

Aquaculture and Fisheries Bill

Consultation Analysis - Main Report

August 2012

Table of Contents

1	Introduction	1
1.1	Background.....	1
1.2	Consultation	2
1.3	Analysis Method.....	2
1.4	Report Structure.....	2
1.5	Report Availability and Distribution	3
2	Overview Of Responses	4
2.1	Number of Responses	4
2.2	Respondent Classification.....	5
2.3	Interest Group Responses	6
2.4	Detailed Responses	6
3	Analysis Of Responses	10
3.1	Introduction	10
3.2	Analysis of Consultation Questions.....	10
3.3	Section 1 – The Sustainable Development Of Aquaculture	11
3.4	Section 2 – Protection Of Shellfish Areas	65
3.5	Section 3 – Fish Farming and Wild Salmonid Interactions.....	66
3.6	Section 4 – Salmon and Freshwater Fisheries Management.....	74
3.7	Section 5 – Modernising Enforcement Provisions.....	109
3.8	Section 6 – Paying For Progress	120
4	Other Comments and Issues Raised	134
4.1	Introduction	134
4.2	Comments on the Strategic Environmental Assessment	134
4.3	Mixed Stock Salmon Fisheries Working Group.....	135
4.4	Changes in Farming Practices	135
4.5	Escapes	136
4.6	Environmental Considerations for Siting	136
4.7	Provisions for Other Species.....	136
4.8	Additional Comments Relating to DSFBs.....	137
4.9	Further Consultation and Collaboration	137
4.10	Close Times and Net Leaders.....	137
4.11	Netting Stations.....	138
4.12	Angling.....	138
4.13	Coarse Angling	138
4.14	Protection Orders (POs).....	139
4.15	Gaps	139
4.16	General Comments	139

5	Summary of Key Issues	141
5.1	Key Issues and Trends	141

Tables

Table 2.1 – Definitions of Stakeholder Categories

Table 2.2 - Response Rates by Broad Stakeholder Group

Table 2.3 - Response Rates by Stakeholder Sub-Group

Figures

Figure 2.1 - Response Rates by Broad Stakeholder Group

Figure 2.2 – Distribution of DSFB/RAFTS Respondents

1 Introduction

1.1 Background

Summary

- This section introduces the Aquaculture and Fisheries Bill – Consultation Document and the Consultation Analysis Main Report, explaining the context within which it has been prepared.
- An overview of the consultation process is provided, and the method used to analyse the consultation and report on the findings, including reference to the relevant guidance, is summarised.

- 1.1.1 The Aquaculture and Fisheries Bill – Consultation Document¹ set out the key issues and priorities in relation to Scotland’s aquaculture, wild salmon and freshwater fisheries industries. The document discussed potential for amendments to existing legislation and scope for additional measures. It built on best practice and voluntary arrangements where appropriate, to protect the interests of those who have invested in the highest standards of management and husbandry.
- 1.1.2 The Consultation Document explored possible legislative measures for a potential Aquaculture and Fisheries Bill during the current Parliament. It also covered wider issues, such as provisions to protect shellfish growing waters.
- 1.1.3 The Consultation Paper was published on the Scottish Government website on 6 December 2011 with responses to the consultation requested by 2 March 2012. The document was accompanied by a Strategic Environmental Assessment Environmental (SEA) Report² and a partial Business and Regulatory Impact Assessment (BRIA)³ of the proposals, published on 22 and 8 February 2012 respectively. The initial consultation period was extended to 13 April 2012, to provide consultees with additional time to consider the accompanying impact assessments.
- 1.1.4 The consultation paper contained 48 questions, including 38 ‘yes’ or ‘no’ questions and ten further questions where consultees were asked for their views or suggestions on a range of issues.

¹ Marine Scotland (2011) Aquaculture and Fisheries Bill Consultation Document [online] Available at: <http://www.scotland.gov.uk/Publications/2011/12/06081229/0>

² Marine Scotland (2012) Environmental Assessment (Scotland) Act 2005 Aquaculture and Fisheries Bill Consultation Document Environmental Report [online] Available at: <http://www.scotland.gov.uk/Publications/2012/02/6255/0>

³ Marine Scotland (2011) Aquaculture and Fisheries Bill Consultation Document Partial Business and Regulatory Impact Assessment [online] Available at: <http://www.scotland.gov.uk/Publications/2012/02/8291/0>

1.2 Consultation

- 1.2.1 In accordance with the Environmental Assessment (Scotland) Act 2005, the consultation was advertised publicly in the print media (The Scotsman and The Edinburgh Gazette) in February 2012.
- 1.2.2 Representations to Marine Scotland on the Aquaculture and Fisheries Consultation were invited. In addition to their responses to the consultation questions, respondents were asked to clearly state their name, address and whether they gave permission for these details to be made available to the public as a respondent to the consultation.
- 1.2.3 Due to a large number of respondents electing to remain anonymous, this consultation report has been prepared such that any comments received from consultees have been attributed to the respective stakeholder groups only and are otherwise anonymous.

1.3 Analysis Method

- 1.3.1 The analysis of responses to the consultation has been undertaken following the Scottish Government's Good Practice Guidance (updated May 2010). This guidance ensures that the responses are analysed objectively and accurately, and that the reporting of the findings is accessible and transparent.
- 1.3.2 The guidance sets out a number of requirements about reporting the findings of consultation analysis. This includes using appropriate methods of analysis, combining qualitative discussion with quantitative assessment of views, and methods for ensuring that the full range of views submitted is properly recognised.
- 1.3.3 The guidance is available online at:
<http://www.scotland.gov.uk/Resource/Doc/160377/0079069.pdf>
- 1.3.4 The analysis has been undertaken by the Scottish Government's Environmental Assessment Team, on behalf of Marine Scotland.

1.4 Report Structure

- 1.4.1 This report has been prepared to set out the results of the analysis of consultation responses. It is structured as follows:
- Section 1 provides an introduction to the consultation and background to the consultation documents.
 - Section 2 provides an overview of the responses to the consultation.
 - Section 3 sets out and summarises the responses to the consultation questions.
 - Section 4 sets out the other comments and issues raised by the respondents to the consultation.
 - Section 5 sets out the key findings from the consultation analysis.

1.5 Report Availability and Distribution

- 1.5.1 The consultation has been undertaken in accordance with the requirements of Section 16 of the Environmental Assessment (Scotland) Act 2005. This report has been compiled in line with best practice and the analysis has been made available to maximise the transparency of the decision making process.

2 Overview Of Responses

Summary

- This Section provides an overview of the responses to the consultation.
- The consultation generated 1,342 responses, of which 1,193 were “Interest Group” responses and 149 were detailed responses.
- Most of the Interest Group responses were from consultees affiliated with the aquaculture industry, with a smaller proportion of consultees affiliated with the voluntary and DSFB sectors.
- A third of the detailed responses were from the freshwater fisheries sector, and just under a quarter were from individuals/politicians, with the voluntary sector and aquaculture sector making up 14% and 12% of respondents respectively.
- There was a good cross-section of interested opinion from the aquaculture, marine, freshwater fisheries, environmental, voluntary and public sectors, with a range of additional responses from interested members of the public and other commercial businesses.

2.1 Number of Responses

- 2.1.1 A total of 1,342 responses were received to the consultation. Of these, some 1,193 were in the form of “Interest Group Responses” received from individuals associated with the aquaculture industry and voluntary sector, consisting of letters providing general comments on the paper but not addressing the questions asked in the consultation, and questionnaire proforma endorsing the responses of the respective industry organisations.
- 2.1.2 A further 149 were in the form of “Detailed Responses” referring to the length and detail of comments on the consultation questions in many of these responses. Most of the detailed responses focused on the consultation questions, although some consultees chose not to answer some of the questions. Many commented on the proposed Bill and the wider industry itself, either in addition or in preference to directly answering the consultation questions.
- 2.1.3 Each response received for the consultation was read in detail and it was a key principle of the consultation analysis and the Bill development process that each response be given due consideration. However, the main focus of the consultation analysis was on the content of the responses rather than the number and, as such, it was primarily focused on the detailed responses.
- 2.1.4 While the Interest Group Responses received consideration in the consultation process, they were not directly included in the analysis for two reasons:
- The letter-style “Interest Group Responses” did not answer or address the issues raised in the consultation questions, and were limited to general comments and views on the upcoming Bill.

