



Scottish Natural Heritage
Dualchas Nàdair na h-Alba

All of nature for all of Scotland
Nàdar air fad airson Alba air fad

Catriona Graham
Scottish Government
1B-North,
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EH6 6QQ

1st March 2011

Dear Ms Graham,

AQUACULTURE AND FISHERIES BILL CONSULTATION

Thank you for asking Scottish Natural Heritage to comment on the Aquaculture and Fisheries Bill Consultation. We welcome proposals for improved regulation of the aquaculture industry and better management of our fish and fisheries resources.

Over and above the issues raised in the consultation paper, there are a few areas where we could see potential benefit to the natural heritage from additional measures.

- Although the proposed measures for increased accountability in freshwater fisheries are welcome, we see advantages from a more holistic, ecosystem-based and modernised fisheries management structure, one which addresses the management of all freshwater fish species.
- Inshore fisheries receive a light touch within the consultation. There is an opportunity to consider issues surrounding wrasse capture and movement within any new legislation. This is discussed more fully in the Annex.
- In the Annex we propose that in addition to provisions to license seaweed cultivation, SNH would support a new provision in the Bill to require all commercial seaweed harvesting (i.e. not including that carried out for personal use) be licensed. This could be important to safeguard biodiversity and ensure sustainable harvesting, and to safeguard kelp resources of strategic importance.
- There is no mention in the consultation paper, but in our view this Bill would be a sensible place to introduce a firmer legislative basis and more streamlined procedures to control the provision of licences for crayfish capture.

We would welcome the opportunity to discuss any of these in more detail.

Our response to the consultation is attached at Annex A.

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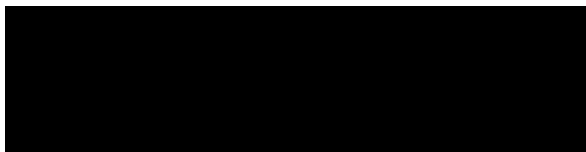


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If anything in this response requires clarification, please contact Colin Bean (0141-951-4488, colin.bean@snh.gov.uk) in the first instance.

Yours sincerely,



Ron Macdonald
Acting Director
Policy & Advice

ANNEX A

SECTION 1 - THE SUSTAINABLE DEVELOPMENT OF AQUACULTURE

Farm Management Agreements (FMAs)

(Para 9) 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. Many existing agreements work well, but this is not always the case, and when they do not there is no co-ordinated management of sea-lice numbers, and consequent risks for wild fish. Legally binding agreements would engender more confidence in the process and offer more surety on compliance.

Appropriate Scale Management Areas (MAs)

(Para 12) 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?

Yes. A review of boundaries should be undertaken following development of a suitable risk/sensitivity model of the kind that has been commissioned by Marine Scotland and is being delivered by the Rivers and Fisheries Trusts of Scotland [RAFTS]. Such a model should take into account the level of production, sensitivity of sites, proximity to sites and species of conservation value, and risk of impact.

Management Measures and Dispute Resolution

(Para 16) 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.

(Para 16) How do you think such a system might best be developed?

We would prefer an option which allows Ministers the final say in relation to any proposed outcome.

Unused Consents

(Para 20) Do you agree we ought to review the question of unused consents?

Yes.

(Para 20) What do you consider are suitable options to promote use or relinquishment of unused consents?

We offer no view on the details, but we would be keen to ensure that options to promote relinquishment of unused consents are linked to opportunities to relocate existing developments as and when relocation becomes an issue.

(Para 21) Do you agree that Scottish Ministers should be given powers, ultimately, to revoke, or to require or request others to revoke, consents? Should any such power relate to all or to particular consents (and if the latter, which)?

Yes. This power should be available for all/any consent, although is likely to be appropriate only in exceptional cases.

Collection and Publication of Sea-lice Data

(Para 29) What in your view is the most appropriate approach to be taken to the collection and publication of sea-lice data?

Powers are already available, through Section 1 of the Aquaculture & Fisheries (Scotland) Act 2007 to allow Scottish Ministers to obtain information in relation to the prevention, control and reduction of parasites. Powers are also available, through Section 6 of that Act to serve an enforcement notice on those operators who fail to carry out the measures required to control sea lice where they become a problem to the welfare of farmed fish. The problem is less the regularity of data collection (as this can be directed either through Section 1 or by the development of a new, statutory Code of Practice as specified in Section 8 of the Act), than the publication and transparent use of data.

