

Orkney Trout Fishing Association

Dear Sir,

Aquaculture and Fisheries Bill Consultation

Please find attached our comments in relation to the above consultation. We are in full support of many of the options mooted in this document, particularly those regarding the control, monitoring and reporting of sea lice on salmon farms. It remains an area of great concern to the Orkney Trout Fishing Association (OTFA), particularly as the production of salmon is once again increasing.

As we understand it, this bill is not looking at location planning issues. We feel that this is a huge mistake as location is the key issue in minimising or even eliminating environmental impact with wild fish. We have seen this repeatedly in Orkney. Just as we thought everybody was willing to accept this, the first new salmon farm in Scapa Flow (Cava South) in over a decade was passed in the most inappropriate location we could imagine, despite words of caution from MSS, clear objections from key stakeholders and concerns raised by the developers own Environmental Assessment. We, like many other conservation groups, are increasingly concerned with SNH's apparent ambivalence on this issue and the lack of clear scientific advice for local authorities.

We would take this opportunity to highlight the unique nature of the wild sea trout fishery here in Orkney. Anyone may fish for sea trout in Orkney, making it a truly free and public resource. The OTFA strives to protect sea trout and brown trout populations which collectively bring significant economic benefit to Orkney, estimated at £1.9 million (supporting 60-75 full time jobs) according to a SNH report in 2006. In the absence of a Board, the OTFA is the only organisation in the islands with a specific remit to protect wild fisheries and it expends a huge amount of voluntary effort each year in this role. Our membership currently stands at 550 individuals and we are at least 107 years old.

Thank you for the opportunity to comment and we look forward to your success in implementing some of the very sensible measures proposed in this Bill.

Yours faithfully

Colin Kirkpatrick

Environment Sub Committee Chair
Orkney Trout Fishing Association

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 - with the industry Code of Good practice seen as a minimum standard that should be a requirement of statutory FMAs.

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 – However the industry must demonstrate that they have adopted appropriate areas and government must maintain the right to amend MA's and enforce change if required. Regulators and external interest parties must have access to MAs and be able to influence the process as appropriate. The issue of boundaries is critical to the success of measures such as fallowing and coordinated lice treatment. It would be very easy to construct "boundaries of convenience" which prioritise operational convenience over environmental benefit. This has happened with some of existing AMA proposals. MA boundaries should apply to appropriate discrete hydrographical zones.

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 – importantly other stakeholders must have access to this process. It is worth noting that there are examples where AMAs have stalled for years and even failed to materialise because of disagreement or unwillingness to participate on the part of the industry (e.g. Orkney). The lack of an independent process with statutory underpinning could simply lead to a replication of the AMA situation and the failure to implement meaningful measures.

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

Marine Science Scotland (MSS) would be best places to take on the role of independent arbitor and reviewer of MAs

Unused Consents

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

YES - Our main concern about unused sites is that sites given approval some time ago would not necessarily be granted permission today given current understanding of environmental impact. Unused sites should be reviewed in the light of current best practice and understanding of impact. On the issue of following there is a need to be clear about what this term actually means. The term has created confusion in the planning process.

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

A review period for consents with “use it or loose it” clause.

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 - consents should be awarded on a “use it or loose it basis” and not be banked by the industry using consented sites as assets which add to the value of companies. This creates speculation and a land grab mentality effectively creating tradable quasi-property rights in what is supposed to be a commons.

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

Existing unused sites in inappropriate areas should be revoked e.g sites sensitive to wild fish.

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)

Sea lice data must be published and made publically available. It is difficult to conceive of any credible argument for not making this information available.

Sea lice data is of no commercial value to other operators and even if it is public good arguments must outweigh these concerns. It is worth noting that the same companies currently operating in Scotland already comply with more stringent reporting procedures in other countries (e.g. Norway and Canada). It is difficult to give credence to industry arguments for a more lax regime in Scotland.

Information regarding treatments should also be included as well as any build up to resistance.

Sea lice statistics are published in Norway and has not been detrimental to the industry there. Scottish data should be available on-line, regularly updated throughout the year. It would make sense to exactly mirror the Norwegian system providing opportunities for comparative research studies and lower set up cost.

It is vitally important that sea lice data is not over aggregated or it ultimately can become meaningless. Data must be available for each individual site.

Verification is critical. This must be done by an independent party (e.g. MSS) and also agreed with wild fish interests in the area.

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 – especially concerning fish and disease movement. Importantly fish escapes should be included in such a regime.

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

Sea lice data should be monthly, as it is in Norway, allowing timely targeted intervention.

Escape data should be notified immediately. Sea lice etc see 9 above.

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 Importantly not just a health and welfare issue for the farmed fish. A reduction in biomass consent may also be required to address environmental concerns. For example in response to a sea lice epizootic (see 9 above) or indeed consistent failure to achieve minimum standards set out in a statutory FMA. Biomass is the main way to control impact.

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

No view on this issue. But ISA concerns must obviously be taken into account.

Processing Facilities

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

YES

NO

No view on this issue

Seaweed Cultivation

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

YES

NO

If it is a no input process then there is less need for legislation. There is less scope for intensification in the way that is possible with aquaculture.

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

YES – local planning arrangements are inadequate. Local authorities do not have the resources available to give informed scientific advice to Councillors

who are inevitably even less well informed. We can provide evidence of this if required.

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

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

We have no view on this issue

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 – Shellfish production is a no input form of aquaculture which relies on water quality. Preference should always be given to this industry over activities which introduce nutrients and chemical therapeutants into the water column.

