



Rivers and Fisheries Trusts of Scotland

Comments and Response to the Aquaculture and Fisheries Bill Consultation

01 March 2012

Introduction:

Formed in 2005, Rivers and Fisheries Trusts of Scotland (RAFTS) is an independent freshwater conservation charity representing Scotland's national network of 25 rivers and fisheries Trusts and Foundations. Our members work across over 90% of Scotland's freshwaters to protect and develop our native fish stocks and populations by undertaking a range of activities including freshwater, river habitat restoration, fish and fisheries monitoring, research and education programmes. RAFTS is the membership organisation of the fisheries and rivers trusts operating in Scotland and is, itself, a charity and company limited by guarantee.

In recent years RAFTS and members have worked closely with Government and its agencies and advisors, particularly Scottish Natural Heritage (SNH), Scottish Environment Protection Agency (SEPA) and Marine Scotland Science (MSS), in a number of freshwater, fishery and biodiversity issues. This has allowed fishery and river trusts with RAFTS to make a positive contribution to the conservation and management of Scotland's freshwaters in areas such as fishery and biosecurity planning, invasive non-native species management, education, salmon genetics, habitat restoration and work on non-salmonid fish species such as eels, sparring, brown trout and charr for example.

We welcome the opportunity to respond to the consultation on the Aquaculture and Fisheries Bill.

Overarching comments:

1. We welcome the proposals and developing approach to aquaculture set out in Sections 1 and 3. Although we recognise the economic importance and permanence of the aquaculture industry to, particularly the West coast of, Scotland we believe that aquaculture can present significant risks to wild fish populations in certain locations and at certain times. A number of the proposals made in these sections would go some way to addressing some of our concerns.

In particular we support proposals to:

- Make a legal requirement to participate in farm management agreements;
- Provide powers to revoke aquaculture consents;
- Provide powers to SEPA to reduce biomass consents;
- Provide powers to determine a lower threshold for sea lice levels on farms above which remedial action must be taken;
- Introduce a Scottish technical standard for finfish farm equipment; and
- Provide powers to take or require the taking of samples of, or from, fish from fish farms for tracing purposes.

2. We also welcome the Scottish Government seeking views on the most appropriate approach to be taken to the collection and publication of sea lice data and believe this is a key issue that must be addressed in the legislation which will follow the consultation. Our view is that it is essential that there is full public access to such data.
3. We welcome many of the proposals laid out in Section 4 in relation to the performance and practice of District Salmon Fishery Boards (DSFB). In many instances DSFBs work closely and effectively with our trust members across Scotland. However, we wish to ensure that Scotland's fish and fisheries are managed consistently, transparently and using best available advice, evidence and data across all of Scotland and so support the powers proposed to Ministers to help ensure that this is the case. We are also keen to ensure that all fish species, not just migratory salmonids, are appropriately and effectively considered.

We provide comments to the questions specified below. Where we have no comment to make on the question it is not included in our submission.

Specific comments:

Section 1: The sustainable development of aquaculture:

Q1. 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 with sanctions for failure to do so, or to adhere to the terms of the agreement?

Yes, we agree and understand that this was also recommended by the Ministerial Group on Aquaculture.

We believe that participation in Farm Management Agreements (FMAs) should be a legal requirement as we believe that it is only by requiring this that it can be made certain that coordinated approaches to stocking, fallowing and the treatment of sea lice and other disease outbreaks, at a scale appropriate to the potential dispersion of sea lice and other diseases, can be assured. It is our view that these actions are important in reducing risks and impacts to wild fish populations and believe also that were FMAs to become a requirement that sanctions should also be confirmed to deal with failures to adhere to necessary agreements and practice.

Within the previous Area Management Agreement (AMA) system put in place during the period of the Tripartite Working Group (TWG), where significant progress was made on many issues, one of the topics that caused some disquiet was the requirement for confidentiality about some of the discussions which took place and regarding information gathered and made known to the groups. To allay such suspicion in the future the operations of the FMAs should act under the principle of transparency, openness and accessibility to the public.

Q2. 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?

We are concerned that the existing farm management agreements are extremely variable in size. Whilst we recognise that information and understanding about connectivity between farms and FMAs is incomplete it would appear that, in some instances, the current FMA boundaries are not primarily based on reasons of good husbandry, biosecurity and control of sea lice.

From a wild fisheries perspective, RAFTS believes that FMA boundaries and areas should, ultimately, be determined by and be based upon sea lice dispersal models to support the coordinated and effective treatment and control strategies for lice. Where models do not exist, there should be a general principle of setting larger, rather than smaller, boundaries to minimise the risk of transfer of disease/parasites between FMAs. Therefore, we support Scottish Ministers having powers to specify FMA boundaries and feel that several existing FMAs should be consolidated as soon as possible.