- The large number of proforma questionnaires submitted contained the same views and content for each respondent. This content also reflected that expressed in detailed responses submitted by other respondents, particularly from the aquaculture industry. As the analysis was mainly focused on the content of responses, the proforma questionnaires were not individually considered in this analysis. However, the views contained within them have been captured in several detailed responses.

2.2 Respondent Classification

2.2.1 Each respondent to the consultation was assigned initially to one of eight broad stakeholder groups, and then to a further sub-group to allow a detailed analysis of their responses. Table 2.1 shows the eight groups and 18 sub-group categories used in the consultation analysis, consistent with previous consultation analysis undertaken by Marine Scotland.

Table 2.1 – Definitions of Stakeholder Categories

Broad Stakeholder Group	Detailed Stakeholder Group
1. Public Bodies	1.1 Local Authorities
	1.2 SEA Consultation Authorities
	1.3 Other Public Bodies
2. Aquaculture	2.1 Fish Farms
	2.2 Aquaculture Industry Bodies
	2.3 Other Aquaculture Related Businesses
3. Marine Fisheries	3.1 Marine Fisheries Businesses
	3.2 Marine Fisheries Industry Bodies
4. Freshwater Fisheries	4.1 Anglers/Fishermen's Associations
	4.2 District Salmon Fishery Board (DSFB) / Rivers and Fisheries Trusts of Scotland (RAFTS)
	4.3 Other Freshwater Fisheries Related Businesses
5. Professional and Academic Bodies	5.1 Scientists, Universities and Research Units
6. Voluntary Sector	6.1 Campaign Groups
	6.2 Non-Government Organisations (NGO)
7. Individuals and Politicians	7.1 Politicians
	7.2 Private Individuals
8. Other Commercial	8.1 Non-Fisheries Businesses
	8.2 Wider Industry Organisations

2.3 Interest Group Responses

2.3.1 Responses received in the form of letters or proforma questionnaires included:

- 1,003 responses received on questionnaire proformas submitted by individuals and conforming to the detailed response of an aquaculture industry respondent.
- 18 responses received on questionnaire proformas from employees of a fish farming company and conforming to that company's detailed response.
- 45 responses received on proformas developed by and submitted by individuals and conforming to the detailed response of a voluntary sector respondent.
- 75 letters received from employees of a fish farming company endorsing that company's detailed response.
- 7 letters received from employees of a fish farming company.
- 45 letters received from employees of a fish farming company endorsing the company's detailed response.

2.3.2 As previously stated, while these have received due consideration in the development of the upcoming Bill, they have not been included in the detailed analysis set out in this report.

2.4 Detailed Responses

2.4.1 The detailed responses received from consultees on the Consultation Document, the Environmental Report and the Partial BRIA were allocated to the respective broad stakeholder groups and sub-groups. These are shown in Tables 2.2 and 2.3 respectively.

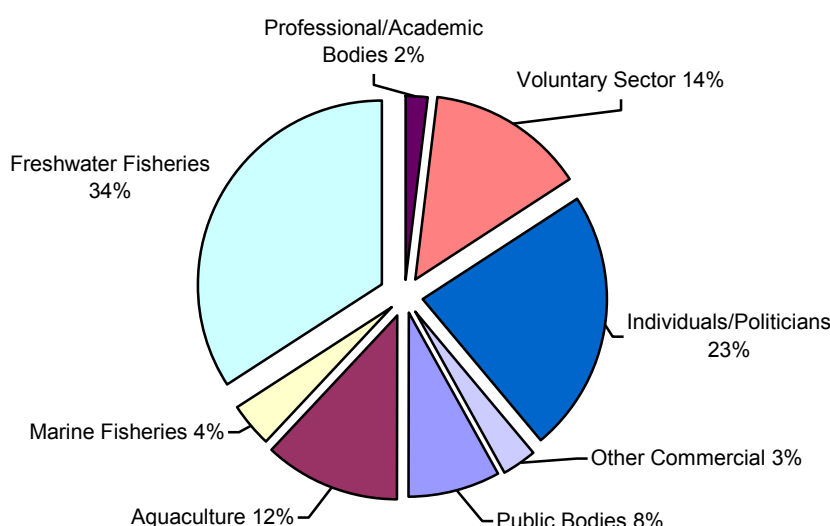
2.4.2 As Tables 2.2 and 2.3 demonstrate, the highest represented group amongst respondents was the freshwater fisheries sector who accounted for 34% of all detailed responses. This proportion was higher than that observed in the previous consultation analysis⁴ undertaken in 2006 for the Aquaculture and Fisheries Bill, where this group accounted for 29% of the total responses. Almost two-thirds of the respondents within this stakeholder group were from DSFBs or Fishery trusts, and as shown in Figure 2.2, the spatial representation of these respondents covered much of Scotland. Angler's/fishermen's associations and other freshwater fisheries businesses accounted for 28% and 10% respectively.

⁴ Scottish Executive (2006) Aquaculture and Fisheries Bill: Analysis of Consultation Responses [online] Available at: www.scotland.gov.uk/Resource/Doc/115712/0028657.pdf

Table 2.2 - Response Rates by Broad Stakeholder Group

Broad Stakeholder Group	Total Replies	Percentage Share
1. Public Bodies	12	8%
2. Aquaculture	18	12%
3. Marine Fisheries	6	4%
4. Freshwater Fisheries	50	34%
5. Professional and Academic Bodies	3	2%
6. Voluntary Sector	21	14%
7. Individuals and Politicians	34	23%
8. Other Commercial	5	3%
TOTAL	149	100%

Figure 2.1 - Response Rates by Broad Stakeholder Group



2.4.3 Private individuals and politicians were well represented with a quarter of all detailed responses. This was a lower share than that recorded in the previous consultation undertaken on the Aquaculture and Fisheries Bill in 2006 (46%). All but two of the respondents to the consultation responses were individuals. A number of individual responses were also received via aquaculture industry businesses or groups.

2.4.4 As in many of the consultation questions, a number of respondents endorsed the view of their sectoral representative body, specifically the Association of Salmon Fishery Boards (ASFB) (the majority of the freshwater fisheries sector) and the SSPO (respondents from the aquaculture industry).

2.4.5 The voluntary sector, comprising campaign groups and non-governmental organisations (NGOs), accounted for 14% of substantial responses received.

The aquaculture sector accounted for 12%, largely comprising those who are involved in aquaculture related business (56%); fish farms and aquaculture industry bodies comprise 28% and 17% respectively of these responses.

2.4.6 Other stakeholder groups accounted for 8% of responses individually and a total of 17% of total responses.

2.4.7 In all, a good cross-section of interested opinion from the aquaculture, marine, freshwater fisheries, environmental, voluntary and public sectors responded to the consultation.

Table 2.3 - Response Rates by Stakeholder Sub-Group

Detailed Stakeholder Group	Total Replies	Percentage Share of Total Respondents ⁵	Percentage Share of Broad Group
1.1 Local Authorities	5	3%	42%
1.2 SEA Consultation Authorities	2	1%	17%
1.3 Other Public Bodies	5	3%	42%
2.1 Fish Farms	5	3%	28%
2.2 Aquaculture Industry Bodies	3	2%	17%
2.3 Other Aquaculture Related Businesses	10	7%	56%
3.1 Marine Fisheries Businesses	1	1%	17%
3.2 Marine Fisheries Industry Bodies	5	3%	83%
4.1 Angler's/Fishermen's Associations	14	9%	28%
4.2 DSFB/RAFTS	31	21%	62%
4.3 Other Freshwater Fisheries Related Businesses	5	3%	10%
5.1 Scientists, Universities and Research Units	3	2%	100%
6.1 Campaign Groups	4	3%	19%
6.2 NGOs	17	11%	81%
7.1 Politicians	2	1%	6%
7.2 Private Individuals	32	21%	94%
8.1 Non-Fisheries Businesses	3	2%	60%
8.2 Independent Membership Organisations	2	1%	40%

⁵ Percentages do not add to 100% due to rounding.

