

Aquaculture and Fisheries Bill Consultation 2012

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The Marine Conservation Society (MCS) welcomes the opportunity to comment on this consultation. We recognise that aquaculture and freshwater fisheries are nationally important industries for Scotland. This Bill provides a significant opportunity to ensure that Scotland becomes an International example for best practice, promoting the highest possible environmental standards and therefore been known as a quality brand.

A healthy marine environment is central to sustainable and successful aquaculture, wild salmon and freshwater fisheries management. Ensuring the sustainability of these sectors is essential to enable the Scottish Government deliver its international commitments under the OSPAR convention, the World Summit on Sustainable Development, and the EU Marine Strategy Framework Directive. Therefore, these sectors must take place within the carrying capacity of the environment.

MCS currently have significant concerns over the planned expansion of the finfish aquaculture industry whilst many environmental issues remain to be resolved. It is hoped that this bill will address some of those issues and contribute to finding solutions to the current challenges faced.

It is important that this Bill is considered within the wider marine and freshwater policy and legislative context. In particular the Marine (Scotland) Act 2010 and the emerging systems of marine planning. Sensitive siting of fish farms is a key factor and can avoid many of the unintended and negative impacts of the industry.



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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

Farm Management Agreements have proved, in many cases, to be useful vehicles to allow farmers to coordinate activities and synchronise production in order to reduce and manage risks posed by infectious agents and parasites. This approach is critical to ensure Scotland's aquaculture industry develops sustainably and within environmental limits. MCS believes that, subject to the appropriate safeguards, it therefore should be a legal requirement for marine finfish operators to participate in an appropriate Farm Management Agreement (FMA) at a scale appropriate to manage the risks. Sanctions for failure to do so should apply. This was also a clear recommendation of the Ministerial Group on Aquaculture. However, we seek further clarification on the term 'appropriate safeguards'. We would be concerned if appropriate enforcement was not implemented the FMA process could easily be undermined. We seek reassurance that this will not be the case.

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

MCS strongly believe boundaries for Management Areas must primarily be determined based on ecological grounds. Where there is limited information, a precautionary approach of selecting larger, rather than smaller boundaries, should be adopted. The proposed boundaries must be suitable to protect the local environmental and ecological features and account for the natural geographic features such as lochs. They must also take account of the relevant cumulative and in combination effects of connected activities so they are within the carrying capacity of the marine environment. Consequently, operators should have primary lead in defining boundaries so strategies on, for example, sea lice, can be integrated fully.

However, while determining boundaries operators should engage more widely and the responsibility of final boundaries definition should be decided by Scottish Ministers following consultation with the Ministerial Working Group and other interested stakeholders to ensure activities and interactions taking place in the wider marine environment can be accounted for. Regional Planning Partnerships will have an important roll to play once they are established, and their role in the process must be considered further.

MCS believe the Minister should have the ultimate power to define boundaries, but again, only following consultation with the Ministerial Working Group and others to ensure wider environmental considerations are taken account of. We stress boundary decisions should be determined primarily on ecological grounds.

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

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

The arbitration process should be capable of maintaining its objectivity. Therefore, the proposed system should be undertaken by a suitably qualified independent arbitrator. We are concerned by the suggestion of an industry producer organisation as a possible independent arbitrator. The proposed system should not be industry led, nor led by another stakeholder with a vested interest.

Unused Consents

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

YES

NO

The future identification of new sites suitable for aquaculture will take place within the parameters of the Marine Scotland Act and resultant Marine Planning process which we hope will prevent unsuitable sites being issued consents in future. The need for this sector to develop sustainably, within environmental limits, is highlighted in several policy documents, including 'Recipe for Success: Scotland's National Food and Drink Policy' and the 'EU Aquaculture Strategy'. MCS believes many concerns associated with fish farming can be minimised by selecting appropriate sites for farms. The wider planning process must help achieve this,

including through national and regional marine plans. The role of the national and regional plans should be clearly recognised in the Aquaculture and Fisheries Bill.

MCS advocates the planning process identifies areas suitable and unsuitable for the development of aquaculture. To ensure this is comprehensive, all available, unused sites need to be incorporated back into the planning process. MCS also strongly believe that within the planning framework and as part of the boundary definition, areas unsuitable for aquaculture development should be identified and designated as aquaculture free zones as mentioned by the Minister on the BBC Documentary Scotland's Fishy Secrets in October 2011.

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

MCS believe that sites identified as unused at the time of publication of the revised Bill should be re-evaluated in terms of their suitability for aquaculture as defined by their consent. Those now deemed unsuitable for the consent issued, for example a shallow, poor tidal flow site that has a historic consent for salmon aquaculture, should have their consents revoked so that the area can be returned to the emerging marine planning process.

