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Your Ref:

If telephoning ask for:
Douglas Sinclair

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Scottish Government
1B-North
Victoria Quay
Edinburgh
EH6 6QQ

By e-mail: Aquacultureandfisheriesconsultation@scotland.gsi.gov.uk

Dear Sir/Madam

AQUACULTURE AND FISHERIES BILL CONSULTATION

Thank you for providing the Scottish Environment Protection Agency (SEPA) with the opportunity to comment on the above consultation document, which has considerable potential to bring forward measures addressing a number of outstanding issues in the management and regulation of aquaculture and fisheries in Scotland.

SEPA has provided a response to the majority of the questions posed in the consultation apart from those which lie a considerable distance from our remit as a regulator or our sphere or expertise as an authority on aquaculture issues.

Dealing with the specific questions in the document and the detail of the consultation SEPA's views are as set out in the Annex (attached).

As a public body committed to openness and transparency, SEPA feels it is appropriate that this response be placed on the public record. If you require further clarification on any aspect of this correspondence, please contact Douglas Sinclair, Specialist I (Aquaculture) who is based at SEPA's Orkney office: Norlantic House, Kirkwall KW15 1RE (email: douglas.sinclair@sepa.org.uk).

Yours faithfully

Andrew J Rosie
Head of Operations North

Annex

CONSULTATION QUESTIONS

SECTION 1 - THE SUSTAINABLE DEVELOPMENT OF AQUACULTURE

Farm Management Agreements (FMAs)

1. **Do you agree that we should, subject to appropriate safeguards, make it a legal requirement for marine finfish operators to participate in an appropriate Farm Management Agreement (FMA), with sanctions for failure to do so, or to adhere to the terms of the agreement? (Page 9)**

YES

This is a complex area and one which invoked considerable discussion during the work of the Healthier Fish and Shellfish Working Group. It may also be controversial as it has in many cases been difficult to agree voluntary management agreements that are sound, binding and robust. The benefits of such agreements are however not in doubt and in the face of current anecdotal reports of sea louse resistance to existing medicines all steps which might improve control of parasites should be considered. SEPA is therefore strongly supportive of the suggestion to develop Farm Management Agreements along statutory lines, and further believes that these agreements should be transparent and available for public scrutiny. SEPA considers that the potential for processing plants, killing stations and possibly even shorebases to contribute to the incidence of disease or parasites means that these facilities should be included within the scope of FMAs where these are present within the geographic area of any such Agreement.

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

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

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

It is possible that an arbitration process could be operated by an expert panel involving individuals with a good knowledge of the industry appointed by Marine Scotland or, developed on a local basis, for example by a sub group of the Regional Planning bodies to be established under the Marine Scotland Act 2010

Unused Consents

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

YES

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

This is a subject which has been discussed for a number of years without satisfactory resolution, in part probably because the significance of the issue, at least outwith Shetland, has been overplayed. The essence of the problem, if a problem exists, is that the existence of sites licensed under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 which are unused for fin fish farming, stifles development because the environmental capacity assigned to such sites is included in calculations of the available environmental capacity for fish farms in enclosed coastal waters. The issue potentially has significance because of the ambitions of the industry and the government for growth in production – 4% per annum to a 50% production increase by 2020.

Capacity for development in waterbodies is defined in the Locational Guidelines with Category 1 waterbodies being defined as those with no scope for development. A perusal of the latest iteration shows that outwith the Shetland Islands, there are 4, mainly small waterbodies defined as Category 1. The vast majority of the coast is either uncategorised or classed as Category 2 or 3 offering considerable scope for further finfish production. Thus, although there are a number of unused sites around the coast, it is incorrect to assert that these have a nationally significant bearing on fish farm production or on the ambitions of the industry to expand. This is further demonstrated by the production levels seen over the last few years where an annual production increase has occurred well in excess of that required to reach the targets set out above (12% in 2009, 6.9% in 2010, est 3% in 2011). SEPA also considers that there is considerable scope for expansion within the currently licensed fish farm resource even when small, arguably economically unviable sites are discounted from the total.