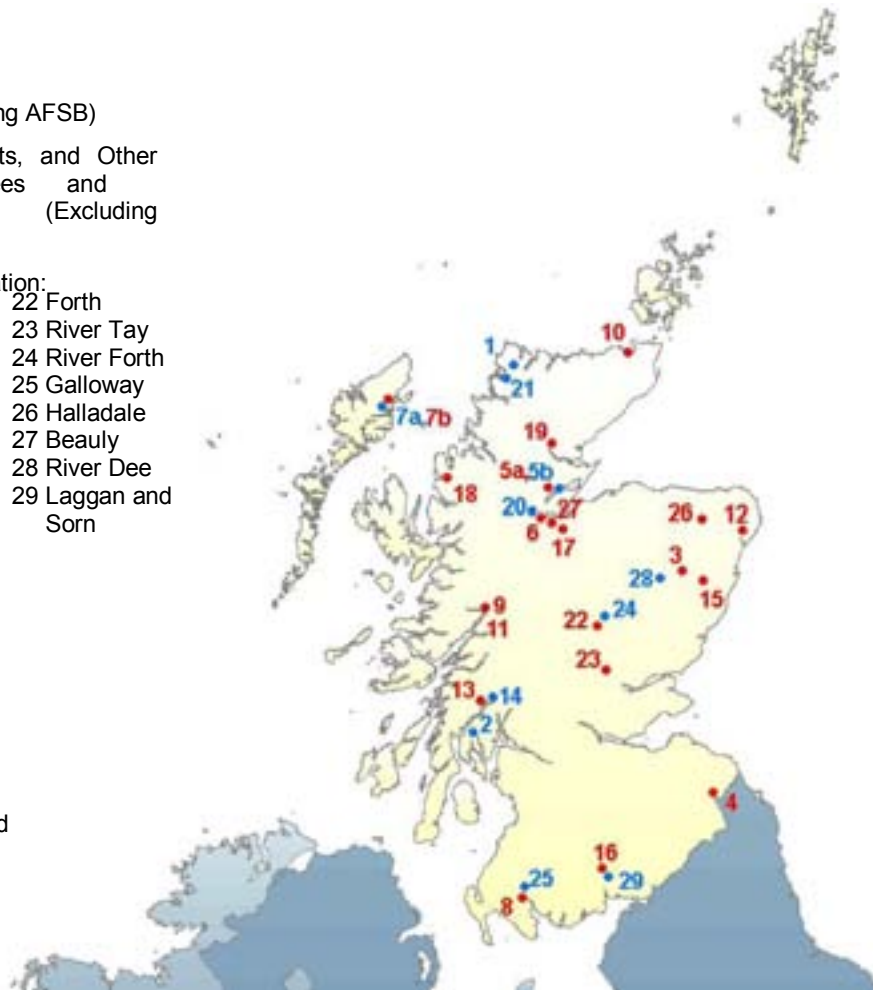
Figure 2.2 – Distribution of DSFB/RAFTS Respondents

Legend:

- DSFB (Excluding AFSB)
- Fisheries Trusts, and Other River Committees and Associations (Excluding RAFTS)

River or District Location:

- | | |
|-----------------------|--------------------|
| 1 River Dionard | 22 Forth |
| 2 River Ruel | 23 River Tay |
| 3 River Don | 24 River Forth |
| 4 River Tweed | 25 Galloway |
| 5 Cromarty Firth | 26 Halladale |
| 6 River Ness | 27 Beaully |
| 7 Outer Isles | 28 River Dee |
| 8 River Dee | 29 Laggan and Sorn |
| 9 Lochaber | |
| 10 Caithness | |
| 11 Lochaber | |
| 12 Ythan | |
| 13 Argyle | |
| 14 Argyle | |
| 15 River Esk | |
| 16 Nith | |
| 17 River Brora | |
| 18 Wester Ross | |
| 19 Kyle of Sutherland | |
| 20 Ness and Beaully | |
| 21 West Sutherland | |



3 Analysis Of Responses

Summary

- This section sets out the findings of the consultation analysis by presenting a summary of the quantitative analysis of responses to each „yes’ or „no’ question, and a summary of the detailed qualitative analysis of the expanded consultation questions.
- Many respondents also provided additional comments in their responses. These have been summarised and discussed under the relevant questions.
- Summaries of the findings are presented in boxes at the end of the discussion on each consultation question.

3.1 Introduction

- 3.1.1 While most of the detailed responses focused on the consultation questions, many commented on the proposed Bill and the wider industry, either in addition or in preference to directly answering the consultation questions. Judgement has been used in such cases to allocate these comments to either „yes’ or „no’ where applicable. In instances where the comments were not related to the specific consultation question(s), these were recorded as „no comment’.
- 3.1.2 In contrast, some respondents restricted their comments to their primary areas of interest, and did not provide a response to other consultation questions. This is perhaps unsurprising, given the wide range of issues presented in the consultation for the upcoming Bill. In such cases, these „non-responses’ were recorded as „no comment’.
- 3.1.3 Many detailed responses to the consultation also took the form of campaign responses. In some cases, respondents endorsed the response of their sectoral body, notably the ASFB and River and Fishery Trusts for some freshwater respondents, and the SSPO for several aquaculture industry respondents. Definitive numbers and percentages cannot be provided for these campaign responses, as the form in which they presented varied between consultees. For example, some simply endorsed their sectoral body’s response while others part-endorsed their response and made additional comments on some issues.
- 3.1.4 Further comments on interpretation of the findings of the analysis are provided in this section and in Section 5.

3.2 Analysis of Consultation Questions

- 3.2.1 Sections 3.3 to 3.8 present the findings of the responses to the 48 consultation questions contained within the Consultation Document. Of these, 38 questions requested „yes’ or „no’ answers. Responses to these questions have been presented in quantitative form with analysis and trends, including identifying support, opposition and the main stakeholder groups responding to the

questions, if any. Additional or expanded comments have been presented in a discussion section for each consultation question.

3.2.2 Ten additional questions invited broader comments from consultees. The responses to these questions have also been analysed and reported.

3.2.3 Where respondents raised additional issues or suggested alternative measures to those identified in the Consultation Document, these have been identified in Section 4. Major issues and themes identified in the analysis are discussed in Section 5.

3.3 Section 1 – The Sustainable Development Of Aquaculture

Farm Management Areas (FMAs)

Question 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 the sanctions for failure to do so, or to adhere to the terms of the agreement?

3.3.1 A total of 83 respondents agreed that participation in FMAs should be a legal requirement, 26 disagreed, and the remaining 40 respondents declined to comment. Based on these figures, the majority of consultees appear to support the proposal.

3.3.2 Responses varied between stakeholder groups. Respondents from the freshwater fisheries sector were supportive of the proposal, with 36 respondents answering „yes’ and two respondents stating their opposition (one DSFB/RAFTS and an angler’s association). Public bodies were also strongly supportive, with all but one respondent supporting the proposals. Respondents from the voluntary sector (NGOs and campaign groups) were also largely in agreement with the proposal, with some 14 respondents showing their support. A further seven responses from this sector declined to answer the question.

3.3.3 Of those who answered the question, a total of 14 individual/politician respondents agreed and six disagreed. All of the marine fisheries consultees who responded to the question supported the proposal.

3.3.4 In contrast, there was strong opposition from the majority of aquaculture industry consultees with 14 of the 18 respondents disagreeing with the proposal, and just two supporting it. Two of the three professional/academic consultees disagreed with the proposal.

3.3.5 Respondents from the last stakeholder group, „other commercial businesses’, were split in their responses with two agreeing, and two disagreeing.

Discussion

3.3.6 While a large number of respondents supported introducing a legal requirement for marine finfish operators to participate in an appropriate Farm Management Agreement (FMA), several respondents provided additional comments on this issue.

3.3.7 Several respondents noted that this question was a previous recommendation of the Ministerial Group on Aquaculture.

