

## 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

Comment :-

The industry Code of Good Practice requires contractually binding Farm Management Agreements between operators in the same Farm Management Areas. New operators are also expected to comply with existing agreements.

Direct involvement of Government in this process would add significant cost and bureaucracy with little perceived benefit.

#### 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

Comment:-

This suggestion was debated and rejected by the Healthier Fish Working Group during its very wide earlier consultation. The current proposal is wide-ranging and open-ended. If new evidence is provided suggesting that modification to management areas is necessary on a scientific and pragmatic basis, industry has the capability to modify boundaries through its current arrangements without the application of further powers.

#### 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

Comment:-

A clear arbitration process is already available in Scotland. There is no justification for duplication

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

Through an independent process organised by industry (SSPO)

**Unused Consents**

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

**YES**

**NO**

**Comment:-**

**I have no clear view on this issue. There are clearly many reasons for unused consents, including, for example, the provision of disease ‘firebreaks’ and the maintenance of separation between management areas. This should perhaps be the responsibility of the planning authorities – industry is only likely to maintain (and pay for the high cost of) unused consents which have significant operational benefit.**

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

This requires considerable discussion with industry as to the best was forward

**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**

**Comment:-**

**This is wide-ranging and non-specific and would deter investors in developing sites with a possible very limited life. This is currently a problem for Irish Aquaculture operators.**

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

If this was developed it would need to be very restricted in scope and subject to further discussion with industry – there is a danger of cutting off investment in the industry.

**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)**

The development of the SSPO Health Database arose directly from the deliberations of the Healthier Fish Working Group and represents a way forward agreed by all stakeholders – this should be the system used. I would agree with the comments in section 26 of page 12 of the consultation which the SSPO system supports

**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**

**Comment:-**

**The proposals of the Healthier Fish Working Group have been implemented. Extensive discussion took place regarding commercial confidentiality, which must be safeguarded. The procedures currently in place provide extensive information to Government to support their statutory duties.**

**The proposals of the Healthier Fish Working Group should be followed. Section 32 on page 15 highlights the burden which further provision of information would create to both industry and government.**

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

Submission of data should be as proposed by the Healthier Fish Working Group

**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**

**Comment:-**

**Definitely not!**

**Fish Health and Welfare matters are the legal responsibility of the farm staff and the veterinary surgeons ensuring clinical care of the stock. Reduction of biomass is a solution which may be taken by the veterinary surgeon in appropriate circumstances. This issue was widely debated before the publication of the Aquaculture and Fisheries (Scotland) Act 2007.**

**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 X**

**Comment:-**

**Not at this time. This aspect was widely discussed by the Ministerial Working Group on Scottish Aquaculture but a clear consensus was not reached. This requires further debate between wellboat operators, the aquaculture producers and government to arrive at clear practical measures. The technology being used is developing rapidly to provide the industry with modified wellboats which could address the majority of government concerns without risking a shortage of appropriate wellboats by taking precipitate action.**

**Processing Facilities**

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

**YES**

**NO X**

**Comment:-**

**Adequate biosecurity controls already exist at processing plants. The issue of risk of discharge of lice from well-boats is being addressed by wellboat operators and the aquaculture industry.**

**Seaweed Cultivation**

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

**YES X**

**NO**

**Comment:-**

**There is a need for pragmatism as the area is only slowly developing but control through adequate planning consents seems sensible.**

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

**YES**

**NO X**

**Comment:-**

**Use should be made of the Planning process as part of existing aquaculture development.**

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

See Question 16

### 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 X

NO

Comment:-

Following further discussion and debate of actual requirements.

### 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

### 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

Comment:-

Thresholds have been set following extensive debate and discussion and take into account 'at-risk' periods for wild fish. There is a clear risk of promoting resistance of sea lice to chemotherapeutants through overtreatment. Decisions on when to treat must be the responsibility of the veterinary surgeon in clinical control of the stock and not that of the Fish Health Inspectorate. Discussion between inspectors, farm operators and veterinary surgeons is appropriate. Powers are not needed at this stage.

