

THE ESK BOARD

Comments on 'Aquaculture and Fisheries Bill Consultation Document'

March 2012

Introduction

The Esk Salmon Fishery Board District includes the catchments of the Lunan Water, South Esk, North Esk and Bervie Water and it has a statutory responsibility to protect and improve salmon and sea trout fisheries. The Board wishes to create the environment in which sustainable fisheries for salmon and sea trout can be enjoyed. Conservation of fish stocks, and the habitats on which they depend, is essential. Conservation measures are implemented by the Board and embrace voluntary measures to reduce exploitation in both nets fisheries (season reduction) and rod fisheries (catch and release). In terms of fishery management, the Board supports the Esk Rivers & Fishery Trust (ERFT) as well as the South Esk Catchment Partnership (SECP).

An analysis completed in 2004 demonstrated that freshwater angling in Scotland results in the Scottish economy producing over £100 million worth of annual output, which supports around 2,800 jobs and generates nearly £50million in wages and self-employment into Scottish households, most of which are in rural areas.

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

Overarching Comments

- The Esk Board has very limited aquaculture within its District and supports fully the comments of the ASFB in relation to aquaculture and issues concerning sea lice.
- . The Esk Board has had codes of practice in place for 4 years and we are confident that we can demonstrate accountability and transparency. We welcome many of the proposals laid out in Section 4. We would stress the importance of locally funded management and do not believe that any additional powers to Scottish Ministers are required, except where there are no fully functional Boards.
- There are a number of other issues which are not addressed by the consultation document. These are set out in our response to Section 7 below.

Specific comments

Section 1: The sustainable development of aquaculture

The Esk Board, not having salmon farms within its District, does not believe it is appropriate to comment specifically concerning the proposals for aquaculture. The Board, however, endorses fully the comments made by ASFB.

Section 4: Salmon and freshwater fisheries management

General Comments: The current Esk Board and related organisational structure (ERFT and SEP) provides highly effective management of our iconic Atlantic salmon and sea trout fisheries. Its strengths lie in its local self-financing structure, and it is a structure which is highly respected and envied. It is capable of reacting swiftly to changing circumstances, and yet no changes to individual's rights can be made without the sanction of the Minister. Scotland benefits hugely from the management of fisheries by DSFBs. DSFBs

are funded by fishery proprietors in the district, to a value exceeding £3.5m in 2010, in the interests of the overall management of the fishery. In terms of the Esk Board, the Board raises £165,000 from proprietors to invest within the District. In addition, Board Members give their time on an entirely voluntary basis. To replicate this management model in the public sector would be massively expensive to the public purse.

The optimistic view painted in paragraph 74 demonstrates that the present management structure is effective. However, it would be wrong to assume that all runs of salmon in all rivers are at their optimum level. Whilst 2010 did indeed see the highest total rod and line catch on record (since 1952) it is important, when drawing comparisons with the past, that we compare like with like. In the 1960s, half a million fish or more were caught annually in Scottish coastal and estuary nets, before salmon were able to access their natal rivers. There was also a catch of over 3000 tonnes at Greenland and the Faroes. The number of salmon returning to Scottish waters is clearly hugely reduced from sixty years ago. Despite strong grilse and summer salmon runs in many parts of Scotland in 2010, it was another poor year for spring salmon. Conversely, in 2011, whilst the spring runs recovered to a degree, the grilse runs were poor. The stocks are managed as individual stock components (such as spring salmon) rather than on total numbers of fish returning to the river. A healthy run of fish, returning throughout the entire season, contributes to a long angling season which secures employment and is important to the local angling-related economy. The biodiversity of stocks also benefits the netting industry. Protection of such stocks may, on occasion, require the intervention of Scottish Ministers, via statutory conservation measures, although voluntary arrangements where possible are preferred.

