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To Whom it May Concern:

Aquaculture and Fisheries Bill Consultation

The British Trout Association Ltd (BTA) thank Marine Scotland / Scottish Government for the opportunity to comment on proposals for the potential content of a forthcoming Bill relating to Aquaculture and Fisheries. Please find below both general comments arising from the consultation document and answers to the specific questions contained therein.

Founded in 1983 BTA are the representative trade association for the entire British trout farming industry. Our members farm trout for both the table and restocking markets and have direct interest in measures relating both to the regulation of aquaculture and freshwater fisheries in Scotland.

General Comments

The entire British trout industry is extremely concerned at the prospect of some of the proposals contained in this Consultation becoming law, which we believe will have a significant impact on our industry, creating a further and unnecessary regulatory and cost burden and damaging our market position and reputation.

With regard to the consultation exercise and proposed legislative timetable, we are extremely concerned that the unrealistic timescales suggested in discussion with Scottish Government officials will lead to poorly drafted, ill thought through legislation. Marine Scotland officials acknowledge problems and shortcomings in the drafting and subsequent implementation of the Aquaculture and Fisheries (Scotland) Act 2007, and to further compound these with yet more regulation, at a point in time where the full ramifications of the 2007 legislation have yet to be manifested, does not make either for good government or common sense.

The Consultation document has been poorly constructed and is indicative of an absence in dialogue with the aquaculture industry, surprising given the close consultation which took place during the progress of the 2007 Act and the recent joint working demonstrated through the delivery of the renewed strategic framework for Scottish aquaculture. The document pertains to be a consultation on Scottish aquaculture, but those sections considering aquaculture are clearly preoccupied with perceived issues relating, in the main, to marine farming of Atlantic Salmon. The implications of certain proposed measures to other marine finfish species (principally halibut and rainbow trout) and to freshwater species (principally trout) have not been given sufficient consideration. From the outset we request that Scottish Government meet

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with representatives of these sectors to discuss which aspects of this consultation should be included in any proposed bill with regard to freshwater production.

The consultation process has been compromised through the late provision of the Partial Business Regulatory Impact Assessment (BRIA) and the Environmental Report. BTA will respond to both documents in due course, but it is unfortunate that we have not been able to approach our constituent members with all documentation at one time. Again, this suggests undue haste on the part of Scottish Government to complete this exercise to a prescribed timetable rather than develop good policy to deliver a stronger aquaculture industry and improved fisheries.

BTA recommend that Scottish Government reconsider each question posed in the consultation document in the context of existing legislation on the statute book. Whilst the consultation does raise certain minor issues that have not been considered before, there are nonetheless a number of pieces of existing legislation which might usefully be considered with regard to certain proposals. We would highlight all issues relating to arbitration, and also certain extension of powers, for example with regard to the taking of samples of fish.

We would also recommend that Scottish Government revisit previous consultation with the aquaculture industry. Many issues raised in the consultation document have already been consulted on with industry and detailed, considered responses given. Specifically, this relates to consultation undertaken during the 2007 bill consultation, the negotiating and transposition of EC Directive 2006/88 and consequent domestic legislations and the working groups established by Scottish Government to deliver A Fresh Start, the renewed strategic framework for Scottish Aquaculture, specifically the outputs of the Healthier Fish and Shellfish Group.

The British trout industry extends across all four nations within the United Kingdom. At a time when all administrations are seeking ways to develop and expand their aquaculture sectors, it seems perverse that Scottish Government are considering measures that will further extend the regulatory burden and create additional cost for the Scottish trout industry. The Scottish industry will be placed at a further competitive disadvantage to that which already exists across the UK. It is ironic that as the Department for the Environment, Food and Rural Affairs seeks to decrease the legislative burden on aquaculture in England through commissioning a review of the Regulatory Burden on English Aquaculture, consulting on the "Red Tape Challenge" with specific focus on marine and fisheries regulation and co-developing an English Aquaculture Plan with industry, Scottish Government is considering further extending the scope of state intervention. Certain proposals being considered will bring significant cost both to the public and private purse yet with no demonstrable benefits. Statutory powers and regulatory intervention do not in themselves provide an answer to any of the perceived issues that both the aquaculture and fisheries sectors are being asked to address.

