

DRAFT

AQUACULTURE AND FISHERIES BILL CONSULTATION

SSPO EXECUTIVE RESPONSE

Following scrutiny and analysis of the Scottish Government's Consultation on Aquaculture and Fisheries, the Scottish Salmon Producers' Organisation (SSPO) is deeply concerned about the future of the salmon farming industry in Scotland.

The proposed legislation for the Scottish industry appears fundamentally contrary to the supportive and enabling positions towards aquaculture of the EU and UK's DEFRA, which both recognise the industry's economic contribution, social importance in rural areas and global role in addressing healthy eating and food security. It runs counter to recent declarations by Scottish Ministers that regulation and bureaucracy should be reduced to allow Scotland to remain effective and competitive. It suggests that Scottish Government has changed its position from its National Economic Strategy in which it endorsed the industry's aspiration to grow. Indeed, the specific proposals contained in the consultation suggest a move towards micro-management by Government and its agencies.

This proposed legislation, on top of legislation already enacted in 2007, but yet to be fully implemented, sends the message to Scottish, UK and international investors that Scottish Government wants a controlling interest in its future; a scenario which could see additional costs of up to £20 million per year incurred by the industry. Scottish Government officials plan to duplicate the work farmers already do, gather information for no legitimate reason and dangle the threat of fixed penalty notices of up to £10,000 over employees as judged by Government officials with no veterinary training. While there are some operational proposals which the industry would agree with, the overall approach seems overly zealous and ill-founded.

On top of existing legislation, the industry already works to an independently audited Code of Good Practice, the audits of many national and international supermarkets and other schemes such as the RSPCA Freedom Food and the French Label Rouge quality standard. Scottish farmed salmon holds the European PGI designation alongside such products as Champagne, Arbroath Smokies and Parma Ham. It celebrates 20 years this month of the French Government's Label Rouge award for the highest quality food and it is chosen by retailers and consumers in 64 countries. **No other food producing sector in Scotland has such a pedigree.**

Fresh salmon is Scotland's largest food export, exports alone contributing £400M to the Scottish economy, and the industry is an economic lifeline to many of Scotland's most fragile, rural communities and economies.

Acknowledged as a world class centre for training and research in aquaculture, Scotland is in danger of losing its best and most valuable

resource - its people - as they move to other salmon farming countries which offer a more attractive and highly regarded career prospect. SSPO cannot understand Scottish Government's purpose in introducing this consultation. The proposed legislation will undoubtedly increase the cost of production and make our industry less competitive at home and abroad. It will damage the industry's contribution to Scotland's economy, threaten jobs in rural areas and in the North East, which relies on salmon for processing jobs. It will jeopardise the companies which have grown up to support salmon farming.

However, while salmon farming is looking at a future of significantly reduced investment, job cuts, and poorer exports it would appear that Scottish Government department Marine Scotland will be fully and handsomely resourced by the fish farming industry.

Will we have paid for progress - to quote the consultation - **or for our slow demise?**

SCOTT LANDSBURGH – Chief Executive

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 X

Rationale:

- 1. We do not agree with the Marine Scotland proposal, which we consider is neither sound nor wise. We believe it raises substantial legal issues and will lead, inevitably, to the Scottish Government becoming deeply embroiled in the minutiae of farming company business, to a level that is incompatible with a market economy. Marine Scotland is wholly unqualified for, and unsuited to, the role it envisages.*
- 2. **SSPO is wholly committed to the concept of contractually binding FMAg between companies operating in the same FMA.** Indeed, it was instrumental in their development.*
- 3. We do think that the Scottish Government might play a useful role in supporting the industry systems, which have been introduced through the CoGP*

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 X

Rationale:

- 1. We consider the specification and systems of management for Farm Management Areas **should be a matter for operators**, and that there is no requirement for reserved powers for Scottish Ministers to specify alternative areas.*
- 2. We are concerned about the resurrection of this proposal, given its history of being rejected during industry wide consultation by the Healthier Fish Group in 2009.*

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 X

Rationale:

We believe these areas have been addressed by The Arbitration (Scotland) Act 2010.