When considering the national picture of angling and netting (Paragraph 75), it is important to note that in respect of netting there remain companies which are active and expanding. In terms of the Esk District, in 2010 the fixed engine fisheries within the old district of the South Esk killed 39.58% of the entire Scottish fixed engine catch. Of the salmon and grilse killed within that district 90.18% (nets killed 6165 and rods killed 556) were killed by the fixed engine fishery. It is relevant to note that MSS (2009) stated that there should not be an extension of the net fishing season in the District into September because it was not possible to assess whether there was a harvestable surplus of salmon and grilse. In the case of the North Esk, the net and coble fishery killed 82% of the salmon and grilse caught in the old District of the North Esk (nets killed 5882 and rods killed 1077). The Board considers that, as a matter of urgency that sustainability of local fixed engine exploitation should be investigated. It is relevant to note the benefits to stocks which have arisen through the Board's buy-out of the coastal nets in Montrose Bay.

We welcome the proposals laid out in this section as we are confident that the Esk Board can demonstrate accountability and transparency through :

- Our established Code of Good Practice: and
- The presence of local councillors at Board Meetings along with SEPA and SNH

The Esk Board supports the availability of additional powers to Scottish Ministers, but we believe that these should provide a safety net, *not* a parallel management framework. As stated previously we believe that these powers should be restricted to districts which do not have functional fishery boards. One of the great advantages of the current structure of fisheries management in Scotland is that the resource is managed at a local catchment scale rather than centrally, and funding raised locally is spent locally. We believe that this principle of local management remains the foundation of effective fisheries management in Scotland. Those who pay for the management of rivers require the important incentive of determining and implementing the management policy.

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

We believe that Boards must act fairly and transparently and the Esk Board over the last few years has taken a number of steps to progress this requirement. In addition, we have a responsibility to ensure that the public interest in local and national tourism in respect of the importance of angling is recognised. The Esk Board operates as follows:

- A code of practice has been agreed and implemented

- Two councillors attend Board meetings in addition to representatives from SEPA and SNH
- The Minutes of Board Meetings are available for inspection on request by any stakeholder
- At least two open meetings are held each year
- Meetings are held with local angling clubs
- The AGM is open to the public followed by an open session where discussion is encouraged and any issue can be raised
- There is usually at least one presentation at the AGM (2011-Philip Bacon) and MSS are invited
- Annual reports are available on demand and circulated widely. They will be posted on the web site in future
- In principle we have no problems with Board Meetings being held in public but we are not aware of any demand for this. We find the measures outlined above suffice.
- Issues of conservation are always subject to wide consultation within the District – It is incumbent on the Board to have overwhelming support for any conservation measure which will be the subject of an application to Scottish Ministers
- Where any application for conservation measures is submitted to Government, Scottish Ministers are required to direct the Board to advertise and undertake wide consultation. In addition the Board is required to provide a Business Regulatory Impact Assessment

We fully endorse the ASFB Code of Good Practice, which has recently been updated, and is designed to ensure fairness and transparency.

The Esk Board has no legal powers to make statutory regulations without application to Scottish Ministers (e.g. conservation measures, reduction of exploitation (rod and/or net fisheries), methods of fishing etc.). Any such regulations are already subject to due process, consultation and Ministerial approval. It is worth noting, that it is almost inevitable that some decisions will be perceived as unfair by some stakeholders. Indeed, this difficulty is highlighted by the fact that the consultation includes a section entitled 'dispute resolution'.

We believe the best means of achieving fairness and transparency is adherence to the Code of Good Practice (see below).

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

The fact that the Esk Board already has a code of practice which it believes is an essential requirement for Board governance means that we support fully the principle of codes of practice. The Board also endorses the updated ASFB Code of practice and are strongly confident that these codes will ensure fair and transparent management.

The essential points have been addressed in the previous question and demonstrate that the Esk Board concurs completely with the need for a code of practice.