- 3.3.8 Several respondents felt that it was a weakness of the FMA process that these have been voluntary. They were concerned that the aims of the agreements have not always been met and there has been a lack of penalties for non-compliance. Some added that the privacy of such agreements has engendered a lack of trust and transparency in them, a point agreed by several freshwater fisheries and voluntary sector respondents, who also added that FMA do not currently have input from wild fisheries interests. One respondent felt that there should be input from government and other stakeholders on the composition of an acceptable FMA.
- 3.3.9 Several respondents (two public bodies, one voluntary respondent and one freshwater fisheries consultee) felt that the relationship between Management Areas (MAs) and FMAs needs to be clarified, with careful consideration given to how this would be monitored and whether sanctions would be applied. A freshwater fisheries respondent also raised this issue, and suggested fines or reductions in biomass consent as possible tools to encourage operators to adhere to an FMA.
- 3.3.10 A public body suggested that this legal requirement for participation could be recognised in planning and consenting, although it needs to be at an appropriate scale. The appropriateness of scale was also raised by several voluntary sector respondents.
- 3.3.11 Three public bodies felt that compulsory participation may work against small independent operators or organic producers who may not be able to accommodate the terms of an FMA for economic or production reasons. One aquaculture industry respondent agreed, and stated that small operators should be given sufficient weight within the development of an FMA. They also noted that a lead-in time for agreements may be needed, particularly in achieving synchronised fish stocking and fallowing for farms within a MA.
- 3.3.12 A public body felt that a FMA should include good practice arrangements for infrastructure and site decommissioning, and suggested that operators be required to lodge a bond for these. Requirements for bonds was also raised by a marine fisheries respondent in relation to care of infrastructure.
- 3.3.13 Another public body stated that they see potential for processing plants, killing stations and shore bases to be included within the scope of FMAs, where they are present within the boundaries of a MA, as a means of countering incidence of disease or parasites. Another voluntary sector respondent felt that additional responsibilities should be included in FMAs for closure planning (i.e. cleaning up the coastline in proximity to farms).
- 3.3.14 While the proposal for mandatory FMAs was strongly opposed by the aquaculture industry, the FMA concept was generally supported. Several aquaculture respondents, including the SSPO, felt that contractually binding FMA between companies operating in the same MAs would be a more appropriate option. They felt that the scope of these agreements should be defined by the operators as per their Code of Good Practice⁶ (CoGP) guidance.

⁶ Code of Good Practice Management Group (2010) Code of Good Practice for Scottish Finfish Aquaculture [online] Available at: <http://www.thecodeofgoodpractice.co.uk/cogp/preface-to-the-2010-edition>

- 3.3.15 One professional/academic respondent noted that the aquaculture industry CoGP requires contractually binding FMA between operators in the same MA, and added that direct involvement of the Scottish Government would add significant cost and bureaucracy with little benefit. One public body also raised the issue of cost, recommending that any such proposals should not hinder the emergence of new developments.
- 3.3.16 Several aquaculture industry consultees raised legal issues potentially arising from the proposal, with some suggesting that this approach was incompatible with a competitive market economy. Another respondent felt that participating companies must have ownership of any FMA for it to operate successfully, and that outside involvement will not contribute to successful operation of a FMA. However, some consultees felt that the Scottish Government could play a useful role in supporting aquaculture industry systems introduced through their CoGP. One aquaculture industry respondent suggested that the Government should provide a light touch approach by incentivising operators to cooperate within an FMA.
- 3.3.17 One local authority noted that care should be taken in relation to synchronised sea-lice treatments, adding that this can lead to increased resistance if operators use the same chemicals at the same time on repeated occasions.
- 3.3.18 A freshwater fisheries respondent felt that the aquaculture industry CoGP should be seen as the minimum requirement for an FMA. Several respondents from the voluntary sector felt that the Salmon Aquaculture Dialogue (SAD) standards should be used as a guide to establish regulations for salmon aquaculture.
- 3.3.19 A voluntary respondent felt that the consultation proposal regarding FMAs was too vague, and recommended including a provision for oversight and enforcement by SEPA as an arms-length independent regulator. They added that it could be an implied condition in a Controlled Activity Regulation (CAR) consent that a finfish farm sign up to an FMA within a specified time limit.

In summary:

- There appeared to be general support from the majority of respondents. Support focused around the need for good husbandry and management of fish farms to be practised consistently across the sector.
- Although the concept of FMAs was generally supported by the aquaculture industry, they significantly opposed the proposal to make FMAs a legal requirement. This was supported by the wider campaign responses.
- Key issues discussed by consultees included the extent to which a FMA should be compulsory or voluntary, who should be involved, and the need for further thinking on other more detailed aspects of the arrangements.

Appropriate Scale Management (MAs)

Question 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 fall back power to specify alternative areas?

- 3.3.20 A total of 39 respondents agreed that boundaries should be determined by operators, 68 disagreed and the remaining 42 respondents declined to comment. Views varied within and between stakeholder groups.
- 3.3.21 The public sector was supportive of the proposed measure, with two-thirds of respondents agreeing, and three local authorities disagreeing. All of the marine fisheries respondents who responded to the question (around half) agreed with the proposal.
- 3.3.22 Views varied within the group of freshwater fisheries respondents, with 17 respondents agreeing, 20 disagreeing and 13 declining to comment. Opinion within the stakeholder sub-groups (DSFBs, angler's associations and other businesses) was also split. Similarly, voluntary groups were divided reasonably evenly between 'yes', 'no' and declining to answer.
- 3.3.23 Strong opposition to this question was shown by the aquaculture industry with 15 of the 18 respondents stating their opposition and just one respondent supporting the proposal. Similarly, individual respondents generally opposed the proposal with 15 respondents disagreeing, four agreeing, and 15 declining to answer the question. Respondents from the other commercial sector (4) and professional/academic bodies (3) also generally disagreed with this proposal.

Discussion

- 3.3.24 Many respondents provided additional comments to explain their support or opposition to the proposal.
- 3.3.25 Reasons for opposing the proposal varied. Some respondents disagreed with the proposal for operators to have primary responsibility in determining MA boundaries, while others disagreed with the fallback power for Ministers in the process.
- 3.3.26 Several respondents, largely from the freshwater fisheries sector, disagreed with the premise that operators should have primary responsibility for determining boundaries. There was concern amongst some respondents on how the boundaries are currently set, with several noting that MA boundaries should be set on 'reasons of good husbandry, biosecurity and control of sea-lice'. These consultees largely supported ministerial powers to set boundaries, with several stating their support for the examples in paragraph 11 of the Consultation Document for when these powers should be used.
- 3.3.27 In contrast, some public bodies, freshwater fisheries and voluntary respondents agreed that operators should have primary responsibility, but attached caveats to their support. These included a requirement for the aquaculture industry to demonstrate that they have adopted appropriate areas, with the Scottish Government having the right or ultimate power to amend MA boundaries. One freshwater fisheries respondent felt that Ministers should be provided scope to

delineate, monitor and enforce MA boundaries, should the aquaculture industry not fulfil its responsibility. Another felt that this power could be used in cases where operators select MAs for reasons other than to maximise health benefits to fish.

- 3.3.28 One voluntary sector respondent felt that either Scottish Environment Protection Agency (SEPA) or Ministers should determine and regularly review boundaries based on current knowledge. Several public bodies felt that boundaries should be specified by Ministers, based on best available scientific evidence provided by Marine Scotland Science in consultation with marine finfish operators.
- 3.3.29 Several respondents suggested Ministers should consult with all interested bodies before making the final decision on area boundaries. Others agreed, stating that although final power may reside with Ministers, it should be a joint effort. Several respondents specifically named the Ministerial Working Group, fish farm operators and other relevant stakeholders (i.e. Fisheries Trusts/Boards, Scottish Natural Heritage (SNH), SEPA, commercial fishermen, tourist boards, etc) for inclusion in this process. One voluntary respondent felt that the regional Marine Planning Partnerships will have an important role in this process once they are established.
- 3.3.30 Some respondents raised issues with the determination or basis of MA boundaries, with one public body specifically stating that they had no preference on who set the boundaries, but rather how.
- 3.3.31 One respondent stated that many of the existing boundaries were based on disease transfers associated with the Infectious Salmon Anaemia (ISA) outbreak in the 1990s, and felt that these are now outdated.
- 3.3.32 The ASFB, supported by a number of freshwater fisheries respondents, felt that some MA boundaries are not based on reasons of good husbandry, biosecurity and control of sea-lice. A number of other voluntary sector and freshwater fisheries respondents also felt that MA boundaries should be based on ecological protection as well as on the best options for farm husbandry and management. One voluntary sector respondent emphasised that boundaries should reflect biological, geographical or environmental issues. Another felt that boundary selection must take account of cumulative and in-combination effects of connected activities, to ensure they remain within the carrying capacity of the marine environment. A freshwater fisheries consultee suggested that there should be a commitment to review MAs when sea-lice dispersal patterns and data are available.
- 3.3.33 One respondent felt that the locations of key salmon and sea trout rivers and the results of sea-lice dispersal models should be taken into account, and another that MA boundaries should be based on the connectivity of fish farm sites with respect to disease and sea-lice transfer. The ASFB and several voluntary respondents also took a general view that where limited information is available, a precautionary approach of selecting larger, rather than smaller boundaries, should be adopted.
- 3.3.34 One public body suggested that boundaries should be drawn on the basis of sites which have one or more permissions in place (i.e. planning permission,

