

Aquaculture and Fisheries Bill Consultation

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?

Yes, but there needs to be input from government and other stakeholders on what constitutes an acceptable FMA. There is little incentive for industry to set the challenging terms necessary for environmental protection if they would be subject to sanction.

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?

No. The boundaries of FMAs should be based on the connectivity of fish farm sites with respect to disease and lice transfer. Some current FMAs are too small and based on patterns of farm ownership rather than environmental impact. There is a pressing need to collect data on lice dispersal patterns across the west coast and there should be a commitment to review FMA when these data become available.

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?

Yes. The terms of each FMA should be published and there should be provision for third parties to refer cases to the arbiter.

Unused Consents

5. Do you agree we ought to review the question of unused consents

Yes, but where unused consents are being used to maintain firebreaks or protect wild fisheries then a proper mechanism to secure this should be established, possibly through local FMAs.

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

Yes. These powers should be worded to allow revocation of licences where there has been poor environmental performance or where severe environmental impacts beyond those predicted by models or assessments have been recorded. The opportunity to use these powers to provide a

powerful test of the environmental impact of fish farms should be taken. The powers should relate to all consents.

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?

Sea lice data need to be published at much greater level of detail than at present. Weekly counts should be made available to Marine Scotland for analysis. Monthly levels should be made publicly available for each farm site via a dedicated website. This website should also publish results of FHI inspections for comparison. Aggregated data over counties or even coastal waterbodies is not sufficient to identify those sites performing well and those performing poorly and prevents a robust assessment of the impact on wild fish.

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?

Yes

11. What are your views on the timing and frequency of submission of such data

The timing and frequency of data submission will depend on the type of data and history of disease in the area and should be determined by a risk assessment process.

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

Yes. These powers should also be used to address concerns about environmental impact and the cumulative effect of farms on wild fish.

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

Yes. Powers to require adequate lice filtration on wellboats should be a priority.

Processing Facilities

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

Yes. Lice filtration should be a priority.

Seaweed Cultivation

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

Yes

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

Yes. This should allow cumulative impacts and potential synergies between coastal developments to be considered.

Commercially Damaging Species

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

Yes, but need to ensure powers are limited to native species under cultivation and not used to control native species growing under natural conditions.

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

No comment

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?

Yes, but there needs to be the realisation that lower thresholds may not be possible within existing discharge consents and with decreasing efficacy of chemical treatments. Many farms are already failing to meet current thresholds. This power cannot replace the need for the correct siting of farms and where a problem has been identified actions beyond the setting of lower thresholds should be considered. Sensitive areas where these measures might be considered should not be limited to big valuable fisheries, but should include critically depleted fish populations regardless of their exploitation.

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.)

Yes, and the performance of this equipment should be monitored in the field to ensure standards are sufficient.

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?

Yes. This is desperately needed to assess the impact of farm escapes on wild salmon populations. Where the LFT has approached aquaculture companies to provide such samples in the past they have refused. The grounds that will be considered sufficient for inspectors to request a sample should be determined in consultation with the aquaculture and wild fish sectors.

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?

Yes

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

Yes, there should be a COGP for DSFBs, but it should be noted that fisheries management is actually carried out by a range of organisations and individuals many of which are small charities or community bodies. It would be difficult for a code to encompass this diversity.

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

Non-statutory. The Aquaculture COGP is 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?

Yes. Illegal netting is a significant problem, and carcass tagging could effectively stop it.

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?

Yes. Genetic samples can be taken non-lethally and we would expect this method to be used. Local wild fish interests should be contacted as there is already a large amount of genetic information available and sampling should be co-ordinated with any ongoing studies in the area.

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?

Yes, but it would be useful to clarify when these measures would be used. Are these emergency measures or an attempt to take over the functions of the DSFBs? If Scottish ministers are

dissatisfied with the way the Board system works, it should say so and suggests improvements or an alternative.

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

Yes, but see above

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

Yes but see above. It is important to note that some boards have limited resources reflecting the poor state of fisheries in some areas.

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?

Yes

Improved Information on Fish and Fisheries

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

Yes, catch effort would aid in the interpretation of rod catch. However, catch effort is extremely difficult to measure and the quality of the data may be poor in many cases. Angler ability, weather and flow conditions will all affect catch efficiency and these could be more variable on west coast spate rivers.

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

Boards should provide details of stocking 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?

Yes, but resources may be very limited on some rivers and Scottish Government should not put impossible reporting burdens on small rivers without providing funding.

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?

Yes. Circumstances should include where there are objections from wild fish interests or when the Board is proposing something outwith the ASFB code.

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?

Yes

Widening the Scope of Fixed Penalty Notices

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

Yes, and penalties need to be of sufficient size to deter the offence and repeat offenders should be dealt with via prosecution. For small operators fixed penalties may reduce their ability to invest in equipment or training required to solve the problem, so some discretion needs to be applied.

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

Yes, this is necessary to provide a credible deterrent.

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

Yes, failure to report diseases or poor efficacy of treatment and breaches of discharge or biomass consents should merit a higher sum. Amend fishery act – go on then

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?

Yes

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?

Yes

Disposal of Property/Forfeiture of Prohibited Items

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

Yes

Power to Inspect Objects

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

Yes

Sea Fisheries (Shellfish) Act 1967

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

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?

No. Not until you reduce the level of unnecessary bureaucracy and show you are actually providing a benefit.

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?

Reducing the level of pointless bureaucracy would result in significant savings. DSFBs are currently self-funding. Crown Estate revenues from fish farm leases could provide funds.

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?

Inspections of fish farms that are limited to a desk exercise checking paperwork.