

SSPO RESPONSE

AQUACULTURE AND FISHERIES BILL CONSULTATION

INTRODUCTION

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 Partial Business and Regulatory Assessment was published very late on in the consultation period and the Environmental Impact Assessment even later. Since both these documents contain key pieces of information which should have been included in the main consultation, the whole consultation process has been substantially compromised. We believe it will not be possible to analyse the consultation responses, using a conventional best practice approach, and we feel that anyone who may feel aggrieved by the procedures will have grounds to make representations to the Government Ombudsman. For our own part, we believe that it would have been much better to have had a complete and well-structured consultation, following an appropriate level of pre-consultation with the industry. We regret that process has not been adopted.

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 dangerously draconian 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.**

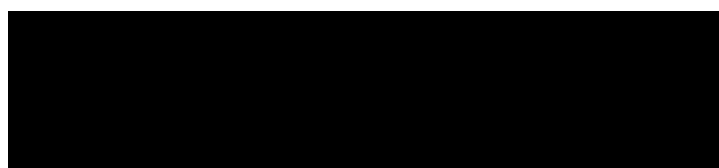
Fresh salmon is Scotland's largest food export, exports alone contributing £400M to the Scottish economy, and the industry is an economic lifeline to many of Scotland's most fragile, rural communities and economies.

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

CHAPTER 1

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. The scope of these agreements should be defined by the Operators within the FMA, as per guidance.
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. Full details are set out in the technical response.*

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 believe 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 a process similar to 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.*

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

Answer:

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

NO

Answer:

As a general principle, we are opposed to undefined enabling legislation, without there being a clear view of its purpose or application. The capability to track wellboats via GPS and obtain information on such matters such as valve status is already available. A technical working group on wellboat design, including filtration of discharges, may become helpful in future, but this should take into account requirements in other international markets.

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:

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:

Broadly, we agree. However, 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, for example 10 years.

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 by not currently doing so it 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.*

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 they 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. No defensible reasoning of evidence is provided that would justify the proposal.*
- 2. It is not, in any way, fair to the accused, due to lack of required evidence.*
- 3. It will not be effective, due to lack of confidence in its validity.*
- 4. Aquaculture offences are uncommon and evidence clearly shows this.*
- 5. It is disproportionate to any perceived problem in the industry. The comparison to the fishing industry is not relevant.*
- 6. 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.*

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)

Answer:

- 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 eight service sectors we have identified in the paragraphs above, we consider Aquaculture Policy Development (1), Regulatory Policy (2), International Relationships (3) and Grants (4), 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 (5) and Licensing (6) are already subject to a charge on the applicant. Thus the only remaining items are Research (7) and Fish Health inspections (8). 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)

Answer:

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.*

CHAPTER 2

Scottish Salmon Producers' Organisation

RESPONSE TO

MARINE SCOTLAND'S AQUACULTURE AND
FISHERIES BILL CONSULTATION

TECHNICAL RESPONSE

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PART 1: BACKGROUND AND CONTEXT

Introduction

In most circumstances, Scottish regulatory legislation reflects the transposition of EU Directives and Regulations into Scottish law. Unusually, the present consultation on a major Aquaculture and Fisheries Regulations Bill reflects proposals that are wholly 'home-grown; they are not driven by EU requirements and represent an additional tier of regulation, distinctive from that which exists in other EU Member States or in other countries of the UK.

Reasonably, it could be expected that the consultation would be overtly enabling - bringing new opportunities or targeted interventions which would facilitate and support the development of Scotland's globally important aquaculture sector. Sadly, that is not the case. Rather, the consultation is characterised by unnecessary or unjustified proposals seemingly designed to expand the powers and roles of Marine Scotland, placing additional burdens and costs on aquaculture businesses with no discernible benefit.

Our industry has a long-standing record of engagement with successive Scottish administrations to support national policy objectives; we are therefore disappointed that principle seems no longer to prevail. Whilst we are not opposed to all the proposals made, we are deeply concerned about many of them. We are also dismayed by the almost complete absence of evidence-based policy development which characterises the consultation. Unsubstantiated assertions are presented as if they are proven facts and, in many sections, the consultation reflects a disturbing lack of knowledge and understanding of the matters under consideration and little appreciation of the consequences. We are also concerned about the consultation process, which we believe falls far short of public sector best practice and will render consultation responses very difficult to analyse and interpret.

If taken forward, many of the consultation's proposals will be very damaging to the Scottish aquaculture industry and the Scottish economy. They will adversely affect the market competitiveness of the industry, compromise its brand and put its future development at risk by undermining prospects for new investment. Personnel recruitment will be impaired and the migration of specialist fish farm managers from Scotland will rise. Needless to say, from both an industry and a wider Scottish economy standpoint, we are strongly against many of the proposals. Scotland has very few world class industries. Now it appears to be making proposals that will fundamentally damage one of those few.

STRUCTURE OF OUR RESPONSE

In PART 1 of this response, we have provided background and context for our later comments. In PARTS 2 – 9, we have considered each of the consultation's sections and have provided some of the evidence, so conspicuously absent from the consultation document itself. At key points we have used supporting material in Appendices and via numbered bibliographical references in the text.

The Purpose of the Scottish Government

When the SNP Scottish Government came to power in 2007 it hit the ground running with a wave of policy innovation which provided a genuine departure from anything that had gone before. A key feature was the clear statement that the main purpose of the Scottish Government is: *to make Scotland a more successful country, with opportunities for all to flourish, through increased sustainable economic growth.*

This message found widespread resonance amongst civic society, business and industry. It demonstrated the Scottish Government unequivocally understood the link between societal objectives and the development of a robust Scottish economy. For industry and business investors, it was a clear sign that the Scottish Government had finally grasped the essentials of national success.

Since 2007, the global economic climate has changed enormously, as is reflected in the revised Government Economic Strategy (2011) (1). However, the purpose of the Government has not been abandoned, so far as we are aware; it continues to be focused on providing the underpinning for Scotland's economic recovery and future growth.

Regulatory Policies

As part of its overall economic strategy, the Scottish Government has made a public commitment to maintaining and further developing the Scottish business environment. In the present context, two types of initiatives are of particular note.

1. *National strategies and strategic frameworks.*

Examples of this are *Recipe for Success - A National Food and Drink Strategy* (2) planning growth in the production of Scottish food exports. Also, *A Fresh Start: The Renewed Strategic Framework for Scottish Aquaculture* (3) setting out priority objectives in aquaculture development.

2. *The Better Regulation programme.*

This has been informed by the work of the Regulatory Review Group (Appendix 1) and is set to be reflected in a Better Regulation Bill to be brought forward in 2012-13. It encapsulates the Scottish Government's stated commitment to championing the Five Principles of Better Regulation: *Proportionate; Consistent; Accountable; Transparent; Targeted.*

Both these policy approaches have been high profile and, on the second, Government Ministers have repeatedly voiced their determination to achieve better, simpler, less bureaucratic and costly regulation which is risk-based and not stifling of industry growth (see Appendix 1). We fully support the Government's policy objectives, but we are at a loss to understand why they have been so comprehensively abandoned in most parts of the present consultation. We contrast this with the recent launch of the UK Cabinet Office 'Red Tape Challenge' designed to lead to reducing the regulatory burden on the water and marine sectors, outwith Scotland (Appendix 1).

History of Finfish Aquaculture

Scotland occupies a unique position in the development of finfish aquaculture, dating back more than 140 years. The pioneering work on salmon and trout breeding conducted by Sir James Maitland at the Howietoun Fishery, near Stirling, beginning in the 1870s, was of fundamental importance in wild fish conservation programmes and in establishing freshwater fish farming. The technology for marine salmon farming, developed by Unilever and Marine Harvest at Loch Ailort in the late 1960s, led to the first marine cultivation of salmon, in 1971. Together, these two developments created the foundation of modern trout and salmon farming; and they have provided a model for finfish cultivation which has been adopted throughout the world.

From small beginnings, Scottish salmon farming has grown over 40 years to be a strategically important national industry. Scotland is the largest producer of farmed Atlantic salmon in the EU, and the third globally behind Norway and Chile. In 2010, Scotland produced 154k tonnes of salmon, with an estimated farm gate value of £540m; salmon exports account for over one-third of the total value of Scotland's food exports.

Scotland will never be a lowest-cost salmon producer. By international standards, our farms are small and our heavy commitment to high standards of husbandry and management is costly. However, because of our unique environment and cultivation systems, Scotland has developed a global position as the leading premium-quality salmon producer. This market position has been painstakingly built and carefully safeguarded by Scottish salmon farmers through a strong customer focus, continuous technological innovation and adoption of industry-leading, independently audited quality assurance schemes and codes of good practice (6). The 'Scottish Farmed Salmon' brand has EU PGI status and is recognised all over the world. Anything that damages that brand is fundamentally damaging to the competitive position of the Scottish salmon industry and, because of the scale of the industry, to Scotland itself.

Crucial to the development of the salmon industry has been the willingness of salmon farmers to join together in self-funded, highly committed and collaborative industry associations, to develop, share and deploy best practice across the whole industry. The Scottish Salmon Producers Organisation (SSPO), which is legally constituted under EU Common Organisation of Markets (COM) legislation has for the past decade been the embodiment of that industry collaboration. SSPO members are responsible for approaching 98% of the farmed Atlantic salmon produced in Scotland.

Aquaculture, Food Security and Health

Globally, the importance of aquaculture has changed hugely over the past two decades. The human health benefits of fish consumption and of the omega-3 fatty acids found in oil-rich fish, such as salmon (7), have become well established. This has highlighted the strategic deficits in fish supply in the UK, EU and elsewhere. Increases in both world population and *per capita* consumption of fish, together with the declining wild-catch fisheries stocks, mean that aquaculture is the *only* way of meeting human health and food security needs in respect of fish supplies (8).

Reflecting these facts, EU policy is to increase aquaculture production throughout the Community, and it has called on Member States to reflect this in their national policies and plans (9). A House of Commons Environment, Food and Rural Affairs Committee Report, has recommended substantial increases in UK aquaculture production (10); and this policy has been accepted by the UK Government. A recent document (11) has set out proposals for a massive increase in English farmed fish and shellfish production from the present 10k tonnes to over 200k tonnes per annum - a figure well in excess of current equivalent Scottish production of 167 tonnes.

Scotland's Plans

The production of farmed salmon in Scotland grew year on year from 1980 until 2003 but there followed a 25% decline in production over 5 years. This reflected some company consolidation in the industry and the transfer of planning development for fish farms from the Crown Estate to Local Authorities. Recognising that development had been checked, the Scottish Government created a strategic framework for the sector (12) and specific initiatives to address problems in the planning system (13, 14).

Additionally, under the *Scotland Food and Drink Strategy* (15), the Scottish Government has actively supported export initiatives and trade missions which have successfully helped open up new markets. Scottish salmon farmers have appreciated these initiatives, and have responded by driving up their contribution to Scotland's food economy. This has brought results: since 2008, annual production has increased from 128K tonnes to 154K tonnes, and farm gate value has increased by approximately £100m; with commensurate increases in exports and employment in the industry.

Under the draft *Scottish National Marine Plan* (16), Scottish farmed finfish production (mainly salmon) is planned to increase at an average rate of 4-5% per annum until 2020. This is fully achievable, subject only to continued planned development, investors' confidence in the business environment in Scotland and the continued competitive position of the Scottish industry, which is founded on its premium brand.

The Scottish Government's policies on salmon farming over the past 4 years have brought capital investments of some £158m in new or expanded farms and associated facilities. Much of this has been won against strong competition from investment opportunities elsewhere. Sadly, the tone of, and many proposals in, the present consultation will put Scotland's future success under serious threat. They

create the impression of a highly bureaucratic and business-hostile environment for aquaculture, placing Scotland at a substantial disadvantage in comparison with international competitors and those in other parts of the UK.

There is now universal international recognition of the need to expand aquaculture production. Scotland is well placed to be an important contributor to that expansion. However, the growth and development of our aquaculture will not occur as of right. Our industry's future depends on our competitiveness - maintaining the premium position of our products and brands, a stable business environment, and continued investment are crucial to Scotland's success.

PART 2: INTRODUCTION TO CONSULTATION

Background to the Consultation (Pages 3-4)

Somewhat misleadingly, the background to the consultation gives the impression that the document is focused on the interaction between aquaculture and wild salmon fisheries (paragraph 2, page 3). Therefore, it is important to place these two sectors into a proper context from the outset.

As a consequence of the Planning Guidelines (paragraph 4, page 4), salmon farming and wild salmon fishing have a commonality of location only within the North West Coast of Scotland, well away from Scotland's main salmon fisheries. This is an area which accounts for some 10% of the total Scottish wild salmon catch (Appendix 2). Thus, mathematically, it would be virtually impossible for salmon farming to have any nationally important impact on wild salmon fisheries, simply because the main fisheries and farming areas do not coincide in their location.

Wild Atlantic salmon catches have reduced from a peak around 1970; but, this reduction has taken place internationally, throughout their range of habitats (Appendix 3); it has been evident in all countries bounding the Atlantic and in all areas of Scotland. These changes are known to be due to climate-related increases in the mortality of salmon in their ocean environment (17). In Scotland, the declines in salmon stocks in the region where salmon farming is located have corresponded closely to those in the regions where there is no salmon farming (Appendix 4).

As stated in the background (paragraph 1, page 3), both salmon farming and wild salmon fishing are economically important to the Scottish rural economy, but the figure of £650M quoted is misleading. Firstly, the figure combines the farm gate value for farmed salmon with the total economic impact value (through visitor spend, etc.) for the salmon fishing industry. Secondly, in juxtaposition with the paragraph that follows, there is an implied economic interaction between the two sectors.

In reality, for the mainland region where salmon farming and salmon angling are co-located, it can be estimated that farmed salmon have a farm gate value of roughly £400m, representing a total economic impact of probably around £1000m. Salmon fishing in the area can similarly be roughly estimated to have a likely economic impact of around £10-20m or 1-2% of that of salmon farming. Thus, in national economic terms, the two sectors are entirely complementary; the economic benefits of salmon farming are generated from the North West coast and those of salmon fishing mainly from the North, East and South West coasts.

PART 3: THE SUSTAINABLE DEVELOPMENT OF AQUACULTURE

The Sustainable Development of Aquaculture (Paragraphs 1-2)

The Scottish salmon farming industry has maintained a leading global position in aquaculture technology, fish management and husbandry for many years. Scottish salmon farming has been at the forefront of minimising, mitigating and managing any environmental impacts of fish farming technology. Progress and improvements in methodology will continue to be made, because that is the nature of a progressive and innovative industry. However, this section of text adopts a pejorative stance which is offensive, and wholly out-of-keeping with the high management standards of Scottish salmon farming and the culture of environmental responsibility that prevails within its companies.

Farm Management Agreements (Paragraphs 3-9)

The title of this section will create confusion because of an error in the juxtaposition of the words and the acronym: it mixes up Farm Management Areas (FMAs) and Farm Management Agreements (FMAg). It is therefore important to make the distinction between the two clear.

FMAs are the defined areas in which farmers farm; they are designated by boundaries that are shown on a geographic map. FMAg are agreements that are established between one or more farmers to coordinate their farming practice within a given FMA. Thus, for example, an FMAg will not be found in a single-operator FMA.

Scottish salmon farming has been the world leader in the development of Farm Management Areas (FMAs) and related Farm Management Agreements (FMAg). It devised and implemented systems beginning around 20 years ago and provided a management template that has been adopted in Canada and the USA, and more recently in Norway and Chile. It is important to note that in Scotland the development of FMAs and FMAg has been industry-led.

Since 2006, FMA maps have been included in the *Code of Good Practice for Scottish Finfish Aquaculture (CoGP)*; and since 2010, the maps are accessible electronically at www.thecodeofgoodpractice.co.uk.