- CAR licence or being registered with Marine Scotland) and should not be altered in the event that a site undergoes an extended fallow.
- 3.3.35 Another public body suggested the inclusion of shellfish operators in any agreed area if biosecurity was considered in FMAs, noting that shellfish have the potential to bio-accumulate infectious agents.
- 3.3.36 One consultation authority felt that a review of MA boundaries should be conducted, following the development of a suitable risk/sensitivity model like that being commissioned by Marine Scotland and RAFTS. The ASFB and several freshwater fisheries respondents added that several existing FMAs should be consolidated at the earliest opportunity. However, another freshwater fisheries respondent disagreed, noting that the current MAs were defined by the ISA Joint Working Group to reflect water movements, suggesting that these should be maintained. However, they also felt that the Scottish Government should have the right to alter the boundaries when new information becomes available. One public body felt that Ministerial powers to define boundaries should only be exercised as a last resort.
- 3.3.37 The aquaculture industry was clearly opposed to the provision for Ministerial powers to set boundaries, contending that this should be a matter for operators, with no need for reserved powers for Ministers to specify alternative areas. Several respondents noted that they previously rejected this proposal in the Healthier Fish Working Group consultation in 2009.
- 3.3.38 Several aquaculture industry respondents added that this could be done under the industry CoGP. One respondent noted that Marine Scotland already have powers under European Directive 91/67/EEC to set up quarantine or control zones in the event of an infectious disease outbreak, and questioned why these powers should be expanded.
- 3.3.39 This view was shared amongst some of the respondents from other stakeholder groups. One freshwater fisheries respondent disagreed with government involvement in setting MA boundaries. They felt that it should be left to the aquaculture industry to determine, and that industry should discuss this process with stakeholders and regulators where applicable. Another freshwater fisheries respondent felt that wild fisheries interests should be considered in the determination of MA boundaries.
- 3.3.40 One professional/academic body felt that the determination of the appropriate boundaries is best left to the operating companies, who have the local knowledge necessary to make that decision. Another professional/academic body noted that this issue was debated and rejected by the Healthier Fish Working Group during an earlier consultation and that the current proposal is both wide-ranging and open-ended. They felt that the aquaculture industry can modify boundaries by using current arrangements, should new evidence be provided suggesting MA boundaries are necessary on a scientific and pragmatic basis.
- 3.3.41 Another respondent (a sole aquaculture operator) felt that there was no need for additional Ministerial powers in this area. They felt that their practices do not impact on other operators in their area (or vice versa), and stated that they felt the current system is working.

In summary:

- There was significant opposition to this proposal. Opposition fell primarily into one of two categories: opposition to the definition of boundaries by operators, or opposition to the proposed fallback power for Ministers.
- Views on who should define the boundaries varied significantly and there was no consensus on this issue. Whilst some felt that the public sector has an important role to play in setting boundaries or having the final decision in consultation with other parties, others are strongly opposed to what they perceive to be interference in the private sector.
- The aquaculture industry was strongly opposed to what they view as interference in the process. Some of those who supported the definition of boundaries by operators attached caveats to this support, mainly around a requirement for aquaculture operators to demonstrate that appropriate MAs have been adopted, with several also suggesting the benefit of a Ministerial power in instances where industry do not fulfil this responsibility.
- Respondents raised a number of ways in which the boundaries of these areas could be defined (e.g. on ecological grounds rather than geographical, to consider biological, geographical, and environmental issues; taking account of cumulative and in-combination effects; good husbandry and biosecurity; etc).

Management Measures and Dispute Resolution

Question 3. Do you agree that an independent arbitration process should be put in place (with statutory underpinning) to resolved disputes related to Farm Management Agreements?

- 3.3.42 There was significant support for this proposal amongst respondents, with 78 supporting an independent arbitration process. However, 26 consultees disagreed with this and the remaining 45 respondents provided no response.
- 3.3.43 Strong support was shown by respondents from the freshwater fisheries sector with 35 respondents agreeing and just one respondent (an angler's association) disagreeing. Similarly, the majority of public bodies and voluntary sector respondents were strongly supportive of this proposal.
- 3.3.44 Of those who responded, individual respondents were largely supportive of the proposal, with 12 respondents agreeing and just seven disagreeing. Several individual respondents opposing to the proposal had submitted their responses via aquaculture operators. All of the marine fisheries respondents who responded to this question agreed with the proposal.
- 3.3.45 In contrast, aquaculture industry respondents were strongly opposed to independent arbitration, with 15 of the 18 respondents who answered disagreeing and only one respondent agreeing.

- 3.3.46 The remaining stakeholder groups, consisting of respondents from other commercial businesses and professional/academic bodies, had mixed views.
- 3.3.47 A large number of respondents provided additional comments on this proposal and on arbitration systems in general, and these have been presented in detail in the discussion for Question 4.

Question 4. How do you think such a system might be best developed?

- 3.3.48 A total of 90 consultees responded to this question. Of these, nine were from public bodies, 15 from the aquaculture industry, two from marine fisheries, 32 from freshwater fisheries, two from professionals and academic bodies, 14 from the voluntary sector, 15 from individuals and politicians, and one from other commercial businesses.

Discussion

- 3.3.49 The level of detail provided in response to this question varied between respondents. Some raised wider issues, whilst many others simply endorsed the view of their sectoral representative bodies, the ASFB (the majority of the freshwater fisheries sector), or the SSPO (predominantly respondents from the aquaculture industry). Many respondents also presented their views on Question 3 in their responses to Question 4.
- 3.3.50 Several key issues were raised by respondents in their responses to this question. These are presented below.

Independent arbitration process

- 3.3.51 Some 38 consultees agreed with the principle of implementing an independent arbitration panel or ombudsman for managing disputes over FMAs. Of these, the majority (26) consisting of the freshwater marine fisheries sectors, voluntary sector, public bodies and individuals, felt a genuinely independent arbitration process was needed and recommended the exclusion of the aquaculture industry and/or other stakeholders from such a process, to ensure independence and public confidence in the system. However, several consultees disagreed with this view, stating they felt the inclusion of stakeholders, such as the SSPO, was needed in the development of such a system.
- 3.3.52 Ten consultees, mainly from the aquaculture industry but also consisting of other respondents from consultation authorities, freshwater fisheries, individuals and other commercial businesses, stated no preference on the composition of the arbitration system other than that a panel should comprise experts who are knowledgeable and experienced in the arbitration process.
- 3.3.53 The ASFB, supported by a number of freshwater fisheries groups, would be supportive of such an arbitration process if it can increase the effectiveness of FMAs. They felt that the process should be accessible to all, and that wild fishery interests should be involved. One aquaculture respondent felt that finding a system that is acceptable and workable will be both time-consuming and challenging in demonstrating fairness.

- 3.3.54 Two freshwater fisheries sector consultees suggested that additional stakeholder consultation be undertaken to identify appropriate parties to sit on such a panel.

Tripartite Working Group

- 3.3.55 One professional/academic respondent suggested developing an arbitration panel comprising stakeholders, like the previous Tripartite Working Group (TWG).
- 3.3.56 It may also be useful to note that several further comments on the role of the TWG were made in other sections of the consultation responses, including criticism of the Scottish Government's decision to leave the group.

Aquaculture industry proposal for arbitration

- 3.3.57 Four consultees (two from the aquaculture industry and two individual respondents) felt that existing legislation under the Arbitration (Scotland) Act 2010 is in place to resolve FMA disputes by arbitration. However, these consultees also felt that current dispute resolution procedures (i.e. the Scottish Land Court) are widely avoided by aquaculture landowners and tenants due to the time, cost and cumbersome nature of these procedures.
- 3.3.58 Many consultees, consisting of professional and academic bodies (one), public bodies, aquaculture industry, freshwater and marine fisheries and several private individuals, supported the involvement of the SSPO in arranging an arbitration process for FMA disputes. Several respondents across the sectors expressed support for an SSPO proposal to take the lead in arranging access to an independent arbitration process for parties involved in FMA disputes. The SSPO stated that this process would be separate to and independent from the SSPO, and would be available to all fish farmers.
- 3.3.59 A freshwater fisheries respondent gave conditional support for aquaculture industry involvement, stating that any process of arbitration developed within the industry must allow recourse to third-party organisations for assistance if necessary.
- 3.3.60 While a local authority and two individual respondents stated their agreement that the SSPO should organise the arbitration process, they would also like local authorities to be involved.
- 3.3.61 One public body felt that SSPO could play a role in arbitration or as a monitoring/enforcement agency.

