

CONSULTATION QUESTIONS

SECTION 1 - THE SUSTAINABLE DEVELOPMENT OF AQUACULTURE

Farm Management Agreements (FMAs)

- 1. Do you agree that we should, subject to appropriate safeguards, make it a legal requirement for marine finfish operators to participate in an appropriate Farm Management Agreement (FMA), with sanctions for failure to do so, or to adhere to the terms of the agreement? (Page 9)**

YES

NO

In principle we agree with this approach. It should be a legal requirement for operators to participate. However we are of the view that the Scottish Government should go further and make it a legal requirement for fish farmers and relevant wild fisheries to participate in Area Management Agreements as advocated by the Tripartite Working Group.

Care would need to be taken in regard to synchronised treatments (for lice) as this could result in resistance to treatments where operators use same chemical at the same time on repeated occasions.

Appropriate Scale Management Areas (MAs)

- 2. Do you agree that operators should have primary responsibility for determining the boundaries (and other management arrangements) for Management Areas, but with Scottish Ministers having a fallback power to specify alternative areas? (Page 9)**

YES

NO

This document highlights that there remains incomplete information and understanding about connectivity between farms and there is need for further scientific work and evidence on which to base decisions. To allow a consistent approach to defining boundaries of Management Areas, it is considered that Marine Scotland should have primary responsibility for determining boundaries but in doing so should take account of relevant information from operators.

Management Measures and Dispute Resolution

- 3. Do you agree that an independent arbitration process should be put in place (with statutory underpinning) to resolve disputes related to Farm Management Agreements? (Page 10)**

YES

NO

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

We would recommend that the Scottish Government should identify an arbitrator that is independent of both developers and their producer organisation.

Unused Consents

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

YES

NO

This has potential to influence the delivery of aquaculture targets that the Scottish Government has set through Scottish Planning Policy. Orkney Islands Council expected that the issue of unused consents was to be considered within Scottish Government Review/Audit of Crown Estate Sea Bed Leases granted prior to 1st April 2007.

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

Relinquishing unused consents should not only cover planning permission but should also include other licenses, consents and leases, for example those issued by Marine Scotland, SEPA and Crown Estate. This will aid transparency within the industry.

Where unused consents are used as firebreaks or buffers between finfish developments, the Scottish Government should consider options for Farm Management Agreements to include suitable measures that would ensure these firebreaks remain if the unused consents are given up. This could in turn free up capacity for other types of aquaculture development such as shellfish or seaweed farming that would not adversely affect finfish farm management.

7. Do you agree that Scottish Ministers should be given powers, ultimately, to revoke, or to require or request others to revoke, consents? (Page 12)

YES

NO

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

This should relate to all consents and licenses to ensure a consistent and comprehensive approach. Note that through the 1997 Planning Act planning authorities have the power to revoke planning permissions with or without the consent of the developer.

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)

We consider that, given the importance of effective sea lice management on the health and welfare of both farmed and wild salmonids, there should be increased openness in the reporting of sea lice numbers in Scotland. Records should be site specific with data being published monthly and made available to all stakeholders in the industry. The provision of clearer information with regard to poorer performing sites will enable regulators to guide development to more appropriate areas.

Surveillance, Biosecurity, Mortality and Disease Data

10. Do you agree that aquaculture businesses ought to be required to provide additional information on fish mortality, movements, disease, treatment and production as set out above? (Page 16)

YES

NO

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

No comment.

Biomass Control

12. Do you agree that Scottish Ministers should have powers to require SEPA to reduce a biomass consent where it appears to them necessary and appropriate – for example to address concerns about fish health and welfare? (Page 16)

YES

NO

This would provide an additional measure in parasite control in situations where a fish farm is unable to control sea lice at a certain level of biomass.

Wellboats

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

YES

NO

We would welcome the introduction of provisions for enabling additional controls, in particular the introduction of additional controls on discharge, whether at sea or on land (for example in relation to lice filtration/destruction requirements).

Processing Facilities

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

YES

NO

Seaweed Cultivation

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

YES

NO

The Council considers that all types of aquaculture development should be covered by the same regulatory framework.

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

YES

NO

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

As seaweed farming is a form of aquaculture and is likely to use similar equipment, it would be more efficient and transparent for it to be regulated by the local planning authority through the 1997 Planning Act. Integrated multi-trophic aquaculture involves the cultivation of seaweed in combination with shellfish and/or finfish aquaculture. Given that finfish and shellfish farming are already regulated through the planning system, it is fitting that seaweed cultivation should be subject to the same consenting regime.