Q3. Do you agree that an independent arbitration process should be put in place (with statutory underpinning) to resolve disputes related to Farm Management Agreements?

Yes, we believe that an independent arbitration process would be a useful and necessary support to statutory FMAs. Given the sometimes contentious nature of some of the topics and issues which will be considered within the FMA systems and process it is important to put in place such a system to allow effective and speedy resolution of conflict or disagreement issues.

Q4. How do you think such a system might best be developed?

We have no comment on how this system should be developed at this stage but would be willing to respond and comment on the development of such a process when initiated.

Q5. Do you agree we ought to review the question of unused consents?

Yes.

Q6. What do you consider are suitable options to promote use or relinquishment of unused consents?

We note the number of reasons listed in the consultation as to why consents for unused sites may be held. RAFTS would be extremely concerned if unused consents were the only mechanism available to achieve aims such as the achievement of effective buffer zones or to facilitate fallowing. We believe that FMAs if set at an appropriate size can allow such buffer zones to operate effectively.

The best option to promote use or relinquishment of unused consents will depend on the individual circumstances at any site and so there is merit in each of the incentives proposed (para 20). However, we believe there are situations when the most appropriate approach is to revoke the consent and ensure that no further consents are issued or reissued in that area.

Q7. Do you agree that Scottish Ministers should be given powers, ultimately, to revoke, or to require or request others to revoke, consents?

Yes, we believe it is important that Ministers be given these powers.

The ability to revoke consents is important as our understanding of the interactions between aquaculture, wild salmonids and the wider environment improves. The revocation of consent may be necessary to remove or minimise impacts that were not previously assessed, identified or confirmed. Currently Marine Scotland Science is not able to predict with certainty the effect of a site in a particular location. Given this situation we do not believe that the issue of permanent planning consents without the option of revocation if necessary should continue.

Q8. Should any such power relate to all or to particular consents (and if the latter, which)?

RAFTS believes that such a power should relate to all consents for both marine and freshwater production.

Q9. What in your view is the most appropriate approach to be taken to the collection and publication of sea-lice data?

RAFTS believes that the most appropriate approach to be taken re the collection and publication of sea lice data is for full public access to data in a disaggregated form.

Although there is currently an industry-run database which reports on sea lice numbers in 6 regional zones we do not believe this is sufficient. The regional areas are large and do not make it possible to identify locations or units performing well and meeting necessary standards from those who are not. The publication of average figures over such regions simply does not allow the necessary focus on remediation measures to be taken or to be seen to be taken by the public. In 2010 there was reporting of lice counts significantly above the target thresholds in many of the regional unit areas. Without finer resolution reporting of lice numbers the public is left with no option other to assume that all farms are not able to meet threshold targets where this simply may not be the case.

We believe strongly that full public access to lice data in Scotland would allow:

- Assessments to be made of the success or otherwise of lice control strategies and subsequent impacts on wild fisheries;
- Allow and support the Fish Health Inspectorate to prioritise limited resources on 'problem' sites as part of the on-going farm inspection process and so use public funds more efficiently;
- The more effective and informed operation of the aquaculture planning process by providing farm scale information and performance history to accompany applications being made to expand existing or set up new production centres.

Currently applications largely state that they will adhere to the Code of Good Practice with regard to lice levels and the routine response to this by Marine Scotland Science is to state that if the target is met then the impact will be minimal (despite also stating that current industry practice as laid out in the Code of Good Practice is insufficient to protect wild fish). At the present time there is no way of assessing such claims, and indeed, under some circumstances in some areas RAFTS does not believe that operators are capable of meeting such targets.

The consultation states, and we agree, that this area is a key area of contention between aquaculture and salmon and freshwater fisheries interests. We believe that, if the industry is confident that sea lice levels can be controlled in line with the Industry Code, then there should be no concern in making such information public, in a disaggregated form and at a farm scale. In fact we would contend there is a reputational risk in not making information available at this scale as currently all farms and units within the 6 regional reporting units will be considered to either pass or fail against threshold values. At the present time there is a high incidence of threshold exceedance.

We acknowledge need for data to be properly presented, explained and understood, to minimise the risk of misinterpretation or misuse. However, this is not a reason to withhold or sanitise data and would propose that the industry itself provides such clarification and advice for issue alongside the published data.

We believe that the principles for collection and publication of sea lice data should be as follows:

- All farms should report data on a weekly basis to Marine Scotland;
- Sea lice data should be published monthly, on a farm by farm basis, on a publically available webpage (operated by Marine Scotland or the Industry);
- The webpage can be used to explain the data in whatever manner is deemed appropriate.

However, in our view, it is fundamentally important and essential that raw data is available.

Q10. 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?

Yes we agree and note that these were recommendations of the Healthier Fish Working Group. Such data should be supplied to Marine Scotland and made available via a publically available website.