We believe all the further options listed in the consultation document are suitable to promote use or relinquishment of unused consents. MCS has concerns that, with such ambitious targets for the industry, if sites suitable for aquaculture development are left vacant and 'banked' there will be a greater pressure to develop sites which are less suitable for fish farms. Furthermore, note that paragraph 19 references holding sites as buffer zones as a reason for sites being unused; we would be very concerned if this was the only mechanism to achieve the appropriate spacing between farms. The planning system and Farm Management Agreements should effectively manage the size and distance between farms

6. 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

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

All consents

Collection and Publication of Sea-lice Data

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

Sea-lice are known to damage the health of both farmed fish and wild salmonids. This is a serious issue for both the industry and the wider environment; it therefore requires an appropriate response. The data from on-farm sea lice testing provides a critical resource to gain a broader understanding of the impacts on wild fish so that strategies to control sea lice can be fully assessed. Lice levels on farms are currently only available under existing Area Management Agreements, but are bound by confidentiality agreements and therefore not publicly available. As such, cumulative impacts cannot currently be adequately assessed as part of the planning process as planners do not have access to lice levels on existing farms in the area. MCS therefore strongly believe the results from sea lice monitoring from individual farms should be publicly available in a disaggregated form. This information could then be used in the planning system to assess cumulative impact. Furthermore, it is anticipated that, in time, collation will result in a comprehensive historical record of sea lice data that can be used to investigate and inform a wide range of related aspects.

Surveillance, Biosecurity, Mortality and Disease Data

9. 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

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

All additional information should be collated and submitted as a package to minimise the burden on both the authorities and industry. The timing and frequency of submissions should be set at a meaningful period to allow for issues can be picked up and resolved at the earliest opportunity.

Biomass Control

11. 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

Wellboats

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

YES

NO

Processing Facilities

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

YES

NO

Seaweed Cultivation

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

YES

NO

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

YES

NO

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



Commercially Damaging Species

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

YES

NO

It is unclear from this question exactly which species these additional powers are intended for. The only example provided is *Mytilus trossulus*. Without further clarification on which species are considered “commercially damaging” MCS cannot comment on the suitability of the suggested, or any other, additional powers.

SECTION 2 - PROTECTION OF SHELLFISH GROWING WATERS

18. 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

SECTION 3 - FISH FARMING AND WILD SALMONID INTERACTIONS

Sea-lice

19. 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

MCS can support the case for giving Scottish Ministers powers to determine a lower threshold above which remedial action needs to be taken; however, we stress the associated risks of increasing resistance to therapeutants and the impact on other non-target species and the ecology of the marine environment must be considered. We recognise the pressing need to manage sea-lice and support action to address this issue which can have significant cost to the industry and potential impacts on wild fish populations. However, lowering thresholds must not mean lice treatments are used routinely. Instead of other suitable non-therapeutic measures should first be considered. MCS is interested in the discussions held at the Sea Lice Symposium in Edinburgh in 2011 and hopes that debates and outcomes from that important, industry specific meeting can inform and be applied to the ongoing challenge of sea lice management in Scotland.

Containment and Escapes

20. 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

Tracing Escapes

21. 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

SECTION 4 - SALMON AND FRESHWATER FISHERIES MANAGEMENT

Modernising the Operation of District Salmon Fishery Boards

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

YES

NO

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

YES

NO

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

YES

NO

In the first instance, the Code of Good Practice should be established in a non-statutory form. As a contingency, the proposed Bill should contain a power to introduce measures requiring adherence to a Code, or sections of it, as deemed necessary by Scottish Ministers.

Statutory Carcass Tagging

25. 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. Statutory carcass tagging for wild Atlantic salmon and sea trout would significantly reduce the market in illegally caught fish. A system of tagging, working in combination with the existing ban on sale of rod caught salmon and sea trout would ensure that only legitimately captured fish, easily identifiable by tags that are only issued to licensed operators, are offered for sale. The scheme would not only help tackle poaching in adherence with international obligations to reduce the levels of illegal and unreported catch, but would improve the reliability of declared catch data, in turn aiding stock assessment and the conservation of salmon and sea trout.

Fish Sampling

26. 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

Management and Salmon Conservation Measures

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

YES

NO

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

YES

NO

29. 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

Dispute Resolution

30. 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

Improved Information on Fish and Fisheries

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

YES

NO

32. 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 routine collection and publication of information on for example, catches, conservation measures, monitoring, introductions and enforcement will serve to allow evidence based management aimed at the conservation of stocks and the delivery of multiple benefits.

33. 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

Licensing of Fish Introductions to Freshwater

34. 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

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

If it is evident that Boards are neglecting their duties or acting in a way that would compromise the conservation of stocks and the ability of Scottish Ministers to fulfil their legal obligations under the Habitats Directive, then it would be appropriate for Ministers to be able to call upon reserve powers to recall, restrict or exclude the jurisdiction of the Boards

SECTION 5 - MODERNISING ENFORCEMENT PROVISIONS

Strict Liability for Certain Aquaculture Offences

36. 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

MCS fully supports measures to increase compliance and accountability within the industry. We therefore fully support strict liability for breaches of a Marine Licence. We request further information on any statutory defences which may also be introduced by the Bill.

Widening the Scope of Fixed Penalty Notices

37. 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

MCS supports widening the scope of fixed penalty notices so they cover all breaches of marine licences. However, fixed penalties must be set at a level which presents a credible threat, and acts as a real deterrent. Further, we believe there should be full public disclosure of the details of any fixed penalties issued. Public disclosure of sanctions is in the public interest and will help to promote compliance across industries.

38. 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

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

No comment

YES

NO

Enforcement of EU Obligations Beyond British Fisheries Limits

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

YES

NO

Powers to Detain Vessels in Port

41. 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

Disposal of Property/Forfeiture of Prohibited Items

42. 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

Power to Inspect Objects

43. 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

Sea Fisheries (Shellfish) Act 1967

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

No comment

YES

NO

SECTION 6 - PAYING FOR PROGRESS

45. 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)

No comment

YES

NO

46. 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)

No comment

47. 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)

No comment