The authorisations that constitute the basis for operating a site effectively form the tangible asset of a fish farm. The agency is aware that these authorisations have changed hands for a considerable sum when companies have taken over sites “owned” by other operators. SEPA retains the view that if situations arise where one company’s ambitions are thwarted by licences and associated environmental capacity being held by another operator then market forces should provide the solution with the assets being acquired at a suitable market price. This scenario is no different to the terrestrial context where land with associated planning consent held by one company or individual is of value to another company and that organisation making an offer to buy the land and associated permissions. This type of transaction occurs continually in relation to land and because it doesn’t always occur in connection with aquaculture does not mean that the permitting system is at fault but that the market is somehow broken. It is an area where government and regulators should tread with care.

On a number of occasions, it has been suggested that SEPA revoke licences for sites that are no longer in operation. SEPA’s reticence regarding this issue is because were the agency to revoke unused licences which an operator valued, SEPA would be likely to lose any appeal against such revocation. Further, defending any such appeal is costly and likely to be a lost cause. SEPA’s view is that this issue is best resolved by dialogue between operators and where this is not feasible then it should be facilitated by the relevant industry association acting as an honest broker.

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

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

If such powers are the only way forward and are to be used then they should be used on sites which the operators are willing to relinquish or the revocation should ideally be beyond the scope of any appeals process. Should licences issued by SEPA under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 be amongst those subject to such powers, the use of a formal Ministerial Direction to SEPA would be the preferred means of facilitating the revocation of the licences.

Collection and Publication of Sea-lice Data

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

The situation with respect to sea lice in Scotland is opaque and surrounded by anecdotal gossip, yet it is accepted that there is a significant and growing problem with regard to lice control on farms in Scotland. Sea lice control is pivotal to the future prosperity and well-being of the sector in Scotland. The topic was discussed extensively at the recent Sea Lice Symposium organised by the Scottish Aquaculture Research Forum and the Scottish Salmon Producers' Organisation. Ensuring effective louse control requires that operators and veterinarians have access to detailed and reliable information on sea louse numbers and treatment effectiveness on sites in the vicinity of those which fall under their care. It is SEPA's view that in order to facilitate effective treatment, access to data on lice numbers and the effectiveness of treatments is required to be available in as near to real time as possible. SEPA is aware that there are concerns regarding the sensitivity of sea louse data but these concerns are outweighed by the need for those involved in organising treatments to have access to up to date information on louse numbers and treatment effectiveness in the area in which they operate. Whilst the publication of the data by the SSPO of the sealice data for 6 defined areas is of interest, it does not provide sufficient detail to be of use in the active management of sea lice infestations. For this reason SEPA considers that sea louse data should be published for individual sites immediately after louse counts or treatments are undertaken. It may be that the Aquaculture Database to be introduced later this year would provide a means for such data to be displayed but failing this, an alternative public portal displaying sea louse and treatment data should be developed without delay.

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

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

In a similar vein to the sea louse issue discussed above, it would seem likely that effective control of other disease problems would be facilitated by real time or close to real time data being accessible. This would allow operators in an area to understand the operation and disease status of sites in their locale held by other companies.

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

We have in the past suggested that this outcome could be achieved by operators voluntarily stocking their sites at a biomass which can be practically treated rather than at the maximum permitted licensed biomass. SEPA has also on many occasions discussed the possibility of licensing farms under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 in a way that aligns the limits on the biomass on fish farms with the amount of medicines licensed such that the entire farm biomass can be treated within a reasonable timescale. We referred to this as a "Limiting Factor Approach".

In order to ensure that such an approach is successful, it is important that the biomass limit is such that the entire site can be treated by more than one medicine. Determining such limits for in-feed treatments is relatively easy but the process may be more complex for topical treatments. For example, if access to topical treatments is subject to significant limitation by conditions in licences issued under the Water Environment (Controlled Activities) (Scotland) 2011 then the biomass should be limited to a scale that allows the entire site to be treated within a short number of days. SEPA understands that 3 days is an appropriate timescale in such cases.