Q11. What are your views on the timing and frequency of submission of such data?

We believe that such data should be submitted on a weekly basis, with the possible exception of treatment notification, which could be collected less frequently. Within this position we are content that some verification of submitted information may be required but would wish to see data published promptly and perhaps identified as “unverified” if necessary to allow timely release.

Q12. 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?

Yes, we support the powers proposed.

Alongside powers to revoke consents, we believe that this power is a necessary and appropriate response. We note, however, that SEPA biomass consents under the Water Environment (Controlled Activities) Regulations 2005 are limited to ‘discharges’ such as fish waste and chemo-therapeutants and these are not currently interpreted as including sea lice.

Marine Scotland Science have recently stated that:

‘adherence to Integrated Sea Lice Management (ISLM) as described in the industry Code of Good Practice may not necessarily prevent release of substantial numbers of lice from aquaculture installations. The CoGP takes no account of farm size, or number of farms in an area, in setting threshold levels for sea lice treatments. This may be appropriate when the aim is to protect the welfare of farmed fish but it will not necessarily prevent significant numbers of larval lice being shed into the environment, and posing a risk for wild fish particularly in the case of larger farms or management areas holding a large biomass of farmed fish.’

We agree that the absolute number of sea lice released from a farm (which is clearly a function of the overall production biomass) is more important than the relative number of lice per fish. These factors are not taken into account in SEPA’s decision-making process and therefore it is entirely correct that Scottish Ministers should have a power to reduce biomass consents where appropriate. It is important that such powers are available to address concerns relating to the health and welfare of both farmed and wild fish. We believe that sea lice emanating from sea cages should be treated in the same manner as other discharges.

Q13. Do you agree we should make enabling legislation giving Scottish Ministers powers to place additional control requirements on well-boats?

Yes, RAFTS agrees that such powers should be enabled and implemented following Bill enactment particularly with regard to fish movement and discharges.

Q14. Do you think Scottish Ministers should be given additional powers to place controls on processing plants?

Yes, RAFTS agrees that such powers should be enabled and implemented following Bill enactment.

Section 3: Fish farming and wild salmonid interactions:

Q20. 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?

Yes, RAFTS agrees that threshold lice levels above which remedial action needs to be taken should be changed to take into account farm biomass and the cumulative biomass to reduce risks to wild fish and recognise the need to protect both salmon and sea trout which have different life histories after leaving freshwaters.

We note that Marine Scotland Science, in responding to fish farm applications, routinely states: *“However, it should be noted that adherence to Integrated Sea Lice Management (ISLM) as described in the industry Code of Good Practice may not necessarily prevent release of substantial numbers of lice from aquaculture installations. The CoGP takes no account of farm size, or number of farms in an area, in setting threshold levels for sea lice treatments. This may be appropriate when the aim is to protect the welfare of farmed fish but it will not necessarily prevent significant numbers of larval lice being shed into the environment, and posing a risk for wild fish particularly in the case of larger farms or management areas holding a large biomass of farmed fish.”*

This position from MSS would seem to suggest that the current arrangements do not adequately protect wild fish populations.

Q21. 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.)

Yes, RAFTS believe that a Scottish Technical Standard should be introduced. We note and support the progress made to reduce the number of escapes in Scotland and the work of the Improved Containment Working Group in developing such standards. However, escapes do still occur, and will continue to be an inevitable consequence of fish farming in cages in both seawater and freshwater systems until such time as finfish farming is carried out under closed-containment.

We would also propose that Ministers should have powers to ensure that staff operating, using and maintaining equipment covered by the Technical Standard should be appropriately accredited and trained to do so.

Q22. 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?

Yes, RAFTS strongly supports this proposal.

We believe that all Scottish aquaculture operators companies in the Scottish Industry should provide access to samples to enable escapee fish to be identified to farm of origin. If technically feasible, such sampling may allow the full assessment of the extent of introgression between farmed and wild fish. However, of more immediate importance is the opportunity to use genetic techniques to support the identification of escaped salmon to the farm or company of origin. We understand that some Scottish companies may be content to provide this information and we believe that such a scheme should be mandatory across Scotland.

RAFTS is also aware that Marine Scotland Science are currently undertaking a scoping study to assess the technical feasibility of identifying escapes and quantifying introgression using genetic methods and would be interested as to the findings and recommendations of that study. We believe that it is entirely possible to require the collection, or to administer the collection, of genetic samples from each farm or cage that can be held or archived with more expensive analysis only required in the light of an escape and when the locus of the escape needs to be determined.

The provision of samples should apply to both marine and freshwater production.

RAFTS also understands that in Norway consideration is being made to ensure that all farmed fish are marked with a uniquely numbered tag with the purpose of identifying the source of escapes under strict liability. Although this approach may not be practicable in freshwater, we believe that there is merit in this approach for marine cage fish, as it is consistent with the polluter pays principle.