We offer no view on the most appropriate approach, but we support the development of measures designed to collect, collate and analyse sea lice data in a way that improves management and helps identify instances where management is failing, or sea lice chemotherapeutant resistance is an emerging problem. We support measures to make sea lice data more widely available in a way that is both informative to all parties and secure.

Surveillance, Biosecurity, Mortality and Disease Data

(Para 33) 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. We agree that appropriate sanctions for non-compliance or for providing false or misleading information should be incorporated into the provisions of a new Bill.

Additional comments are given relating to the information components described in the table included in this section below:

- Mortality data: Option 2 (reporting all mortality on a regular, possibly weekly, basis) would be our preferred choice. This option goes further than the recommendations of the Healthier Fish Working Group, but moves the reporting requirements away from specified thresholds and encourages

operators to keep records and provide information on all mortalities that occur in fish farms.

- Movement record sheet: It is surprising that there is no such current requirement in place. Given the importance of these data in directing a response to outbreaks of notifiable or emerging diseases we fully support measures to put such provisions in place.

- The results of external surveillance: As part of a risk-management approach this is a sensible measure to incorporate into a new Bill.

- Treatment notification: Where treatment has failed, it is sensible that operators be required to notify Marine Scotland. The provision of such data may, for example, help in identifying areas where resistance is a particular issue. We would recommend that at least summary reports (content to be defined) should be provided to Marine Scotland on an annual, rather than 'on request' basis.

- Fish farm production data: We support any measure to make the provision of fish farm production data (in marine and freshwater units) a mandatory requirement.

(Para 33) What are your views on the timing and frequency of submission of such data?

For each element the format and reporting frequency needs to be established at the outset. For several of these (such as overall mortality data and farm production), data may need to be provided on only and annual basis. For others (such as fish movements and treatment notification), more frequent reporting may be required. The reporting of external surveillance may be one element for which a more *ad hoc* or 'as required' approach may be appropriate.

Operators should be required to keep up-to-date records for all of these elements, regardless as to whether the reporting cycle is annual or is required on a more frequent basis. In the event of a disease outbreak, for example, up-to-date data should be made available to Marine Scotland immediately upon request. Some consideration should also be given to the way in which such data is made available to the public.

Biomass Control

(Para 36) 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. We support this as a potential means of ensuring that better sea lice control measures are in place. There is a clear link here between two of the additional reporting requirements requested for Marine Scotland in Q9 (above) (treatment notification and farm production). We can see how these data will be used to control biomass in areas where treatments are either ineffective or insufficient to treat whole farm units.

Wellboats

(Para 39) Do you agree we should make enabling legislation giving Scottish Ministers powers to place additional control requirements on wellboats?

Yes. Any new secondary legislation will need to be aligned with the existing Marine Licensing of discharges from wellboats. This is particularly relevant when viewed against new controls on the discharge of sea lice in water and current controls over discharges of chemotherapeutants. It will be important to ensure that the processes are clear and that they complement each other in their end aim of reducing parasite and disease transfer, whilst not increasing risks to the environment.

Processing Facilities

(Para 41) Do you think Scottish Ministers should be given additional powers to place controls on processing plants?

Yes.

Seaweed Cultivation

(Para 44) Do you agree that the regulatory framework should be the same for all seaweed farms?

Yes.

(Para 44) Do you agree that the most appropriate approach to regulation of this sector would be through marine licensing? If not, what alternative arrangements would you suggest?

Yes.

In addition to licensing of seaweed cultivation, SNH would support a new provision in the Bill to require all commercial seaweed harvesting (not including that carried out for personal use) be licensed. There are two reasons for this:

1) Over-collection can damage stocks and their associated biota including Priority Marine Features. For most species, especially *Ascophyllum*, this can be offset by careful attention to harvesting methods and frequency. It should also apply to red seaweeds, which can suffer from over-collection¹.

2) *Laminaria hyperborea* beds to the west of the Uists, and potentially elsewhere, have a very significant ecosystem function in respect of coastal protection.

Commercially Damaging Species

(Para 47) Do you agree that we should provide for additional powers for Scottish Ministers in relation to commercially damaging native species?