As the consultation points out, the CoGP is voluntary, although sections of it are adopted as a basis for Fish Health Inspectors' (FHI) statutory farm assessments. However, all members of the SSPO are required by the rules of membership to adopt the CoGP and to undergo independent audits of its standards conducted by Food Certification International (an independent, UKAS accredited auditing body). The CoGP is thus 'statutory' under the framework of the COM regulations for SSPO members, who account for approaching 98% of Scottish salmon production. Additionally, there are a few small producers in Shetland (who are members of SSPO's affiliated body Shetland Aquaculture) who have also fully adopted the FMA approach. Thus, FMAs apply universally across Scotland.

The consultation correctly points out that it is theoretically possible for a farmer to farm without adopting the CoGP and without recognising the existence of an FMA or the need for an FMAg. *We agree and, to our knowledge, in recent years there has been one small independent farmer (within an existing FMA) who has demonstrated this theoretical problem can become a practical reality.*

In examining the ways that the problem might be addressed, the consultation document refers to three options:

1. It **suggests and rejects** the possibility of Ministers adopting the CoGP as a wholly statutory document. **We agree with that decision** on the basis that the CoGP is the industry's method for continuously driving up production standards. The CoGP goes well beyond current (or any envisaged) legislation; and it must be dynamic to respond to changing industry practice and technology. It would therefore be detrimental to the continued advancement of industry best practice if the CoGP were to become a Government-controlled regulatory document.
2. It **suggests and rejects** defining FMAs in statute. **We agree with that decision** on the basis that this was already fully consulted on and rejected by the Healthier Fish Working Group in 2009. It would be very inflexible and act to the detriment of best practice in the management of FMAs, taking all biosecurity and other management factors into account.
3. It proposes to make it a legal requirement that all finfish operators in the marine environment must have an FMAg, with penalties where that is not the case. We accept there is good intention behind this proposal and it was a recommendation from the Healthier Fish Working Group. However, we believe the proposal fails to consider the legal and other consequences of Marine Scotland becoming deeply embroiled in the minutiae of farming company business.

To explain the position in detail and propose an alternative, workable solution we have set out a detailed analysis and proposals in Appendix 5.

We would be happy to consider this with Marine Scotland, in order to develop a solution that is both feasible and practical, and which will avoid the serious problems attendant on their own proposal.

Question 1: Do you agree that we should, subject to safeguards, make it a legal requirement for marine finfish operators to participate in an appropriate Farm Management Agreement with sanctions for failure to do so, or to adhere to the terms of the agreement?

Answer:

1. *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.*

2. *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.*
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. Specifically, following from our discussion in Appendix 5 we believe:*
4. *Farm Management Statements (FMS, see Appendix 5) should be required on all farms that are not in FMAg, including those in single operator FMA: this might most simply be achieved by 'extension of powers' of the SSPO to non-member companies, according to the EU COM legislation.*
5. *FMS should be used by Marine Scotland in the statutory consultation on new farm development planning.*
6. *Any FMA that is multi-operator and does not have a formal FMAg in place, or clear route map to agreeing one, should be regarded as an area of increased risk, justifying a more intensive Marine Scotland regulatory inspection regime.*
7. *SSPO should be given 'extension of powers to non-members' approval under the provisions of the EU Common Organisation of Markets legislation, and require all marine fish producers in Scotland to conform to the FMA provisions of the CoGP.*

Appropriate Scale Farm Management Areas (Paragraphs 10-12)

This proposal was consulted on exhaustively, throughout the fish farming industry in 2009, as part of the programme of work of the Healthier Fish Working Group and was completely and comprehensively rejected. Nothing has changed to alter that position and the consultation document provides no evidence to support a change in approach. Our comments on the specific points, which are apparently regarded as justification for the resurrection of the proposal, are:

1. The argument of 'fire beaks' (paragraph 11, bullet point 1) was fully considered by the Healthier Fish Working Group in reaching its conclusions. Marine Scotland should realise that farming businesses are highly conscious of the need to maintain disease fire breaks and are knowledgeable and experienced in their establishment and maintenance in practice.
2. Scottish Salmon farming has pursued a leading role in fish health and welfare and some 60% of Scottish production takes place under the audited RSPCA Freedom Food Scheme. If there were 'serious or persistent disease or parasite issues' (paragraph 11, bullet point 2), the industry would wish quickly to address them. If they were ever unaddressed, there would be animal health and welfare issues which are entirely covered by the Animal Health and

Welfare Act (2006) and other disease control legislation. Marine Scotland has comprehensive powers to act and intervene under these Acts.

3. If evidence emerges of unmanageable connectivity between areas (paragraph 11, bullet point 3) there is no reason why the FMAg for an area should not be extended across adjacent FMA. This does not require action on the part of Marine Scotland and does not require it to be involved in restructuring FMA areas.
4. The statement that '*persistent sea lice problems providing a significant challenge to wild fish populations*' (paragraph 11, bullet point 4) is presented without any supporting evidence and is simply provocative. Sea lice from wild salmon represent a risk to farmed salmon throughout a large part of the year; but sea lice from farmed salmon represent a hazard (Appendix 6) to wild salmon only in the two spring months when there is outward migration of smolts. Salmon farmers invest hugely in managing farms so that this hazard is not manifest as an important risk (see Appendix 6).
5. The evidence from wild salmon catch statistics shows that salmon farming has no general impact on wild salmon populations (Appendix 4). Experimental studies in Ireland show that inshore sea lice impacts on outward migration of wild salmon are not an important contributory factor to their high level of marine mortality (18, 19).

Question 2: Do you agree that operators should have primary responsibility for determining the boundaries (and other management arrangements) for Farm Management Areas, but with Scottish Ministers having a fallback power to specify alternative areas?

Answer:

1. *No, 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. Many operators may regard this simply as justification for the funding of Marine Scotland's area-based theoretical modelling research. This raises concerns about conflicts of interest both within the context of this consultation and within the organisational structure of Marine Scotland.*

Management Measures and Dispute Resolution (Paragraphs 13-16)

This section of the consultation relates directly to our discussion of Farm Management Agreements (Appendix 5) and we therefore draw attention to that rather than repeating the same commentary here.

Our overall view is that the consultation document and its proposals have failed fully to identify and understand the issues. It also appears to be unsighted about the (very few) cases of dispute and the nature of the current arbitration law in Scotland.

To summarise briefly, where there is no binding FMAg (i.e. no contractual agreement between companies) the need is to facilitate the process of that agreement being achieved (see Appendix 5). Our understanding of the law is that it is not possible to arbitrate on an agreement where no agreement exists. (We believe the quoted example of disputes between wild salmon fishermen and netsmen is entirely different since they will take place within the legal framework of the Salmon Acts.)

Where a formal FMAg is in place, any disagreements or disputes between operators in a given FMA are open to arbitration and dispute resolution under the normal provisions of Scottish law, as it relates to the specific FMAg that applies. In practice, such cases are very few since most disagreements are resolved by negotiation.

Since arbitration and dispute resolution were first considered by SSPO in 2009 there has been a major development in Scottish law, The Arbitration (Scotland) Act 2010. Marine Scotland seems to be unaware of this legislation, which is of key importance. The new legislation sets out the legal framework for any type of arbitration in any sector of activity and there are now a number of specialist organisations in Scotland, such as the Chartered Institute of Arbiters and the Scottish Agricultural Arbiters and Valuers Association, which are offering arbitration and dispute resolution services within the framework of the legislation.

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

In our view the new legislation removes the need for the proposals contained in the consultation document.

Question 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?

Question 4: How do you think such a system might best be developed?

Answers:

- 1. No, we do not agree. We believe these areas have been addressed by The Arbitration (Scotland) Act 2010.*
- 2. 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. It would thus be a mistake for the Scottish Government to progress along that sort of route, and such a proposal would not have industry support.*

Unused Consents (Paragraphs 17-21)

REVIEW OF UNUSED CONSENTS

The textual commentary here suggests that Marine Scotland has failed fully to understand the underlying issues or the practical, legal, commercial and financial implications of their proposals. Additionally, there seems to be a failure to recognise that the position has been made unnecessarily complex by the failure of Marine Scotland to deliver on its programme of transferring existing fish farm sites into the planning system.

This transfer process, which began following the implementation of the *Town and Country Planning (Marine Fish Farming) (Scotland) Order 2007* has progressed slowly and wholly unsatisfactorily for nearly 5 years. As a result, almost two thirds of finfish farm sites in Scotland remain in an uncertain position in regard to their planning status. This causes substantial business planning issues for the owners of the sites, and potentially has serious economic implications because of the value of the sites concerned. **We will make no comment on shellfish sites, other than to say that many of them are also 'in limbo' with respect to their planning status.**

As the consultation indicates, the operation of a finfish farm requires a series of consents, which must be held in combination for the farm to be used. The requirements are complicated by the fact that existing sites may have authorisation under a Crown Estate approval or a Shetland or Orkney Works Licence approval, whilst for sites approved since 2007, Crown Estate approval and Works Licence approval have been replaced by the need to obtain planning permission under the Town and Country Planning Acts.

Under the Town and Country Planning Acts arrangements the following apply. Up until 1st August 2009, if a planning permission had not been implemented, i.e. development not commenced, within 5 years, the planning permission would lapse. From 1st August 2009 the period within which a planning permission had to be implemented, i.e. development commenced, was reduced to 3 years. If planning permission lapses, then no permission exists on the site and any prospective developer would have to apply for planning permission again. There are also powers within the Town and Country Planning Acts for Ministers to revoke unimplemented planning permissions.

Planning permission to farm at a site is 'permanent' so long as the development has commenced in the context of a valid planning permission and the development is carried out entirely in accordance with the terms of the planning permission. Planning permissions granted by Ministers to existing fish farm developments through the Audit and Review process are permanent because the developments have been implemented. SSPO is not aware of any member company not intending to implement developments granted planning permission by local authorities since 2007.

Thus, concern over unused consents can only be an issue where sites have been approved under the previous licensing regime. These sites would require:

- a Crown Estate sea-bed lease;
- a 'planning licence' either in the form of a Crown Estate approval (attached to the sea bed lease) or a Works Licence; and
- a SEPA discharge consent under the CAR regulations for a specified permitted biomass.

Therefore, the consultation document is posing the question of whether there are any sites for which there is an incomplete set of these consents. This we believe is readily ascertained by interrogating the databases held by the various regulatory agencies. Our own evaluation is that there is a small number of sites for which CAR consents exist, but for which other leases or consents have been allowed to lapse (for later reference we have termed these 'orphaned CAR consents').

Quite separate from this, we believe that there may be some 26 sites where the ownership status of the sites is unclear, possibly reflecting individuals or small businesses that have left the industry; it also cannot be ruled out that these legacy sites are being held for their inherent value by private individuals. However, there is some uncertainty because we have discovered that in some cases the SEPA database (one of the set of databases held by government agencies) has not recorded the transfer of ownership from one owner to another.

Finally, of approximately 395 sites that are used by active farming companies, there are approximately 26% which are inactive at any one time. These will be sites that have a full set of consents and are being used either as part of a farming-fallowing cycle, as strategic sites for development or emergency use, or in some other way as a basis for strategic development. These sites should not be considered as 'unused consent' in the sense that Marine Scotland has used the term.

Question 5: Do you agree we ought to review the question of unused consents?

Answer:

1. *No, we do not. It is not necessary to undertake a review; the requirement is for action. Emphasis should be on completing the Audit and Review process as a matter of utmost urgency. The issues to be addressed and the information needed to support action are already available.*
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). It was chaired by John O'Brien of Marine Scotland.*

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 by the continued problems of the Audit and Review process.

4. *Almost all SSPO members are currently engaged in finding new sites and increasing activity and investment to secure further market premium for Scottish salmon. If existing sites were available and viable they would be being used. Developing a new site is a costly and time-consuming process. It would be more efficient to use unused consents if they were available, but they are not for the reasons that have been outlined.*

POWERS TO PROMOTE USE OR RELINQUISHMENT OF CONSENTS

As indicated in the consultation, because there are a number of CAR consents within a particular bay, the Locational Guidelines calculations may block the consideration of any new development. The assumption made in the consultation is that release of any CAR consent, either 'orphaned' consent or inactive site consent, will allow new development or expansion of an existing farm. However, this is simplistic and fails properly to understand the position.

To explain: the CAR consent is based on the approved discharge of materials at a specific farm site, i.e. a point source, whereas the Locational Guidelines are based on an area model, i.e. the cumulative discharge from all CAR consents within a given bay. Thus, the issue in the juxtaposition of the two is that the Locational Guidelines calculations assume that all CAR consents in an area are fully used at all times; in effect that all farms that could be active are being farmed to the maximum CAR consent. The assumption being made by the consultation is that 'release' of CAR consent, either through its removal from 'orphaned' consent or from inactive sites, will allow further farm development. However, that will only be the case:

- where there is a suitable location for newly-planned site of viable size or where an existing site has scope to expand its CAR consent;
- where, in addition to the above, there are no fish health or husbandry reasons for a farmer wishing to constrain the stocking in a bay at a level below the permitted total cumulative CAR biomass consent for all sites. There are in practice FMAs where farming companies hold more consents than they need for their production in any one year but the total consent tonnage held is above the level they would farm in the FMA for husbandry and biosecurity reasons. In these circumstances the sites being farmed may move from year to year, according to a fallowing cycle but the total production will always be less than the theoretical consented production for the area. In some areas, where the cultivation conditions allow, mussel farming is being introduced as part of the fallowing cycle, heralding the development of multi-trophic aquaculture.

In practice, both these factors may compromise the consultation's simplistic assumption that release of CAR consent can be equated to new development opportunities.

As we have pointed out above, inactive sites cannot be equated to sites that are not needed. There are wholly legitimate reasons for consented sites being inactive at any given time, for example:

- to create buffer zones or fire breaks, as part of management area arrangements to assist in fish health management;
- to facilitate fallowing and sustainable use of available capacity, with operators utilising different sites as part of a rotational production cycle;
- to allow time for the acquisition of other consents necessary, in addition to those already acquired, to develop and operate sites of the required scale to be commercially viable and competitive;
- to use sites as a commercial asset to underpin the further development of the company;
- to create opportunities for the future development of multi-trophic farming, with the integrated operation of finfish and shellfish culture;
- to allow an operator to make a planned and structured exit from the industry whilst releasing business assets for other purposes, including pensions.

Thus, whilst we do not rule out the possibility that there may be opportunities to release or restructure CAR consents to facilitate further development, that process will not be achieved by the blunt instrument approaches that Marine Scotland appears to be considering.

Question 6: What do you consider are suitable options to promote use or relinquishment of unused consents?

Answer:

1. *We believe that there may be 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, Marine Scotland appears not to understand that 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 reflect 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 or consents. In the unlikely event that a planning permission granted under the Town and Country Planning Acts is not implemented, it lapses after three years. Any prospective developer would have to then apply for planning permission again.*
 - *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 and possibly sites without CAR consents that need to be addressed. However, we believe that this is an administrative matter rather than a matter for new regulation.*
 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. Whilst, by and large, the industry understands the situation, it is clearly not generally transparent and potentially creates confusion in policy making and planning.*

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

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

Answers:

1. *No. Ministers' powers under the Town and Country Planning Acts are already well-defined. Beyond that 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.*
2. *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.*
3. *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.*
4. *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 and Review process. We would therefore urge Ministers to direct their attention to addressing this issue.*
5. *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, Reporting and Publication of Data (Paragraphs 22-33)

These two sections of the consultation appear to have been written without taking account of the animal health and welfare laws of Scotland, or of the different roles and responsibilities of farmers, veterinarians and Marine Scotland officers (who are mainly technically-qualified non-veterinarians).

Animal health and welfare legislation in Scotland is in principle the same for all vertebrate species, including pigs, poultry, livestock, and fish; in this regard, aquaculture is best regarded as a specialist section of the livestock industry. In understanding the consequent legal position, there are three main points to consider. Firstly, *'a person who owns an animal is always to be regarded as being the person who is responsible for it'* and that *being in charge of an animal on a permanent or*

temporary basis carries legal responsibilities of care and control (see Section 18, *Animal Health and Welfare (Scotland) Act 2006*). Thus, the person who is legally responsible for the health and welfare of farmed fish, for their management, records and treatments is the fish farmer.