Ultimately, whilst there may be disagreement on the specific means of identifying escaped fish, and in recognition that technical methods will progress over time, we would advocate that the power should be drafted in such a way as to allow samples for tracing purposes to be taken, but without being prescriptive as to the means to achieve this aim. We do, however, believe that current genetic analysis techniques should be applied and used quickly in support of a sampling programme.

Section 4: Salmon and freshwater fisheries management:

General comments:

RAFTS and its network of 25 members make a significant contribution to the management, protection, conservation and enhancement of Scotland's freshwater fish, fisheries and habitats. We also gather significant volumes of survey and other data and information to inform management decisions and practice undertaken by trusts themselves or by others. In many areas of Scotland fishery trusts work closely with their local District Salmon Fishery Boards (DSFB) and local management is sound and robust. However, this is not the case across all of Scotland and RAFTS has an interest in improving and modernising the management of our salmon and freshwater fish and fisheries management nationally. Our interest is not restricted to migratory salmonid species and the charitable objectives of our members extend to the habitats and other fish species associated with our freshwaters as well as to education and public information provision.

As a result our comments to this section are designed to promote the better management and protection of salmon and freshwater fisheries using existing structures and bodies but also

recognising that more important than the protection of these structures in themselves is the protection and management of Scotland's freshwater fish and fisheries.

Q23. Do you agree that we should introduce a specific duty on Boards to act fairly and transparently?

Yes, RAFTS agrees that all DSFBs, as with all bodies, should act fairly and transparently. We note that the Association of Salmon Fisheries Boards (ASFB) has just published a Code of Practice to support members in achieving necessary standards of good governance, transparency and practice and it may be appropriate to allow a period for this Code to be implemented. However, the introduction of such a duty would support DSFBs in meeting these obligations and serve as useful reminder of the necessity in doing so. Equally, and perhaps as importantly, such a duty would allow the public or other interested parties to be reassured that these bodies with legislative duties and obligations are working to appropriate standards of transparency.

Q24. Do you agree that there should be a Code of Good Practice for wild salmon and freshwater fisheries?

RAFTS has finalised an updated version of the Code of Good Practice for our members in November 2011 and, therefore, we agree that there should be such a code. Our approach is to seek to ensure that our members work in a professional and consistent manner, but which allows and recognises that management decisions and issues must be appropriate to local conditions. In issuing the code we have prepared to our members we are acutely conscious that each member of RAFTS is, in its own right, a separate charity with independent management and governance arrangements and obligations. As a member organisation we seek to lead and support our members but each, ultimately, has its own structures and obligations to its staff, its operations and, as a charity, to the Office of the Scottish Charity Regulator (OSCR). Our Code is issued to support members but is not issued to members from RAFTS acting as a regulator.

We note that the ASFB has also issued a Code of Practice to its DSFB membership to support governance and practice there. Clearly, DSFBs have obligations due to their more formal legislative status and duties and we support moves by ASFB to improve practice in that regard.

We are also aware that a Code of Best Practice for Fisheries Management is also under development as part of implementation of the Strategic Framework for Scottish Freshwater Fisheries. We have contributed to the early drafting of that document and would be keen to see that Code published and its use supported. The Codes prepared by RAFTS and ASFB for members, in the main, deal with governance, practice and legal obligations whereas the Fisheries Management Code is more associated with the practicalities and needs of informed fisheries management.

In terms of the recommendations set out on the operation of DSFBs, RAFTS would support improvements in the practice of Boards in these areas but believe this is more a matter for the ASFB and individual DSFBs themselves.

Q25. If yes, do you think such a Code of Good Practice should be statutory or non-statutory?

We believe that, similar to the Code of Good Practice for Scottish Finfish Aquaculture, the code should be non-statutory in the first instance. However, RAFTS would itself have no difficulty with such a code becoming statutory in the future if required. It is not clear at this stage the range of

operations, organisations and activities that might be intended to be covered in such a code at and this would require to be clarified.

Q26. Do you agree that Scottish Ministers should have powers to introduce a statutory system of carcass tagging for wild Atlantic salmon and sea trout?

Yes, RAFTS believes that such powers should be taken and implemented by Scottish Ministers.

Carcass tagging can be considered both to be both a quality control measure and a means to minimise the possibility of illegally caught fish reaching markets or dealers. In combination with the ban on sale of rod caught fish across the UK, any untagged fish would be made unmarketable and clearly identified as of illegal origin. We believe the absence of a carcass tagging scheme in Scotland represents a significant gap in the provisions to track and control the capture and sale of net caught fish in Scotland. We are of the view that this measure would allow all Scottish salmon sent to market to be clearly of reputable origin and protect the interests of those who have a legitimate right to take those fish by excluding those who do not hold this right from accessing the market. In addition it would, of course, further strengthen and improve the accuracy of catches reported from Scottish waters.