At a time when both industry and Government are working with restricted budgets and limited resources, we are alarmed at any proposals for increased regulation, bureaucracy and administration where there is not discernible benefit associated to the increased cost.

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It is clear that the purpose of many sections of this consultation document seek not to develop and advance the Scottish aquaculture industry, but to equip the Scottish Government with greater regulatory powers as a means to address concerns which have been leveled at the Scottish salmon farming industry by critics of that industry. It is telling that in setting out those “who will be interested in this consultation” the document makes no reference to those interested in Scottish food and drink policy, to the investment community upon which the aquaculture industry will depend if it is to increase and expand in line with Government policy objectives, to those who fish for leisure or to those individual customers who purchase Scottish aquaculture products.

We acknowledge Scottish Government are required to consider criticisms leveled against aquaculture production; but the solutions to any perceived problems are not best met through resorting to the development of further legislation. Certain proposals suggested in the consultation document will do nothing to change the existing status quo, simply create a further tier of administration and cost upon both the aquaculture industry and both central Government and agencies. It is better to take a methodological and considered approach and to work in partnership with both aquaculture and fisheries interests to better understand how any potential problem areas might be resolved, rather than to create regulation for sectors Scottish Government does not fully understand. BTA remain committed to working with Scottish Government to try to achieve the effective management of our industry which we all seek, but which will be most effectively achieved not through regulation but mutual cooperation and support.

Specific 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)

NO

BTA do not believe it is appropriate for Scottish Government to have the potential to become involved in the management of aquaculture businesses when not qualified to do so. In any case, FMAs may already be legally binding where part of a contractual obligation.

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)

NO

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We do not believe that Scottish Government have sufficient knowledge of the aquaculture industry to specify alternative areas and this issue should be left to industry, where necessary in discussion with appropriate agencies and third party organisations.

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)

NO

There is no requirement for statutory underpinning of any arbitration process. Third party legal advice suggests that this issue, whilst primarily for discussion within the industry, may be considered under the Arbitration Scotland Act 2010.

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

Any process of “Arbitration” might best be developed within industry, allowing recourse to third party organisations for assistance as required.

Unused Consents

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

NO

Whilst Scottish Government are correct to address this question, there is no need to conduct any further / additional review. It is our understanding that this issue is already under consideration between industry, SEPA and Government, and whilst regrettably this process has taken much longer than anticipated it would be better were Scottish Government to prioritise this work, rather than commission yet another review.

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

Prior to addressing this issue, it is important for the review of unused consents to be completed and for an accurate assessment of unused biomass to be completed. However, relatively simple measures might be considered a pragmatic solution, such as increasing the opportunity for trading in sites and a review of charges for sitting on genuinely inactive sites.

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)

NO

BTA are completely opposed to giving Scottish Ministers any such powers and believe this sets an unacceptable precedent for state intervention in private business.

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

As per our answer to question 7, we do not believe such powers should be permitted in any circumstance.

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)

At present sea lice do not prove a problem for the marine farmed trout industry, in that there are only a limited number of sites and those in brackish water. However, we acknowledge that this issue may become more pertinent if marine farming of trout is to expand. We are aware that industry colleagues have developed a database for the purposes of sea-lice figures (developed from a project originally funded by SARF) and suggest that Scottish Government liaise with industry over the provision of data from such facilities.

BTA would also like to take this opportunity to query what Scottish Government actually plan to do with this information, and what the collection of such data will actually do in relation to resolving some of the perceived problems with any increase in sea-lice numbers. Furthermore, the market implications in relation to the publication of such data must not be underestimated, and we encourage Scottish Government to reconsider the economic impact to the Scottish industry or making such information publicly available.

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)

NOT APPLICABLE

BTA are unable to answer this question in that sections 30 – 33 relate purely to the farming of Atlantic salmon. We look forward to discussing this issue further with Scottish Government with regards to trout farming.

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

As per above, we look forward to discussing this issue with Scottish Government in relation to trout farming. Again, whilst we are unable to comment further until we have discussed the provision of data further, we have concerns at what Scottish Government plan to do with such information when it is provided. We do not believe Scottish Government or agencies have any spare resource to work with any data provided. We would also note that at present there is already a legal requirement of designated veterinarians to report most of the information Scottish Government seek in relation to instances of increased mortality, whilst all movement data should already be available to Government.