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

The current Act does include administrative statutory requirements and these could be strengthened if necessary. We believe that, similar to the Code of Good Practice for Scottish Finfish Aquaculture, the code should be non-statutory in the first instance and would be content if there was a power for Scottish Ministers to adopt the code should they wish to do so in future.

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, such powers should be taken **and implemented** as soon as possible. All tags should be uniquely numbered and recorded. One netting company within the Esk District already uses unnumbered tags. The other operational netting company is seriously considering tagging.

A carcass tagging scheme has been in operation in England and Wales since January 2009. Any salmon and sea trout caught by means other than rod and line (i.e. by licensed net or trap) must be tagged with a uniquely numbered Environment Agency carcass tag. This must be attached immediately after capture and remain attached until the fish is processed. Details of the fish and the tag reference numbers must be recorded in an annual log-book (supplied) and returned to the Environment Agency at the end of the year. Further information on the EA scheme is included in the 2009 review of implementation of the Salmon and sea trout carcass tagging and ban on sale byelaws¹. It is worth noting that during the 2009 season, 36,500 salmon and sea trout were caught, tagged and recorded, with 30,668 of these recorded in the North East of England. The scheme is reported as having been a success: *“Feedback from the netsmen has been positive – they can sell fish to a premium market where the buyer can be confident about the source of the fish – the tags are also seen as a sign of quality.”* Similar schemes have been in operation in the Republic of Ireland since 2001 and Northern Ireland since 2002. Carcass tagging has been considered both as a quality control measure and as 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 identifiable as illegally taken.

It is of note that the EA has identified a loophole in their system that, in the absence of a mandatory carcass tagging system in Scotland and in the Tweed District, illegally caught English fish are reaching the market masquerading as Scottish produce. There are also a number of potential routes for illegally caught Scottish fish to reach the market. Marine Scotland Compliance² has noticed a recent upturn in illegal gill netting in Scottish inshore waters. Between June 2009 and August 2010, 17 illegal gillnets were seized by FPV Minna (average length 47m; range 11-87m). There is a continuing, significant problem of wildlife crime in Scotland - the illegal taking of salmon within rivers and estuaries. During 2010, bailiffs employed by 28 of the 41 DSFB's across Scotland (including the River Tweed Commission) seized a further 166 nets of which 49 were recovered in-river and 117 were recovered in estuaries/coastal waters. Declared net catches for 2007-2009 (January-April) were 86, 80 and 145 respectively. However it is difficult to reconcile these figures with the amount of wild Scottish salmon reaching the market prior to the end of April. For example, the number of boxes of “Scotch Wild” salmon (containing on average five, 10lb salmon per box) arriving at Billingsgate Market in London³ suggests that somewhere between 300 to over 1000 more Scottish salmon are sold than are declared according to the Statistical Bulletin. These figures are estimates as no records are kept as to how many of the fish boxes are full to capacity. However, given that only 30-40% of Scottish spring salmon are estimated to be sold through Billingsgate, it is clear that illegally caught salmon reaching the market is a significant problem. The reduction of such illegal activity, by significantly reducing the potential market for illegally caught fish, would have a significant conservation benefit for wild salmonids.

There are also potential benefits to the netting industry. In the light of the application to the EU for Protected Geographical Indication (PGI) status for ‘Scottish Wild Salmon’ it is in the interests of both the netting industry and the Scottish Government to ensure that any Scottish wild salmon reaching the market is traceable and of the highest quality. The quality of illegally caught fish, which would be unlikely to be stored appropriately, could not reach the standards required for PGI status. ASFB are aware that there are a number of distinct carcass-tagging schemes, operated by individual netting operations. Whilst these are non-numbered schemes, operated purely for marketing purposes, the fact that such schemes are in operation demonstrates that these schemes are of value to the netsmen. However, unless such schemes are mandatory across Scotland and use uniquely numbered (and recorded) tags, the problems outlined above cannot be addressed.