It is not clear whether the consultation question refers to net caught fish, rod caught fish, or all fish caught in Scotland. However, carcass tagging of rod caught fish may be a useful tool to help ensure and monitor compliance with local river conservation policies and measures and we would support the implementation of carcass tagging to rod caught fish also. However, we recognise that the ban on the sale of rod caught fish already in place does already make rod caught fish unmarketable even without a carcass tagging scheme.

It is currently illegal to sell rod caught fish although it is not illegal to purchase these same fish. Were a statutory system of carcass tagging to be introduced we suggest that it should be an offence to either sell or buy any untagged fish.

Q27. Do you agree that Scottish Ministers should have powers to take or require fish and/or samples for genetic or other analysis?

Yes, RAFTS agrees that Scottish Ministers should have the powers to take or require fish and/or samples for genetic or other analysis.

This provision was recommended by the Mixed Stock Fisheries Working Group and we agree that powers should exist to ensure that fish genetic samples can be produced where necessary from any salmon fishery. Genetic analysis is a key and developing tool in modern fisheries management, and without such information it is often not possible for fishery managers to know the impact of the total or sectoral catch on individual catchments or to apply targeted and robust conservation measures. RAFTS believes that access to such samples would allow analysis to be undertaken which would inform evidence based management decisions necessary on a river by river basis. We do not believe that the gathering of genetic samples requires the necessary sacrifice of fish and so support this proposal as an effective means of informing local management practice.

Current genetic studies undertaken by RAFTS and its members have, on occasion, sought to investigate the Mixed Stock Fishery issue in some catchments. However, access to net caught fish for sampling has not been provided thus preventing both the investigation and assessment of the issue and the development of appropriate conservation and management policies. Given the

interest in this issue the network of staff currently employed by fishery trusts may provide a staff resource that could be deployed to support the gathering and collection of samples.

Q28. Do you agree that Scottish Ministers should have powers to initiate changes to Salmon District Annual Close Time Orders?

RAFTS supports the principle of local management in respect of fisheries. However, where there is no DSFB in place or where there is a conservation or management need or case to justify the change in the Annual Close Time which is not being accepted by the DSFB then we would support the provision of such powers with Scottish Ministers. We do not believe that such powers would require frequent use and would require a robust case to justify any changes where a DSFB is in operation.

Q29. Do you agree that Scottish Ministers should be able to promote combined salmon conservation measures at their own hand?

RAFTS has no position on whether Ministers should hold such powers. The consultation document does not set out the basis or need for combined salmon conservation powers and it is not clear where the advantage may lie in combining these powers. However, we would agree that in circumstances where a clear and/or case for the combination of measures is necessary that combination may be efficient.

Q30. Do you agree that Scottish Ministers should be able to attach conditions, such as monitoring and reporting requirements, to statutory conservation measures?

Yes, RAFTS supports the proposal that Ministers would be able to attach conditions, such as monitoring, to statutory conservation measures. We are supportive of evidence based management decision making and this accords with that principle.

Clearly there will be a need to ensure that such monitoring requirements are proportionate and reasonable and do not discourage the bringing forward of reasonable measures in the first instance. Were such measures to be proposed by Ministers themselves (such as proposed in Q29) then we presume that the monitoring burden would also be borne by representatives of Scottish Ministers.

The network of fishery trust and DSFB staff now in place across Scotland may present a resource available to ensure the appropriate delivery of necessary monitoring or reporting conditions but there might usefully be an important role for MSS to ensure that monitoring and reporting design and planning is robust and to support the meeting of these conditions.

Q31. 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?

In principle RAFTS supports the introduction of such mediation and dispute resolution provisions. In the main fisheries management in Scotland is delivered in a consensual manner but there are clearly areas where disputes arise e.g. in relation to the proposal of contentious conservation measures, in relation to the evidence base and the decision making process associated with management and in such instances an independent and trusted mediation and dispute resolution would be helpful. However, we believe that, ultimately, the final decision on issues where resolution cannot be achieved on either a voluntary basis or following such a mediation process must lie with Scottish Ministers.

Were such a provision to be brought forward further information and guidance would be required to clarify, for example, what issues and parties can access the process and in what circumstances. Clearly the preference should always be to seek voluntary agreement and it would be unfortunate if relatively minor issues were brought unnecessarily into the mediation and dispute resolution process and relatively routine conservation, management or other decisions delayed as a result.

Improved Information on Fish and Fisheries:

In general terms RAFTS believes that improved information and data on fish and fisheries is necessary to better manage and understand Scottish fish populations and fisheries. We believe that the network of fishery trusts can play a role in that process if resourced to do so. The network of DSFBs in Scotland would seem to have a legislative interest and, perhaps, responsibility, to support such activities as would MSS on behalf of Ministers. To effectively and efficiently combine the efforts of these groups, along with proprietors, it may be necessary for MSS and Scottish Ministers to develop and negotiate a strategy with partners that harnesses and improves data and information gathering associated with catch statistics, electro-fishing surveys and fish counters for example.

