests to participate in Area Management Agreements as previously advocated by the Tripartite Working Group. These areas were largely based on Management Areas for fish health originally specified by the Final Report of the Joint Government/Industry Working Group on ISA, (which were based on sea lice management areas originally proposed by the former Scottish Salmon Growers Association). The relationship between these Management Areas and Farm Management Areas agreed by industry and set out in the Industry Code of Good practice needs to be clarified.

For example will the FMA areas replace the MA areas previously published in the final report of the Joint Government / Industry Working Group on ISA or are they a separate entity. Many of the functions of the FMA are similar to those originally proposed for MA's and Marine Scotland has, until recently advised the Council as to which Management Area sites fall within when commenting on planning applications for fish farms.

Careful consideration is required as to how FMA's will be monitored and how it will be decided whether or not sanctions should be applied.

#### 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)

**~~YES~~**

**NO**

NO. Operators should not have the primary responsibility for determining Farm Management Areas. This allows for the industry to exercise too much

flexibility which in some areas could be construed as “moving the goalposts”. For example, we consider that many of the Farm Management Areas depicted in CoGP are too small given the advice that we consistently receive from Marine Scotland Science; that sea lice larvae may be transferred distances of up to 14km by the wind. This would suggest that any sites within 14km of each other should be in the same FMA if one of the functions of the FMA is to control sea lice as stated in paragraph 4 of the consultation.

There are several examples within the maps depicted in the CoGP where there are sites within close proximity to each other that are within different management areas. There are also Management Areas depicted in the CoGP which have no approved sites within them.

We are of the view that Management Areas should be set by Marine Scotland/ Scottish Government and that once set these areas should be published in order to allow all regulatory bodies a clear understanding of the boundaries. The boundaries should be drawn on the basis of sites which have one or more permissions, either Planning Permission, CAR licence or are registered with Marine Scotland, they should not be altered regularly in the event that a site undergoes an extended fallow, as is the case at present as this gives little clarity for the purposes of determining various applications. There should be a general presumption against the development of any sites which would close “firebreaks” between management areas.

### **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**

**NO**

YES – we agree that an independent arbitration process should be put in place as described in the consultation. We are content for the Scottish Salmon Producers Organisation to facilitate the development of arrangements for arbitration, subject to the proposed final process being open to consultation. We do not however feel that it would be appropriate for SSPO to be the arbiter in relation to disputes.

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

If Marine Scotland/Scottish Government were to assume responsibility for setting the boundary of the Management Areas there would be little requirement for arbitration in respect of the boundary of the Management Area.

If disputes need to be resolved in the drafting or implementation of Farm Management Agreements then a truly independent arbitrator is required.

We would suggest MS/SG should seek to engage a number of environmental consultants, qualified to undertake the proposed arbitration role, and that such a consultant should be assigned to individual cases at random if arbitration is required.

As funding for this process is required for the industry to meet its environmental responsibilities then this arbitration process should be funded equally by the companies concerned rather than the public purse.

### **Unused Consents**

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

**YES**

**NO**

**YES.** It was our expectation and that of many stakeholders that the issue of unused consents was to be considered within Scottish Government Review/Audit of Crown Estate Sea Bed Leases granted prior to 1<sup>st</sup> April 2007. The opportunity to deal with the issue of unused consents seems to have been largely missed to date.

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

Going forward, Scottish Government should review its Policy Advice to Local Authorities that Planning Permissions issued for Marine Fish Farms (Fin-Fish and Shellfish) should be permanent. Planning Permissions, issued either by Planning Authorities, or by Scottish Government through the review process should be reduced to a timescale more appropriate for equipment which is inherently mobile, has a finite working life and is, in any case likely to be upgraded or altered many times during the course of its planning permission, potentially leading to a number of extant planning permissions for any one site.

The requirement at the moment is for development to commence within three years of planning permission having been granted. There does not however appear to be any requirement for completion of the development, or for it to remain in use once developed, or even for it to remain developed. Scottish Government planning circular 4/1998 in relation to planning conditions provides guidance that it is not appropriate to condition for completion of a development. This therefore compounds the issue in relation to lack of use of fish farm sites in that a site which has initially been developed within the three year deadline, could then be removed and not operated for an extended period of time. As an extant site it would have to be considered in any forward planning for the area because it could be reactivated at any time.