Secondly, in discharging their duties and responsibilities fish farmers are assisted and supported by the professional advice, diagnostic skills and treatment practices of qualified fish veterinary surgeons, who also must be registered with the Royal College of Veterinary Surgeons (RCVS) to practice in the UK. The duties and responsibilities of veterinary surgeons are specified under statute (*Veterinary Surgeons Act 1966*) and are bound by the professional codes and disciplinary procedures of the RCVS. These include a professional requirement to report any notifiable diseases to the appropriate state authorities, and likewise to report animal welfare offences to the responsible authorities.

Thirdly, Fish Health Inspectors (FHI), who are part of the Marine Scotland Fish Health Inspectorate are employed by Scottish Ministers to act as inspectors under certain limited provisions of the fish health regulations, including:

- The Aquaculture and Fisheries (Scotland) Act 2007
- The Fish Health (Scotland) Regulations 2009
- The Fish Farming Businesses (Record Keeping) (Scotland) Order 2008
- The Animal Health and Animal Products (Import and Export) Regulations 2009; and
- The Sea Fisheries (Shellfish) Act 1967.

Their main function is as administrative regulators, not as animal health and welfare specialists. Their main responsibilities are to inspect farms to provide regulatory assurance that Scottish fish farming conforms to international regulations with respect to disease and to the requirements of Scottish law. Thus, by way of illustration, Section 1 of *The Aquaculture and Fisheries (Scotland) Act 2007* stipulates that Scottish Ministers may make an order for the purpose of obtaining information in relation to the prevention, control and reduction of parasites on fish farms and shellfish farms and escapes of fish. Section 3 of the same Act appoints the Fish Health Inspectors to carry out inspections of fish farms to ensure that the required records are kept.

The detailed records that Ministers actually require fish farmers to record and retain are set out in Schedule 1 and Schedule 2 of *The Fish Farming Businesses (Record Keeping) (Scotland) Order 2008* and consist of 61 separate elements of information (see Appendix 7). These records must be available for inspection by FHI at any time.

Fish farmers accepted, with great reluctance, the imposition of statutory bureaucracy that followed from *The Aquaculture and Fisheries (Scotland) Act 2007*, largely because farms were undertaking much of the recording under the CoGP. However, the proposals now being brought forward are that farm management records which are commercially confidential both to the farms and, in relation to veterinary medicinal products, to the pharmaceutical companies that supply those farms, must

by statute be reported to Marine Scotland for vaguely identified 'research purposes'. These proposals represent a wholly unprecedented intervention into the operation of corporate businesses. They go well beyond anything that was recommended by the Healthier Fish Working Group or is in any way acceptable to the fish farming industry. They risk placing the Scottish Government in the role of shadow Director of commercial companies in a way that is unprecedented in any other sector of the agriculture and food industries. Reflecting our concerns in this area, we have made further comments and recommendations in PART 8 of this response.

Collection and Publication of Sea Lice data (Paragraphs 22 – 29)

We are surprised and greatly disappointed by Marine Scotland's comments on the position in relation to the collection and publication of sea lice data, believing as we do that this wholly fails to identify the problem that it is seeking to resolve, or to recognise and consider the details of the arrangements that are currently in place.

There is no precedent for measures involving the collection and publication of parasite data under statute in any other area of food animal production in Scotland or elsewhere in the UK. It is wholly unacceptable that part of the justification for this proposal is that "*other salmon farming countries do this*" when, the most perfunctory research will show the systems in place elsewhere are already inferior to those in Scotland. Above all, the failure of the consultation document to consider and set out what the Scottish salmon industry currently does is inexcusable; whether intended or not, it represents an active process of disinformation for anyone responding to the consultation.

Therefore for the sake of factual correctness, we should make clear that:

1. The recording of sea lice on Scottish farms is (by statute) more frequent and more detailed than exists in any other country.
2. All sea lice records are available at all times to the statutory FHI (and are routinely scrutinised by farmers and farm vets as part of the farms veterinary health plan and monitoring procedures).
3. Since 2009, the SSPO has implemented the recommendations of the Healthier Fish Working Group and developed an industry wide Fish Health Database through which farming companies within FMAs can share management information, including sea lice information.
4. Since the first quarter 2011, SSPO has published quarterly reports of information extracted from the Fish Health Database on its website: these are available to farmers and the public. From April 2012, it will publish annually a Scottish Salmon Industry Report which will include a complete summary of the management systems in place in the Scottish salmon farming industry. This will include the annual sea lice statistics along with other information. We anticipate that the scope of this report will subsequently be extended in response to the Common Fisheries Policy reforms for Producer Organisations, which will extend their role in environmental matters.

5. Large areas of Scotland are covered by Area Management Agreements (AMA) designed to provide for information sharing between fish farmers and fisheries managers, and in non-AMA areas industry has sought to establish corresponding local groups with an equivalent function. Suffice to say, that fish farmers are prepared to be pro-active in information sharing with wild fisheries managers within normal cooperative information sharing agreements.

All practitioners in the salmon farming industry are well aware of the nature of the issue surrounding sea lice and, over many years, have implemented important, practically focused initiatives to deal with the challenges to fish health and welfare posed by these naturally occurring parasites. We believe that Scottish arrangements for the collection, inspection and publication of sea lice data through the SSPO, and for professional sharing of data both between farmers and with local fisheries managers, is up to and beyond anything that exists in another country.

We cannot agree that "the question of access to sea lice data was perhaps the most contentious faced by the Healthier Fish Working Group". In fact, the HFWG (on which wild salmon angling industry interests were fully represented) dealt with this matter in an informed, erudite and proactive manner. Its recommendations relating to the industry health database, with public reporting of comprehensive and useful information on sea lice management and control by the farmers, alongside statutory reporting of treatment failures were widely consulted upon and accepted across the piece.

Given the fact that the wild salmon angling industry was represented on the HFWG, and that the Group's recommendations on this matter were generated without negative comment, it is disappointing that Scottish Government, through Marine Scotland, now feels it necessary to resurrect this issue and propose measures well beyond those recommended by an multi-stakeholder group with enormous expertise appointed by Ministers and convened specifically to address this and related matters.

The proposal fails to take account of the important work on the gathering, analysis and dissemination of information currently underway within the farming industry under the auspices of the SSPO's Health Database. Industry has invested heavily in this initiative and members of the SSPO have given their commitment to work together in exchanging real-time information within designated FMAs and beyond in a way that is now creating significant and wide ranging benefits in terms of sea lice management and control.

While other salmon farming countries may have data collection systems of one sort or another, none of these are focused on improving the ability to manage and control sea lice and, in this regard, the SSPO's Health Database is world leading and quite unique. There is a strong sense within the Scottish salmon farming community that other salmon farming countries will, in time, embrace the Scottish industry model as an important contribution to problem solving.

In seeking to further regulate for sea lice beyond what has been agreed and implemented already, Marine Scotland is already exceeding any obligations and responsibilities under EU law. Moreover, there is no doubt that the sea lice management systems (including regulatory involvement) that have been introduced by the Scottish salmon industry have added significantly to its costs, arguably to its competitive disadvantage. However, Scottish salmon farmers are committed to striving to maintain high health status in their fish and to minimising any potential risk to wild salmon. It is thus sad and regrettable that their efforts and achievements are not recognised and acknowledged by the government department that has been established to promote the development of the sector.

Question 9: What, in your view, is the most appropriate approach to be taken to the collection and publication of sea lice data?

Answer:

- 1. Scottish Government and Marine Scotland should acknowledge the Scottish salmon farming industry's significant investment in implementing the recommendations of the Healthier Fish Working Group and developing the SSPO Health Database; and should recognise that this must be the principle vehicle used to gather, analyse and disseminate information on sea lice management and control.*
- 2. Quarterly reports from this database have been published on the SSPO website throughout 2011. From April 2012, SSPO will publish, on an annual basis, a Scottish Salmon Industry Report which will include a complete summary of the management systems in place in the Scottish salmon farming, including the annual sea lice statistics along with other information. We anticipate that the scope of this report will subsequently be extended in response to the Common Fisheries Policy reforms for Producer Organisations, which will extend their role in environmental matters.*
- 3. We would warmly welcome the Scottish Government's re-engagement in a process similar to 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 (Paragraphs 30 – 33)

We refer to the deliberations of the Healthier Fish Working Group and to its recommendations. This multi-stakeholder Group comprised fish health experts from industry, representatives of Marine Scotland Science and the Fish Health Inspectorate, the wild salmon angling industry and others, with a distinguished and learned independent Chair. The Group's broad agenda was generated by Marine Scotland officials and the Group conducted its business in an open, transparent and constructive manner.

The issues addressed in meetings were widely consulted upon and we are astonished that Scottish Government should now be considering making further

proposals which go far beyond the Group's recommendations. We question the rationale and motives for this and believe it will serve no useful purpose beyond the *status quo*.

The attempt to justify the proposals on the basis of *EU Directive 2006/88/EC* and the *Aquatic Animal Health (Scotland) Regulations 2009 (paragraph 30)* is risible and we reject it completely. We have made further comment on this in PART 8 of our response.

Question 10: Do you agree that aquaculture businesses ought to be required to provide additional information on fish mortality, movements, disease, treatments and production as set out above?

Answer:

1. *No, 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.*
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, and as yet has failed to revise its procedures to address shortcomings that have already been identified by industry.*

Question 11: What are your views on the timing and frequency of submission of such data?

Answer:

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

Biomass Control (Paragraphs 34-36)

This section of the consultation paper effectively describes the "*Limiting Factor Approach*" already employed by SEPA. It is naive and castigatory in its tone, focusing, as it does, on penalising farming companies through reducing consented biomass on established and legally compliant farm sites. Furthermore, it completely ignores sea lice management and control strategies which do not rely on the use of therapeutic treatments.

We are keen to understand the sort of evidence which would provide support for such a proposal. We are concerned that, once again, it seeks to move control over the management of fish health and welfare from fish farmers and their veterinary surgeons to non-veterinarians with no farm-management experience, a reliance on theory and unvalidated computer models, and no legal or financial liability for the consequences of their decisions.

The proposal's reference to Marine Scotland requiring SEPA to reduce rather than vary biomass on a temporary or permanent basis, exposes Marine Scotland's generally unconstructive attitude towards fish farm management and failure to adopt a problem solving approach to challenges. Underpinning the proposal lies an inflexible adherence to the concept of short-term and generally local EQS compliance, even where there is no detectable or demonstrable effect on the environment, alongside a failure to recognise the existence of non-therapeutic intervention.

We accept the principle of EQS compliance, but argue that there are opportunities in many places to allow the use of control measures in much more innovative ways. These would have no measurable environmental impact, but allow treatments to be applied more effectively and efficiently with sea lice than is possible at the moment. Industry would have warmly welcomed constructive proposals from Marine Scotland and SEPA which addressed the shortcomings in the current regulatory system as it pertains to sea lice therapeutants. Regrettably, this proposal represents yet another missed opportunity.

In regulatory terms, the position is clear. If SEPA is concerned about environmental impacts of any treatments, it has full powers under environmental legislation to require fish farms to modify their control regimes. Likewise, if there are any health and animal welfare issues to be considered, these can be fully addressed by Marine Scotland under the animal health and welfare regulations. There is no requirement for additional powers.

Question 12: Do you agree that Scottish Ministers should have powers to require SEPA to reduce biomass consents where it appears to them necessary and appropriate - for example to address concerns about fish health and welfare?

Answer:

- 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 represents a missed 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.*

Wellboats (Paragraphs 37 – 39)

We acknowledge the importance of removing hazards where possible and minimising risks in the operation of wellboats. The Scottish industry is fully engaged with the companies operating wellboats in Scottish waters and our member companies are currently in dialogue both with each other and with their wellboat service suppliers on the issues identified in paragraph 38 of the consultation paper.

Remote monitoring of wellboat positioning and certain operational activities (such as valve status) are already possible (see <http://www.marinetraffic.com/ais/>) and could relatively easily be implemented across all wellboats operating in Scotland. This approach can provide publicly accessible information which will meet the monitoring needs both of the industry and of Marine Scotland and will be driven by customer demands on the wellboat operators. Likewise, enhancements in wellboat design in areas like discharge and filtration systems are being driven by market forces, both in terms of new vessel design and retro-fitting systems to existing vessels.

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

Answer:

- 1. As a general principle we are opposed to the creation of open-ended enabling legislation without there being any clear view of its ultimate purpose or application. In the present case the position is additionally complicated by the fact that advances in wellboat operation and design are being driven by market demands from fish farm operators. In these circumstances there is a significant risk that some imposed legislative requirement might impede the advances in technology rather than assist them.*
- 2. The capability to track wellboats via GPS and obtain information on important matters such as valve status is already publicly available and is already a focus of across-industry consideration. We consider this area will be addressed through the normal process of farm operator demand on the wellboat sector.*
- 3. We would not rule out the longer term need to influence wellboat design specifications by changes in national or international engineering standards. To this end, we believe a technical working group on wellboat design may become helpful in the future. If future legislation on design, including filtration of discharges, is required, we believe it would be better addressed separately from this present Consultation.*

Processing Facilities (Paragraphs 40 – 41)

It is our understanding that all processing facilities must have appropriate effluent treatment equipment in place, especially where they are located in areas where discharges from the facility might constitute a hazard for fish in the water. Given that there are existing controls, we are unsure of the point of introducing additional controls. If there are any identifiable problems (and we are not sure that there are), the first step to a solution would clearly be to ensure that existing control measures were being operated effectively and properly regulated. The consultation paper fails to identify the nature or scale of the problem(s) to be resolved by the introduction of additional powers and this makes any informed response impossible. We have made further reference to this in PART 8.

Question 14: Do you think Scottish Ministers should be given additional powers to place controls on processing plants?

Answer:

1. *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.*
2. *Given the mass of regulation that already relates to processing facilities we would recommend that a regulatory mapping exercise should be undertaken specifically to pinpoint where Marine Scotland considers there is any gap in the regulations.*
3. *As a matter of principle, we would strongly recommend that any regulatory change that might be considered is made in the context of processing plants of all types, including abattoirs and other food premises, rather than developing a piecemeal approach relating only to fish processing.*

Seaweed Cultivation (Paragraphs 42-44)

There is little doubt that seaweed cultivation will develop in Scotland and a substantial part of that development will be linked to integrated multi-trophic aquaculture, where finfish farms, shellfish farms and seaweed farms are established on an integrated basis. ***We therefore concur with the conclusion that this is a developing area of technology and that a planning and regulatory framework should be introduced to support its development.***

Because of decisions taken by the Scottish Government and approved by the Scottish Parliament in the *Marine (Scotland) Act 2010*, planning development for finfish and shellfish farms is undertaken by the Local Authorities under the provisions of the *Town and Country Planning (Scotland) Act 1997* and the *Town and Country Planning (Fish farming) (Scotland) Regulations 2007*. Thus, since seaweed farms will be developments in association with other branches of marine aquaculture, either planning approval should be located with the Local Authorities and regulated under

the planning acts, or all forms of aquaculture should be brought together under the Marine Licensing Arrangements set out in the *Marine (Scotland) Act 2010*.

During the parliamentary consideration of the *Marine (Scotland) Bill 2010*, SSPO unsuccessfully campaigned for all forms of aquaculture to be dealt with through the Marine Licensing arrangements. However, since that time there has been a huge investment of industry effort in working with Local Authorities to develop their role in aquaculture development. We are now of the view that the arguments for finfish farming and shellfish farming planning being brought under marine licensing, rather than being left with Local Authorities, are finely balanced. Additionally, some existing seaweed farms are shore-based and their planning approval by the Local Authority may be more appropriate.