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 - We strongly agree with this. With respect to sea lice this is critical. At the moment the sea lice threshold in the industry Code is often advanced as a level below which there is no impact on wild fish. Adherence to the Code and the inference that it represents “safety” is used as leverage in the planning/consent process. There is no science to suggest that this a safe level of infestation. Furthermore there is no way to ensure that it is even being achieved once a consent to operate a farm is given.

Thresholds in the existing Code may be appropriate from a farmed fish welfare perspective. However it is obvious, but worth noting, that it is the number of lice not the rate of infection (lice per salmon) that is significant to wild fish infestation in any location. Therefore biomass must be taken into account when establishing minimum thresholds in specific locations. This is a fundamental flaw with claims that the existing Code gives adequate protection to wild fish.

The code should be a minimum accepted standard. It is clear that certain sensitive locations should be subject to more stringent controls. E.g. salmon farms adjacent to spawning burns and well known nursery areas for wild fish. Wild fish interests should be involved in the identification of sensitive locations. This information should feed into planning and site location/relocation procedures

Any measures must be linked to reporting verification protocols and as discussed in 9 above.

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 - escapes are a serious problem. Mass escapes continue to be a routine problem and reporting is poor. This should include freshwater fish farms.

Tracing Escapes

22. Do you agree that there should be additional powers for Scottish Ministers to take or require samples of fish from fish farms, for tracing purposes? (Page 26)

YES - the ability to trace fish is essential otherwise regulators are relying on operators to report escapes. It is too easy to deny the existence of escapees. Again this is important in the case of freshwater smolt farms handling large numbers of fish, where it is easy to deny that routine escapes are happening.

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 - at the moment there is not even 100% coverage in Scotland. To an extent DSFBs have been superseded by the work of Fisheries Trusts.

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)

Non-statutory – the huge diversity of fisheries physically, biologically and in terms of ownership/governance means that it is not practicable to produce binding codes. Large east coast rivers cannot be compared on any level with public angling associations or voluntary organisations like the Orkney Trout Fishing Association. However there may be scope for DSFBs (or their replacements to agree Codes of best practice for specific catchments)

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 – Certainly if a fish is offered for sale it should be accompanied by a numbered tag. This will eliminate existing loopholes which allow illegally caught salmon to enter the market through Scotland. Additionally it will provide accurate catch returns from net fisheries. In principal this would be a useful way of reducing the illegal sale of wild fish from recreational fisheries.

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 – this is an important source of scientific data. Fisheries are exploiting a public resource and it is only reasonable that scientific data useful for the sustainable management of the resource should be made available.

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 – in agreement with area boards or trusts.

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)

NO – On the face of it this is sensible in the case of salmon and sea trout. However there would be real problems in the case of traditional open access fisheries in coastal areas for sea trout. It may be better to encourage voluntary schemes through local organisations or Trusts in these areas. The Government must take note of the fact that there is a long history of free access to the recreational fishing resource in Orkney and Shetland. This is seen as a traditional Old Norse udal right and is fiercely upheld locally. However in both island groups the local angling organisations play an active role in protecting the fishery (including gathering scientific data) and maintaining the tradition of free access. The fact that the resource belongs to the community has encouraged responsible practice. Both island groups enjoy some of the best brown trout fishing in Europe. Angling tourism brings significant economic benefits to both island groups.

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)

No comment

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 – in principle however it must be remembered that certain parts of Scotland are not covered by Boards and that the efforts of voluntary organisations have their limits!

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)

Only in relation to non native species. Stocking remains a valuable and necessary wild fisheries management tool where natural recruitment is limited or not possible.

SECTION 5 - MODERNISING ENFORCEMENT PROVISIONS

Strict Liability for Certain Aquaculture Offences

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

YES – given the difficulty in establishing if regulations have been breached, and the relative ease with which they can be covered up (or not reported) - then it is reasonable to introduce strict liability for breach of

regulations. For example supermarket sampling of fish has in the recent past demonstrated the illegal use of chemicals but this has not led to prosecution.

It is also worth noting that in Scots law a person who is in charge of animals and knows that they have dangerous propensities (to damage third persons or their property) is held strictly liable for any damage they cause without the need to prove negligence. There is an argument that strict liability might apply in the case of escaped salmon and genetic pollution of wild stocks. However new law would provide clarity and the concept of applying strict liability to aquaculture is not unreasonable.

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)

This is a trivial amount for a serious breach of conditions.

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

YES

NO

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

We have no view on this issue

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

We have no view on this issue

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

Power to Inspect Objects

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

YES

Sea Fisheries (Shellfish) Act 1967

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

YES

NO

We have no view on this issue

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 Aquaculture is now a major industry executed by multinational companies. It is entirely reasonable that the cost of enhanced monitoring should be recovered from the industry. This is properly part of the “cost of access” to Scottish waters which the industry uses for private profit. The public should not be expected to subsidise private enterprise. Rather aquaculture should pay for the privilege of access to the sea and maintaining the public good.

There is however a radical difference in the financial position of multi-national business and grass roots voluntary organisations and this needs always to be taken into account. The consultation document treats this issue with a broad brush and individual measures would need specific consultation. In the case of fisheries it is important to note that the benefits of public sector “management” are not evenly spread. In the northern isles for example there is very limited practical or other

assistance or input from government towards fisheries. It would therefore be wrong to impose blanket generic charges (e.g. rod licence) for services that in practice do not always exist.

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)

Yes but see caveat above.

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)