

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)**

We agree with the position described in the submission by the Association of Salmon Fishery Boards and refer you to that for more detail.

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)**

We agree with the position described in the submission by the Association of Salmon Fishery Boards and refer you to that for more detail.

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)**

We agree with the position described in the submission by the Association of Salmon Fishery Boards and refer you to that for more detail.

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

No comment

Unused Consents

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

We agree with the position described in the submission by the Association of Salmon Fishery Boards and refer you to that for more detail.

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

We agree with the position described in the submission by the Association of Salmon Fishery Boards and refer you to that for more detail.

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)

We agree with the position described in the submission by the Association of Salmon Fishery Boards and refer you to that for more detail.

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

We agree with the position described in the submission by the Association of Salmon Fishery Boards and refer you to that for more detail.

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)

No comment

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)

We agree with the position described in the submission by the Association of Salmon Fishery Boards and refer you to that for more detail.

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

We agree with the position described in the submission by the Association of Salmon Fishery Boards and refer you to that for more detail.

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)

We agree with the position described in the submission by the Association of Salmon Fishery Boards and refer you to that for more detail.

Wellboats

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

We agree with the position described in the submission by the Association of Salmon Fishery Boards and refer you to that for more detail.

Processing Facilities

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

We agree with the position described in the submission by the Association of Salmon Fishery Boards and refer you to that for more detail.

Seaweed Cultivation

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

No comment

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

No comment

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

No comment

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)

No comment

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)

No comment

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)

We agree with the position described in the submission by the Association of Salmon Fishery Boards and refer you to that for more detail.

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)

We agree with the position described in the submission by the Association of Salmon Fishery Boards and refer you to that for more detail.

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)

We agree with the position described in the submission by the Association of Salmon Fishery Boards and refer you to that for more detail.

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)

We agree with the position described in the submission by the Association of Salmon Fishery Boards and refer you to that for more detail.

We already publish our annual report and accounts on our website www.tdsfb.org.

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

We agree with the position described in the submission by the Association of Salmon Fishery Boards and refer you to that for more detail.

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

We agree with the position described in the submission by the Association of Salmon Fishery Boards and refer you to that for more detail.

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)

We support the position described in the submission by the Association of Salmon Fishery Boards and refer you to that for more detail.

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)

We agree that Scottish Ministers should have this power and that, as recommended by the ASFB, that DSFBs should also be given this power to use if they so wish. However, we note that from the recent Marine Scotland Science report on the Northumberland drift net fishery and the FASMOP project the current state of the technology does not provide meaningful

genetic resolution within Scotland at the present time. Therefore, such analyses may in fact have very limited value at present.

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)

We agree with the position described in the submission by the Association of Salmon Fishery Boards and refer you to that for more detail.

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

We agree with the position described in the submission by the Association of Salmon Fishery Boards and refer you to that for more detail.

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)

We agree with the position described in the submission by the Association of Salmon Fishery Boards and refer you to that for more detail.

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)

We agree with the position described in the submission by the Association of Salmon Fishery Boards and refer you to that for more detail.

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)

We agree in principle that it might be useful, particularly in the medium to long term, to obtain simple nominal fishing effort data, for example the daily average number of rods fishing per month or total number of rods-days fished per month. The requirement to collect more detailed information could be onerous on many fisheries and unlikely to be popular. Even the level of

information suggested may be hard to obtain accurately in some cases (e.g. fishing clubs).

There is a well known distinction between 'nominal' fishing effort (e.g. rod-days, days at sea etc) and 'effective' fishing effort, which relates in a more detailed way to how the nominal effort is deployed. As outlined in the ASFB submission, effective effort depends not only on the number of anglers fishing, but their skill, the ghillie, weather, water conditions, methods used etc. While we cannot understate the importance of such influences, it would be unrealistic to hope to compensate for them in a national catch-all data request and this will seriously undermine the value of such data. However, despite the limitations, simple nominal effort data should still be sufficient to demonstrate major changes in nominal effort, which do in fact occur. In our own case, had such data been collected in recent years we would have been able to demonstrate a significant decline in the numbers of anglers fishing in the spring.

However, such data will only have value in years to come and will have relatively limited value for management at the present time.