Provision should be made for sites which are not developed as operational fish farms as per their planning consent to have that planning consent removed if they are not fully developed and in production for a period of 3

years, even if they have initially been developed and have been in use. We consider that this timescale is long enough to allow the use of a site within a rotational scheme involving more than one site, and short enough to allow for meaningful forward planning.

**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**

**~~NO~~**

Yes – Either mechanism suggested would be acceptable but there needs to be a mechanism for regulators to directly request that consents be revoked and Scottish Ministers should have the powers to instruct (not request) regulators to remove consents for a site.

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

Such a power should relate to all consents including Planning Permission, Crown Estate Lease, CAR licence, Marine Licence etc.

**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)**

As many of the companies operating in Scotland also operate in Norway, Ireland and Canada where sea lice data is readily available it is hard to comprehend why such difficulties are faced in obtaining and publishing sea lice data in Scotland. It is remiss of the consultation to describe Scotland as being at the forefront of best international practice in aquaculture management when clearly the reporting requirements are more stringent in Norway. If companies are used to working in Norway under the Norwegian reporting requirements there should not be any great difficulty in providing similar information in Scotland.

We consider it essential that there is increased openness in the reporting of sea lice numbers in Scotland, given that the impact of sea lice on farmed salmon and the impact that lice emanating from farms may have on wild fish are amongst the largest pressures faced by the industry. Lice records should be site specific allowing particular problem sites to be readily identified. In the event that this requires additional funding to allow infrastructure to be put in place then this should be funded by the industry and not the public purse.

The provision of clearer information with regard to poorer performing sites will allow regulators additional information with which to guide development to more appropriate areas.

## **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**

**~~NO~~**

The Council has no view on this matter.

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

The Council has no view on this matter.

## **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**

**~~NO~~**

YES – The Council has previously expressed the view to Scottish Government and SEPA that the peak biomass of fish retained on a site should be limited to a level that can be effectively treated with any single type of sea lice medicine. From an animal welfare point of view and in relation to wider biodiversity issues of the receiving environment it makes no sense that some fish farm sites are currently permitted to hold more fish than they can effectively provide therapeutic treatments for.

## **Wellboats**

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

**YES**

**NO**

Yes – We would welcome the introduction of provisions for enabling additional controls in relation to wellboat operations, in particular the introduction of facilities for sea lice filtration and destruction.

## **Processing Facilities**

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

**YES**

**NO**

The Council has no view in relation to this issue.

### **Seaweed Cultivation**

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

**YES**

**~~NO~~**

Yes. All seaweed farms should be regulated in the same way

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

**~~YES~~**

**NO**

No. The Council made representation to Scottish Government in several rounds of consultation on the extension of planning controls for Marine Fish Farming that seaweed cultivation should be subject to planning control in the same way as fin fish and shellfish farming. We remain of this view even given the prospect of larger, "offshore" farms with different equipment to that which was considered perhaps 10 years ago.

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

We are firmly of the view that seaweed cultivation should be considered a form of aquaculture and as such provision should be made for it to be contained within the meaning of development under the Town and Country Planning (Scotland) Acts. This will result in all marine aquaculture facilities being considered in the same way and will end the confusion which currently results from applications for seaweed, which require ostensibly the same equipment as shellfish farming but are not part of the planning system even though the impacts may be similar.

Regardless of the planning regime that Scottish Government settles upon we consider that there is also a need for alterations to the Environmental Impact Assessment Regulations so that there is provision for the consideration of the impacts of large seaweed farms through the provision of an EIA.

### **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**

**~~NO~~**

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**

**~~NO~~**

Yes. The Council has provided a response to the recent consultation on shellfish growing waters, we would again make the point that whilst improved water quality in the coastal zone is important we need to avoid situations where a single shellfish operator with a relatively small turnover benefits from the provision of a designation but that this in turn proves to be a constraint for onshore development of residential and commercial properties.