In 2011, DSFBs applied for a Salmon Conservation Order to introduce a statutory system of carcass tagging for all net caught fish, in line with the rest of the UK. Whilst we believe that the power to

¹Environment Agency (2010). Salmon and sea trout carcass tagging and ban on sale byelaws: Review of 2009 implementation.

²Alistair Beveridge talking at the 2011ASFB Bailiff's Seminar in Stornoway

³ Official statistics supplied by the Chief Inspector of The Fishmongers' Company

introduce such a system already exists under the 2003 Act we are supportive of a system being introduced in Scotland at the earliest possible opportunity.

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 aid DSFBs in ensuring compliance with their conservation policies. We would therefore suggest that DSFBs should be given a power to introduce a carcass tagging system within their own districts. However, we would note that the existing ban on the sale of rod caught fish across the UK, means that, even without carcass tagging of rod-caught fish, any untagged fish would be unmarketable.

Finally, as mentioned above it is currently illegal to sell rod caught fish. However, it is not illegal to purchase rod caught fish. Once we have a statutory system of carcass tagging in place, we believe that it should be illegal to both sell *and* purchase an 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?

The Esk Board supports this strongly and advocates that the power should also extend to Boards and Trusts.

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

The Esk Board believe that such powers should only be used where there is no functional DSFB in place. Where a DSFB is in place, and is complying with good practice as set out in the Code of Good Practice, then changes to Salmon District Annual Close Time Orders should be initiated only on the application of the DSFB.

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

The Esk Board has applied successfully for both close time orders and conservation measures, sometimes in combination, and we are not aware of a particular problem with this arrangement.

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

The Esk Board believes that it is incumbent on Boards to monitor (and report) as far as practicable the annual state of its stocks. The Esk Board assesses stocks annually using the Scottish Government approved methodology (Rod catch assessment tool) and reports this in its annual report.

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?

The Esk Board does not agree that there should be statutory provisions in relation to mediation. In respect of conservation measures, these are not progressed without extensive local consultation and overwhelming support. Furthermore Ministers consult widely before any decision is taken. The only issue to be resolved that of compensation and if considered necessary the ASFB should provide independent professional mediation with experience in valuation.

It should also be noted that mediation is of no benefit where one party refuses to discuss certain conservation issues.

Improved Information on Fish and Fisheries

General Comments: The Esk Board supports fully the view of the ASFB in this regard, who agree that there is a need for improved information on fish and fisheries. Between the DSFBs, Fisheries Trusts and MSS there is a significant resource which we feel could be deployed in a more integrated and efficient manner to ensure data collection (whether from catch returns, electrofishing or counters) is consistent and useable. For instance, catch statistics are currently collected by MSS, by DSFBs and by the District Assessor. We would therefore propose a national strategy for the collection of fish data to provide the evidence required for appropriate fisheries management. Such a strategy could be drawn together using the existing structures of the Strategic Framework for Scottish Freshwater Fisheries. For a DSFB to operate effectively, using an evidence-based system of management, it must have access to robust information (e.g. adult returns, juvenile numbers & factors affecting them). A national strategy for the collection of data would identify the roles of Marine Scotland Science, DSFBs, Trusts and individual proprietors in providing this information, and this could be defined through the relevant code of practice or statute. It is also important that this information is used to inform stakeholders and members of the public. Such a strategy would need to be sensitive to the variable resources available to DSFBs/Fishery Trusts across Scotland.

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

The Esk Board remains to be convinced of the value of rod catch data in view of the wide range of abilities, perseverance, tackle, availability of a ghillie and fishing conditions. However we would support a small scale investigation using a few proprietors who would collect designated information. The value of this could be assessed by MSS before proceeding further.

We would also suggest that, as recommended by MSS flow data is a crucial determinant of rod fishing effectiveness. There are ample flow records in many catchments which could be accessed to support and perhaps refine current methods of stock assessment. This might improve the interpretation of valuable historical data sets.