Q32. Do you agree that there should be a legal requirement to provide comprehensive effort data for rod fisheries?

In principle RAFTS supports this proposal to gather effort data for rod fisheries.

The current catch statistics are amongst the best available anywhere in the world but there is no indication of effort held within them and this makes robust analysis problematic and limited. These limitations are well known. However, there are many other issues with this data set due to the procedures of gathering returns from proprietors and we believe that the whole catch statistic collection process and methodology should be robustly reviewed to allow, for example, catch statistics to be extracted for Atlantic salmon Special Areas of Conservation (this is not possible for many SACs at present) and to, perhaps, rationalise other areas and aspects of the process.

Whilst we welcome the proposal and accept the need to gather effort data from rod fisheries further clarification on what information would be required and how and what information would be collected and how it would be used. There is a need to ensure that information requested is proportionate and actually available to the fisheries from which returns would be required. In assessing how effort information on rod catch is gathered it may also be useful to consider also if further improvements in quantifying netting effort can be usefully introduced.

Q33. 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?

We have no fully developed view of additional information that should or could be provided on the fish and fisheries by proprietors or DSFBs. However, there should be consideration given to whether desired information and data is actually available and accessible in all situations due to the highly variable nature of the fisheries around Scotland.

Amongst the issues that might usefully be recorded and reported by DSFBs could be:

- Information on hatchery operations
(numbers, life stage, management need, monitoring strategy and measures of success)

- Fish movement and introduction licenses or decisions made (numbers, justification, advice taken or sought, basis of decision etc)

The information that might be recorded and reported by DSFBs in respect of fish movements, for salmon and sea trout, should also be augmented by similar reporting by river of trout or other species or salmon and sea trout licences issued by MSS annually and by river. A national and accessible inventory of such licenses and authorisations would, in our view, be of great value in making known the extent of these activities and their purposes. Essentially, this would amount to a Public Register of fish movement license decisions across Scotland by catchment and would support the principles of transparency and openness promoted elsewhere in the consultaion.

Q34. 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?

RAFTS believes that this is a matter largely for ASFB and DSFBs to consider.

However, Ministers, if exercising this power, would need to ensure that the investigations they require fall within the functions of the DSFB and are necessary and proportionate to the fisheries of the district. Requiring a DSFB to act outside its legislative remit would be difficult to justify and fund within the current model. A number of DSFBs undertake and report upon a comprehensive suite of management and conservation activities but we recognise that if a DSFB is not meeting what might be considered to be basic standards of investigation and action that requiring this work would fulfil a useful purpose. Even the knowledge that such work can be required by Ministers may, in itself, stimulate action to be taken by DSFBs independent of Ministers.

Q35. 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?

RAFTS wishes to see a robust and consistent approach taken to the regulation and control of all species of fish introductions in Scotland.

We support the principle of effective and local management where that is based upon sound evidence and where the management objective is determined and measures to assess effectiveness are in place at the outset. Where a DSFB is meeting these requirements for salmon and sea trout introductions in their District then we are content for that power to remain with the DSFB. However, if a DSFB is not taking informed management decisions in relation to fish introductions then we would support the option of Ministers having powers to recall, restrict or exclude DSFB jurisdiction in this area.

Hatchery and stocking practice in the past has been of variable quality. The situation currently is better but we do not believe that all currently authorised fish introductions are necessary, have a legitimate management objective or follow sound advice. Some fish introductions authorised may, in fact, be damaging. Currently RAFTS is developing a revised version to set out our policy position on hatchery and stocking practice due to the concerns of some members as to some of the current practice being authorised. We hope that this will support our members in the advice they provide to DSFBs and others.

It is important to note that MSS is also a regulator of salmon and sea trout introductions where there is no DSFB. We assume that if powers were to be taken from a DSFB they would be lodged elsewhere; presumably with MSS. We understand that there are concerns also as to some of the

licensing decisions made by MSS in this regard and so would seek to ensure that the resource and practice of that regulator is reviewed and improved to support this function.

Q36. If so, why and in what circumstances?

As stated above RAFTS wishes to see robust and informed decisions made on fish introductions to be made across Scotland and by all regulators (DSFBs and MSS).

In respect of the function of DSFB we would support the application of the powers proposed in the following general circumstances:

- If a DSFB was neither seeking or taking scientific advice on introductions;
- If there was no clear and justified management objective to the introductions;
- If there was no clear and robust approach to measurement of success and monitoring and a review of the operations after the results of such monitoring are available;
- If regulatory decisions made by the DSFB are not competently and formally recorded and made available for inspection similar to any other regulatory decision making process. This would include provision of the case to justify the introductions, the evidence considered and justification for the decision ultimately taken.