Other suggestions

- 3.3.62 Some consultees suggested a range of options for the arbitration process, and these are outlined below.
- 3.3.63 Two respondents felt that the resolution of conflicts should be left largely to the aquaculture industry. An industry respondent noted that area management agreements have been in place for several years, and as voluntary members they have found that conflicts are resolved within the groups amicably. An individual respondent suggested that farms should be allowed to agree terms for an arbitration process where required.

- 3.3.64 Other consultees suggested adapting existing systems for the arbitration process. One voluntary sector respondent suggested that an arbitration system could be based on the existing Scottish Agricultural Arbiters and Valuers Association (SAAVA) while another felt that the Irish Aquaculture Appeals Board system could be reviewed and adapted for use. A third voluntary sector respondent suggested developing a system along the lines of current land-based planning procedures, and highlighted the need to nominate a representative in any system that was independent of the relevant authority.
- 3.3.65 An individual respondent suggested arbitration via an Independent Salmon Commission for Scotland.
- 3.3.66 A freshwater fisheries respondent felt that the terms of each FMA should be published, and a provision included allowing third parties to refer cases to the arbiter.
- 3.3.67 Several respondents suggested government involvement in the arbitration system, but in different ways. A consultation authority stated that it had no preferred option for such a process, but preferred an arbitration system that allows Scottish Ministers to have the final say on any proposed outcome. A freshwater fisheries respondent suggested that Marine Scotland Science would be best placed to take on a role of an independent arbitrator and reviewer of MAs.
- 3.3.68 Another freshwater fisheries respondent suggested a specific panel of three members be established for each dispute, with one member each selected by those on either side of the dispute and the remaining place taken by Scottish Ministers.
- 3.3.69 A public body respondent suggested an option of using current standards drawn up by the CoGP Working Group.
- 3.3.70 An individual respondent suggested that, in order to protect wild stocks, a range of stakeholders (i.e. fishermen, scientists and the general public amongst others) should become involved in running and supervising fish farm management.
- 3.3.71 One respondent stated that if Marine Scotland or the Scottish Government were given responsibility for setting MA boundaries, there would be little requirement for arbitration in this process.

In summary:

- There was general support for development of a dispute resolution process. Most of those supporting the proposal indicated their preference for independent arbitration in one form or another. For example, some felt that existing legislation under the Arbitration (Scotland) Act 2010 could resolve FMA disputes by arbitration, while others raised a number of options for an arbitration process to be developed.
- In contrast, the aquaculture industry was strongly opposed to the proposal, and several of these respondents were critical of the Scottish Government's halting of the Tripartite Working Group. Instead, aquaculture industry respondents supported an arbitration system proposed and arranged by the SSPO.

Unused Consents

Question 5. Do you agree we ought to review the question of unused consents?

3.3.72 Seventy-seven respondents agreed that unused consents should be reviewed, and 29 respondents disagreed. Forty-three declined to comment.

3.3.73 Most freshwater fisheries respondents (33) supported this, with just two opposing. All 11 public sector respondents to this question were in favour of reviews. Most voluntary sector respondents were supportive, with only one opposing the idea. There was also overall support amongst individual respondents for reviewing the issue of unused consents, with 12 answering 'yes' compared to eight answering „no'. All of the marine fisheries consultees who responded to the question, and two of the three professional / academic bodies, were supportive.

3.3.74 In contrast, there was strong opposition from aquaculture industry respondents, with all but two of the 18 consultees answering „no' to the consultation question.

3.3.75 Respondents from the other commercial businesses sector had mixed views.

Discussion

3.3.76 Some respondents provided additional comments in their responses to this consultation question. However, others used their responses for Question 6 to discuss this issue.

Potential benefits of a review

3.3.77 Several respondents commented on the possible benefits of the proposed review. One freshwater fisheries respondent noted its importance for providing an accurate assessment of unused biomass. Another felt that unused sites should be reviewed in light of current best practice and current understanding of impacts, a view that was also supported by one aquaculture industry respondent. A local authority felt that a review would be an opportunity to address the issue of unused consents.

Implications of a review

3.3.78 The difficulty in collating accurate data where some consents are not used was highlighted by a voluntary sector respondent. They were also concerned that sites and consents were viewed as items of commercial property by operators, and noted that Crown Estate lease arrangements could give operators the possibility of a legal challenge against attempts to close down sites on environmental grounds.

Justification for unused consents

3.3.79 A professional/academic respondent felt that there are many reasons for a site owner or operator to hold an unused consent (i.e. as a firebreak or buffer zone separation between MAs). A few other respondents agreed with this, with aquaculture industry respondents emphasising that this could be part of a business plan.

3.3.80 The freshwater fisheries respondents had a different perspective. Two respondents from this sector felt that unused consents should not be used as buffer zones in MAs, as buffer zones should be accounted for separately

through a planning system. A further respondent stated that a proper mechanism (i.e. FMAs) should be established, for instance where unused consents are being used to maintain firebreaks or protect wild fisheries .

- 3.3.81 A professional/academic respondent felt that this should be the responsibility of the planning authority to resolve, as the aquaculture industry is only likely to maintain and pay for unused consents that have significant operational benefit.

Dealing with unused consents

- 3.3.82 Several respondents discussed their views on dealing with unused consents in the future. A voluntary sector respondent felt that to ensure this process is comprehensive, all available unused sites should be incorporated back into the planning process. Another respondent from this sector agreed, stating that a review could limit pressure on existing sites and make better use of available space, but added the proviso that this should not lead to an increase in production biomass.

- 3.3.83 Two other voluntary respondents felt that any areas identified as unsuitable for aquaculture development should be designated as aquaculture free zones. One felt that unused sites should be re-evaluated for their suitability for aquaculture as defined in their consent. They also felt that the marine planning process should identify suitable and unsuitable areas for the development of aquaculture, and that any unused sites should be incorporated back into the planning process. They expressed concern about instances where suitable sites are left vacant and „banked’, and that there may be greater pressure to develop less suitable sites for farming. Several other respondents from the marine and freshwater fisheries sectors also noted this, stating that undeveloped sites should not become a tradable commodity. One respondent suggested that if a site was lying dormant for more than two years after planning approval, the site should revert back to the Crown.

Concerns about a review of unused consents

- 3.3.84 Aquaculture industry opposition to a review was based around two main issues.
- 3.3.85 There was scepticism about the value and effectiveness of another review. Several criticised the current Audit and Review process, which they felt had hindered the resolution of this issue. Several aquaculture industry respondents, including the SSPO and one freshwater fisheries respondent, felt that this process should be concluded rather than starting a new review process. One respondent felt that this issue was reviewed in 2010 by a Sub-Group of the Improved Systems for Licensing Aquaculture Developments (ISLAD), and this concluded that the matter should be referred to the fish farming industry.
- 3.3.86 Several aquaculture industry respondents felt that the issues around unused consents were already known and the information required was already at hand. The SSPO stated that they did not rule out the possibility of restructuring CAR consents for further development, but added that this will not be achieved by the current proposal.
- 3.3.87 Two aquaculture industry respondents stated they were amenable to the creation of „something along the lines of’ a National Register for consents, and

that this would be able to identify unused consents and the reasons for their non-use. One of these respondents felt that such a review of unused consents did not require legislation, suggesting instead greater clarity on these consents and their rationale.

- 3.3.88 One public body respondent stated that this issue should 'largely be a historical feature to be addressed' rather than something that will occur to the same extent in the future, due to the way the marine aquaculture industry has developed and changes in the requirements of production sites.

Question 6. What do you consider are suitable options to promote use or relinquishment of unused consents?

