

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

NO

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

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

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

Unused Consents

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

YES

NO

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

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

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

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)

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

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

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

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

Processing Facilities

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

YES

NO

Seaweed Cultivation

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

YES

NO

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

YES

NO

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

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

NO

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

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

NO

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

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

NO

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

YES

NO

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

YES

NO

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

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

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

NO

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

YES

NO

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

NO

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

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

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)

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

NO

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

NO

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 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

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

SIFT recognises the benefits already enjoyed through the use of Fixed Penalty Notices (FPNs) in appropriate situations where both Marine Scotland and offenders can reduce those costs normally associated with the criminal justice process. SIFT would welcome extending the use of FPNs to all areas where Marine Scotland has a compliance, monitoring or enforcement role. SIFT would add that it would expect caution to be exhibited where breaches were clearly of a nature whereby the offences would be more appropriately dealt with in the criminal courts, i.e. that FPNs would not be used indiscriminately simply to lessen the administrative burden from the regulators' perspective. SIFT also expects that the burden of evidence collated prior to the imposition of an FPN will continue to be equivalent to the burden necessary to enter as evidence in any court proceedings.

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

SIFT would agree that an increase in the number of offences that can be dealt with by way of an FPN would confer benefits on regulators, particularly in those cases where the potential profits of non-compliant activities significantly outweigh the penalties currently imposable. SIFT would hope that an increase in the maximum sum that can be levied would also be utilised in cases where repeat offences are identified.

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

YES

SIFT believes that areas of particular environmental sensitivity would merit higher maximum sums and equally, higher minimum fines would also be appropriate in these circumstances. For example, in the Clyde area, the Cod Recovery Zone, Lamlash Bay NTZ and other areas identified as having high environmental value such as Loch Creran should automatically invoke higher penalties where infringements are detected.

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

SIFT agrees that this amendment should be made to fully mirror the changes already made in England and Wales through the Marine and Coastal Access Act 2009 and would welcome the lessening of the need for further subordinate legislation in this regard.

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

Once again, SIFT would agree that the necessary amendments are made in line with those measures introduced into statute in England and Wales. Given the itinerate nature of those vessels (and therefore the skippers) the potential for evasion when the vessel is released prior to court proceedings taken place appears to be high.

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

SIFT believes that the introduction of specific powers to allow disposal and/or forfeiture of such items is a fundamental requirement to ensure satisfactory enforcement of commercial sea fisheries. SIFT believes that the current system –whereby seized catch must be stored until court proceedings are completed - is unjustifiable, both from the perspective of the regulators (where storage costs will be incurred and disposal costs of biological matter are often

high), and more importantly from the environmental perspective (where viable biomass is removed from the fishery unnecessarily).

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

SIFT would agree wholeheartedly with this proposal and would expect that when utilised in conjunction with the enhanced powers of Disposal/Forfeiture outlined in the response to (7) above, this measure could significantly improve enforcement effectiveness in Scottish waters. SIFT envisages that a combination of the proposed powers in (7) and (8) would be particularly useful in areas where static fishing grounds become inaccessible to compliant fishermen due to the illegal placement of fishing gear.

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

SIFT would welcome any amendments to the Sea Fisheries (Shellfish) Act 1967 ('the Act') that will make its application clearer. SIFT considers that the two specific amendments to amend Section 1 to apply to 'all shellfish' and the removal of the reference to 'material concern' both appear to be laudable amendments. SIFT would however need to be reassured that certain safeguards will remain following these amendments:-

- It is hoped that the alteration to the face of the Act to apply to 'all shellfish' will not lessen the rigour by which any Order granted under the Act will be considered by Government and that the tests which are applicable under Schedule 1 of the Act
- Similarly, SIFT would expect that the proposed removal of the term 'material concerns' would not lessen Parliamentary rigour when considering such applications and would expect that Ministerial responsibilities when considering applications will be thorough. SIFT notes that under the Marine (Scotland) Act 2010, the reference to an inquiry being triggered where objections were considered 'neither frivolous nor irrelevant' was removed. Taken together with this early alteration, the proposed removal of 'material concern' might suggest that the decision taken by Ministers to grant (or otherwise) an Order will become a more subjective process for Ministers than was previously the case.

SIFT also feels that the opportunity could be taken at this time to amend the Act to further improve the management of Scotland's inshore fisheries, particularly in those areas where the Act could make more appropriate provisions to capture the modern management regime in which the Act (together with other relevant Acts such as the Sea Fisheries (Scotland) Act) must now show itself to be fit for purpose. This will include compliance with the Scottish Government's obligations under the Marine Strategy Framework Directive to achieve good environmental status for its inshore waters. In particular, SIFT would recommend that the relevant sections of the Act be amended to ensure beyond reasonable doubt that the management of fisheries, as carried out under its auspices, would place emphasis on an ecosystem-based approach with sustainable fisheries management underpinning any measures carried out under its provisions.

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

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)

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)

Section 7. Any Other Issues