We believe it would also be useful for more information and data to be collected from net fisheries. We believe that netting effort should be more clearly defined (not simply the monthly median), all instances when leaders are not removed during weekly close times should be reported (see our response to Section 7 below), and number of fish taken from specific nets should be reported (net locations often range from close to river mouths, to several km from river mouths - such a reporting requirement would give an indication of the relative impact of a fishery on specific rivers).

We would support this issue being examined in detail in drawing up a national strategy for the collection of fish data as proposed above. We are aware that MSS are currently undertaking a pilot study on specific indexed rivers to assess the potential value of such data. On that basis, we would be content for Scottish Ministers to take a power to collect effort data, to be utilised on the successful conclusion of the MSS pilot study. We would also highlight that the existing catch statistics database contains a great deal of valuable information and the national strategy could also examine the most effective means of utilising and improving the interpretation of such information.

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?

See above.

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?

We believe that it is incumbent on Boards to provide this information. The Esk Board already collects and publishes information on catches, conservation policies, monitoring, introductions and enforcement within their districts in its annual report. We believe that the Code of Best Practice is the best way to ensure that this information is provided, in a consistent manner for all DSFBs. The operation of the Code in this matter could be linked to the proposed national strategy for the collection of fish data.

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?

The Esk Board supports these suggestions. As highlighted in the consultation document ASFB and RAFTS have developed guidance on stocking⁴ including that in SACs. The Codes of Practice are sufficient to deal with this matter but where a Board is not fulfilling its duties such a power may be useful as a safety net.

⁴ Available at: <http://www.asfb.org.uk/wp-content/uploads/2011/04/ASFB-RAFTS-Salmon-stocking-policy-paper.pdf>

Q36. If so, why and in what circumstances?

Answered in question 35.

Section 5: Modernising enforcement provisions

We are not sufficiently well informed to comment on this section.

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?

The Esk Board has offered to contribute funding to management projects agreed with the Board at liaison meetings with MSS. Furthermore, it has offered payment to promote the National Fisheries Management Project on the South Esk to negate the need for September netting. It has suggested that the latter project by virtue of its national status should be managed by a team from the public and private sectors. None of these offers have been accepted to date. We have supplied free of charge Board personnel to assist MSS monitoring their smolt trap in the North Esk.

It would seem reasonable for charges for specific services/benefits and we believe that SEPA provide a good model here. For generic services such as setting up the framework of Controlled Activities Regulations, data collections standards etc. there is no charge. However, where a specific application is made, SEPA then levy a charge. In operation this appears equitable and proportionate.

It is also worth noting that the current CAR regime provides for the waiving of the application fee for an activity which delivers an environmental benefit. It would therefore seem logical that, where there is an application for e.g. conservation measures (where there is likely to be an environmental benefit) there should be no charge. In line with the SEPA model we would also expect Scottish Government to meet certain performance requirements. Specifically, applications to Scottish Ministers should be dealt with, within a statutory timeframe and we would expect the Act to reflect this.

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?

As with question 46 we limit our comments to the salmon and sea trout fisheries sector. The Trusts are increasing in effectiveness and undertaking a greater role in management. It is worth noting that Scotland gets a huge benefit from the management of fisheries by DSFBs. DSFBs are funded by fishery proprietors in the district, to a value exceeding £3.5m in 2010. Board Members give their time on an entirely voluntary basis. To replicate this management model in the public sector would be massively expensive to the public purse. In addition, DSFBs are consulted on, and expend significant time and effort in responding to, planning applications for wind farms, run of river hydro developments, marine renewable developments, fish farm developments and other developments with the potential to impact on the freshwater or marine environment. Any decisions on the level of charges, or indeed the need for charges, should be taken in the light of the considerable value already provided by DSFBs.

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?

There are a number of ways in which funds could be freed up. We have proposed above a national strategy for the collection of fish data. This could potentially help to refine the operations of MSS, thereby freeing up staff time. We also believe that a closer working relationship between **Boards**, Trusts and MSS, together with SEPA and SNH would be valuable in this regard.