¹ Sharp, G.J. & Pringle, J.D. 1990. Ecological impact of marine plant harvesting in the northwest Atlantic: a review. *Hydrobiologia*, **204/205**:17-24

Yes. Any control measures put in place should take into account the wider environmental impacts from the control measures themselves. We presume this would occur through the normal Marine Licensing process (e.g. for any disposal measures).

SECTION 2 - PROTECTION OF SHELLFISH GROWING WATERS

(Para 51) Do you agree with the introduction of provisions to protect shellfish growing waters and support the sustainable growth of the shellfish industry?

Yes, the provisions would allow Ministers to identify areas, set standards and objectives for shellfish waters for Water Framework Directive purposes once the Shellfish Waters Directive is repealed.

SECTION 3 - FISH FARMING AND WILD SALMONID INTERACTIONS

Sea-lice

(Para 57) 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. As it currently stands, the Fish Health Inspectorate can only direct treatment (using powers within the Aquaculture and Fisheries (Scotland) Act 2007) in situations where fish welfare within the farm itself has been compromised. The FHI have no powers to intervene in situations where, for example, sea lice levels within the farm are within acceptable limits, but outwith the farm environment they are high enough to cause damage to wild salmonids. This is an area that could be usefully explored as the new Bill develops.

Recent work carried out by Marine Scotland in relation to the development of sea lice dispersal models, and work commissioned by Marine Scotland through RAFTS to develop tools to develop risk-based approaches to spatial planning should help to identify areas of greatest sensitivity to elevated sea lice numbers. In such areas lower trigger thresholds for treatment should apply.

Specific consideration should be given to developments which occur in areas where sea lice may impact upon sites designated for their Atlantic salmon or freshwater pearl mussel interests. In this regard we should also consider the role that sea trout may play in the continued existence of freshwater pearl mussel within, and outwith, SACs. Where a new or existing development may adversely affect such sites there may be a need to adopt trigger levels which are lower than those currently used by the industry. In some cases, subject to the outcomes of sea lice dispersion modelling, a case may be made for keeping some areas clear of aquaculture development if risk to the features of designated sites is to be avoided.

We agree that the application of sea lice chemotherapeutants in accordance with predetermined trigger levels is only part of a suite of measures that can be taken if appropriate management measures are to be effective.

Containment and Escapes

(Para 65) 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. Currently Section 5 of the Aquaculture and Fisheries (Scotland) Act 2007 gives Scottish Ministers the power to inspect fish farms to ascertain the risk of escape and the measures that are in place to prevent an escape taking place, however no single technical standard is currently in place to guide the industry. We are aware, however that a proposed Scottish Technical Standard (as recommended by The Improved Containment Working group) was published in February 2012.

A key recommendation of the Improved Containment Working group was that the Scottish Technical Standard would apply to all of Scotland's marine and freshwater (including hatcheries) finfish farms covering nets, pens and mooring systems. We strongly support the early introduction of regulations to make a Scottish Technical Standard a requirement for all finfish farms. We also support any further measures that can be extended to improve biosecurity in freshwater systems, including moves towards the development of closed containment systems.

Tracing Escapes

(Para 68) 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. Once fish escape from a fish farm they may distribute themselves widely. It does not follow that fish farm escapes will ascend the nearest river, and the limited evidence suggests that many will not ascend any river at all. For those that do, it is important that we know from which site they originated and, with modern genetic tools, this can now be achieved.

The power to take samples from fish to establish their source may have several advantages. Firstly, it may drive up containment standards (despite aspirations of high standards, escapes still occur on a regular basis). Secondly, it may identify operators for which containment (either through mis-handling or through equipment failure) is an issue; thirdly, it will enable others to estimate the genetic impact, or level of genetic introgression, that has taken place within individual populations as a result of escape events. The development of an agreed protocol, to be enacted immediately after an escape has been notified, would help identify the scale and timing of this work.

SECTION 4 - SALMON AND FRESHWATER FISHERIES MANAGEMENT

Modernising the Operation of District Salmon Fishery Boards

(Para 80) Do you agree that we should introduce a specific duty on Boards to act fairly and transparently?

Yes.

(Para 80) Do you agree that there should be a Code of Good Practice for wild salmon and freshwater fisheries?

Yes. A number of 'Codes of Good Practice' have been under development as Pories for Action within Theme 1 of the *Strategic Framework for Scottish Freshwater Fisheries* since 2008. Whilst some good progress has been made, none of these have been finalised and signed off by all parties. A good case can be made for the development of a Code of Good Practice for salmon and freshwater fisheries, which will put in place measures for the way that DSFBs operate. This Code would promote transparency and provide wider confidence in the way that our valuable salmon (and other important fish), populations are managed.