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

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

Question 17: If not, what alternative arrangements do you suggest?

Answers:

1. Yes, we agree that there should be a single regulatory framework for all seaweed farms.
2. 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, unless responsibility for all aquaculture planning reverted to the marine licensing system.

Commercially Damaging Species (Paragraphs 45-47)

Whilst the specific issues that related to *Mytilus trossulus* are well made and important, this section of the consultation is so poorly developed as to cause concern. Stakeholders will have an understandable unease and reluctance to provide Scottish Ministers with almost open-ended enabling powers to make significant interventions and take unrestricted action across a wide range of unspecified and ill-defined circumstances.

We would therefore wish to see these proposals much more fully developed, including the introduction of democratic checks and balances on process, before we could provide them with our unqualified support.

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

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.*

PART 4: PROTECTION OF SHELLFISH GROWING WATERS

Protection of Shellfish Growing Waters (Paragraphs 48-51)

A number of SSPO members already have interests and involvements in mussel production and/or processing. We believe that pattern will become more established, both in regard to free-standing mussel farms and also through the development of multi-trophic integrated salmon and shellfish aquaculture.

The Draft National Marine Plan for Scotland sets out an objective to increase shellfish production by 100% by 2020, albeit from a relatively modest base. We wholly support that objective and the appropriate provisions to facilitate its achievement.

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

Answer:

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

PART 5: FISH FARMING AND WILD SALMONID INTERACTIONS

Introduction (Paragraph 52)

Fish farming presents identifiable hazards (Appendix 6) to wild fish, through potential effects on localised sea lice populations and potential cross-breeding between escaped farmed fish and wild fish. However, the practices of salmon farming that have been adopted in Scotland have been designed to minimise those hazards being translated into significant risks. The evidence from catch statistics (Appendix 4) indicates that salmon farming in Scotland has had no significant impact on changing wild fish populations across the region where salmon farms are located compared with that where there is no farming. Thus, whilst it is a statement of fact that sea lice and fish escapes remain contentious for anti-farming lobby organisations, it is misleading to describe them as 'critical'. The evidence indicates that in Scotland they are not.

That said, salmon farmers are wholly committed to continuous improvement, both in minimising fish escapes and in avoiding any potential impact of sea lice on farmed salmon or wild fish. This is consistent not only with farmers' commitment to high fish health and welfare standards; it is a reflection of their wider interest in wild fish conservation and investment in excellence in environmental management.

Sea lice (Paragraphs 53 – 57)

Our earlier comments on 'Collection and publication of sea lice data' are relevant to this section of the consultation.

The consultation proposes that, in relation to sea lice treatment thresholds, "Scottish Ministers should have the power to determine a lower threshold above which remedial action needs to be taken". This proposal is based around the argument that there is some sort of scientifically defined cause and effect relationship between numbers of adult female *Lepeophtheirus salmonis* on farmed fish and the risk to wild fish.

However, robust scientific evidence for such a relationship does not exist and there is significant evidence to the contrary. Sea lice are natural parasites, which are found on wild salmon and sea trout populations both within and outwith salmon farming areas (20). Moreover, there are well documented examples in Marine Scotland's own research and other studies of infestations of sea lice on wild fish in areas where sea lice levels on local farms are very low (21).

Thus, to assume a simple cause and effect relationship between some minor change in the treatment trigger levels for sea lice on fish farms and the sea lice levels on wild salmon or sea trout is scientifically naïve. Moreover, it ignores the fact that even if any such relationship was established, it would be highly site specific; would vary between salmon and sea trout (which have very different migration strategies); would be limited to a short period, corresponding to the outward migration of smolts; and would need to be risk-assessed within the context of the total risks from all factors that applied in any given location.

With this in mind, we are deeply interested to know how Marine Scotland would, in practice, go about applying the further powers proposed in the consultation. This could only be through a full risk assessment, but the consultation paper completely fails to provide the detail necessary to allow us to comment constructively on this or to take a position. In our experience, Marine Scotland's practical experience of risk assessment techniques is very rudimentary, and much less reliable as a basis for decision making than the management expertise of fish farmers who have detailed knowledge and experience of local conditions.

This topic has been the subject of consultation by Scottish Government before. It formed part of the consultation leading to the *Aquaculture and Fisheries (Scotland) Act 2007*, and was part of the debate within the agenda of the Healthier Fish Working Group in 2009. It is totally unacceptable for Marine Scotland to dismiss out of hand the many well established arguments 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)*". The risks of developing increased resistance are significant and important.

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.

Question 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?

Answer:

We do not. We believe the proposal will increase problems of sea lice management.

Containment and Escapes (Paragraphs 58 – 60) and Establishing a Scottish Technical Standard for fish farm equipment (Paragraphs 61 – 65)

Containing fish in freshwater tanks and freshwater and sea pens is fundamental to efficient farming. Every fish that is lost reduces the profitability of the business concerned. The industry has a complete commitment to full containment and thus supports all initiatives which help reduce the risk of any breakdown in containment. Industry is also aware of the extremely low levels of putative escaped farmed fish consistently recorded each year in national catch statistics (22). Despite allegations from wild fish interests that there may be 'hidden' losses of fish from freshwater holding facilities, there is no evidence of this or of any significant impact arising as a consequence of the low numbers of farmed fish appearing in the wild in Scottish waters.

The scientific evidence clearly shows that wild Atlantic salmon is under threat throughout its natural range as a consequence of the effects of global climate change on the deep oceanic environment (Appendix 3). Some twenty years ago industry agreed that, while wild salmon stocks are in a parlous state, with numbers declining and the performance of spring salmon and grilse being poor, it would adopt science-based strategies to ensure that potential risks from fish farming are kept to a minimum. We do not accept that salmon farming has driven the decline in wild salmon and our position is strongly supported by the scientific evidence. The measures which we implement in relation to improved containment must, therefore, be in proportion to scientifically well-founded assessments of risks, rather than the speculations of those who seek to prevent the, now essential, development of marine fish farming.

On the matter of the establishment of a Scottish Technical Standard, industry has been generally supportive, believing as it does that high minimum standards are a common feature of all aspects of fish farming operations in Scotland. We remain aware that there are still gaps in knowledge and we are wholly supportive of research which will help further improve fish farming technology.

Question 21: Do you agree that 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?

Answer:

Broadly, we agree that fish farming equipment should meet a minimum standard of design and manufacture. However, 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. A period of transition, e.g. 10 years, to any new standard would be necessary. 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.

Tracing escapes (Paragraphs 66 – 69)

Chemical analyses are currently available, which do not specifically involve the use of genetic markers, which give a reasonable probability of determining the locational origin of a given fish (23, for example). Such combined methodology is more useful as a forensic tool than highly specialised and expensive genetic analysis. There is a perception that the proposal to develop genetic tracing methods has been made to justify a highly expensive research programme initiated by Marine Scotland; we believe the proposal cannot be justified when alternative techniques are available.

We are also concerned by the inconsistencies in the consultation: paragraph 68 describes the creation of powers to allow Inspectors to take samples for "*the purposes of future investigations and tracing*", yet paragraph 69 refers specifically to the taking of samples on a "*targeted basis*". Furthermore, paragraph 69 states that "*it is not the intention to undertake universal sampling...*". This begs a question about

the basis on which targeted samples would be taken. The implication is that Inspectors would be expected to speculate about farms that might be most likely to lose fish and take samples in anticipation of analyses being required. The intention is unclear, as is the scientific basis on which targeted sampling would take place.

Question 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?

Answer:

- 1. No, 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. Industry efforts here are focused on better technology and standard operating procedures based on training and awareness. We believe that is a much more effective way of driving continuous improvement.*
- 3. The proposal appears to be designed specifically to support a research programme conceived by Marine Scotland 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.*

PART 6: SALMON AND FRESHWATER FISHERIES MANAGEMENT

Management (Paragraphs 70-106)

Salmon farmers have a significant interest in the management and conservation of wild fisheries. Aquaculture and fisheries management share common historical roots, and there is a long history of stocking Scottish rivers with hatchery and farm-reared salmon and trout, going back to the 1870s. Indeed, during the development of salmon farming, leases for freshwater smolt sites often contained clauses requiring farmers to supply the estate with farmed fish to stock salmon rivers, a practice that continued at least until the mid-1980s. In its modern version, this stocking is more selective in choosing broodstock from the natal river. However, several SSPO member companies still provide expertise, equipment and financial or other support to salmon fisheries managers, directly supporting fisheries management and salmon conservation. Industry supported conservation projects on the River Carron and River Lochy are notable west coast successes.

Scottish salmon farmers have a major ethical and financial commitment to safeguarding environmental habitats and wild species, including wild salmon. Additionally, the management of fisheries is important because wild fish present significant parasite and disease risks to farmed stock, and this risk is increased by unregulated or careless actions on the part of fisheries managers or anglers.

The SSPO has no formal policy position either for or against salmon fishing as an activity; we recognise its economic contribution in salmon farming areas and many people who work in fish farming are keen anglers. We do, however, have views on the management of wild salmon fisheries, and on the operation of angling businesses which impact on our interests.

Modernising the Operation of District Salmon Fisheries Boards (Paragraphs 76-80)

To all but those who are most closely involved in their operation, Scotland's system of District Salmon Fisheries Boards (DSFBs) is an unfathomable anachronism. Scotland is a country manifestly conscious of its rich natural resources and responsibilities for protecting and conserving wildlife. It therefore appears almost inconceivable that the Scottish Government should hand conservation management of its iconic and internationally important wild salmon to associations of fishery proprietors whose commercial interests are vested in wild salmon exploitation. It hardly needs saying that this arrangement raises questions about its inherent conflicts of interest.

Additionally, reflecting on the historical nature of the DSFBs, the *Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003* gives the DSFBs significant powers but virtually no responsibilities. Distinct from all other bodies with statutory recognition and para-fiscal powers for collecting money, DSFBs are regarded as private organisations. As a consequence, Scottish Ministers can request

information from DSFBs on fish catches, but there is no systematic requirement to report to Ministers on the conservation of the fisheries, or related matters. Under EU law and international treaties, Ministers have binding commitments for significant aspects of salmon conservation over which they have no control in practice. This arrangement seems curious at best; and we are surprised that the consultation has not proposed a wider modernisation of the DSFB system, better to reflect the Ministers' responsibilities.

We are unclear about the suggestion (paragraph 77) that the *Ethical Standards in Public Life etc. (Scotland) Act 2000* should be applied to the DSFBs, as if they were public bodies (which they are not so far as we are aware). We see no argument against the proposal for DSFBs to be more open, fair and transparent. However, we do not consider that is a substitute for a coherent national programme of salmon fisheries conservation; in Scotland such a plan is notable by its absence

As we view the situation, the management of Scotland's salmon fisheries (and freshwater fisheries generally), has almost no national-level regulation, inspection and government oversight; even the basic information and monitoring of the state of the fisheries resources is lacking. This appears to fall well short of best practice, and is difficult to reconcile with the Scottish Government's responsibilities for conserving wild salmon.

Question 23: Do you agree that we should introduce a specific duty on Boards to act fairly and transparently?

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

Question 25: If yes, do you think such a Code of Good Practice should be statutory or non-statutory?

Answers:

1. *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.*
2. *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.*
3. *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.*

Enhancing the Management of Salmon Fisheries (Paragraphs 81-85)

SUSTAINABLE SALMON FISHERIES

We accept that exploitation of wild salmon by game fishing has social and cultural supporters: some are engaged in salmon farming. We also recognise that game fishing can provide local economic benefits, help to maintain rural community viability and diversify the economy alongside fish farming, agriculture and forestry.

However, salmon farming has removed the need to catch wild salmon as a source of fish for human consumption and, as a result, has made an enormous contribution to wild salmon conservation. Since there is no need for the exploitation of wild stocks, there is now no reason why wild salmon conservation in Scotland could not adopt a prohibition of fishing in any salmon fishery which is at or below its sustainable conservation limit. We would regard that as the only management approach that has long-term sustainability.

It is stated (paragraph 85) that Marine Scotland seeks to promote 'sustainable rod fisheries' alongside salmon netting. However, it appears to feel that it might need to further regulate netting, because fishing lobbyists claim that netting exploits mixed stock fisheries and thus is less sustainable than rod fishing. However, this analysis is highly questionable since it takes no account of existing or prospective fish welfare legislation. That legislation significantly questions the long-term sustainability of Scottish rod fisheries, so long as they are based precariously on the adoption of catch and release fishing.

Scientific advances in the last decade have shown that many, if not all, fish are sentient creatures; they feel pain (24). Morally and legally they should be considered under animal health and welfare legislation. This has been fully and comprehensively recognised by the salmon farming industry. The welfare of farmed salmon is of considerable regard in the industry's CoGP, and some 60% of Scottish farming is recognised under the RSPCA's Freedom Food Accreditation.

Catch and release fishing is increasingly regarded as an abuse of fish welfare. It is already reported to have been prohibited in Germany and Switzerland (24), and it seems likely to come under increasing scrutiny across the whole of the EU in coming years.

The *Animal Health and Welfare (Scotland) Act 2006* already encompasses the welfare of fish; its provisions apply to farmed salmon, for example. As presently framed, it does not apply to animals '*living in a wild state*'. However, it does apply to '*animals of a kind which is commonly domesticated in the British Islands*' and to any animals that are '*under the control of man on a permanent or temporary basis*'. On these terms, it is debateable whether the Act may already cover rod-caught salmon, particularly if they are removed from the water, unless they are caught for the purpose of slaughter.

So far as we are aware, there has been no legal test of the interpretation of the 2006 Act in respect of rod-caught salmon. However, in considering the future of the salmon

fishing industry, we believe it would be wise to recognise that, at some stage, all rod-salmon may legally be required to be slaughtered after they are caught. It is therefore difficult to argue that present Scottish policies reflect a situation where salmon stocks are being managed 'sustainably', without also recognising the associated animal welfare issues.

MIXED STOCK FISHERIES REPORT

This section of the consultation seeks comments on the recommendations of the *Mixed Stock Fisheries Working Group*. These recommendations were made on a personal basis by the independent Chairman after there was a failure to reach any agreement between various angling and netting interests represented on the Working Group.

Of the 21 recommendations made, we agree with most; although we recognise the difficulty of moving forward when there is no agreement between the main players.

We would not wish to comment on every recommendation but we would highlight the following:

1. Recommendation 3: *There is no realistic alternative to the responsibility of the local management of Mixed Stock Fisheries (MSF) remaining with the DSFBs. They should use nationally agreed procedures and templates and co-opted expertise where needed. To that end, clear guidance on the handling of and responses to MSF issues should be provided to DSFBs so as to provide a consistent framework for local decision making.*

We are not fully convinced by the argument that there is no realistic alternative to the responsibility for MSF remaining with the DSFBs. Indeed, there would be a case for the present arrangements being examined as part of a wider DSFB review.

2. Recommendation 11: *Conservation limits should be developed further and tested to guide sustainability and, with other accepted methods (such as modelling through trends), be used to assess the status of spawning stocks and thus form the basis of salmon management and conservation targets.*

We strongly support this recommendation. Unless there is a clear process of scientifically setting conservation limits, based on spawning targets, there is no acceptable basis for managing wild salmon fisheries and setting allowable catch limits.

3. Recommendation 13: *Marine Scotland Science in consultation with fisheries proprietors should consider the case for further research fisheries in order to help address current scientific gaps. Such fisheries should be licensed, tightly controlled and not capable of exploitation for commercial purposes.*

This recommendation was made in a particular context. However, we support the underlying concept. In particular, we believe there is an urgent need for

controlled scientific studies of optimum methods of stock enhancement and habitat improvement in selected small and poorly performing rivers in the North West of Scotland. On the basis of the significant improvements that have been achieved through conservation and stocking programmes on the River Carron and River Lochy, we believe there is a wider need for carefully controlled 'action research' programmes to explore whether these successes can be replicated more widely.