- 3.3.89 A total of 95 consultees responded to this question. Of these, 34 were freshwater fisheries respondents, 16 aquaculture industry, 16 individuals and politicians, 13 voluntary sector, ten public bodies, two marine fisheries, two professionals and academic bodies and two other commercial businesses.

Discussion

- 3.3.90 The level of detail provided in response to this question varied between respondents and some raised wider issues. Many respondents also presented views on Question 5 in their responses to Question 6. Several key issues were raised by respondents in response to this question. These are presented below.

Support for review and / or revocation

- 3.3.91 Several consultees, mainly from public bodies and the academic and freshwater fisheries sectors, felt that there may be situations when the most appropriate approach is to revoke a consent, but that it should also depend on the individual circumstances at each site.
- 3.3.92 Some suggested circumstances under which consents should be relinquished or revoked, including for closed and derelict sites, and those with untraceable owners.
- 3.3.93 Many consultees felt that there should be a time limit on the development of aquaculture sites after consent is given, with suggested periods ranging between one and eight years after time of consent before the consent is either reviewed or revoked.
- 3.3.94 Many consultees, largely from the freshwater fisheries, voluntary sector and private individuals, felt that a review or re-evaluation of unused consents should be undertaken, with some consultees feeling that additional consultation should be undertaken on this issue. Several respondents were of the view that the existing review processes should be concluded before any new options for review are considered.
- 3.3.95 Several consultees were of the view that sites should be evaluated on their suitability for their consent, and others were concerned with the perceived 'banking' of unused consents by some site operators.

Circumstances where revocation may be appropriate

- 3.3.96 One voluntary respondent felt that unused consents should be revoked automatically in relation to biomass limits as set within CAR licences. An individual respondent recommended that sites whose owner is untraceable or no longer operating should be considered for revocation. Similarly, two voluntary sector respondents felt that if a site closes or is left derelict then immediate removal of consent should occur. An individual respondent felt that the revocation of consents could be extended to include wider public interest reasons.
- 3.3.97 A voluntary sector respondent felt that where cases of negative impact or farm management failures have been recorded by survey or Fish Health Inspectorate (FHI) inspections, there should be a presumption that any unused biomass under a CAR, or other relevant unused consents, should be revoked automatically. However, an aquaculture consultee raised a concern that operators who use long fallowing practices on their sites could be disadvantaged with their sites being regarded as unused. A local authority felt that developers should be encouraged to inform the appropriate authorities when their sites are undergoing extended fallow, and that this could avoid confusion regarding the site status. However, a freshwater fisheries respondent disagreed and felt that SEPA should be able to judge whether unused sites are being retained for eventual deployment in the fallowing process, and could make changes accordingly.
- 3.3.98 A freshwater fisheries respondent noted that an appeals procedure would be necessary to deal with exceptional situations in relation to this issue.

Reasons for keeping unused sites

- 3.3.99 While four consultees from the freshwater fisheries, public bodies and voluntary sectors supported the principle of the revocation or relinquishment of unused consents, another ten consultees, predominantly from the public, academic and freshwater fisheries sectors, felt that the reason for a site not being used should be considered before such an action was taken. They felt that this action should depend on the individual circumstances at a site, but most also felt that there may be situations when the most appropriate approach would be to revoke a consent.
- 3.3.100 One respondent from the other commercial sector agreed that promoting the relinquishing of unused consents should be undertaken on a case-by-case basis and felt that the best application of this would be when an existing unused consent blocks another development. A public body also addressed this issue, stating that in the vast majority of cases, they consider that unused consents are „highly unlikely’ to be used again for the original consented purpose, mainly due to economic reasons. They added that, given the complexity of issues surrounding the retention of unused sites and consents by the aquaculture industry, the „use it or lose it’ clause in lease agreements is rarely exercised unless the development ambitions of another party were being blocked by the unused consent. In this situation, they stated that a development plan and timetable would be requested from the incumbent party, or the consent would be relinquished and assigned to the other interested party.

- 3.3.101 A large number of freshwater fisheries consultees, largely endorsing the responses from the ASFB and RAFTS, stated that they can see merit in all incentives set out in paragraph 20⁷ of the Consultation Document. They also felt that when the most appropriate approach is to revoke a consent, no further consents should be issued or re-issued for that area, and that a mechanism for the revocation or relinquishing of unused consents should be included in the marine planning system.
- 3.3.102 Several consultees commented on unviable sites and suggested options for managing these consents. A local authority suggested that when a site becomes uneconomic for aquaculture, all consents should be rescinded to prevent inhibiting modifications at adjacent aquaculture sites. A professional/academic respondent stated that if a case was made that a site was not in the interests of the existing owners, the site should be designated under Locational Guidelines as unsuitable for further expansion of the salmon industry.

Unused sites as firebreaks

- 3.3.103 Several consultees from the aquaculture, freshwater fisheries, public and academic sectors, commented that some operators retain unused sites as firebreaks for their other sites. However, opinions varied amongst consultees on this issue. Several consultees from the voluntary and freshwater fisheries sectors, stated concerns on the use of unused consents as firebreaks. They raised concerns based on the premise that they felt that the planning system and FMAs should effectively manage the size and distance between farms without the need for firebreaks.
- 3.3.104 A professional/academic respondent discussed other reasons for operators maintaining firebreaks, stating that if a site was left unused specifically to act as a fire-break to prevent another operator acquiring a site, then that consent should be relinquished. They also felt that the consent should also be relinquished if an unused site was detrimental to other existing operators in a MA.
- 3.3.105 An aquaculture industry respondent suggested an option whereby site owners could conditionally surrender consents held for this purpose, in order to preserve these firebreaks. A voluntary respondent also held this view, adding that the revoked consents, or any „geographically similar’ consents, should not be re-issued to a competitor. Other respondents, including two local authorities and a freshwater fisheries respondent, shared similar views. They felt that the Scottish Government should consider options in the FMA process to include suitable measures to ensure these firebreaks remain, and to encourage unused consents used for this purpose to be relinquished.
- 3.3.106 While not specifically mentioning fire-breaks, a voluntary sector respondent suggested an option that required licensees of unused sites to make these sites available to other operators in the MA (i.e. to help facilitate statutory area-wide following).

⁷ Paragraph 20 in the Consultation Document refers to possible incentives that might be considered to develop unused sites including withdrawal of consents where they have not been used or are derelict, placing time period conditions on consents for development, reducing biomass consented, revocation and considering the scope for further changes for inactive/unproductive sites.

Time limits

- 3.3.107 Many consultees, predominantly from the public, freshwater fisheries and voluntary sectors, felt that there should be a time limit set on the development of aquaculture sites after consent is given. These respondents include the ASFB, endorsed by a large number of freshwater fisheries consultees.
- 3.3.108 Most of these consultees suggested specific time periods, where if a consented site was not developed inside this period, the consent would either lapse, be revoked or be subject to review. These proposed time periods ranged from one to eight years.
- 3.3.109 A local authority suggested that a time period of three years was sufficient to allow the development and use of a site within a rotational scheme, and would be short enough to allow for meaningful forward planning.
- 3.3.110 One voluntary consultee felt that the adoption of a time period could be achieved through the inclusion of a time relinquishment clause in aquaculture consents. However, a respondent from another commercial sector stated that there are already planning requirements that give a deadline for the development of sites. A local authority broadly agreed with this view, stating that at the moment, the requirement is that development must commence within three years of planning permission having been granted. However, they also noted that there does not appear to be any requirement for completion of the development, or for it to remain in use once developed. The respondent felt that planning permissions should be reduced to a more appropriate timescale, and that the Scottish Government should review its Policy Advice for Fish Farms (Fin-Fish and Shellfish) to Local Authorities.

Review of unused consents

- 3.3.111 Almost a third of consultees responding to this question commented that a review or re-evaluation of unused consents should be undertaken. These respondents consisted of academic bodies, voluntary sectors, freshwater fisheries groups and private individuals. Many of these responses were from the freshwater fisheries sector, endorsing the ASFB response.
- 3.3.112 Some respondents discussed the timeframe for such a review, with several considering the adoption of the Bill as a suitable time to re-evaluate sites. Some, from the voluntary sector, felt that sites should be re-evaluated on their suitability for their consent, with those sites deemed unsuitable having their consents revoked. They also felt that areas where consents have been revoked should be returned to the emerging marine planning process.
- 3.3.113 A marine fisheries sector consultee felt that with a more rigorous approach likely to be given to monitoring fish farms in the future, the evaluation of suitability of a site should be looked at in light of stricter requirements. They believed that this should specifically apply where a site is near a salmon run, adjacent to shellfish fishing or cultivation areas, and areas without sufficient flushing of water.
- 3.3.114 As in Question 5, some consultees discussed the perceived „banking’ of unused consents by aquaculture operators.. In addition to stating that unused consents should be reviewed, the ASFB and other freshwater fisheries

respondents were opposed to the promotion of the use of unused consents, except in situations where it may prevent the development of a new site.