(Para 80) If yes, should such Code of Good Practice be statutory or non-statutory?

A Code of Good Practice would normally go beyond the statutory requirement. However such a Code may benefit from a signal from Government to the effect that if it is not sufficiently observed by the industry, elements that are in that are initially non-statutory could in future become statutory.

In addition to the development of a Code of Good Practice for DSFBs, other bodies responsible for managing trout or non-salmonid fisheries within Scottish freshwaters should not be exempt from freshwater fishery management controls. Thought should be given to the development of relevant codes of practice (outwith that described in relation to Q24) and how these may be used to secure the necessary compliance.

Statutory Carcass Tagging

(Para 87) 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. The ability to introduce a statutory system of carcass tagging for wild Atlantic salmon and sea trout can be useful in controlling the sale of fish captured using illegal methods. It can also identify those fish which have been captured by legal (e.g. angling) methods, but illegally sold to fish merchants or others. It will also identify those fish which have been captured via the use of legally operated nets. Similar schemes are in place in other countries (such as England, Wales and Northern Ireland) and these have operated effectively by improving the traceability of fish within the marketplace.

The final report of the Mixed Stock Fisheries Working Group (a group formed under the direction of the Strategic Framework for Scottish Freshwater Fisheries)

recommended that a carcass tagging scheme should be considered for all wild net-caught salmon offered for sale, whether privately or on the open market. Further, the MSFW recommended that the Government should “urgently work with all stakeholders to develop such a scheme with a view ultimately to making adherence to it compulsory”. Other than controlling the sale of illegally caught fish, a tagging scheme could also, at an alternative date, be used to control the number of fish entering the market place (by limiting the number of tags allocated to an individual net operator), and may also have a use in marketing wild Scottish fish.

Fish Sampling

(Para 90) Do you agree that Scottish Ministers should have powers to take or require fish and/or samples for genetic or other analysis?

Yes.

Management and Salmon Conservation Measures

(Para 92) Do you agree that Scottish Ministers should have powers to initiate changes to Salmon District Annual Close Time Orders?

Yes. Powers already exist to alter the salmon close season under the Salmon and Freshwater Fisheries (Consolidation)(Scotland) Act 2003, but only after an application has been made by the DSFB that manages that fishery. We agree that Scottish Ministers should have powers to initiate Close Time Orders not only in areas where no Board exists, but also where Boards are present but where Marine Scotland have significant concerns relating to the status of salmon stocks.

This would bring salmon into line with the new Section 17B which was inserted into the 2003 Act by the Section 22 of the Aquaculture & Fisheries (Scotland) Act 2007, which enables Scottish Ministers to implement annual close times for species other than trout and salmon.

(Para 93) Do you agree that Scottish Ministers should be able to promote combined salmon conservation measures at their own hand?

Yes. These powers should be available to Scottish Ministers wherever salmon occur, but any measure which may affect a Special Area of Conservation would need to be subject to a Habitats Regulations Assessment. A total of 17 rivers are designated as a Special Area of Conservation in Scotland for Atlantic salmon, and 19 SACs have been designated for freshwater pearl mussel. Similar consideration should be given to sites which have been designated for other features (such as otter, seal and piscivorous birds) that may also be affected by any loss of salmon.

(Para 94) Do you agree that Scottish Ministers should be able to attach conditions, such as monitoring and reporting requirements, to statutory conservation measures?

Yes. Conditions should be reasonable and proportionate. Using the example provided: as managers of the resource, it is not unreasonable for Scottish Ministers to expect DSFBs to report on the status of salmon populations or the overall salmon stock in the fisheries that they exploit.

Dispute Resolution

(Para 99) 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?

Independent mediation or facilitation may be helpful, however even where mediation has taken place a satisfactory outcome may not be achieved for either party. The important matter is how and under what circumstances Ministers are then brought in to arbitrate.

Improved Information on Fish and Fisheries

(Para 102) Do you agree that there should be a legal requirement to provide comprehensive effort data for rod fisheries?