In order to better understand the current situation we think that a more immediate priority should be for MSS to retrieve more value from its existing catch dataset. Having been provided with monthly returns on a beat by beat level for the Tay district back to 1986, it is very clear that there are significant issues with the published district figures. For example, between the late 1980s and mid 1990s the number of beats in the Tay district which reported to MSS increased by about 80% because MSS undertook a major overhaul of its database. We also found that some beats have not always reported consistently since then. Such issues will, presumably, affect reported catches in other districts too. Perhaps the comment "gaps in other data" in section 102 of the consultation document is also a reference to this issue?

If the Tay experience is representative, the published national catch statistics may be presenting a false impression of Scottish angling catches. Caution should therefore be applied to statements such as in section 74, referring to 2010 as having had the record rod catch.

We suggest, therefore, that it would be of great value to have the MSS datasets cleaned up to more reliably reflect catch trends. The MSS dataset has been digitised back to 1986 and certainly from that year on it would be easy to produce standardised trends for each river based only on beats that have consistently reported catches.

The analysis of Tay data also showed that data do need to be analysed / presented in meaningful management / or salmon population units. For example, in the Tay's case this means a breakdown at a tributary level. It was also apparent that, particularly with regard to analysis of catches later in the season, catch trends need to be separated between those beats which do predominantly catch fresh run fish and those which predominantly rely on older coloured fish. This is consistent with MSS's original ideas when applying

SAT tests of breaking down larger catchments into lower, middle, upper etc. Unfortunately this approach was not taken with the recent site condition monitoring of SACs and will thus provide potential opportunity for some results to be skewed.

Effects of past changes in nominal and effective angling effort will of course still remain. In some rivers or parts of rivers effective effort may be increasing. On the Tay, however, we suspect that effective effort has, on the whole, been decreasing over the last 10 or 20 years. Nominal angler effort has decreased in the spring particularly, but the statutory ban on the use of shrimp bait (in autumn only in 1992 and remainder of season from 1999), the more recent voluntary restrictions on worm fishing and a more general trend from spinning to fly fishing as the method of first choice will have had significant effects. In contrast, in those larger rivers where fly fishing was always the method of choice, recent technological advances are likely to have led to increased effective effort.

While it may be difficult or even impossible to compensate for such subtleties, efforts could usefully be made to at least catalogue important changes so that they can at least be borne in mind when considering catch trends. In some instances, however, where there may have been big changes in the numbers of anglers fishing (e.g. when a previously unlet beat is opened up to an angling club) it might be the case that a sudden change in the catch trend is extreme relative to the general trend for the whole river. Identification of such events at a beat level could be useful in at least identifying areas where significant effort change may have taken place and that could help to more effectively direct efforts to find other information (e.g. fishing magazine reports, anglers' recollections, books etc) which could help confirm past effort changes.

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)

We would be happy for the information on fish numbers in our hatchery, their source, stocking records etc, which we keep anyway, to be provided to Scottish Ministers or anyone else on a periodic basis or if required to a Fish Health Inspector. This would also include the hatchery operating policy or any other policies.

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)

We agree with the position described in the submission by the Association of Salmon Fishery Boards.

TDSFB already performs many of the functions that might reasonably be expected under this heading. For example we collect salmon and sea trout catch data every year and perform juvenile electrofishing surveys. We are content to do such work and often do so as part of wider initiatives (e.g. site condition monitoring) when required to do so. We already publish such material annually in our report and would be happy to do this according to some more standard format, including SAT tests etc if required. We are aware that there is duplication in effort, particularly with respect to catch data collection and would therefore support the ASFB view of the need for an integrated data strategy involving a range of stakeholders. Given the willingness to do this we are not sure that any form of compulsion is necessary, certainly in our case.

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)

We agree with the position described in the submission by the Association of Salmon Fishery Boards and refer you to that for more detail.

We would also wish to add that it would be useful for DSFBs to be consulted by MS on applications for the introduction of freshwater fish within their respective districts, particularly since DSFB bailiffs are expected to have a role in enforcing such legislation.

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

We agree with the position described in the submission by the Association of Salmon Fishery Boards and refer you to that for more detail.

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)

We agree with the position described in the submission by the Association of Salmon Fishery Boards and refer you to that for more detail.

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)

No comment

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)

No comment

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

No comment

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)

YES

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

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)

We agree with the position described in the submission by the Association of Salmon Fishery Boards and refer you to that for more detail.

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)

We agree with the position described in the submission by the Association of Salmon Fishery Boards and refer you to that for more detail.

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)

We agree with the position described in the submission by the Association of Salmon Fishery Boards and refer you to that for more detail.