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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)

NO

BTA believe it is completely inappropriate to involve SEPA in issues relating to fish health and welfare. Where biomass consents require variation for environment purposes SEPA remains the appropriate agency.

Wellboats

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

NO

Whilst BTA remain opposed in principle to the granting of unspecified enabling legislation, Scottish Government is correct to raise issues relating to use of wellboats. We suggest further dialogue with the relevant industry groups and wellboat users to progress this issue. There is room for the improvement in wellboat practice, but simply increased regulation will not necessarily improve upon the status quo.

Processing Facilities

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

NO

This issue has been considered several times by Government, principally during consultation on Council Directive 2006/88. BTA remain opposed to the granting of additional powers. We further note that epidemiological research undertaken by CEFAS indicates that Government does not have an accurate understanding of risk associated with processing and imported product and suggest this issue in addressed in consultation with industry.

Seaweed Cultivation

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

YES

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

NO

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We suggest that all regulation of seaweed farming should be integrated to that of other forms of aquaculture, both finfish and shellfish.

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

Please refer to our answer to question 16 above.

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

In general, BTA remain opposed to the granting of unspecified additional powers to Scottish Ministers. However, in specific circumstances, such as witnessed with *mytilus trossulus*, it may be appropriate for Scottish Government to act in relation to commercially damaging native species, but this ought to be addressed on a case by case, species by species basis.

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

Although not linked to shellfish aquaculture, industry colleagues advise BTA that this action is necessary to address issues relating to the Shellfish Waters Directive.

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)

NO

BTA do not believe that Scottish Government has sufficient knowledge or expertise in this issue or of the aquaculture industry for this power to be justified. Furthermore, there are already legal obligations between farmer and veterinarian and so such a step is unnecessary

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

We note that this question is somewhat academic in that development of the Scottish Technical Standard is well underway. Such a Standard and the adherence thereto must accommodate those smaller aquaculture businesses and the freshwater sector.

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)

NO

Our understanding is that Scottish Government already has this power. In any case we do not consider this issue appropriate or necessary for trout farming, in that there are no objections to escapes of fish having any genetic interaction with wild trout stocks.

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

District Salmon Fishery Boards, in that they are the competent authority, must be treated as any regulatory public body and be fully transparent, fair and equitable in the conduct of their business.

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

YES

BTA have worked with Scottish Government and fisheries colleagues in the development of such a Code of Good Practice. This process is proving slow and ineffective and we encourage greater drive and resource being committed to this process. It is to be hoped that the Code of Good Practice will be further developed to be independently audited and inspected to ensure the Code is implemented and is not simply viewed as idealized best practice.

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

The Code should be non-statutory, but as above, we suggest it should be subject to third party, independent inspection and audit, along the same lines as the Code of Good Practice for Scottish Finfish Aquaculture.

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

We are supportive of this measure and are advised by fisheries colleagues of their support for this initiative.

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)

NO

BTA do not consider this measure necessary or appropriate, or indeed logical for rainbow trout stocks. However, we would also note that our understanding is that Scottish Ministers already have this power to take samples as per question 22 above.

Management and Salmon Conservation Measures

28. Do you agree that Scottish Ministers should have powers to initiate changes to Salmon District Annual Close Time Orders? (Page 32)

YES

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

YES

30. Do you agree that Scottish Ministers should be able to attach conditions, such as monitoring and reporting requirements, to statutory conservation measures? (Page 32)

YES

Dispute Resolution

31. Do you agree that we should introduce statutory provisions related to mediation and dispute resolution, to help resolve disputes around salmon conservation, management and any related compensation measures? (Page 33)

NO

BTA do not feel it is appropriate for Scottish Government to introduce statutory provisions, but do believe it remains appropriate for Scottish Government to intervene to the extent of helping to facilitate non-statutory dispute resolution.

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

It is our understanding that the absence of such catch data is compromising the work of Scottish Government in fully addressing issues relating to fisheries management and fisheries policy. As such we support this proposal should efforts to secure this information on a voluntary basis prove impossible.

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)

BTA would welcome the return of information on all stocking activity that is undertaken in any catchment, such information being provided routinely, in the form of an annual report.

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)

NO

Scottish Ministers should instead assist Boards, proprietors and their tenants through Marine Scotland Science on investigating and reporting on salmon and sea trout in their district.