Statutory Carcass Tagging (Paragraphs 86-88)

We can see merit in, and no argument against, the proposal to introduce statutory tagging of wild Atlantic salmon and sea trout.

Question 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?

Answer:

Yes, we would be fully in favour.

Fish Sampling (Paragraphs 89-90)

We have difficulty in clearly identifying the nature of the problem that the consultation is seeking to address. In the absence of clarity, we assume that the proposal derives from Recommendation 10 of the Mixed Stock Fisheries Working Group report.

However, it is difficult to reconcile the proposal with what we perceive to be the legal position. Firstly, fisheries proprietors do not own the fish in their fishery; they own the right to fish. Secondly, the provisions of Section 64 (1)(a) of *the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003* appears to give Ministers all the powers that are required for the purposes of sampling.

Question 27: Do you agree that Scottish Ministers should have powers to take or require fish and/or samples for genetic or other analysis?

Answer:

- 1. No, 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

We have already set out our view that the conservation of wild salmon is a clear responsibility of the Scottish Ministers under EU law and international treaty. We believe that responsibility is at present abrogated through a system that appears to rely on others and over which Ministers have little control. We thus support any move by the Scottish Government to take greater responsibility for the situation.

Question 28: Do you agree that Scottish Ministers should have powers to initiate changes to the Salmon District Close Time Orders?

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

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

Answers:

- 1. Yes, we agree that Scottish Ministers should have powers to initiate changes to Salmon District Close Time Orders. Indeed, we believe that their powers and regular intervention should go beyond the "by exception" level that is proposed.*
- 2. Yes, we agree that Scottish Ministers should be able to promote combined salmon conservation measures at their own hand. We consider that the Scottish Government is abrogating its conservation responsibilities by not already doing so.*
- 3. Yes, 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 by not currently doing so, it is failing to accept the Government's responsibilities for salmon conservation.*
- 4. We consider there is a need for a well-developed national conservation plan for wild salmon that goes beyond the fragmented localised approach that currently exists.*

Dispute Resolution

We have no experience of dispute resolution issues within the framework of the DSFB regulations. However, as we referenced earlier in our response, fisheries proprietors appear particularly litigious and dispute-prone, both within and outwith the DSFB framework.

With regard to the proposal, we would simply refer back to our discussion on paragraphs 13-16 of the consultation. On the basis of this, we question whether there is any need for additional Scottish Government involvement in the resolution of disputes and arbitration.

Question 31: Do you agree that we should introduce dispute resolution, to help resolve disputes around salmon conservation, management and any related compensation measures?

Answer:

No, 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 (Paragraph 100-104)

ROD-EFFORT

Whilst the current catch statistics present a commendable long-term data series, their usefulness is fundamentally impaired because of the absence of rod-effort figures. This is a deficiency that has been raised repeatedly by the Fresh Water Fisheries Laboratory in the annual statistical reports. We believe that the introduction of a requirement for submission on rod-effort is long overdue.

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

Answer:

Yes, we fully support this proposal.

RECORD KEEPING, REPORTING AND INSPECTION

There is a lack of logic in the thinking (paragraph 104) on a need to introduce 'comparability' between aquaculture and fisheries management in record keeping, reporting and inspection; and there are two reasons why.

1. In holding broodstock, operating hatcheries, culturing juvenile fish, and introducing juvenile fish into growing waters, fisheries proprietors (or DSFBs or Fisheries Trusts) are already operating as aquaculture businesses. Therefore, they should be treated as such, and be required to meet the terms of the legislation that is applied in other areas of aquaculture.
2. Beyond that requirement, there are additional considerations that should apply to fisheries managers because they are making introductions of eggs or fish into open waters. These introductions should be recorded and reported and, as necessary, planned and controlled as part of an overall national conservation plan or stock enhancement plan.

At present, because of a unique interpretation made by Marine Scotland of *Directive 2006/88/EC*, Scottish farmed fish and wild fish populations are exposed to unregulated introductions of eggs and fish cultured by wild fishery organisations. We consider the failure of the Scottish Government to implement the Directive properly, and the risk that this poses, need urgently to be addressed.

Question 33: What additional information on 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?

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.
3. There is a specific need to close the regulatory loophole which allows fish to be introduced into open waters without prior health checks by the regulatory authority (Marine Scotland). We note in England this is already a requirement under the system operated by the Environment Agency.

Question 34: Should Scottish Ministers have powers to require Boards and/or proprietors or their tenants to investigate and report on salmon and sea trout fisheries in their district?

Answer:

1. We assume that the inclusion of sea trout with salmon in this proposal is a reflection of the wording of the salmon fisheries legislation. However, at least to our belief, 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. We think this difference is important in what Ministers might or might not have powers over.
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. At present, whether Ministers are meeting that responsibility is questionable. We believe that there is a need for a nationally organised and coordinated programme for the conservation of salmon; and that requires information on the state of fisheries and freshwater habitats. We have no fixed view on how that information should be provided. 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 (Paragraphs 105-106)

We have largely covered this point in our comments above. We believe that all forms of aquaculture should be brought into the same regulatory framework, whether it is related to growing fish for food, for stocking or for stock enhancement.

Question 35: Do you agree that Scottish Ministers should have the powers to recall, restrict or exclude the jurisdiction of Boards in relation to fish introduction, in certain circumstances?

Question 36: If so, why and in what circumstances?

Answer:

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.

PART 7: MODERNISING ENFORCEMENT PROVISIONS

In this section of the consultation we have responded only on the topics that relate to aquaculture (as distinct from sea fisheries). However, in providing our comments we would wish to note that brigading of aquaculture with sea fisheries in this Section is profoundly unhelpful, since it implies there are similarities between the two. Fish farming is in fact culturally and conceptually a branch of farming and food, and where there are comparisons to be drawn they should be drawn with those sectors rather than the hunting of wild fish.

The consultation states that the Scottish Government intends to make “improvements” to enforcement provisions in two specific areas. As they relate to aquaculture, the proposals include:

- introducing strict liability for certain offences;
- providing for Fixed Penalty Notices (FPNs);
- setting a maximum penalty Fixed Penalty notices.

Strict Liability for Certain Offences Related to Aquaculture Operations (Paragraphs 107 – 112)

The introduction of any punitive new legislation, especially legislation that is as far reaching as that proposed here, must be well-researched, fully justified and take careful account of the likely consequences, including those which are unintended. It is not for Government, on a whim, to consider measures that criminalise without cause whole communities of workers, or whole sectors of highly respectable businesses.

Therefore, by any assessment, before making their proposals Marine Scotland should have provided: a) a detailed analysis of the scale, nature and persistency of the problem it is seeking to address; (b) a careful and critical analysis of the various options that had been considered for legislation; (c) a statement of the particular benefits that will arise from the option selected: and (d) an assessment of the unintended consequences that would need to be considered.

Sadly, and wholly deficiently, none of this provision of evidence, scrutiny of options and analysis of consequences has been undertaken. On the basis of the comments made (paragraph 110) the Strict Liability proposal arises from some vague and unspecified situations, where unspecified ‘*regulatory bodies*’ have unspecified ‘*experience of situations*’ related to the former *Food and Environmental Protection Act 1985 (FEPA)*. On the basis of this, it is proposed to introduce sweeping new laws, apparently almost without limit.

In the absence of any information that would justify the proposal it is difficult to respond to address its underlying motivation. However, we make the following observations.

1. There are very few strict liability offences in Scots law. As we understand it, strict liability offences typically relate to currency offences, road traffic

offences, health and safety, and possession (e.g. drugs and weapons). Strict liability offences (in these areas) are generally of a type where there can be seen to be a clear cut transgression by an identified person. They are not offences that are associated with administrative or operational transgressions of the type that seems to be implied by reference to the *Marine (Scotland) Act 2010* and other aquaculture regulations.

2. Likewise, FPNs have a very limited and specific application generally to frequently occurring low level offences. With the exception of their use in the sea fishing sector, which has been quoted in the consultation, they do not apply under Scottish law in any sector of the farming and food industries or related areas of environmental management.
3. Since the FEPA legislation is specifically referred to (paragraph 110), it can only be assumed that the '*experience of situations*' relates to discharges of material from boats. In that case, untypically of other situations, there is a skipper who is in sole charge and to whom existing fisheries fixed penalty offences might apply. However, the logic on which Marine Scotland is attempting to justify the extension from this situation to the whole of aquaculture is entirely unclear.
4. The proposal seems, in an entirely illogical way, to be based on an extrapolation to aquaculture from sea fisheries legislation contained in the *Aquaculture and Fisheries Act 2007*. However, as indicated above, both conceptually and culturally aquaculture bears no relationship to sea fishing. It is an entirely different industry sector.
5. In order to try to obtain some statistical information, SSPO requested from Marine Scotland the total number of prosecutions and fixed penalty notices for the financial years from 2004-07 and 2008-2010, (the last full year recorded) for both sea fisheries operators or businesses and aquaculture operators or businesses. The fisheries data is summarised in Table 1 and indicates two things. There is a record of offences in sea catch fisheries, but the introduction of fixed penalty notices in 2008 had no apparent effect in reducing the total number of offences.
6. For aquaculture operators or business, Marine Scotland told us there were no recorded offences from 2004-2010. We therefore also sought to establish if aquaculture has any significant history of offences under areas regulated by SEPA, but again we have been assured by SEPA that is *not* the case. This pattern of a high level of compliance reported by the two main regulatory agencies is also consistent with the evidence that is available from the independent FCI audits of the CoGP, where compliance has uniformly been high across all 6 categories of the Code throughout its operation from 2006.

Table 1. The number of prosecutions and fixed penalty offences (introduced after 2007) for sea fisheries and aquaculture operators and businesses.

Date	Sea Fisheries		
	Prosecutions	Fixed Penalty Notices	Total Offences
2004	69	-	69
2005	53	-	53
2006	33	-	33
2007	18	-	18
2008	14	14	28
2009	16	37	53
2010	16	20	36

We therefore ask the Scottish Government to set out in precise detail the perceived problem they are trying to address. Also, why other options to deal with the perceived problem are not outlined and evaluated alongside the wholly disproportionate introduction of “*strict liability for certain aquaculture offences*”. Additionally, since there is no evidence of any pattern of non-compliance in aquaculture and all the evidence is that fixed penalty notices have been ineffective in the sea fisheries sector, why is their extension to aquaculture being considered at all?

The distinguishing feature of crimes of strict liability is the absence of “*mens rea*”, i.e. the prosecution is not required to prove the defendant intended the consequences of his actions or even foresaw them. In addition, as stated in paragraph 111, investigators need only to pursue one avenue of enquiry to gather sufficient evidence to establish what supposedly happened. When this approach is coupled with the proposals for FPNs (see below) the implications of the current proposals are of enormous concern since they undermine the fundamental human rights of all citizens to pursue their lawful profession.

In seeking to understand Marine Scotland’s position we have sought clues in the text (paragraphs 109-111). It is stated that “the nature of aquaculture” creates ‘logistical and other reasons’ which may act as a barrier to appropriate enforcement action on “apparent illegal activity” or “suspected” non-compliance.

Thus, in the view of the proposals, specifically designated fish farm personnel are to be considered guilty of a supposed or suspected offence, with little or no requirement for evidence of that offence being considered necessary, simply because they are employed in the wholly legal but logistically-difficult-access (i.e. geographically remote) profession of fish farming; and their only recourse will be to go to law to seek to prove their innocence.

Notwithstanding our view that this is an assault on the democratic and legal rights of citizens of Scotland we question whether Marine Scotland has given any thought to the implications of their proposals in practice. Our analysis of the proposals is as follows:

1. They will encourage speculative and vexatious claims of offences by Marine Scotland built on inadequate, unsound or otherwise flawed foundations. They will remove the legal onus on Marine Scotland to be financially or otherwise

responsible for the consequences of its actions, allowing it to circumvent the normal requirements and responsibilities of regulatory agencies under Scottish law. We believe this will do enormous, possibly terminal, damage to the reputation of Marine Scotland as a regulator.

2. They will lead to fish farming businesses robustly defending their reputations through the Courts until the point where, for small businesses particularly, the cost of defence becomes impossible to bear. In either of these situations the reputational damage to individual personnel, to individual businesses and to the internationally recognised 'Scottish Farmed Salmon' brand is likely to be enormous.

So far as we have determined, strict liability has, until now, been applied mainly to very specific offences, and yet no evidence (unsubstantiated or otherwise) of any offences in aquaculture has been cited to justify this proposal. If the proposal is to introduce strict liability for alleged minor transgressions in farm management, it is deeply flawed. No case has been made in terms of scale, frequency or seriousness of such offences to provide any justification for the proposal. Moreover, with the introduction of new legislation since 2007, Marine Scotland has been subject to a series of significant errors of interpretation. These have been corrected after representation from the industry, and written apologies have been given to the operators concerned. However, from this record, the industry has no confidence that similar errors will not occur again: and under a strict liability and FPN regime, opportunities to complain or appeal would be heavily curtailed.

As implied in the text (paragraphs 111 and 112) and shown by the statistics (Table 1), strict liability for regulatory non-compliance is used in commercial sea fishing, where the liability is placed on the skipper of the vessel, who is always present on the vessel and is entirely in command of its activities. The consultation does not indicate who would be the strictly liable person at a fish farm, but by analogy the local Farm Manager would seem to be the most likely target. However, the continuity of presence and the scope of control of a Farm Manager are in no way comparable with that of a vessel skipper.

The SSPO has carried out a Regulatory Impact Assessment and, in addition to the financial consequences, we believe the strict liability proposal will have a major impact on recruitment and retention of highly trained and skilled personnel in the aquaculture industry. There is significant under-supply of experienced, well-qualified farm management personnel and people "trained in Scotland" are in high demand the world over. If the strict liability proposal is pursued, we believe it will result in a significant outward migration of Scottish talent.

Question 37: Do you agree that strict liability criteria should apply – where they are capable of being applied – for offences related to Marine Licensing requirements insofar as they apply to aquaculture operations and, potentially, in other situations?

Answer:

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

1. No defensible reasoning of evidence is provided that would justify the proposal.
2. In combination with the proposal for Fixed Penalty Notices, the proposal undermines the most fundamental human rights of all citizens to pursue their lawful professional activities in Scotland; it is not, in any way, fair to those accused, due to lack of required evidence.
3. It will not be effective, due to lack of confidence in its validity.
4. Aquaculture offences are uncommon and evidence clearly shows this.
5. It is disproportionate to any perceived problem in the industry. The comparison to the fishing industry is irrelevant and unreasonable.
6. It will have a very damaging impact on recruitment and retention of trained personnel and directly impact on employment in rural economies.
7. 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.
8. It will fundamentally damage the reputation of Marine Scotland as a regulator.
9. It risks wholly unjustified reputational damage to individuals, to individual businesses and to the globally important 'Scottish Farmed Salmon' brand.

Widening the Scope of Fixed Penalty Notices (Paragraphs 113-122)

In conjunction with the proposal to introduce strict liability for certain aquaculture offences, the consultation has proposed that FPNs be issued as an alternative to prosecution for aquaculture offences.

We are deeply concerned that Marine Scotland, in presenting its proposals, has quoted selectively from the *Hampton Review*. In its reference (paragraph 115), it says that Hampton states “any penalty regime should be based on the risk of re-offending and the impact of the offence”; and, in principle, this is sound. However, the lack of relevance of this to the aquaculture sector refocuses attention on the arguments against strict liability, which we have considered earlier. A key principle in Hampton’s review is that “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”. We do not detect any consideration of this recommendation anywhere in the consultation, and it is singularly absent from this section.

Hampton also states that “regulators should use comprehensive risk assessment to concentrate resources on the areas that need them most”. However, the consultation is glaringly deficient in its failure to use any evidence or any analysis that would indicate that this basic and essential principle has been observed. This is simply unacceptable to the Scottish salmon industry which is justifiably proud of its record as an exemplar of best practice. For this record to be besmirched by insinuation, as it is in this consultation document, is intolerable.