#### 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:-

This is being developed by the Improved Containment Group. Transitional procedures may be required for existing farms.

## **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**

**Comment:-**

**This is likely to be an expensive and unnecessary research exercise. As egg sources used are limited and often mixed, it is highly unlikely that differentiation will be possible on a site-by-site basis.**

**The contribution of escapes to wild populations in Scotland has not been demonstrated. Only small numbers of escapes are caught by rod fishermen. Chemical analysis would readily demonstrate whether a fish is of farmed or wild origin. 'Anecdotal' evidence is not appropriate in scientifically assessing risk.**



## **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**

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

**YES X**

**NO**

**Comment:-**

**This should follow the excellent, proven, example provided by the Aquaculture industry.**

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

**YES**

**NO**

**Non-Statutory**

### **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**

**Comment:-**

**Surely already possible. Why take powers.**

### **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**

**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**

**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**

**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**

**Comment:-  
Already available**

**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)**

Reporting requirements should be as for Aquaculture operations. The current system does adequately assess the risk presented to aquaculture operators by wild fish activities.

**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**

**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)**

Introductions should be controlled as for aquaculture

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**N 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 they apply to aquaculture operations and, potentially, in other situations? (Page 37)

YES

NO X

Comment:-

Analysis of the Hampton review suggests that this would be an over-reaction to a minor problem

**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

Comment:-

Again, an over-reaction to a minor problem.

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

Comment:-

Wholly unjustified in terms of likely offences.

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

YES

NO X

**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 X

NO

Comment:-

**This seems fully justified.**

**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 X**

**NO**

**Comment:-**

**Sensible to apply similar rules North and South of the border.**

### 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 X

NO

Comment:-

As Question 42

### 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 X

NO

Comment:-

As question 42

### 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 X

NO

Comment:-

Seems a logical development

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

Comment:-

This section does not appear to be clearly thought through. The provision of relatively unspecified charging would not be well accepted in the current financial climate. There is a need for a detailed consultation on this.

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)

Much of the required service provision is already provided directly by the sectors in question. There is a danger of duplication of necessary work. Perhaps some means of tendering and cost sharing between government and industry would be appropriate

**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)**

Perhaps a review of current activities, whether statutory or not, which includes stakeholders, would highlight where cost savings could be made.

## AQUACULTURE AND FISHERIES BILL CONSULTATION.

### PREAMBLE

Considerable progress has been made in the last two years through the work of the Ministerial Working Group on Aquaculture. This has brought together the aquaculture industry, wild fish interests, Scottish Government policymakers and scientists from Marine Scotland and Scottish academia to consider actions needed to ensure a strong future for sustainable aquaculture in Scotland. Government has, on many occasions, highlighted its support for carefully planned growth in production to sustain an industry responsible for producing a high quality Scottish food, which employs large numbers of people in remote rural areas and which enjoys an enviable international reputation.

I was fortunate to chair the Healthier Fish Working Group, which is frequently referred to in the consultation, and which developed an agreed way ahead in fish health control through extensive consultation between the sectors mentioned above. Debate was lively, wide-ranging and thorough and achieved consensus, as reported in the consultation. Access to stakeholders was assured through workshops held around Scotland to explain the thinking of the Group and canvass opinion on the detail of the proposals.

This has led to agreed and sensible protocols for the reporting of mortalities and trigger values for lice treatment for the benefit of all and has resulted in the provision, by industry, of highly detailed information on sea lice management and control on a regional basis. The latter system was developed as a consequence of very significant investment by the industry and involves very senior, capable, scientists producing information and data at the highest scientific level which has been used to improve the industry's approach to controlling sea lice..

Many of the proposals in the consultation suggest a heavy reliance on new legislation rather than working closely with the industry through its externally-audited Code of Good Practice and the carefully developed SSPO Health Database. This is very disappointing and would seem to be contrary to the oft-cited wish to reduce the regulatory burden placed on the industry and reduce financial compliance costs. Such proposals run the risk of reducing investment in the Scottish industry in favour of investing in more attractive regulatory regimes elsewhere.

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