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

Answer:

Arbitration and dispute resolution procedures (such as the Scottish Land Court) are now widely avoided by landowners and tenants on the basis of time, cost and the cumbersome nature of the procedures.

With members' approval, SSPO proposes to work with arbiters' organisations to establish a suitable expert panel for dispute resolution and arbitration in regard to FMAg. This service would be separate from, and independent of, the SSPO and available to all fish farmers, whether they are SSPO members or not.

Unused Consents

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

YES

NO X

Rationale:

- 1. It is not necessary to undertake a review; the requirement is for action. Emphasis should be to complete the Audit and Review process as soon as possible. The issues to be addressed are identified and the information needed to support action is already available. Whilst we do not rule out the possibility that there may be opportunities to restructure CAR consents for further development, that process will not be achieved by the blunt instrument approach proposed in this paper.*
- 2. In cases where there is an 'orphaned' CAR consent but no associated Crown Estate lease or Works Licence, the CAR consent (which specifically relates to a discharge from a fish farm) cannot be used unless the holder applies for planning permission for a new development. In these cases, SEPA should take administrative action and write to the last known holder of the CAR consent asking them to intimate their intentions. Where there is no intention to apply for planning permission, the likelihood is that the CAR consent will be surrendered.*
- 3. The question of unused consents (including inactive sites) was reviewed in 2010 by a Sub-Group of the Improved Systems for Licensing Aquaculture Developments (ISLAD). The review concluded that the matter should be referred to the fish farming industry for its consideration. Industry has actively*

pursued exploiting under-utilised capacity, with some success, and this is ongoing. However, that process is being blocked and delayed by the continuing problems of the Audit and Review process.

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

Answer:

1. *We believe that there is a specific issue in respect to 'orphaned' CAR consents, and we have addressed this at the end of our answer.*
2. *With regard to other consents, a specific policy objective of the transfer of planning permission for fish farming under the Town and Country Planning (Marine Fish Farming) (Scotland) Order 2007 was to make sites a heritable asset; so that fish farmers investment in their businesses had a long-term beneficial value both to the business and to investors. Marine Scotland therefore cannot abandon that position; nor is it in its power to do so.*
3. *Paragraph 20 of the consultation sets out a number of example suggestions for dealing with 'unused sites'. We note that this is different from 'unused consents' or 'inactive sites' in the sense that we have outlined them above. There is a need for Marine Scotland to clearly understand and have a consistency in its terminology.*
4. *On the five bullet pointed suggestions offered in paragraph 20 :*
 - *Transfer of planning to the Town and Country Planning system was in part undertaken as a policy decision to remove the insecurity caused by the Works Licensing System.*
 - *Escalating rent arrangements for inactive sites introduced by the Crown Estate reflects a simple commercial arrangement between landlord and tenant. It is already in place and has been accepted by the industry. Any attempt by Marine Scotland to extend this and so 'nationalise' marine resources would be unacceptable.*
 - *There is no need to consider additional conditions on consents. The Town and Country Planning system makes provision for planning permission to be reviewed or rescinded after 5 years (from 2007) or after 3 years (from 2009) if planning permission is not acted upon by the developer.*
 - *We cannot conceive how a system of reducing biomass consent would work, since it seems to have no scientific logic and would be challengeable in law. On principle, we are against any system of arbitrary and punitive actions of this type.*
 - *Again, here the apparently interchangeable use of 'unused consents' and 'unused sites' is unhelpful, since it is difficult to determine exactly what Marine Scotland has in mind. However, we would say unequivocally that any revoking of consents that would render an approved but inactive site unusable would represent theft of private assets by the Scottish Government. We would strongly oppose it.*
5. *We recognise that the suggestions of Marine Scotland are well-intentioned but we consider they are poorly-informed and misguided in their direction of travel. On the basis of our analysis, we believe there are some specific issues in respect of 'orphaned' CAR consents that need to be addressed.*
6. *Additionally, we identify a small but significant number of legacy sites, where there is uncertainty about the status and/or ownership. Again, these need to be addressed. Thereafter we believe that sites which represent production opportunities and asset values to their owners must be subject to normal market considerations. If Marine Scotland wishes to engage in that market it is clearly free to do so.*
7. *Separate from this, we consider that there is a need to consider the operation of the Locational Guidelines system and the way it interfaces with CAR consents, particularly in an FMA where operators are cycling production around different sites within the same bay.*

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 X

Rationale:

We are entirely against giving Ministers sweeping powers to use in undefined situations. We believe that this is contrary to principles of democracy and good government since it risks putting Ministers above the law.