We would be pleased to provide a more considered view on this subject but would require a list of all the activities which are implemented by Government and which you consider at risk due to a funding shortfall.

We also suggest below that the period in which DSFBs can authorise certain activities without applying to Scottish Ministers should be extended. This again would free up scarce Government resources.

Section 7: Any other issues

Section 1

- Paragraphs 37-41 in the consultation document suggest that discharges from wellboats and processing facilities might be an issue with regard to sea lice. As we set out in our answer to Q12 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 wellboats and processing facilities are an issue (and thereby would require filtering measures), then it would appear reasonable that sea lice released from farms are also an issue, and therefore we believe that sea lice emanating from sea cages should be treated in the same manner as other discharges. This would deal with the current lacuna in law with respect to the control of sea lice emanating from cages.

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. However, we have been informed by the Fish Health Inspectorate that any such notices are limited to observed problems with farmed fish and such notices cannot be utilised for the purposed 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

- At present, the powers of DSFBs are restricted to the dates set for the traditional netting season – outwith those times, Boards need to apply to Scottish Ministers for authorisation. Whilst the definition of the salmon season based on salmon netting may have made sense historically, when salmon netting was the major part of the sector, this is no longer the case. Indeed, the vast majority of DSFBs have little or no netting interests within their districts. It seems incongruous, and a waste of scarce government resources, for DSFBs to have to apply to Scottish Ministers to electro-fish or take brood stock for hatchery operations out with the netting season, when they do not have to do so within the netting season. This places an unnecessary burden on DSFBs and Scottish Government. We therefore propose that DSFBs should be given powers to undertake these activities throughout the year.
- It is an offence to fish or take salmon during the weekly closetime for net fisheries (6pm Friday – 6am Monday). In the case of fixed engine salmon fisheries (bag or stake nets), this is achieved by removing the 'leader', a net positioned perpendicular to the shore which diverts fish into the salmon net. Removal of the leader largely but not entirely prevents fish from entering the nets. It has become apparent that, in some parts of Scotland, the weekly close time is often not observed if, for example, rough sea conditions make it too dangerous to remove the leader. For example, Usan Fisheries near Montrose failed to remove the leaders on their nets on 12 out of 18 weekends in 2011 – equating to a significant increased exploitation of fish throughout the season. We are content that exceptions to the weekly close time should exist and indeed ASFB do not want to see anyone's life being put at risk. However, we are concerned at the potential for the current exception to the weekly close time to be exploited. The weekly close times were put in place for sound conservation reasons and therefore we believe that, where the close time cannot be adhered to for reasons of health and safety, the leaders should be removed for a corresponding period at the earliest next opportunity. Implicit in this, is the need for a requirement for netsmen to report all such occurrences when leaders are not removed.

- The North Atlantic Salmon Conversation Organisation⁵ has successfully negotiated reductions in salmon fisheries in their marine feeding grounds in the North Atlantic. Recently, MSFs have come under increased International scrutiny. NASCO's success in achieving tight restriction of traditional high seas MSFs near Greenland and the Faroes has led to increasing pressure on all parties to the Convention for the Conservation of Salmon in the North Atlantic Ocean to address MSFs in their home waters. As we expect Greenland and the Faroes to adhere to the current tight restrictions on their fisheries, we must keep our own house in order – it would be a disaster for Scottish salmon fisheries if these high sea fisheries were to resume.