We also note the consultation’s attempt selectively to use the *McInnes Report* (paragraph 113) as justification for this proposal. However, we would point out that *McInnes* cited that all justice systems should be: fair to victims and the accused; effective in deterring, punishing and helping to rehabilitate offenders; and efficient in the use of resources.

We do not accept that the introduction of FPNs for ‘suspected’ or ‘apparent’ offences in the aquaculture industry is in any way fair to an accused. It is incompatible and wholly inconsistent with the application of law in all other areas of agriculture and food regulation, which are the sectors directly comparable with aquaculture. It appears to be based on a false and wholly unsupportable premise that aquaculture is in some way related to sea fishing, where the command and control powers of vessel skippers are unique and there appears to be a history of illegal activity. Finally, it implies, without any foundation, that aquaculture is subject to significant levels of serious regulatory non-compliance; and that is untrue and represents a grave affront to the reputation of one of Scotland’s leading and most responsible food sectors.

Fundamentally we question the use of FPNs as an appropriate measure not only in aquaculture but in any area of the food industry. All food sector businesses operate under conditions where there is a recognised excess of bureaucratic regulation (Appendix 1). There is also continuous and frequent auditing to meet the requirements of retailers and others. Under these circumstances, identifying and addressing minor points of non-compliance has become part of an industry-wide culture of constant and continuous improvement, with which FPNs are incompatible.

FPNs are intended for situations where there is a frequent repeated pattern of offending. They are intended to reduce the regulators’ costs of prosecuting an offence. However, as can be seen from the analysis of offences where they have been applied, their effect is to habitualise the pattern of offending and probably to drive non-compliances underground. This is wholly contrary to the needs and culture that applies in aquaculture and in other sectors of the food industry.

From an industry standpoint we have a clear view: if there is some minor error of non-compliance it should be addressed through normal audit procedures or by an improvement or enforcement order from a regulator. If there is serious deliberate and illegal non-compliance it should be subject to detailed investigation, a case presented to the Procurator Fiscal, and the offender prosecuted to the full measure of the law. We believe anything less than this represents an unacceptable regulatory approach, with significant unintended consequences (see above). Introduction of FPNs will lead to lax standards in the investigation and enforcement of regulations

and to habitualisation of offences. We believe they have no place in the Scottish food industry.

We know from audits reports that non-compliances within the industry are few and overwhelmingly minor. Whilst these are not to be excused, they are always promptly and speedily addressed and operating procedures adjusted to ensure that they are not recurring. Under what is being proposed, a poorly noted record or a missed recording could qualify as a strict liability offence, with potentially very significant implications for the professional careers of individual personnel, the reputation of the farming businesses and the 'Scottish Farmed Salmon' brand. Is this the proportionate approach to regulation promised by the Scottish Government? Is this level of criminalisation by bureaucracy and micro-management what the Scottish Government is intending to adopt in its relationship with industry?

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

Answer:

- 1. No, 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; and we will strongly oppose it.*
- 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. There is no valid comparison with the aquaculture industry, which is a highly regulated part of Scotland's food production chain; aquaculture 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.*

The proposal outlined for fixed penalties is to: a) widen their scope; b) increase the maximum penalty to £10,000 for a prescribed offence; and c) for repeat offending, trigger a doubling of the penalty. There might be some case for this if there was evidence to suggest that there were high levels of criminal non-compliances in the aquaculture industry or that there are growing problems. However, that simply is not the case, and no evidence has been put forward by Marine Scotland to suggest that it is. Under these circumstances, we simply find these proposals offensive, both in their intent and in their unfounded insinuations.

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

Answer:

1. *We do not agree with the principle of fixed penalty notices to include aquaculture, 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. There are also some specific issues with the regulations that apply and we have addressed these in PART 8 of our response.*

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

Answer:

As stated in the previous answer, we do not agree with the principle and therefore this question is not relevant.

PART 8: PAYING FOR PROGRESS

The lack of any relevant background material and analysis in this section of the consultation serves to obfuscate the issues raised. We have therefore attempted to set out the relevant background and summarise the position as we see it.

Creation of Marine Scotland

In January 2008, the First Minister announced a commitment to bringing together marine management functions from across public organisations into a single Marine Management Organisation. This proposal was subsequently confirmed in July 2008 in *Sustainable Seas for All (25)*, the consultation which laid the foundation of the *Marine (Scotland) Act 2010*.

The consultation closed in October 2008; an analysis of responses (26) was published in February 2009. Almost immediately, Scottish Ministers announced that, from the 1 April 2009, the Fisheries Research Services (FRS, a Government Agency), Scottish Fisheries Protection Agency (SFPA), and the core of the Scottish Government Marine Directorate was to be brigaded as a single body, to be called Marine Scotland. It was also decided that Marine Scotland would be a Department of Scottish Government and have responsibilities for: (a) developing government policy; (b) provision of evidence; (c) policy delivery; (d) licensing and; (e) regulatory functions.

This arrangement, which reflects a very different model to anything that exists in any other sector of government, had been one option outlined in the *Sustainable Seas for All* consultation, although it had found only qualified support. Of the 120 respondents to the consultation some 39 had been in favour of the model, but 32 had raised concerns about conflicts of interest, and 23 had argued for an organisation more at arm's-length from government, like the UK Marine Management Organisation (MMO), which is non-departmental Public Body (NDPB).

Role and Responsibilities of Marine Scotland

As outlined in *Sustainable Seas for All* and the subsequent *Marine (Scotland) Act 2010*, Marine Scotland's functions, would include responsibilities for:

- securing marine-based economic growth and safeguarding the environment of the sea;
- marine planning and a related role to ensure the availability of underpinning science and data;
- marine, freshwater fisheries and aquaculture management to provide for economic growth, marine planning and wider marine management; and
- marine conservation (with SNH retaining its statutory advisory responsibilities).

At establishment in 2009, *Marine Scotland* had a range of powers and responsibilities under existing legislation but its role was substantially expanded by the provisions of the *Marine (Scotland) Act 2010*.

Evolution of Marine Scotland

The proposed evolution of Marine Scotland was set out in its Strategy Statement (2009) (27) and its Strategic Plan 2010-2013 (28) and an up-to-date summary of its purpose and responsibilities as they now exist is shown in Table 2. The remit continues to reflect key responsibilities in enhancing the sustainable economic growth and ensuring the environmentally sustainable use of Scotland's marine resources; it also demonstrates that the range of Marine Scotland's functions is huge and very diverse.

Table 2. Summary of the purpose and key responsibilities of Marine Scotland.

Purpose:

Marine Scotland's purpose is to manage Scotland's seas for prosperity and environmental sustainability.

Key Responsibilities:

Work towards good environmental status, through maritime planning, licensing and other functions, to ensure a healthy and sustainable environment.

Promote sustainable economic growth from the marine renewable industry through integrated planning and, where appropriate, streamlined regulatory frameworks.

Promote sustainable, profitable and well managed fisheries and aquaculture industries in Scotland.

Ensure sustainably managed freshwater fish and fisheries resources.

Ensure a sound evidence base to inform the development and delivery of marine policy, planning and services.

Ensure effective compliance arrangements.

Continue to integrate our functions and resources, and to develop our organisational skills, competencies and capacity to ensure effective, efficient marine management arrangements in Scotland.

Assessment of Marine Scotland

Salmon farmers supported the concept of Marine Scotland, particularly because the concept of combining economic development, planning and sustainable environmental management, was forward-looking and appeared holistic. However, to much disappointment, Marine Scotland has in practice failed to establish itself as a credible representation of the original vision. Moreover, it seems unlikely that vision can be achieved without a radical reappraisal of Marine Scotland's organisation, structure, remits, resources and operation.

We cannot categorically answer the question of 'what's gone wrong'. However, a number of factors appear to have contributed to the present situation.

1. Because of the way it was established, Marine Scotland was never subject to the rigorous public analysis of its projected roles and required resources and expertise, which would normally have been applied to the creation of a major new public body.
2. Because it was formed through a combination of existing bodies the staff, programmes of work, and corporate cultures embedded in those bodies were inherited by the new organisation. There is little indication that much has changed, and the original vision of Marine Scotland now appears to have contracted into a narrow, traditional regulatory body.
3. At establishment, there was an acknowledged need for Marine Scotland to recruit new skills and rationalise its operations to increase its efficiency. There are no signs that either of these has taken place to a significant degree. Rather, there has been changing leadership, significant staff turnover and loss of relevant experience, with little strategic recruitment to fill skills gaps. In areas that relate to salmon farming (but also possibly more widely) there are important gaps in expertise in macro- and micro-economics; business development; marketing; fish-farming and food technology and fish husbandry; fish veterinary science; and specialist areas of policy development expertise.

Marine Scotland has notionally aligned its internal structures with its remits for: policy development; provision of evidence; policy delivery; licensing; and regulatory functions. However, it appears that this reflects largely a re-naming of what already existed. Additionally, because the former multi-agency structure has been subsumed into a large opaque government department, there is reduced public transparency as to the cost and achievements of the organisation. Understandably, the concerns about conflicts of interest and democratic accountability, which were voiced at the time of the *Sustainable Seas for All* consultation, have re-emerged.

The Aquaculture and Fisheries Bill consultation has brought to a head concerns about Marine Scotland which have been growing in the salmon farming sector over many months. These relate to the role, structure and fitness for purpose of the organisation; whether it has the capability of undertaking the task for which it was established; whether its structure and governance as a public body are appropriate; and whether it offers value for money.

We should make clear at the outset that our views are expressed solely from an aquaculture standpoint and therefore relate to the aspects of Marine Scotland of which we have most direct experience. As we understand it, the vast majority of Marine Scotland's work relates to sea fisheries, unspecified aspects of marine science and regulation, and some work on renewable energy. We cannot comment on these latter areas.

We have attempted below to breakdown Marine Scotland's functions, on a systematic basis and to provide comment on each. However, in overview, we should say the salmon industry has a growing sense of dissatisfaction with the present

situation. Marine Scotland is widely regarded as narrowly focused, bureaucratic, lacking in clear sense of its wider purpose, and under-performing in respect of its stated remit. There are, of course points of exception, where specific actions – often reflecting individual relationships, as distinct from a corporate response - provide assistance or support for the industry. These are well-recognised, very much appreciated and fully acknowledged by the industry. Nonetheless, overall, we judge that if Marine Scotland undertook a stakeholder survey, as has been done by the UK Marine Management Organisation, the recorded level of aquaculture stakeholder satisfaction might be rather low.

The following sets out our views in regard to 8 sectors of Marine Scotland activity where we believe there is a salmon industry interaction.

1. Aquaculture Policy

Our assessment of Marine Scotland's capacity in policy development is relevant to the present consultation, since it reflects a set of policy proposals. As indicated in our earlier responses, we are deeply concerned about the almost complete absence of evidence-based policy development which is exemplified in the consultation.

There are many good practice guides on policy development in the public sector. However, they all adopt a similar underlying systematic approach based on a process reflecting six main steps.

- Identify and quantify the problem.
- Define the objectives in its resolution.
- Use the evidence base to formulate the main policy options
- Analyse the economic, social and environmental impacts of each option.
- Compare options and select the optimum policy.
- Outline the policy monitoring and evaluation measures.

However in this consultation, it is often impossible properly to address the consultation questions because: the problem to be addressed has not been defined and quantified; there is no exploration of the evidence base to support the policy proposal; a single proposal is generally made without any exploration of alternatives,

The Partial Business and Regulatory Assessment was published very late on in the consultation period and the Environmental Impact Assessment even later. Since both these documents contain key pieces of information which should have been included in the main consultation, the whole consultation process has been substantially compromised. We believe it will not be possible to analyse the consultation responses, using a conventional best practice approach, and we feel that anyone who may be aggrieved by the procedures will have grounds to make representations to the Government Ombudsman. For our own part, we believe that it would have been much better to have had a complete and well-structured consultation, following an appropriate level of pre-consultation with the industry. We regret that process has not been adopted.

Beyond the present consultation, our feeling is that the weaknesses in policy development are deep seated and long standing. As a specific example, the policy of transfer of fish farms into the Town and Country Planning system, initiated in 2007 was poorly conceived and planned. As a result the transfer process for existing farms has been wholly unsatisfactory; the majority of farms are still remaining to be transferred 5 years after the legislation was passed. This remains a huge concern for the aquaculture industry, since the farms represent not only its production base but a major part of its assets.

3. Regulatory Policy

On the development of regulation, the industry view is that Marine Scotland is not modern in its approach and is overly bureaucratic. It favours introducing very broad enabling powers followed by almost unfettered technical measures providing a level of bureaucratic intervention that is wholly unnecessary. As a result, there is now a deep industry distrust of enabling legislation, since it provides for upward creep regulatory bureaucracy.

As an example, *Council Directive 2006/88/EC* on Animal Health Requirements for Aquaculture Animals and Products thereof, and on the Prevention and Control of Certain Diseases in Aquatic Animals laid down EU requirements for translation into Member State legislation. These were relatively specific and broadly supported by industry as sensible developments. They were introduced in Scotland through several separate regulatory instruments and were in part used to justify Section 1 of the *Aquaculture and Fisheries (Scotland) Act 2007*. This set out a need for fish farmers to keep records on parasites and fish escapes and this effectively reflected the existing position. However, that requirement was subsequently translated into a highly specified and obligatory list and series of prescribed procedures contained in *The Fish Farming Business (Record Keeping) (Scotland) Order 2008* (Appendix 7). Now, it appears that the present proposals would, or might, include FPNs and Strict Liability related to that record keeping.

This is almost a case study of how not to implement modern regulation; it is not risk based, it is bureaucratic in approach and it takes no account of the fact that the fish farmer is an experienced, professional person who is operating a multi-million pound facility where high levels of husbandry, effective management are pre-requisites for business viability. In other sectors of the food industry, the regulatory emphasis has been on businesses developing HACCP-based risk management approaches and regulators increasingly taking a business overview ensuring such systems are in place. By contrast, Marine Scotland's approach has been to seek an ever deeper and more intrusive involvement in the day to day management of farm businesses.

3. International Relationships

Although Defra often has lead responsibility as the relevant UK government department, Marine Scotland has a definable role in negotiations at EU level or internationally. In trade matters generally other Scottish Government departments and Scottish Enterprise are the most important bodies. In regard to Marine Scotland

specifically, we have found their work to be effective. Their initiative in establishing the UK Aquaculture Forum, which brings together relevant government departments and industry bodies from across the four UK administrations has been worthwhile, and their organisation of the annual meeting in Brussels, particularly so. There has also been strong Ministerial presence and support at international trade fairs and other events, which has helped to fly the flag for Scottish products, including salmon. This has been appreciated and is generally successful.

4. Grants

Marine Scotland both administers the Scottish programme of European Fisheries Fund (EFF) grants and provides grants directly. EFF funding (approximately £6M per annum) is to support industry and community developments, which fall within the specific terms of the scheme. Of the direct grants, we identify three that should be mentioned. The first is an average annual grant of approximately £200k which is provided to the Scottish Aquaculture Research Forum (SARF) to support research; historically about 50% of this has typically supported salmon-related research. The second is a one-off programme of research funding being applied to take forward actions arising from the *Strategic Framework for Scottish Aquaculture*. The third is an historical expenditure of approaching £400K to support the Tripartite Working Group (TWG) with the wild fish sector; this was reduced to *ca* £200k and redirected into research funding for the Rivers and Fisheries Trusts in 2009-10.

We are very pleased that aquaculture is able to access this level of government support, which is greatly appreciated. We find the EFF grants and SARF grants are very well administered, although we have had reservations about a minority of the directly awarded funding, particularly that relating to the former TWG funds. We believe that there is a very strong case for the re-establishment of a structure similar to the former TWG and we consider that there is a case for funding for that to be re-established.