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

Answer:

- 1. We believe there is a specific issue with 'orphaned' CAR consents that needs to be addressed. We think that this can be done administratively by SEPA, within existing legislation. However, if that proves not to be the case we would support specific, well-defined legislation to allow the problem to be addressed.*
- 2. Beyond that, we think there is a small but significant issue of 'legacy sites' where their status is uncertain. However, there is already a mechanism through the Audit and Review process for this issue to be addressed. If that is considered not to be the case, we would support specific legislation, following further consultation to address the matter.*
- 3. We believe that there will be a continued process of operators rationalising and restructuring their holdings on commercial market terms. However, that process is being significantly impaired by the failure of the Audit & Review process. We would therefore urge Ministers to direct their attention to addressing this issue.*
- 4. Finally, we believe that there is a need for Marine Scotland to review the operation of the Locational Guidelines system to allow more flexibility for operators than currently exists. We would be happy to consider this further with Marine Scotland.*

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)

Answer:

- 1. Scottish Government and Marine Scotland should acknowledge the Scottish salmon farming industry's significant investment in the development of the SSPO Health Database, and recognise that this must be the principle vehicle used to gather, analyse and disseminate information on sea lice management and control.*
- 2. We would welcome the Scottish Government's re-engagement in the Tripartite Working Group arrangements (from which they withdrew in 2009) since their absence from a direct involvement in the engagement between the fish farming industry and wild fish sector appears to have resulted in them being poorly informed about recent developments.*

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 X

Rationale:

- 1. We support the recommendations of the Healthier Fish Working Group and strongly disagree with Marine Scotland's proposal on the provision of information above and beyond these recommendations.
<http://www.scotland.gov.uk/Topics/marine/Fish-Shellfish/mingroup/MGA23Feb11>*
- 2. We believe that the recommendations made by the Healthier Fish Working Group remain entirely fit for purpose and are more than adequate to address any issues identified by Marine Scotland officials during the tenure of the Group, since that time, and into the future.*
- 3. We believe any requirement to submit the additional information would create an unnecessary additional financial burden on companies and on the taxpayer for no purpose whatsoever; and provide an uneven playing field for Scottish finfish aquaculture producers when compared with their competitors in Europe and the rest of the world. They risk placing the Scottish Government in the position of a shadow director of commercial companies.*
- 4. We do not discern any method whereby Marine Scotland could protect on behalf of companies the commercial confidentiality of any information supplied. Indeed there is clear and unequivocal evidence to the contrary; Marine Scotland has shown no capacity whatsoever to protect the commercial confidentiality of farm data. Marine Scotland has shown no capacity whatsoever to protect the commercial confidentiality of farm data.*

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

We strongly support the recommendations of the Healthier Fish Working Group as they pertain to timing and frequency of submission of data.

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 X

Rationale:

- 1. No, we strongly disagree with this proposal, which ignores the fact that the legal responsibility for ensuring the health and welfare of farmed fish rests with the farmer and the veterinary surgeon who have the fish under their care.*
- 2. The proposal, as it stands, does not provide the opportunity to improve farmers' and veterinary surgeons' ability to deal effectively with sea lice on farmed fish and threatens punitive measures which could be applied to businesses operating fully legally compliant sites.*
- 3. Industry would have welcomed constructive proposals from Marine Scotland and SEPA to allow treatments to be applied more effectively and efficiently with sea lice than is possible at the moment*

Wellboats

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

YES X

NO

Rationale:

- 1. We would support the creation of enabling legislation designed to be helpful in ensuring high minimum standards of wellboat operation around the coast of Scotland.*
- 2. In supporting the creation of such enabling legislation, we would require to be assured that this would be fit for purpose, practicable and would not impose unreasonable requirements, particularly in relation to the deployment of novel technology.*

Processing Facilities

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

YES

NO X

In the absence of any information on the nature and scale of the problem to be addressed, we would wish to reserve our views until more detail is provided. On the basis of the information provided, our answer could only be No.