SEPA is content that Ministers should have powers to require that biomass limits in licences issued by SEPA under the above legislation be aligned. In such cases the most appropriate means to vary biomass is by a Ministerial Direction. Alternatively, SEPA would be interested in discussing with Marine Scotland and the aquaculture industry the possibility of revising the Agency's licensing policy such that all licence limits are routinely determined and set on the basis of such a Limiting Factor Approach.

Wellboats

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

YES

SEPA is strongly in favour of a change in the regulatory controls on wellboats. SEPA is content with current arrangements for the control of wellboat activities around the coast generally but believes that wellboat operations at marine cage fish farm premises, specifically the discharge of medicine residues, should fall to be controlled under the Water Environment (Controlled Activities) (Scotland) Regulations 2011.

Recent experience has shown that the situation where there is a duplication of controls over the release of medicine residues at fish farms may lead to difficulties or complications in terms of enforcement activities and also potentially for environmental protection. The current arrangements also lead to operators requiring an additional licence for their farm site with associated costs and bureaucracy.

Bringing all “discharge” activities at marine cage fish farms under the control of a single legislative regime therefore has considerable benefits from the perspective of effective regulation, streamlining and lessening the administrative and financial burden on the aquaculture industry. SEPA’s view is that the regime under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 is the most appropriate means of regulating such discharges.

Processing Facilities

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

YES

The existing powers which allow controls over processing plants to ensure biosecure operations where there is a risk of the release of pathogens responsible for notifiable diseases should be extended to cover other types of releases that pose a risk to wild and farmed fish populations. This could include the release of lice or their larvae from infected fish delivered to processing sites both directly from the processing plant itself and during the delivery process from for example a wellboat.

Seaweed Cultivation

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

YES

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

YES

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

SEPA considers that seaweed farms could be effectively licensed through either the Marine Licensing Framework or through Town and Country Planning legislation.

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

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

SEPA broadly supports the proposals for changes to the regime protecting Shellfish Growing Waters as set out in our response to the recent consultation on: An Integrated Approach To The Protection Of Shellfish Growing Waters.

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

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

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

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

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

YES

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

Statutory

Statutory Carcass Tagging

26. Do you agree that Scottish Ministers should have powers to introduce a statutory system of carcass tagging for wild Atlantic salmon and sea trout? (Page 31)

YES

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

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

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

YES

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

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

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

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)

Detailed information on stocking, including location, species, life history stage and number should be recorded and made available. This would assist SEPA in interpreting results and reduce the risk of misclassifying data. Greater use of rod catch data, and particularly the ability to include a measure of fishing effort, and providing catch and effort information on a finer geographic scale would enhance the usefulness of catch data and would enhance the ability of water framework directive classification procedures to include information on adult fish stocks.

34. Should Scottish Ministers have powers to require Boards and/or proprietors or their tenants to investigate and report on salmon and sea trout and the fisheries in their district? (Page 34)

YES

Licensing of Fish Introductions to Freshwater

35. Do you agree that Scottish Ministers should have powers to recall, restrict or exclude the jurisdiction of Boards in relation to fish introductions, in certain circumstances? (Page 35)

YES

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

SECTION 5 - MODERNISING ENFORCEMENT PROVISIONS

Strict Liability for Certain Aquaculture Offences

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? (Page 37)

YES

Widening the Scope of Fixed Penalty Notices

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

YES

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

YES

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

YES

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)

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)

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)

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)

NO COMMENT

Sea Fisheries (Shellfish) Act 1967

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

NO COMMENT

SECTION 6 - PAYING FOR PROGRESS

45. Do you agree that there should be enabling provisions for Scottish Ministers to provide, through secondary legislation, for both direct and more generic charges for services/benefits arising from public sector services and activities? (Page 43)

YES

46. If you do not agree that there should be charging provisions, how do you envisage ongoing and new work to assist in management and development of the aquaculture and fisheries sectors should be resourced? (Page 43)

47. If no new way of resourcing such activity can be found, what activities do you suggest might be stopped to free up necessary funds? (Page 43)