## **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**

**~~NO~~**

Yes. As mentioned above in response to question 9, the impact of sea lice on farmed salmon and the impact that lice emanating from farms may have on wild fish are amongst the largest pressures faced by the industry. Advice received from Marine Scotland in relation to several recent planning applications has been that:

“It should be noted that adherence to the industry Code of Good Practice may not necessarily prevent release of substantial numbers of lice from aquaculture installations. The CoGP takes no account of farm size, or number of farms in an area, in setting threshold levels for sea lice treatments. This may be appropriate when the aim is to protect the welfare of farmed fish but it will not necessarily prevent significant numbers of larval lice being shed into the environment, and posing a risk for wild fish, in the case of larger farms or management areas holding a large biomass of farmed fish.”

Given the consistency with which this advice has been provided we welcome the proposal that Scottish Ministers be given powers to determine a lower threshold above which remedial action needs to be taken. Information relating to which specific sites these lower thresholds have been applied to should be available to public scrutiny.

### **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**

**~~NO~~**

Yes. We are supportive of this proposal but are of the view that whatever technical standard is developed should provide for the construction and use of a variety of different cage sizes and should retain provision for the use of both square and circular cages. Consideration also needs to be given in any technical standard for the design quality and aesthetics of the cages and must recognise that a one size fits all approach may not be appropriate. In addition we would welcome the inclusion within the standard of an upper limit on the dimensions of cages such that in the worse case scenario of a catastrophic failure of a single cage the maximum number of fish that will escape can be limited. We would also request that whatever technical standard is finally adopted it should include provision for each cage to be marked with a manufacturer's plate similar to that required for boats, such a plate should indicate the dimensions of the cage, the year of manufacture and a serial number to enable the ownership of the cage to be established in the event that cages come adrift or are washed ashore.

### **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**

**~~NO~~**

Yes. In view of the fact that escapes from fish farms may not be totally eradicated, provision to ensure that the origin of farm escapees can be traced is welcome.

## **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~~**

**NO**

No. If as described in the consultation there is a requirement for all public bodies to operate in an open and transparent manner, we are unclear why it is necessary to introduce new provisions in respect of a specific body such as the Fisheries Boards. In our routine dealings with fishery boards as Statutory Consultees in considering Planning Applications for Marine Fish Farms we have seen no evidence to suggest that the Fishery Boards that we are dealing with are operating in anything other than an open and transparent manner.



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

**YES**

**~~NO~~**

Yes. A Code of Practice for Wild Salmon and Freshwater Fisheries would be welcome and it should see the same or similar level of investment from government as was afforded to the Fish Farming Industry. The preparation of a Code of Practice should incorporate the various other codes of practice mentioned in the consultation document into a single unified code.

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

**YES**

**NO**

A code of Practice for Wild Salmon and Freshwater Fisheries should be afforded the same status as the industry codes for fin fish and shellfish farming.

### **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**

**~~NO~~**

Yes. The Highland Council recognises the importance of being able to trace the provenance of wild salmon caught via licensed net fisheries.

### **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**

**~~NO~~**

Yes. This could be an important tool in measuring the impacts of migration and escapes

### **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**

**~~NO~~**

Yes, but only in following consultation with Fishery Boards.

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

**YES**

**~~NO~~**

Yes, where these can be agreed with other fisheries stakeholders.

**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**

**~~NO~~**

Yes. Such an approach is an important part of monitoring and understanding conservation measures that are in place.

### **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**

**~~NO~~**

Yes. Mediation processes, properly resourced in terms of expertise and scientific information should help resolve disputes where otherwise there would be stand off.

### **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**

**~~NO~~**

Yes. Such information is an important part of the understanding and assessment of the effectiveness of fisheries management measures

**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)**

Information should be provided in relation to the number of fish of farmed origin present within catches.

It would also be helpful to provide information on the number of diseased fish caught, any unusual stock conditions

**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**

**~~NO~~**

Yes. Such data is an important part of stock and resource management.

#### **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**

**~~NO~~**

Yes. Fish introduction can have a very significant impact on existing populations of fish in any body of water and should only be undertaken only in very controlled circumstances. Powers should probably be restricted for use only after full consultation with other stakeholders and the Scottish Government.