Seaweed Cultivation

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

YES X

NO

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

YES

NO X

Rationale:

Since a main development of seaweed farming is likely to be in multi-trophic aquaculture, we believe it is crucial that the planning consent for finfish farms, shellfish farms and seaweed farms should be with the same planning authority. Because of the decisions already made in the Marine (Scotland) Act 2010 this body would logically be the Local Authority.

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

Answer:

*As things stand, responsibility for all aquaculture planning is with the Local Authority as stated above. We would welcome this proposal only if it involved **all aquaculture development** passing to the marine licensing system.*

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

Answer:

- 1. No, not without qualification. The case, including the triggers for action and the need for democratic accountability and limits on powers, needs to be more fully considered.*
- 2. In the case of an identified problem, such as is the case with *Mytilus trossulus*, we would be wholly supportive of the proposal.*

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 X

NO

Rationale:

We believe there is need for new provisions essentially to restore the protection provided by the Shellfish Waters Directive.

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 X

Rationale:

Many well established arguments have been presented by eminent scientists around what the consultation paper describes as "some associated risks of increasing resistance to therapeutants and tensions with fish health and welfare considerations (sic)"

This proposal totally ignores the responsibilities of the veterinary surgeon and farmer, both of whom have responsibility for the care of the fish in question; it rides roughshod over established principles of good practice in animal husbandry. Such proposals have been firmly rejected in the past for reasons that are already a matter of public record; and we completely reject the proposal now.

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 X

NO

Comment:

Currently, there are examples of Scottish fish farms where the equipment in use is not state of the art and which may not meet the requirements of a new Scottish Technical Standard, yet their record of containment is exemplary. It would be unacceptable for such companies to be penalised in any way simply because they failed to meet a technical specification that they deem to be inappropriate for their circumstances. Implementation of this proposal would therefore require a long lead-in time

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 X

Rationale:

- 1. We do not consider any additional powers are required. The proposal is predicated on the false assumption that in Scotland there is a damaging impact of escaped farm salmon on wild salmon populations. However, the scientific evidence indicates that this is not the case.*
- 2. The proposal is illogical and disproportionate since it seeks to introduce a scheme based on targeted sampling of farms in anticipation of an escape taking place. We believe that nothing would be achieved by this, especially if the purpose is to notify the fish farmer in question and, if necessary, take remedial action.*
- 3. The proposal appears to be designed specifically to support a research programme without consideration of alternative and more cost effective techniques that are already available. We do not consider the proposed research is justified or represents a good use of public funds.*

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 X

NO

Rationale:

Fisheries proprietors have a national reputation for being litigious; DSFBs are one of very few Scottish industry sectors nationally to retain a lawyer to further their interests. Anything that can be done to encourage the Boards to be more outward looking with respect to their local communities and other river users would be beneficial. However, this measure should not be regarded as an alternative to a more radical review and revision of the DSFBs and the management of the national salmon conservation policy for Scotland.

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

YES X

NO

Rationale:

We understand that a Code of Good Practice has been 'in preparation' since 2008. We strongly recommend a rigorous science-based code, including risk management, similar to the Code of Good Practice for Scottish Finfish Aquaculture (CoGP). Indeed, there are sectors of activity – related to broodstock, hatcheries, fish health and welfare etc. - where the provisions of the CoGP are directly transferable to wild fisheries management.

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

YES

NO

Answer:

Non-statutory. On the basis of our experience, the proposed wild salmon and freshwater fisheries Code of Good Practice should be non-statutory, but should be made a requirement for fishery proprietors in DSFB areas (or where Marine Scotland fulfils that function). It should also be independently audited by a UKAS accredited auditor.

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 X

NO

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 X

Rationale:

- 1. We do not agree with the question as it is posed. We are broadly against creating additional powers where the legal powers already exist.*
- 2. Scottish Ministers already appear to have full powers to take samples for these purposes.*
- 3. We do not consider that there should be a power for the Scottish Government to command (as distinct from request) others to take samples on its behalf.*

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 X

NO

Comment:

Indeed, we believe that their powers and regular intervention should go beyond the "by exception" level that is proposed.