Yes. Marine Scotland and its predecessors have relied almost entirely on the 1952-present rod catch data for the provision of advice on management and for reporting the overall status of the Scottish Atlantic salmon and sea trout stock. Whilst it has been (and continues to be) a useful indicator of overall trends, its value as an assessment tool is limited. In rivers where angling for salmonids is common and fisheries are tightly controlled, then these data are very useful. In rivers which are visited less frequently and lightly managed, we believe that the data is less likely to be useful as a measure of abundance or to determine trends. It is ironic that catch-and-release, an activity which we would agree is desirable from both fishery management and conservation perspectives, actually contributes to uncertainty relating to the accuracy of the rod-catch statistics, as they are currently collected.

The provision of fishing effort data is one way of increasing the value of the data already provided to Marine Scotland on rod catch, notwithstanding this is a fairly crude measure in itself.

Ideally, we would like to see the integration of catch-independent measures of fish abundance – such as the collection of data on adult fish using electronic counters, and the collection of pre-adult (smolt) data obtained using devices such as screw traps – to provide a more accurate measure of population or stock status. These should be funded out of the revenues from management of the resource.

(Para 104) 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?

Information on stocking should be provided routinely by Boards. Supplementary stocking is not carried out by the licensing authority in two SACs (the rivers Dee and Tweed). Two others who manage SAC rivers for Atlantic salmon have, in recent years, fully engaged with the licensing and Natura assessment process (the Northern DSFB for the River Naver SAC and the Spey DSFB for the River Spey SAC). This constitutes an improvement on previous years, but others have yet to follow suit. Under the current arrangements we are concerned that many of those bodies responsible for stocking do so without consulting and obtaining an appropriate licence from the appropriate authority, and we remain concerned at the lack of transparency in relation

to the number, stage and source of fish being stocked, the location of stocking and the rationale for stocking in each of these areas. Information relating to monitoring the success or failure of these activities is similarly lacking. This legislation provides an opportunity to compel those involved in stocking to provide data, to an agreed standard, that will allow Ministers to monitor this activity within Scotland.

Similar data is available for species other than 'salmon' in Scotland, through the licensing system currently operated by Marine Scotland Science. In the interests of transparency, this information should also be made available.

(Para 104) 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. Much of the responsibility for the management of Scottish freshwater fisheries lies with the proprietors, who control the numbers of people who gain access to the resource. DSFBs also have powers to take actions for the protection or improvement of salmon fisheries within their districts. We believe that it is reasonable for Scottish Ministers to require Boards and proprietors, as managers of the resource, to be able to report on its condition. In areas where DSFBs do not exist, fishery proprietors must play the key role. It is sensible for those who derive benefit from the resource to contribute to its monitoring and management.

Similarly, we feel it reasonable for owners of other (non-salmon) fisheries to be able to report on the condition of their stocks, particularly in instances where supplementary stocking is used as a management measure.

Licensing of Fish Introductions to Freshwater

(Para 106) 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? If so, why and in what circumstances?

Yes. DSFBs (or other relevant bodies where DSFBs do not currently exist) who operate in a manner that is not transparent and which fail to adhere to legal requirements, should have their powers to authorise the introduction of fish recalled or restricted. This is particularly relevant in those DSFB areas which contain rivers designated under nature conservation legislation for species such as Atlantic salmon or freshwater pearl mussel.

Few of the Boards that operate hatcheries for salmon apply to Marine Scotland Policy for an appropriate licence to take salmon out of season as broodstock. This is a general issue, but becomes significant where that river is, for instance, a Special Area of Conservation for either Atlantic salmon or freshwater pearl mussel. If a competent authority such as a DSFB operates outwith the requirements of the Habitats Regulations, it not only puts at risk the conservation status of the site, but places the UK at risk of infraction.

In order to discharge their responsibilities as a competent authority under the Habitats Regulations, DSFBs should properly consider, and document, their assessment of the impact that their introductions may have on wild Atlantic salmon (or other fish) populations. An assessment of the effect of stocking on wild fish, and an evaluation of

its success, should be carried out as a matter of course within any sensible fisheries management operation.

In cases where these powers have been recalled or restricted, there may be a role for Marine Scotland Science, as the licensing authority for all other fish introductions, to assume the task of authorising fish introductions in these areas.

SECTION 5 - MODERNISING ENFORCEMENT PROVISIONS

Strict Liability for Certain Aquaculture Offences

(Para 112) 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?

We offer no view.