5. Planning

Marine Scotland is a statutory consultee within the terms of Local Authority planning approval for fish farms. In this capacity it informs the planning process on matters related to physical farm design, location (under the Locational Guidelines), proposed farm management systems, and any potential interactions with wild fish. As perceived by industry, these duties are being provided satisfactorily after an initial period of settling in. Our main criticism would be that there remains an unresolved overlap in responsibilities for advice on wild fish between Marine Scotland and SNH, which is also a statutory consultee. This can cause confusion in planning advice to Local Authorities. However, this is a matter which is being addressed by the Improved Systems of Licensing Aquaculture Development Working Group, as part of its efforts to streamline the planning system, and we are optimistic that the issue can be addressed.

6. Licensing

In a sense the marine licensing department of Marine Scotland is a new arrangement, although it largely reflects earlier structures. It is possibly too early to make a judgement on its effectiveness; from an industry standpoint the jury is still out. On specific issues we would note the following.

There is a long and protracted fish farmers' issue about the interface of CAR consents, which relate to discharges from fish farms, and FEPA (now marine licensing) consents which relate to discharges from boats. Since medicinal treatments of farmed fish often now take place in wellboats moored beside the fish pens, there is a pressing need for the two types of licences to be combined for aquaculture operations. Marine Scotland has, in the view of the industry, been very slow to address this need. We believe there is a simple solution that would result in wellboat discharges at farm sites being brought under CAR regulations.

Introduction of the licensing provisions of the *Marine (Scotland) Act 2010* were thrown into confusion by wholly impractical interpretations of the provisions of the Act. There is a question about where the responsibility for this rested. However, it has now been corrected by an amendment of the legislation; we believe this will have addressed the issue.

Seal control licensing was introduced in 2011 and, whilst administratively challenging for farmers, it has worked effectively. However, we have concerns that the number of licences has been reduced for 2012, apparently without scientific justification and on the basis of only one year's licence returns.

7. Marine Scotland Research

Marine Scotland has substantial research expenditure within Marine Scotland Science. However, very little of it has relevance to aquaculture; and most that does is of low relevance to the industry. As a consequence, whilst the industry invests very heavily in research, most of its investment is channelled into the university sector: particularly the University of Stirling, University of Glasgow; University of Edinburgh; University of Aberdeen; University of Dundee; and the Scottish Association of Marine Science (now part of the University of the Highlands and Islands). In the past year, there has been a major development of research funding in conjunction with the Technology Strategy Board.

The parts of Marine Scotland which could undertake work relevant to the aquaculture industry are mainly located in the aquaculture and fish health laboratories at Aberdeen and the freshwater fisheries laboratories at Pitlochry. These laboratories have good facilities and experienced scientists. However, to attract significant industry funding they would require substantially to refocus their programmes on industry-relevant priorities.

From an industry assessment, such a refocusing would probably be most readily achieved by moving the research laboratories into the 'main research provider' category, in line with the Scottish Government's policy for the 'main research

providers' in the agriculture and food sector. That would then free up the laboratories to engage in competitive funding with the other providers, including the universities. We increasingly believe that this would be to the benefit of the programmes of work, as well as to the wider Scottish economy. The Centre for Environment, Fisheries and Aquaculture (Cefas), an Executive Agency of Defra, is now active in contracting work in Scotland and we should note that it has a significant industry focus.

8. Fish Health Inspection

This category of Marine Scotland's work includes on-farm inspection by Fish Health Inspectors (FHI) and diagnostic laboratory facilities which are located at the central laboratory at Aberdeen. The role of the Inspectorate is primarily to ensure that Scotland (UK) meets its requirements for the control of specific diseases under various fish health regulations and to undertake certain inspections (see section on paragraphs 22-23). In general, FHI are the Marine Scotland personnel fish farmers will encounter most routinely.

Fish farmers are always very focused on the health of their fish and all farms employ specialist veterinary surgeons to provide advice and assistance in fish health management. Likewise, all fish farms routinely use commercial diagnostic fish health laboratories as part of their management regimes. All farms are also subject to a wide range of farm audits, including an annual FCI audit of CoGP compliance, audits every few months by retailer customers and audits under various schemes including ISO 14001, ISO 9001, Label Rouge, Freedom Foods, Global GAP, etc. Within this framework the precise purpose and role of the FHI is quite difficult to define and justify. It is significant that any equivalent Scottish Government officers involved in pig, poultry or livestock agriculture were phased out many years ago.

Over the past five years the FHI have rolled out a substantial amount of new, regulatory provisions, which in general simply mirrored what salmon farmers were doing already. This introduction has not been without errors on the part of the FHI, for which they have subsequently apologised in writing. However, there is industry dissatisfaction with aspects of FHI operations, including the lack of detailed operating procedures to which industry can hold FHI accountable for their actions. It is also fundamentally questioned why it is not possible to adopt more efficient, much less costly systems, relying more on the professional farm veterinary surgeons and the State Veterinary Service, as is the case in other areas of animal production.

Question 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?

Answer:

No, 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 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 a separate public consultation.

Question 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?

Answer:

- 1. This question starts from an entirely incorrect premise, namely that industry should be charged to meet unjustified and increasing costs of 'public services' that it has neither requested nor requires.*
- 2. Of the 8 service sectors we have identified in the paragraphs above, we consider Aquaculture Policy Development (1), Regulatory Policy (2), International Relationships (3) and Grants (4), 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 (5) and Licensing (6) are already subject to a charge on the applicant. Thus the only remaining items are Research (7) and Fish Health Inspection (8). 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 duplicate 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. It 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.*

Question 48: If no new way of resourcing such activity can be found, what do you suggest might be stopped to free up necessary funds?

Answer:

- 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. However, for the aquaculture industry, its requirements are very different from Marine Scotland's current programmes of work.*
- 3. To move forward to undertake the kind of privatisation that 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 recommend 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.*

PART 9: ANY OTHER ISSUES

Overall, we believe the consultation presents an image of Marine Scotland as totalitarian in approach and hostile to business, which is damaging both to the interests of Scotland's fish farming and the Scottish Government's declared purpose: *to make Scotland a more successful country, with opportunities for all to flourish, through increased sustainable economic growth.*

We have attempted to respond informatively and constructively to the consultation, accepting, as we do, that Scottish salmon farming (and all marine industries) depends significantly on the Scottish Government's policies, strategies and regulatory systems. We fully endorse effective regulation and we support the Scottish Government's Better Regulation programme. However, both policy and regulation depend on policy makers who have industry-relevant knowledge and experience. We are concerned that this requirement is not being fulfilled by Marine Scotland as it currently exists.

Therefore, irrespective of the progress of the consultation, we ask Scottish Ministers specifically to consider external recruitment into Marine Scotland's policy team to address its gaps in knowledge and experience, as it relates to Scottish finfish aquaculture and associated aspects of food processing, manufacturing and supply.

Appendix 1: Evidence of Scottish Government's Stated Commitment to the Principles of Better Regulation.

The Scottish Government's support for the Better Regulation programme is regarded as part of an ongoing and national strategy. It has been informed by the Regulatory Review Group Chaired by Professor Russel Griggs, and is part of a wider movement to reduce unnecessary regulation and regulatory bureaucracy across the UK.

It is evidenced by the recent Scottish Parliamentary Bureau Motion S4M-01526 (4) which proposed:

That the Parliament agrees that better regulation is an important driver of sustainable economic growth and endorses the Scottish Government's commitment to better regulation rather than deregulation; welcomes the Scottish Government's commitment to delivering regulation that is proportionate, consistent, transparent, accountable and targeted only where needed, and supports a regulatory framework in which government, regulators and business work together to identify regulatory barriers to growth and deliver an outcomes-based approach, thereby providing a favourable environment for business to grow and flourish, creating jobs and improving lives.

At the time of this motion, it was reported that 80% of primary Scottish legislation and 57% of secondary legislation considered in 2010 had been subject to a Business and Regulatory Impact Assessment (BRIA).

In some sectors of the economy special measures have already been taken to reduce the levels of government bureaucracy in regulation. For example, Cabinet Secretary Richard Lochhead has recently announced 'Moves to Cut Red Tape for Farmers' (5), a review to reduce the bureaucracy and number of on farm inspections for agriculture.

No attempts have been made to reduce the frequency and bureaucracy of the regulatory system for salmon farmers, despite the fact that it is widely recognised as being excessive. The Aquaculture and Fisheries consultation provided an opportunity for the required regulatory reform, but perversely it is proposed that regulation will be substantially increased.

The UK Cabinet Office, in February 2012, launched its 'Red Tape Challenge for Water and Marine' sectors. This covers a wide range of industry activities, including aquaculture and freshwater fisheries. This initiative is designed to promote discussion of ways in which the aims of existing regulation can be fulfilled in the least burdensome way possible.

(see <http://www.redtapechallenge.cabinetoffice.gov.uk/themehome/water-and-marine/>)

Appendix 2: Analysis of Distribution of Wild Salmon between Different Regions of Scotland

The Table below shows the average percentage total catches of wild salmon by all methods made in the region where salmon farming and wild salmon fishing are co-located, and where there is no salmon farming for the periods from 1955-1979, and 1980-2009.

Years	Salmon Catches in Farmed Area (%)	Salmon Catches in Non- Farmed Area (%)
1955-1979	10.9	89.1
Salmon Farming Started in 1980		
1980-2009	9.9	90.1

Appendix 3: International Trends in Wild Atlantic salmon Stocks.

The figure below shows trends in wild Atlantic salmon stocks (tonnes) in the North Atlantic Salmon Conservation Organisation (NASCO) Commission areas. The Figure is taken from the International Council for the Exploration of the Sea (ICES) report to NASCO in 2011

(see, http://www.nasco.int/pdf/reports_annual/2011%20Council%20Report.pdf).

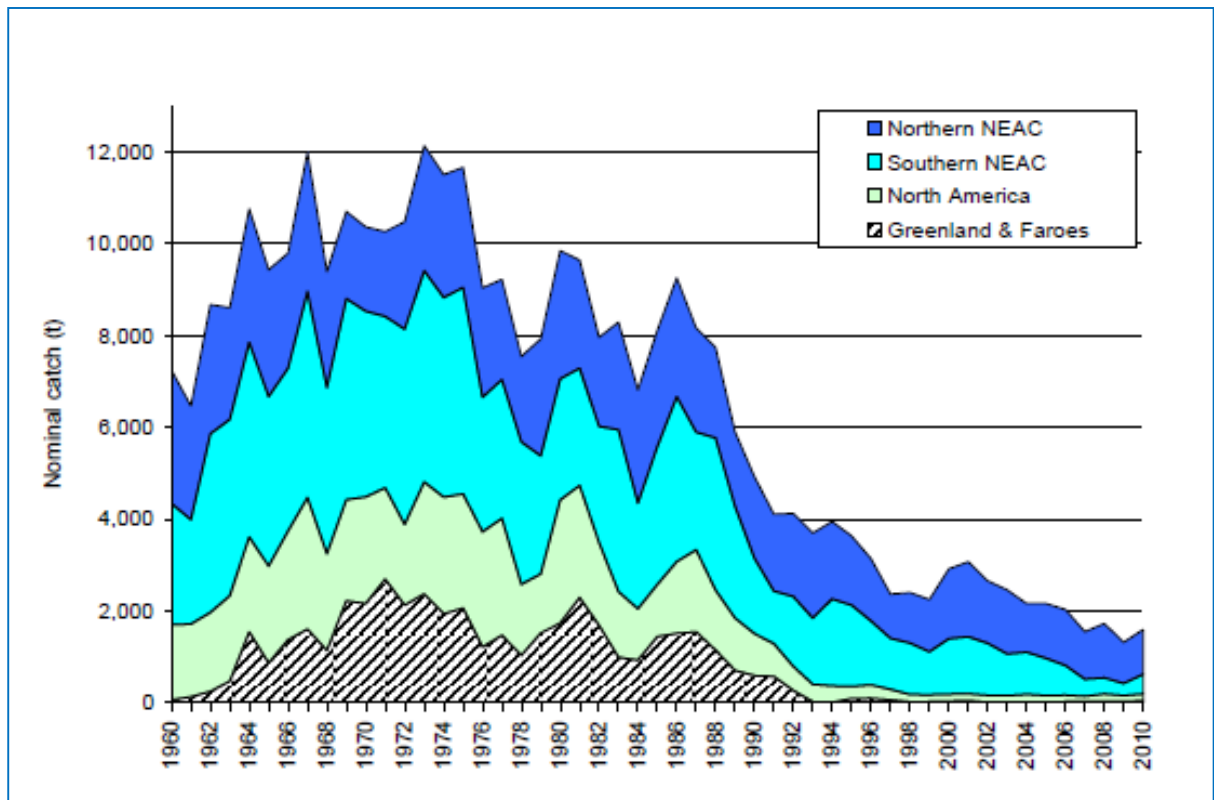
Commission areas are defined as:

North East Atlantic (NEAC), which for statistical reporting has been sub-divided into Northern NEAC and Southern NEAC;

North America; and

Greenland and Faroes.

The Northern NEAC area includes Russia, Finland, Norway, Sweden and the northeast regions of Iceland. The Southern NEAC area includes UK (Scotland), UK (England and Wales), UK (Northern Ireland), Ireland, France and southwest regions of Iceland.



Appendix 4: Analysis of Trends in Wild Salmon Catches in Scotland

The two figures below show the trends in catches of wild salmon by all methods in the Scottish coastal area where commercial salmon farming became established from 1980 onwards and for the corresponding area where there is no salmon farming. Figure (a) shows the year by year figures in absolute terms. Figure (b) shows a histogram of the same data expressed as average figures for each 5-year period and indexed as a percentage of the five year average for 1955-59 in each case (i.e. 1955-59=100).

Note in Figure (a) that salmon catches generally in both areas increased from the 1950s to reach a peak around 1970 and then declined. The same pattern was shown both within and outwith the area where commercial salmon farming became established after 1980. However, the figures in this area were always historically low (as shown in Appendix 2).

Note in Figure (b), where the data have been indexed to the catches at start of the records, the pattern of change over time is the same both in the area where commercial salmon farming became established after 1980 and where there is no salmon farming.