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

YES X

NO

Comment:

We consider that the Scottish Government is abrogating its conservation responsibilities by not already doing so.

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 X

NO

Comment:

We agree that Scottish Ministers should be able to attach conditions, such as monitoring and reporting requirements, to statutory conservation measures. Further, we feel that it does not currently do so is failing to accept the Government's responsibilities for salmon conservation.

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 X

Rationale:

We believe that there are already adequate provisions under existing Scottish arbitration law. It would be an unjustified investment of public funding to introduce additional provisions.

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 X

NO

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)

Answer:

- 1. All forms of finfish aquaculture, irrespective of their ownership should be brought within the same legal and regulatory framework. They should have the same requirements for record keeping, reporting and inspection.*
- 2. Additionally, operations undertaken for wild fisheries restocking, stock enhancement or other purposes should be required to provide information on the person undertaking the activity; and the species, origin, numbers and precise locations of the release of fish into the water body. This should be reported and published on a frequently updated Marine Scotland website (comparable to that used for escapes of farmed fish). Further, stock introductions should be planned and controlled as part of a national conservation effort.*

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 **X**

NO

Rationale:

- 1. Scottish Ministers have clear duties and responsibilities in regard to salmon conservation, but the same is not the case for sea trout, which are simply anadromous brown trout and represent an exploitable fish stock.*
- 2. Dealing firstly with salmon, where the position is clear, it is a Ministerial responsibility to conserve and safeguard wild salmon and their related habitats. We believe that there is a need for a nationally organised and coordinated programme for the conservation of salmon; and that requires information of the state of fisheries and freshwater habitats. Technically, the information could be provided through a national agency or by other means, such as the DSFBs or fisheries proprietors.*
- 3. We see little purpose in introducing comparable measures for sea trout without recognising that they are a sub-group of brown trout, and including brown trout in the measures. We note that this would be in line with the regulation on brown trout stocking that is being introduced in England and Wales.*

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 **X**

NO

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

<p><i>We would go further than the proposal. We believe all fish introductions whether for fish farming or restocking should be brought within the existing legislation for aquaculture. The powers of the DSFB to operate outside that legislation should therefore be removed.</i></p>
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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 NO X

Rationale:

We do not accept that strict liability criteria should apply for aquaculture offences for the following reasons:

- 1. It is not, in any way, fair to the accused, due to lack of required evidence.*
- 2. It will not be effective, due to lack of confidence in its validity.*
- 3. Aquaculture offences are uncommon and evidence clearly shows this.*
- 4. It is disproportionate to any perceived problem in the industry. The comparison to the fishing industry is not relevant.*
- 5. It will have a very damaging impact on recruitment and retention of trained personnel and directly impact on employment in rural economies.*

It will fundamentally change the open and cooperative relationships that exist between salmon farmers and regulators, and encourage the development of a combative and litigious relationship that we believe has no place in the modern food industry.

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 X

Rationale:

- 1. We wholly reject the proposal to widen the scope of offences for which FPNs can be used to include aquaculture issues, for which Marine Scotland has a compliance, monitoring and enforcement role.*
- 2. The aquaculture industry has no history of regulatory non-compliance (perceived or otherwise) which would have resulted in a fine of £10,000.*
- 3. The proposal is disproportionate and not evidence-based. It is also not appropriate; any non-compliance of the scale apparently envisaged would be expected to go to Court.*
- 4. It appears this proposal has been based on the regulatory and compliance regime applied to fishing vessels. Aquaculture, being a highly regulated part of Scotland's food production chain, is comparable with agriculture and food sectors rather than sea fishing.*

5. In summary, we believe that there is no case for an extension of fixed financial penalty notices and their application within aquaculture; and no convincing case for their extension has been made in 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 X

Rationale:

1. We do not agree with the principle of fixed penalty notices to include aquaculture issues for the reasons stated in the previous answer.
2. On the specific point of the proposed £10,000 maximum limit, we believe this is wholly disproportionate to any non-compliance we can conceive in respect of a fish farm non-compliance.
3. We believe that there is an urgent need for an independent review and mapping of the regulations that apply to fish farming. We firmly hold the view that there is a need to adopt a modern risk-assessed regulatory approach in line with the recommendations of the Hampton review, a key element of which is "Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection".