In respect of DSFBs we believe it is important that a robust and transparent decision making process is in place and available for inspection in relation to fish introductions. In most cases the DSFB are regulating their own activities and this in our view provides a further imperative for those decisions to be made, and be seen to be made, safely, competently and transparently.

We believe that fish introductions decisions should:

- Be informed by competent scientific advice which may be provided by a fishery trust but not necessarily so. It is essential that advice is taken and used appropriately;
- Be recorded and available for inspection;
- Have a sound management objective and outcome and have an associated monitoring and assessment programme.

Given that the fish introductions legislation now being applied by DSFBs and MSS is relatively new it would be helpful for Ministers to undertake a review of practice and decision making by both regulators in order to identify areas of necessary improvement, examples of good practice and also identify common procedures and basic requirements that should be applied. Currently we are of the view that practice could be improved by many DSFBs in respect of salmon and sea trout introductions in their districts and by MSS in respect of other fish species across Scotland and for salmon and sea trout in areas where there is no DSFB.

Section 5: Modernising enforcement provisions:

Q37. 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?

This question appears to be limited to breaches of the requirements for, or conditions of, Marine Licensing requirements (under the Marine (Scotland) Act 2010), as they apply to aquaculture operations although there is no explanation as to the scope of such requirements or conditions. RAFTS is in favour of strict liability in principle, particularly with regard to escapes from freshwater and marine cages. Such a system would be consistent with the proposal that there should be additional powers for Scottish Ministers to take or require samples of fish from fish farms, for tracing

purposes and could be supported by this provision in making evidence available to help to quantify liability and impact.

Section 6: Paying for Progress:

Q46. 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?

RAFTS restricts its comments here to the freshwater fisheries and management sector. It is not clear from the consultation which services/benefits are being referred to in relation to salmon and sea trout fishery management and where these charges might be applied from and to whom.

In principle it would seem reasonable for charges for services and benefits to be applied where these are delivered. As RAFTS and its members operate within the charitable sector we view the public sector as hugely important to us as partners and supporters of our work in a range of areas and wish to see it protected and maintained. However, we also feel that we, reciprocally, deliver services and benefits to the public sector which are not fully paid for or recognised at the current time.

This presents something of a conundrum. In Scotland it is also the case that the public sector has less direct roles and responsibilities in respect of freshwater fisheries than elsewhere in the UK. There is no equivalent to the Environment Agency in England and Wales with responsibilities for fisheries although clearly MSS and SNH have interests and SEPA has important regulatory and other roles in respect of the water environment.

Before confirming support of the payments to public sector we would require confirmation as to what parts of the public sector might be included in such provisions for freshwater fish and fisheries, what levels of payments might be envisaged and for what benefits and services. We would also require recognition that, in some instances, additional payments may be necessary to be made from the public sector to bodies such as RAFTS and its members where the required services and benefits are delivered by these bodies on behalf of, or in partnership with, the public bodies.

Q47. 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?

Clearly the provision of resources to assist in the management and development of aquaculture and fisheries is likely to be challenging and we have no immediate solutions.

It is worth noting that the freshwater fisheries sector undertakes a significant body of work without cost to the public purse (the DSFB network is self funded from proprietor levies) whilst RAFTS and member trusts provide an effective mechanism of gathering funds from other sources including public, private and European grant schemes. Where public funds are provided to RAFTS or trusts, they are generally to support the partnership delivery of shared objectives or priorities or to support the delivery of statutory requirements.

We believe that the only model which will ensure that freshwater fisheries management is supported and improved further is through further development and expansion of existing and new partnerships between RAFTS, trusts, Government, MSS, SEPA, SNH, ASFB and DSFBs. However,

these partnerships must be genuine and recognise the legitimate resource requirements of the charitable sector. We are ready and willing to support data gathering, WFD implementation, scientific and management investigations etc but cannot simply take on these roles from a shrinking public sector without resource provision. A genuine attempt to strengthen necessary partnerships and to identify shared priorities and objectives and to confirm who is best placed to deliver each activity is essential to make this system a reality. Clearly linked to this is the necessity to recognise and resolve resource pressures to the charitable sector as well as supporting the delivery of public sector priorities.

Q48. If no new way of resourcing such activity can be found, what activities do you suggest might be stopped to free up necessary funds?

Currently RAFTS and its members are being invited to undertake and support an ever expanding range and list of activities for public and private sector partners. It would seem to us at this stage that there is a need within the public sector itself to confirm the priority areas of work it wishes to maintain to inform tighter and more focused activities it might wish to deliver in partnership with RAFTS and its members. As charities our activities are determined by charitable objectives and the extent to which these are undertaken is defined and limited by available resources. If resources are reduced RAFTS and its members can do less for themselves and/or with others in partnership.