Figure (a)

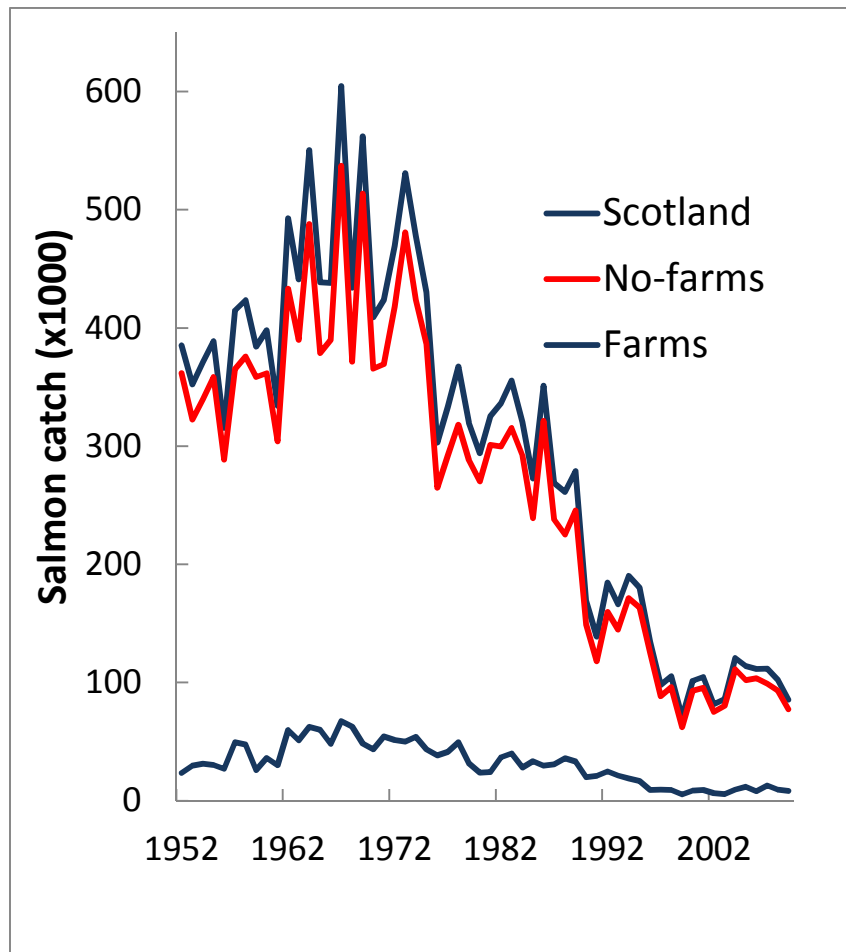
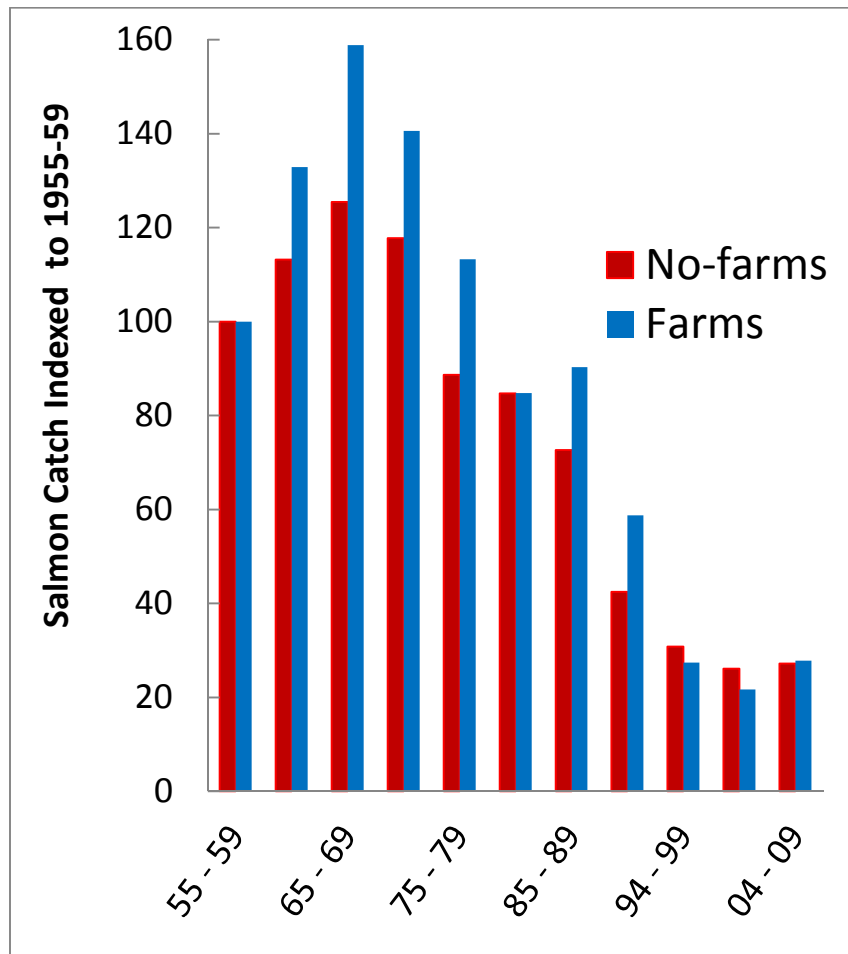


Figure (b)



Appendix 5: Analysis and Proposals on Farm Management Areas and Farm Management Area Agreements.

Outline of the System

1. FMAs are determined by consideration of the geographic location of farms and related physical, bathometric, wind and current patterns, together with related boat movements and shore base locations. They may be adjusted from time to time as new farms come into production, or old farms are taken out of production or are fallowed. However, they are essentially based around a set of readily definable parameters and are mapped as a defined area.
2. FMAg are agreements between two or more farming companies which farm in a single FMA. FMAg technically cannot exist in single-operator FMAs. FMAg relate to how an FMA is farmed: including decisions on stocking and harvesting plans; fallowing periods; husbandry and biosecurity procedures; management practices, medicinal treatments; information sharing and potentially other matters.
3. FMAg are about the methods of farming and husbandry that are adopted in a given FMA. However, they are necessarily conditioned by other factors within each farming business. As a simple illustration: all significant companies operate a stocking and harvesting plan designed to produce a supply of fish to meet seasonal market demand and make efficient use of the company's processing facilities. Commonly, these plans will reflect closely specified long-term supply contracts with retailers. Thus, whilst FMAg are about farming, they reflect the operation of farming company overall, taking account of many business factors.

Where Difficulties Can Arise

Difficulties can arise under two distinct sets of circumstances.

OPERATORS ADOPTING THE CoGP

In these circumstances, FMAg difficulties can arise:

- Where there has been a single operator FMA and a second operator establishes a new farm in the same FMA;
- Where there is a 'change of circumstances' in a multi-operator FMA and a farm or farms changes ownership or an operator wishes to change the farming system in some significant way;

In these cases an FMAg may be challenging to establish initially because the operational requirements (including stocking and harvest plans) of the two or more companies may be out of phase or otherwise not in harmony. In these cases, the important need is to be able to negotiate an agreed plan to bring the different farming operations into accord, within an appropriately specified FMAg. This often requires

compromise by all companies involved in the relationship, and may take time to phase in.

To facilitate this process, the CoGP was changed in 2010 to require farmers in single operator FMA, (who do not require an FMAg) to have a written Farm Management Statement (FMS) providing a summary (equivalent to that in an FMAg) setting out how their farm(s) in the FMA are operated. This sets the established pattern of management for the FMA and provides the system to which new operators must either conform or must have regard as the starting position for negotiating any changes to achieve an agreed FMAg.

Note: For any new farm developments in an existing FMA (i.e. where an FMS or an FMAg exists) Marine Scotland, as a statutory consultee in the planning process, can use these documents, as a basis for ensuring any new farm conforms to the farming practice established in the FMA. This does not require legislation and is simply a component of the statutory planning consultation that is already undertaken.

The issues of 'change in circumstances' cases (second bullet point above) can raise more difficult problems since agreements between operators within a FMAg are subject to negotiation and compromise. However, where an existing FMAg exists there is a clear contractual framework within which the agreement between operators has a legal basis and can be subject to dispute resolution by use of the legal framework of the *Arbitration (Scotland) Act 2010*.

However, where an FMAg has yet to be established between operators, the basis for negotiation is less clear and negotiations may be more challenging. The question that has to be addressed in this case is whether the situation would be improved by introducing a statutory underpinning for an FMAg. On this, we fully support the need for an FMAg, but we believe the proposal in the consultation document is very questionable on the following grounds.

There will be instances where there are wholly justifiable and genuine difficulties in companies making the adjustments needed to agree an FMAg; in these circumstances the agreements must be phased in over a period of time. This requires developing close working relationships between companies and there can be real and unavoidable issues where companies must reach a compromise through negotiation. No individual company is necessarily in the right or in the wrong; there may simply be a difference in priorities between two businesses. In these circumstances the role of the SSPO is to seek to facilitate the process of the companies agreeing on an FMAg.

In cases where these negotiations are ongoing, it is difficult to envisage how the introduction of a statutory requirement would improve matters, since it will lead to a situation where the Scottish Government will either: (a) become embroiled in between-company negotiations; (b) come down arbitrarily on the side of one company or the other; or (c) prohibit both companies from pursuing their legitimate business objectives. All these options raise legal issues. Our understanding is that the Scottish Government could not force a Board of Directors to take a decision that

would compromise its fiduciary responsibilities to the company and shareholders, and that would be an evident risk in the Marine Scotland proposal. This prompts the question of what could the Scottish Government do that would encourage the process of agreement?

Within the SSPO we have considered in some detail the process whereby formal FMAg can be reached in cases of 'changed circumstances' and that led, in part, to the introduction of FMS. We believe that FMAg can be reached more readily where two (or more) companies seeking an FMAg start from the standpoint of having a clear understanding of each other's farm management systems, gained through comparison of the existing or intended FMS for each operator. In this way, it is easier to agree a route map to bring farming operations into one system and conclude an FMAg.

We believe that the most proportionate and helpful contribution Marine Scotland could make to this process would be to regard any multi-operator FMA that does not have an FMAg in place or a specified route map to agreeing one as an area of increased risk, justifying a more intensive regulatory inspection regime. In that way there will be pressure on operators who are negotiating an FMAg to reach an accord in as short a time as possible.

OPERATORS NOT ADOPTING THE CoGP

The consultation specifically raises the issue of operators not adopting the CoGP (or otherwise not complying with the requirements for FMA and FMAg). Firstly, on an industry scale, these are small producers and few in number. Nevertheless, in just the same way as the regulation of agricultural 'small holders' can provide a risk to large commercial agricultural businesses, the 'unregulated' activities of a non-conforming small fish farmer can create a risk to a larger 'conforming' operator, farming under the FMA and FMAg system.

However, it would be wrong to overestimate the scale of this problem or to legislate disproportionately to seek its resolution. **In our view, it can be addressed by two simple measures and we would propose as follows:**

- 1. For any new farm development in an existing FMA (i.e. where an FMS or an FMAg exists) Marine Scotland, as a statutory consultee in the planning process, should use these documents, as a basis for ensuring any new farm conforms to the farming practice established in the FMA. This does not require legislation and is simply a component of the statutory planning consultation that is already undertaken.***
- 2. For any existing farm being operated outwith the FMA or FMS or FMAg requirements (and we are not certain there are any), SSPO can apply to Scottish Government under the 'extension of powers to non-members' provisions of the EU Common Market Organisation (CMO) (which are currently being revised as part of the Common Fisheries Policy reforms). In this way it will be possible to apply existing CoGP provisions for FMA, FMS and FMAg to businesses which are not SSPO***

members. Again until businesses conform to these requirements Marine Scotland should regard them as higher risk and subject to a more intensive regulatory inspection regime.

- 3. With extension of powers in view, SSPO has already given consideration to creating an 'associated member' status for any operators who might fall into this category.***

Appendix 6. Risk Management in Aquaculture.

FAO Fisheries and Aquaculture Technical Paper 519, 'Understanding and Applying Risk Analysis in Aquaculture' (29) provides a comprehensive guide on all relevant aspects of hazard identification, risk assessment, risk management and risk communication in respect of aquaculture. For the purpose of this response it is only necessary to define the three technical terms that are used in our comments and recommendations. Specifically, it should be noted we have commented using the following, well defined terminology.

Hazard – A hazard is the inherent property of an agent or situation of being capable of having an adverse effect on something. Hazard identification is the very first step in any process of risk assessment.

Risk – Risk describes the probability and severity of an adverse effect or event occurring as a result of the risk source (i.e. the hazard).

Risk Management – Risk management is the process whereby a risk is eliminated or reduced to a point where it is not quantitatively important within the system criteria that are set.

Thus, whilst sea lice and escapes from fish farms present a hazard to wild fish under some conditions, farm management of sea lice and effective containment of fish reduces the risk to a level that is not quantitatively important. All farms in Scotland operating under the CoGP are operated in a way designed to manage risks to wild fish. The evidence supports the conclusion that this is effective.

Appendix 7: Requirements for Record Keeping by Fish Farmers in Respect of the Control of Parasites and Fish Escapes.

The below is extracted from Schedule 1 and Schedule 2 of The Fish farming Businesses (Record Keeping) (Scotland) Order 2008

SCHEDULE 1: RECORDS IN RELATION TO THE PREVENTION, CONTROL AND REDUCTION OF PARASITES.

1. A record of all training undertaken by each person working there in relation to:
 - a) parasite identifications;
 - b) counting of parasites;
 - c) recording of such counts;
 - d) biology and life cycle of parasites; and
 - e) symptoms of parasite infection of fish.

2. A record of the number of parasites counted in the course of a weekly count of parasites, including:
 - a) the name of each person making the count;
 - b) the date of the count;
 - c) the number of fish sampled per facility;
 - d) the identification number of each facility from which the sample of fish was taken;
 - e) the water temperature as measured at the half way point of the depth of the facility containing the fish sampled;
 - f) the number of parasites counted on the fish sampled per facility and the stages of the life-cycle of the parasites counted, these stages for *Caligus elongates* being mobiles and for *Lepeophtheirus salmonis* being non-gravid mobiles and gravid females; and
 - g) the reason for not conducting a weekly count of parasites in the event that such a count is not undertaken in any week.

3. A record of particulars relating to the administration of any medicinal product to farmed fish, which record shall be prepared as soon as is practicable after administration of the product and including:
 - a) the date of administration;
 - b) the identity of the product;
 - c) the concentration and amount of the product;
 - d) the method of administration of the product;
 - e) the identification number of all facilities which have been subject to the administration of the product; and
 - f) the name of the person who administered the product.

4. A record of particulars relating to any other methods employed to control parasites or treat their impact including:

- a) the nature of the method employed;
- b) the date the method was employed;
- c) the identification number of all facilities which were subject to the method; and
- d) the name of the person employing such other method.

5. In respect of any management area operated in accordance with the Code of Good Practice for Scottish Finfish Aquaculture within which a person carries on the business of fish farming, a record of:

- a) the name of each person who is a member of any group involved in co-ordinating a strategy for control and treatment of parasites;
- b) the name of any person nominated to act as a co-ordinator of a group referred to in sub-paragraph (a); and
- c) any decision taken at a meeting held by a group referred to in sub-paragraph (a) regarding action to be taken in relation to prevention, control and reduction of parasites.

SCHEDULE 2: RECORDS IN RELATION TO CONTAINMENT, PREVENTION AND RECOVERY OF ESCAPED FISH.

1. In relation to each facility, net, and mooring a record of:

- a) the name of the manufacturer;
- b) any special adaptations;
- c) the name of the supplier;
- d) the date of purchase;
- e) each inspection, including:
 - i. the name of the person conducting the inspection;
 - ii. the date of each inspection;
 - iii. the place of each inspection;
 - iv. the outcome of each inspection; and
- f) the date and result of each repair, equipment test and antifouling treatment carried out.

2. In relation to each net a record of:

- a) the mesh size;
- b) the code which appears on the identification tag;
- c) the place of use, storage and disposal; and
- d) the depth of water between the bottom of the net and the seabed as measured at the mean low water spring.

3. In relation to each facility a record of:

- a) the date of construction;
- b) the materials used in construction; and
- c) its dimensions.

4. In relation to each mooring a record of:

- a) the date of installation;
 - b) the design and weight of the anchors; and
 - c) the length of the mooring ropes or chains.
5. A record of any navigation markers deployed.
6. In relation to any boat operations a record of:
- a) all training and qualifications of each person working there in the use of each boat;
 - b) the type and size of each boat used for operations on the site; and
 - c) the type and size of any propeller guard fitted to each boat used for operations on the site.
7. In relation to any transfer of, or handling of, fish a record of:
- a) all training of each person working there in relation to containment and prevention of escape of fish, and recovery of escaped fish; and
 - b) any assessment of the escape of fish carried out.
8. A record of any anti-predator measures undertaken, including:
- a) the type and location of each net, fence and scarer deployed;
 - b) the use of lethal means by any person involved in operations on the site; and
 - c) any assessment of risk of escape of fish carried out.
9. A record of any contingency plan for preventing escapes of fish from fish farms and recovering any fish which have escaped prepared by a person carrying on the business of fish farming.
10. In respect of sites at which fish are farmed in inland waters, being waters which do not form part of the sea or of any creek, bay or estuary, or of any river as far as the tide flows:
- a) the type, method of and date of construction of any flood prevention or flood defence measures in place;
 - b) the date of and results of any tests conducted on any such measures;
 - c) the date of any incident where the site was flooded; and
 - d) the water course height during any such flood.
11. A record of:
- a) the date of any severe weather event which caused damage to any facility, net or mooring; and
 - b) any action taken to rectify any such damage.

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