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

YES NO X

See response to Q.39.

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

No comment.

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

No comment.

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

No comment.

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

No comment.

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

No comment.

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 X

Rationale:

In the absence of anything but the vaguest attempt to justify the policy in the consultation, we believe that the approach outlined will be widely regarded as a device to circumvent or avoid the normal democratic process and public debate of the quite fundamental proposals made. We believe this will bring substantial discredit to the Scottish Government, and more widely to Scotland as a country in which to do business. If the proposal is to be taken seriously then it must be properly and fully developed and specified as a basis for public consultation.

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)

- 1. This question starts from an entirely incorrect premise, namely that industry should be charged to meet unjustified increasing costs of 'public services' that it has neither requested or requires.*
- 2. Of the seven service sectors we have identified in the paragraphs above, we consider Aquaculture Policy Development (1) and International Relationships (2) and Grants (3), to represent a core part of Scottish Government work, funded from general taxation to which the aquaculture industry and its employees make substantial contributions. Planning (4) and Licensing (5) are already subject to a charge on the applicant. Thus the only remaining items are Research (6) and Fish Health inspections (7). As we have already indicated these two activities are at present of very little benefit to the aquaculture industry. We believe that significant parts of the FHI activity add unnecessarily to cost, and duplicates services that are already being provided by fully-qualified professional fish farm veterinarians.*
- 3. Salmon farming is a sector of primary food production that has never been subsidised. Even though there is legislative provision to do so, the Scottish Government has refused to implement compensation schemes even under the conditions of slaughter of stock, as a result of regulatory policies for Infectious Salmon Anaemia. The industry already procures, and pays for R&D and other services and would not in principle exclude procuring services from Marine Scotland, subject to industry specification, and open competitive tender between suppliers. However, it would be entirely against paying Marine Scotland for unspecified services in the open ended way that appears to be suggested in the consultation.*

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)

1. *Again, this question starts from an incorrect premise. Any organisation seeking to develop a charged services regime must start from 'point zero', making the assumption that every single one of its functions and activities must be specifically justified and that the customer for whom the work is undertaken must determine the amount and detail of the work they are prepared to pay for.*
2. *In Marine Scotland's case some work will be required by the Scottish Government and paid for through public funding, other work may be required by industry, but for aquaculture, industry requirements are very different from Marine Scotland's current programmes of work.*
3. *To move forward to undertake the kind of privatisation the present consultation is proposing will require a full and comprehensive review of Marine Scotland, as well as a detailed evaluation of the potential market for its services. We therefore call for an independent public review of Marine Scotland, covering its functions, programmes, skills base, costs, efficiency of operation, and appropriateness of its continuing status as a single monolithic Government Department.*
4. *Within this review framework we specifically recommend that:*
 - *Marine Scotland research and fish health inspectorate functions are clearly separated so that there is no risk of impaired governance and conflicts of objectives arising from the close association of the functions.*
 - *Fish health inspector responsibilities are clearly specified and codified in writing, according to the relevant legislation and detailed manuals of operating systems and procedures for fish health inspectors, are published and made available to the industry.*
 - *The Fish Health Inspectorate and role of the FHI are reviewed by an independent committee consisting of representatives of the Scottish Government, the Royal College of Veterinary Surgeons, the Fish Veterinary Society and the fish farming industry. It should be chaired by an eminent veterinary scientist, and tasked with considering the degree to which the functions could be fulfilled by farm veterinary surgeons, as in other sectors of the livestock industries. The regulations applying to fish farming should be mapped with the objective of adopting a modern risk-based regulatory approach in line with the recommendations of the Hampton Review.*
 - *There is an independent external review of Marine Scotland's research programmes, related functions and facilities to assess their relevance, utility to industry and value for money; and whether the research requirements of Scotland, both for the public sector and for industry, could be delivered more effectively and cost efficiently by alternative providers or structures.*