Widening the Scope of Fixed Penalty Notices

(Para 119) 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. This clarifies and extends the powers already in place within the Aquaculture and Fisheries (Scotland) Act 2007 and should lead to a greater level of consistency and transparency.

(Para 122) Do you agree that we should increase the maximum sum that can be levied through a fixed penalty notice to £10,000?

We offer no view.

(Para 122) Are there particular regulatory areas that merit a higher or lower maximum sum?

We offer no view.

Enforcement of EU Obligations Beyond British Fisheries Limits

(Para 127) Do you agree that we should amend section 30(1) of the Fisheries Act 1981 as proposed?

Yes. This will bring Scottish fisheries into line with provisions elsewhere within the UK. Such a move will this will mean fewer statutory instruments are required in future to transpose EU restrictions and obligations on commercial fishing in Scotland.

Powers to Detain Vessels in Port

(Para 130) 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. These powers offer a useful improvement to existing enforcement provisions.

Disposal of Property/Forfeiture of Prohibited Items

(Para 133) 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. These powers offer a useful improvement to existing enforcement provisions.

Power to Inspect Objects

(Para 136) 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?

Yes. These powers offer a useful improvement to existing enforcement provisions.

Sea Fisheries (Shellfish) Act 1967

(Para 137) Do you have any views on the proposals to amend the Sea Fisheries (Shellfish) Act 1967 to help make its application clearer?

The Sea Fisheries (Shellfish) Act has a significant role to play in the management of sustainable inshore fisheries in Scotland. This is already the case with the Regulating Orders in both the Solway and the Shetland Isles. It is likely that in the future this Act (in combination with the Sea Fisheries (Scotland) Act) will be of great value for the implementation of relevant aspects of the management plans developed by the Inshore Fishery Groups.

We therefore agree with the proposals to make the application of this Act clearer, in particular making provision for the Act to apply to all shellfish is desirable.

In addition, we believe it would be timely to take this opportunity to modernise the Shellfish Act to take into account the current Scottish inshore fishery management regime.

For example, Section 5 (1) of the Act makes provision for the appropriate Minister to remove an Order if he is not satisfied that 'the grantees are properly cultivating the ground for shellfish of any description'. While it is appropriate that the Minister retains the sanction of removing an Order that is not being properly used, the current wording could be interpreted to mean that such Orders may be used only for fishery management in the narrowest sense. In reality, fishery management is now implemented with the ecosystem-based approach, taking into account interactions with the environment and biodiversity. Both the current Regulating Orders

demonstrate elements of this approach, for example in relation to sensitive marine habitats.

Consequently, there is a case for amending the wording to put beyond doubt that Orders under the Act reflect the ecosystem-based approach in the management of sustainable fisheries, thereby incorporating both the management of the target species and the wider environmental interactions of the fishery.

SECTION 6 - PAYING FOR PROGRESS

(Para 141) 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?

Yes. We endorse the broad principle that those businesses or those sectors which benefit directly from support provided by the public purse should pay a fair share of the costs incurred. The 'beneficiary pays' principle is in many ways analogous to the 'polluter pays' approach which is now in common usage.

The aquaculture industry already, through the Scottish Aquaculture Research Forum [SARF], contributes to research within that sector. However, some larger strategic projects, which have wider implications for the environment, have been addressed through different routes. Examples of such projects may be the assessment of marine migration routes for Atlantic salmon or the coastal movements of sea trout. The development of spatial planning and risk assessment tools for wild fisheries or natural heritage interests also come into this category.

It is reasonable for the fishing industry to make a contribution to costs, particularly when we are facing a new scenario/development that creates a research (or management) need. Like the situation described above for SARF, the fishing industry also contributes to ongoing research through its Seafish levy, however much of this commissioned research is focused on current issues rather than wider strategic approaches to industry development.

A research need which extends between both sectors may be the commercial exploitation of wrasse for use within the aquaculture industry. There is concern that Scottish wrasse populations would not be able to withstand high exploitation levels and consideration of the impact of their removal, particularly in localities such as Special Areas of Conservation (where wrasse would be considered to be typical species of qualifying features, like Annex I reef habitat) is urgently required. In addition to their removal, this activity also introduces the risk of transferring pathogens when translocating live wrasse from one site to another.

(Para 141) 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?

n/a

(Para 141) If no new way of resourcing such activity can be found, what activities do you suggest might be stopped to free up necessary funds?

We offer no view.