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)

Fish stocking has significant implications with regard to both fisheries and aquaculture, particularly considering the move towards risk based regulation of aquatic animal health and freshwater ecology. BTA consider that all fish introductions should be regulated in a uniform manner, and that as with aquaculture fish movements and stocking, one regulator, Scottish Government, should oversee this.

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)

NO

BTA remain absolutely opposed to the principle of introducing strict liability for certain aquaculture offences. The logic of applying the same regulatory methodology to aquaculture as to capture fisheries is deeply flawed and completely inappropriate. We are concerned about the potential impact upon insurance and insurance premiums for the aquaculture industry. Furthermore, this is an offensive proposal on the part of Scottish Government, implying that there is a widespread breach of aquaculture regulations. Such proposals will send fear and insecurity throughout aquaculture employees and will create tension between business and Government and agency officials. The system might also be subject to abuse on the part of those deliberately seeking to have individuals prosecuted.

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

As an industry sector we are not opposed to fixed penalty notices being used as an alternative to prosecution, but not as an exclusive alternative in that certain cases would be better addressed through 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)

NO

These levels seem completely arbitrary and are not viable for a small scale industry such as trout farming, the majority of which is made up of micro businesses. We do not understand any breach of regulation that would be commensurate with a figure of up to ten thousand pounds.

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

NO

BTA believe not, but only in so much as we disagree in principle with the ten thousand pound limit.

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)

NOT APPLICABLE



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)

NOT APPLICABLE

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)

NOT APPLICABLE

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)

NOT APPLICABLE

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)

NOT APPLICABLE

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)

NO

BTA are deeply concerned at the logic and thinking behind this section of the consultation document. We appreciate that all Government departments and agencies are facing a time of decreasing budgets. However, the private sector, and particularly the Scottish trout farming sector, is also facing an unprecedented squeeze on finances. The primary food production sector is facing great pressure in an extremely difficult market. The volume and value of the total fish market across the UK is sinking. To suggest that charges for Government services should be transferred to the private sector when those services are instigated at the behest of Government is entirely inappropriate. Scottish Government activity requires to be scaled back across the board, and to return to the core requirement of fulfilling statutory obligations only.

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)

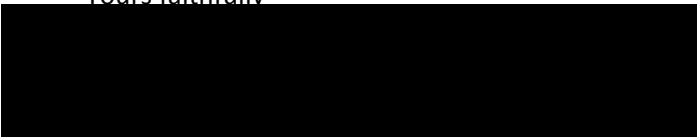
Ongoing and new work should be developed in partnership with industry and fisheries stakeholders, addressing those issues which the industry itself identifies as necessary priorities for action. However, all too often we note that activity is instigated by Government which is neither desired by, nor beneficial too either aquaculture or fisheries interests. It is quite clearly wrong for any charge to be levied for that activity which industry and fisheries have neither requested nor require. New activity might best be undertaken through competitive, commercial tendering, to ensure value for money and an efficient service. One example Scottish Government might do well to examine is the funding of CEFAS in England and Wales, where core Government funding is provided for aspects of work relating to the statutory obligations of the Fish Health Inspectorate, but where commercial sources of income are sought for research activity, and specific business development activity is undertaken.

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)

BTA consider there are certain areas of Marine Scotland activity that could be stopped, specifically with regard to research and development activity undertaken by Marine Scotland Science. We believe that both the Marine Laboratory and Freshwater Laboratory might best be transferred to the private sector, or operate in collusion with academic institutes, where research and development work commissioned is linked directed to industry priorities and where operational activity is put on a more commercial footing. Such activity should be distinct from the statutory obligations of the fish health inspectorate. We would also suggest government consider a cost benefit analysis of visits from the fish health inspectorate. In general terms, the consideration of funding for Marine Scotland activity ought to be put to a full review, in that rather than specific tasks and functions being made chargeable, it would make sense to conduct a wholesale review of the function, priorities, obligations and costs of Marine Scotland and her relationship with associated agencies.

We trust that these comments are of help and assistance to Scottish Government in the further development of any proposed Aquaculture and Fisheries Bill. Representatives of BTA will be delighted to discuss our response or any other issue relating to this consultation exercise in further detail should that be of benefit to you. As noted above, there are sections of the consultation document that, as written, do not apply to the freshwater production industry and we would welcome the opportunity to explore these further with you.

Yours faithfully



David Bassett
Executive Officer

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