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

It appears to make little sense for a board to be able to authorise its own actions, and we feel it would be appropriate in these circumstances for Scottish Ministers to have joint powers to authorise fish introductions.

### **SECTION 5 - MODERNISING ENFORCEMENT PROVISIONS**

#### **Strict Liability for Certain Aquaculture Offences**

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

**YES**

**~~NO~~**

Yes. We agree with the proposed provisions outlined within the consultation document.

#### **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**

**~~NO~~**

Yes. We agree with the proposed provisions outlined within the consultation document

**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**

~~**NO**~~

Yes. We agree with the proposed provisions outlined within the consultation document, although provision should be made for the consideration of the public interest in pursuing fixed penalty for an offence.

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

~~**YES**~~

**NO**

No. The Council is not aware of any areas which merit a higher or lower maximum sum.

#### **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**

~~**NO**~~

Yes. The proposal that section 30(1) is amended to create offences and provide enforcement powers for the enforcement of EU fishing restrictions and obligations beyond the 200 mile fisheries limit is welcome in so far as it relates to Scottish vessels. We consider it vital that Scottish fisheries activities are enforced to the same level and under similar powers to those in England and Wales and note that such amendments have already been made in England and Wales under the Marine and Coastal Access Act 2009

#### **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**

~~**NO**~~

Yes. It is important that enforcement officers have the powers to detain vessels in port in order to avoid accused persons attempting to evade being brought to justice

#### **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**

**~~NO~~**

Yes. It is important that illegal equipment, if discovered can be disposed of in a manner which does not involve long term storage by fisheries inspectors.

#### **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**

**~~NO~~**

Yes. It is essential that officers have the powers to inspect anything that may be or appears to be related to fisheries activity, this should include items such as keep pots. If it is not already the case these powers should be accompanied by a requirement that keep pots be clearly marked with the name and PLN of the vessel that they are being worked from and if not appropriately marked on inspection such keeps etc should be removed by fishery officers.

#### **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**

**~~NO~~**

Yes. The opportunity should also be taken to ensure that the definition of "Shellfish" is consistent across all regulatory regimes in the Marine Environment. For example sea urchins are not included in most scientific or dictionary definitions of shellfish, yet they are included as Shellfish in the meaning of development in the Planning Acts. Sea urchins are also listed as a genus requiring a harvesting classification in relation to shellfish harvesting regulations. Any changes to the 1967 Act should be consistent in this regard.

Amendments should also support the application of Regulating Orders, under the same Act, as a means of implementing regional management systems within Scottish inshore waters, and Inshore Fisheries Groups should be encouraged by Government to pursue these orders as a means of providing them with some statutory footing and powers to regulate.

#### **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**

**~~NO~~**

Yes, most definitely.

**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)**

N/A

**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)**

N/A

## **SECTION 7 – ANY OTHER ISSUES**

The consultation document invites comments on any other issue that consultees feel may need further consideration. The Council and other Local Authorities have recently expressed concern to Scottish Government about the Review and Audit of those fish farm sites issued development Consent by the Crown Estate Commissioners prior to 1<sup>st</sup> April 2007.

The officers are becoming increasingly frustrated by the lack of openness and transparency in the process. As an example of this process the Scottish Government issued The Town and Country Planning (Marine Fish Farms Permitted Development) (Scotland) Order 2011 in March last year. The Order granted permanent Planning Permission for a number of sites in Highland. Almost a year after its introduction Scottish Government have not, as yet, been able to provided information on which sites have been approved, what equipment has been approved, or the planning boundaries of these sites. To date the Council is unable to include these sites on the planning register, and is unable if required to carry out any enforcement action on sites.

The Council is concerned that sites may have been granted planning permission by Scottish Government that have already been moved under the Town and Country Planning Acts, or that sites have been granted planning permission without any planning boundary within which they should be contained. We are, however unable to confirm this or progress these issues further due to lack of information for Scottish Government.

Council assumes that Scottish Government knows which sites were approved under the above Order. If so, information on approved sites should be made available so that local authorities can proceed with their statutory duties. If not, serious consideration must be given to repealing the Order and

undertaking meaningful consultation with local authorities and other stakeholders prior to granting planning permission for sites.