Section 7: Any other issues

Section 1

The consultation suggests (paras 37-41) that discharge from well-boats and processing facilities might be an issue in respect of sea lice. We understand that SEPA biomass consents under the Water Environment (Controlled Activities) Regulations 2005 are limited to 'discharges' such as fish waste and chemo-therapeutants, but these are not currently interpreted as including sea lice. If sea lice from well-boats and processing facilities are an issue and, therefore, require mitigation measures, then it would appear reasonable that sea lice released from farms should be considered in the same way. We, therefore, believe that sea lice emanating from sea cages should be treated in the same manner as other discharges.

Section 3

Enforcement notices under s6 of the Aquaculture and Fisheries (Scotland) Act 2007 allow Scottish Ministers to require the execution of such works, or the taking of other steps, with the purpose of the prevention, control or reduction of parasites. We believe from the Fish Health Inspectorate, via the ASFB, that such notices are limited to observed problems with farmed fish and that these notices cannot be utilised for the purposes of protection of wild fish. We do not believe that the 2007 Act specifically precludes such action, but if this is the case, we believe that the 2007 Act should be amended to allow such action to take place.

Section 4

1. Currently DSFB powers to consent certain activities for the purposes of fisheries management, e.g. electro-fishing and collection of broodstock for hatchery operations, are only available outwith the annual close time. During the close time, DSFBs must apply to Scottish Ministers for authorisation to undertake such activities. It would be useful were these consenting powers to be made available to DSFBs throughout the year in order to reduce the administrative burden on DSFBs, Scottish Ministers and those acting locally who may wish to secure such authorisation.
2. Also in respect of electro-fishing RAFTS believes that there should be consideration given as to how consent to survey for species other than migratory salmonids is secured and administered.

In the main electro-fishing surveys are undertaken to gather information on juvenile salmonid species but this is not always the case. We would like to see a system where DSFBs are appropriately advised of such surveys but that this work cannot unnecessarily or unreasonably be denied where it has a legitimate management, conservation or development related purpose e.g. to inform an Environmental Impact Assessment (EIA). We also believe that in certain circumstances e.g. gathering of data to inform an EIA or to assess risk from a prospective development that DSFBs should be required to act reasonably in issuing consent for these works to be undertaken by suitably qualified and competent 3rd parties within their District. We believe that a confirmation and affirmation would be helpful for a range of parties and developers that where such works are necessary as part of another necessary process e.g. EIA, DSFBs cannot reasonably refuse such applications for consent or restrict such work to their own staff.

3. We feel that there has been very little mention of coarse fish or species of conservation or biodiversity value within the consultation. RAFTS and its member trusts have all species permits and whilst we welcome many of the proposals for the better management of migratory salmonids believe that other species have not been greatly considered.

Amongst the key issues which should be considered further are:

- The need to ensure that native coarse and other non-salmonid fish are recognised and valued appropriately and not persecuted in the name of salmon or sea trout management;
- The need to consider the introduction of further protection measures for non-salmonid species to prevent persecution and, perhaps, to consider removal of the right of proprietors to remove these species without an appropriate authority. Such a change would also require the identification of an authority to consider applications for non-salmonid removals;
- That where coarse and other non-salmonid fish are present and where there is an angling interest in catching them that this should be reasonably accommodated in all waters and not unnecessarily prevented or unfairly limited by for example method restrictions where angling access is permitted;
- The longstanding need to bring forward a more effective programme of population monitoring and sustainable management of non-salmonid species. It is recognised that this has not been implemented comprehensively to date by any party and, although RAFTS members, SNH, SEPA and others do have an interest in these species, their assessment and management is minimal in comparison to that invested in migratory salmonids. In part this is due to the economics of the salmon and sea trout generating funds for such management where no such model or revenue stream exists for other species.
- The need to ensure that species of conservation interest e.g. the eel, Arctic char, vendace, powan, lamprey spp etc are appropriately protected and recognised. In the main this takes place via the network on conservation site designations but more widespread species such as the eel are now recognised as of high conservation value and are without protected sites. The Eel Management Plan prepared for each River Basin District is not mentioned in the consultation and clarification as to how this is being implemented and might be further prioritised for implementation would be useful.

Other

There is a population of feral beavers on Tayside which is likely to have been introduced illegally and/or from escapes from private collections. In either case, it is important that these animals, which may impede the upstream access of migratory salmonids, are chipped, tested for disease and securely enclosed as a condition of ownership. We would seek assurance that the Wildlife and Natural Environment (Scotland) Act 2011 contains the necessary powers for Scottish Ministers to deal with these issues. If the relevant powers do not exist, we believe that the Aquaculture and Fisheries Bill may provide a legislative vehicle for changes in relation to this issue.