Commercially Damaging Species

18. Do you agree that we should provide for additional powers for Scottish Ministers in relation to commercially damaging native species? (Page 19)

YES

NO

SECTION 2 - PROTECTION OF SHELLFISH GROWING WATERS

19. Do you agree with the introduction of provisions to protect shellfish growing waters and support the sustainable growth of the shellfish industry? (Page 21)

YES

NO

SECTION 3 - FISH FARMING AND WILD SALMONID INTERACTIONS

Sea-lice

20. Do you agree that there is a case for giving Scottish Ministers powers to determine a lower threshold above which remedial action needs to be taken, in appropriate circumstances and potentially as part of a wider suite of protection measures? (Page 23)

YES

NO

The Council welcomes the proposal whereby the Scottish Ministers would be given powers to determine a lower threshold above which action needs to be taken. The existing industry Code of Good Practice threshold may be appropriate when the aim is to protect the welfare of farmed fish but it does not necessarily prevent the release of substantial numbers of lice larvae into the marine environment where they pose a

risk to wild salmonids. This issue is even more significant in terms of the cumulative effects of lice larvae production from multiple fish farms within an area.

Containment and Escapes

21. Do you agree we should provide powers for Scottish Ministers to require all finfish farms operating in Scotland to use equipment that conforms to a Scottish Technical Standard? (The technical content of the standard would be defined separately.) (Page 25)

YES

NO

It would be of considerable benefit when determining planning applications to know that a national technical standard has been applied.

Tracing Escapes

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

YES

NO

SECTION 4 - SALMON AND FRESHWATER FISHERIES MANAGEMENT

Modernising the Operation of District Salmon Fishery Boards

23. Do you agree that we should introduce a specific duty on Boards to act fairly and transparently? (Page 29)

YES

NO

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

YES

NO

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

YES

NO

Non-statutory.

Statutory Carcass Tagging

26. Do you agree that Scottish Ministers should have powers to introduce a statutory system of carcass tagging for wild Atlantic salmon and sea trout? (Page 31)

YES

NO

Fish Sampling

27. Do you agree that Scottish Ministers should have powers to take or require fish and/or samples for genetic or other analysis? (Page 32)

YES

NO

Management and Salmon Conservation Measures

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

YES

NO

No opinion.

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

YES

NO

No opinion.

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

YES

NO

No opinion.

Dispute Resolution

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

YES

NO

Improved Information on Fish and Fisheries

32. Do you agree that there should be a legal requirement to provide comprehensive effort data for rod fisheries? (Page 34)

YES

NO

No opinion.

33. What additional information on the fish or fisheries should proprietors and/or Boards be required to collect and provide; and should this be provided routinely and/or in specific circumstances? (Page 34)

No opinion.

34. Should Scottish Ministers have powers to require Boards and/or proprietors or their tenants to investigate and report on salmon and sea trout and the fisheries in their district? (Page 34)

YES

NO

Levels of information required should reflect the type of fishery. Note that at this point in time trout fishing is free in Orkney and is a key recreational activity for both visitors and residents.

Licensing of Fish Introductions to Freshwater

35. Do you agree that Scottish Ministers should have powers to recall, restrict or exclude the jurisdiction of Boards in relation to fish introductions, in certain circumstances? (Page 35)

YES

NO

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

As per the consultation document.

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 they apply to aquaculture operations and, potentially, in other situations? (Page 37)

YES

NO

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

NO

39. Do you agree that we should increase the maximum sum that can be levied through a fixed penalty notice to £10,000? (Page 39)

YES

NO

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

YES

NO

Enforcement of EU Obligations Beyond British Fisheries Limits

41. Do you agree that we should amend section 30(1) of the Fisheries Act 1981 as proposed? (Page 40)

YES

NO

Powers to Detain Vessels in Port

42. Do you agree that sea fisheries enforcement officers should be given specific power to allow vessels to be detained in port for the purposes of court proceedings? (Page 41)

YES

NO

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

NO

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

NO

Sea Fisheries (Shellfish) Act 1967

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

YES

NO

The definition of 'Shellfish' should be consistent across all regulatory regimes in the Marine Environment.

SECTION 6 - PAYING FOR PROGRESS

46. Do you agree that there should be enabling provisions for Scottish Ministers to provide, through secondary legislation, for both direct and more generic charges for services/benefits arising from public sector services and activities? (Page 43)

YES

NO

47. If you do not agree that there should be charging provisions, how do you envisage ongoing and new work to assist in management and development of the aquaculture and fisheries sectors should be resourced? (Page 43)

No comment.

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)

No comment.