The extent of *active* net fisheries in Scotland has declined, particularly since the 1970s when the advent of salmon farming and the availability of cheaper farmed fish to the consumer had a marked effect on the commercial viability of salmon netting for wild stocks. However, there remain a large and undefined number of inactive netting stations in Scotland, for which the netting rights still exist. The 1997 Report of the Scottish Salmon Strategy Task Force recognised that it would be inappropriate to prohibit the operation of active net fisheries, but that a mechanism should be established to prevent any increase in fishing effort, in line with our International commitments. The report therefore recommended that '*All net fisheries (both outside estuary limits and net and coble fisheries above the head of the tide) operated or genuinely let in any two years in the period 1993 to 1996, inclusive, should be registered, and only those that are so registered should be permitted to continue operating*'. The report also recommended that '*The number of traps fished at a bag-net or stake-net station, or the number of crews working a net and coble station outside estuary limits, should not be greater than those qualifying for registration*'.

Section 5

- There are a number of issues relating to gill netting of concern to salmon interests. The use of monofilament nets in Scottish waters is prohibited. However, many nets being used on the South Scottish coast are *multi-monofilament*. Despite the inclusion of the pre-fix 'multi', these nets are monofilament and are already illegal as highlighted in an English court ruling⁶. The rules regarding gill netting in England have recently changed. Previously gill netting was dealt with under s6 of the Salmon and Freshwater Fisheries Act 1975 (as amended by the Salmon Act 1986) by way of bylaws set by the Local Fisheries Committee. However, the 1975 Act was repealed by the Marine and Coastal Access Act 2009, which set up a new framework for the governance of inshore fisheries via Inshore Fishery and Conservation Authorities (IFCAs). Some IFCAs have used these powers to remake the old sea fisheries committee bye laws prohibiting gill netting within certain specified locations. Such bylaws are in terms similar to the following:

The placing and use of fixed engines for taking sea fish is prohibited in the following areas except when placed or used in accordance with the following conditions:

The headline of every fixed engine shall be at least 3m below the surface of the water at any state of the tide when set in the following areas less than 1 nm from the low water line along the coast and between the following eastward and westward boundaries.

(All references to fixed engines in the above, refer to gill nets)

Such bylaws, which are also designed to prevent gill nets being placed near river mouths, reduce the likelihood that salmon or sea trout will be intercepted by gill nets set for sea bass or mullet, assalmonids fish generally swim within 3m of the surface and close to the coast. As the law currently stands, it is an offense to take salmon, but this does not prevent salmon being intercepted and killed in gill nets, so long as the fish are not landed. We believe that the Aquaculture and Fisheries Bill presents an opportunity for Scottish Ministers to take a power (if such a power does not already exist under the Inshore Fisheries (Scotland) Act 1984), via the most appropriate legislative vehicle, to regulate gill

⁵ Established under the Convention for the Conservation of Salmon in the North Atlantic Ocean in October 1983

⁶ Brough v National Rivers Authority (1993)

netting by order, along the lines of the English bylaws suggested above. Such orders should be made by Scottish Ministers under their own volition, or on application by a DSFB.

Section 6

- The Esk Board suffers considerably from the inequitable burden of conservation as recommended by the Chairman of the MSFWG. In 2010, the South Esk District netting stations killed over 90% of the total salmon and grilse killed in that District while paying for only 5.8% of the assessment. This disparity is clearly shown by the recently agreed level of compensation which equates to over 20% of the total assessment paid to the Board for a cessation of fishing for the period 16th February to 30th April. This imbalance is a source of considerable resentment. In the case of the North Esk over 80% of the fish were killed by netting stations which pay 6.2% of the assessment.

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Other

- The spread of feral beavers in Tayside which has most likely been introduced illegally. It is also possible that some of these animals may have escaped from private collections. In either case, it is important that such 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 to primary legislation in relation to this issue.
- Netting bi-catch: we believe that netsmen should report all non salmonid species caught in their nets. This would add to the knowledge and availability of other species in the District in relation to climate change.
- The situation with regard to the anomalous status of "trout" and "sea trout" should be rectified. Whilst the law includes sea trout as salmon trout are excluded. For the avoidance of doubt all trout of the species *Salmo trutta* should be within the statutory remit of all DSFBs

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