- 3.3.115 Several consultees felt additional consultation should be undertaken on this issue, a common theme from responses to Question 5. One suggested discussion with the aquaculture industry to determine the best way forward. A local authority proposed discussion with the Scottish Government's Improved Systems for Licensing Aquaculture Development (ISLAD) before reaching any conclusions.
- 3.3.116 One aquaculture consultee believed that it made sense to complete existing review processes before any new options are considered, linking to a common theme amongst aquaculture respondents answering Question 5.

Potential for industry and market-led solutions

- 3.3.117 Consultees from the aquaculture industry disagreed with proposals to permit revocation of consents. Many felt that the aquaculture industry could resolve some of the issues around unused consents, with several stating that market solutions such as „sub-letting’ sites, exchanging or trading consents, or offering unsuitable sites to shellfish and seaweed cultivation operator may be valid options.
- 3.3.118 While one individual respondent felt that an industry-led approach may be possible, through co-operation between industry bodies and licensing authorities, others believed incentives could be a good mechanism for this.
- 3.3.119 Two respondents, one from the freshwater fisheries sector and an individual, supported a common aquaculture industry view by expressly stating that farm operators should be allowed to use their facilities when they feel necessary as is part of their business plan. However, other respondents from the aquaculture, freshwater fisheries and public sector supported giving operators incentives to make use of their unused consents. The suggested incentives included providing other operators with the opportunity to make use of the unused consent, and operators „sub-letting’ sites from other operators. One voluntary respondent broadly agreed with this, suggesting that licences of unused sites should be made available to other operators to facilitate statutory MA-wide following.
- 3.3.120 One public body suggested encouraging operators to „trade in’ unused site consents to support a case for approval of new sites or the expansion of existing sites. Another felt that the retention of unused CAR capacity can restrict further development, and favoured incentives in resolving this issue rather than enforcement.
- 3.3.121 Several freshwater fisheries sector respondents also suggested „trading-in’ sites, granting an operator permission to develop a new site in another area or an increase in biomass at another consented site in exchange for relinquishment of an unused consent. This was raised as an option for removing unused consents for environmentally-sensitive sites. One aquaculture industry respondent agreed with this in principle, stating that the planning process should be reviewed to reduce costs and time involved in planning permissions for moving operations to a new and more viable site, to promote relinquishment of these sites. One consultation authority also shared

this view, emphasising the need to ensure relinquishment of unused consents is linked to opportunities to relocate existing developments.

- 3.3.122 A consultation authority agreed with aquaculture industry views that these authorisations were effectively a tangible asset of a fish farm, and that authorisations have changed hands previously for considerable sums when companies have taken over sites „owned’ by other operators. They explained that this scenario is no different to that of terrestrial sites where the transfer of land with planning consent is often led by market forces. A public body also shared this view suggesting an option where companies might be able to purchase unused capacity from other producers.
- 3.3.123 A professional/academic body and another public body suggested an option of allowing operators to offer sites unsuitable for aquaculture (unsuitable in terms of carrying capacity or environmental reasons) to shellfish or seaweed cultivation operators to use. However, one other commercial respondent felt that there are already examples of existing rent arrangements being in place, and hence there are already incentives that encourage the use of such sites.
- 3.3.124 Alternatively, some consultees suggested sanctions or charges for genuinely unused sites. A public body suggested that this, or encouraging sub-letting, would help to address this situation. One individual respondent suggested sanctions in the form of offering a site to other companies if it was not used for a period of time. Two aquaculture respondents also agreed, suggesting that adding levy or nominal charges on unused consents or on sites not used for some years may promote use or relinquishment.
- 3.3.125 A local authority added that the use or relinquishment of unused consents could be encouraged through an Industry Code of Practice. However, they also noted that the transfer of a biomass consent to another site would require revocation of the original site lease.

Legislation

- 3.3.126 Several consultees from the public sector and aquaculture industry identified a range of powers within existing legislation that could be used to resolve this issue. One public body felt that the most obvious means of addressing the issue would be through the consenting process for new sites and expansion of existing sites, but was not certain if the Town and Country Planning legislation applied. However, they stated that if it did not apply, they felt that statutory consultees such as SEPA and Marine Scotland Science (MSS) could possibly address the relinquishment or rationalisation in submissions to local authorities on development proposals.
- 3.3.127 Several consultees from the aquaculture industry noted that the Town and Country Planning regime allows for planning permission to be reviewed or relinquished after five years (from 2007) or three years (from 2009) if the permission is not executed by the site developer. Further, two local authorities stated that the planning consents already include conditions that require development to commence within three years of granting and for equipment to be removed if the site is not used for a period in excess of three years. Whilst this does not remove the planning consent, allowing sites to undergo extended fallowing for environmental benefits, it can also include a requirement for the removal of equipment from sites that are in a state of disrepair. However, one

of these respondents felt that the revocation of a consent is not considered to be an appropriate option after three years of disuse, as they consider it only to be possible to revoke a consent in the first three years of an unimplemented planning permission.

- 3.3.128 A consultation authority felt that although it has been suggested that licences be revoked for sites that are no longer in operation, legal risks around this are a key barrier. As such, this issue would be best resolved by dialogue between operators, and where this is not possible, it should be facilitated by the relevant industry association.
- 3.3.129 Several aquaculture industry consultees, including the SSPO, felt that the transfer of planning permission for salmon farming to the Town and Country (Marine Fish Farming) (Scotland) Order 2007 was to make sites a heritable asset, to give farmers' investment long-term beneficial value and remove uncertainty. They stated their strong opposition to the revocation of consents as they considered that it would „represent theft of private assets’.

BRIA comments

- 3.3.130 The ASFB also commented on this section of the partial BRIA, stating that they see merit in addressing unused fish farm consents and recommended taking forward Option D⁸.

Other issues

- 3.3.131 A large number of aquaculture industry respondents referred to or endorsed the consultation response from the aquaculture industry body, the SSPO. In their response, the SSPO identified several wider issues, including:
- Orphaned CAR consents – Although this could be achieved by SEPA using existing legislation, the SSPO would support the introduction of specific legislation to address this issue if necessary.
 - Legacy sites where the site status is not certain – The audit and review process may address this issue.
 - Marine Scotland should consider the operation of the Locational Guidelines System and the interfaces with CAR consents in FMAs, particularly where aquaculture operators cycle production around different sites within the same MA.
 - Terminology – The term „unused site’ is different from „unused consent’ or „inactive site.’
- 3.3.132 An individual respondent felt that the use of an unused consent should not be granted without an appropriate risk assessment being undertaken.

⁸ Option D refers to „Powers for Ministers to revoke consents: an option to enable Ministers to revoke consents for a number of reasons, not necessarily limited or set to a particular timeframe. This could include powers to revoke consents for wider (e.g. „public interest’) reasons where appropriate’.

In summary:

- There was overall agreement with the proposal from consultees. A significant proportion of respondents from the freshwater fisheries and other sectors supported this proposal, citing for example the importance of such a review in providing an accurate assessment of unused biomass. However, the aquaculture industry was strongly opposed.
- Most of the detailed responses emphasised that this issue is complex, although some suggested ideas on how a review could be achieved.
- The aquaculture industry considers the right to use or not use consents to be an industry matter, and many respondents highlighted the various reasons for unused consents being in place. The industry is largely opposed to what it perceives as outside interference on this issue and several respondents felt that the Audit and Review process should be completed before a review of unused consents is undertaken. Despite its opposition, the industry supports the principle of incentives to resolve this issue.
- Respondents identified numerous options to promote the use or relinquishment of unused consents including introducing incentives, attaching time limits for site development, and allowing for market-led solutions.
- The reasons for sites being unused was considered by many to be an important issue. Several considered that the reasons for the non-use of a site should be considered prior to revocation of consent. Others considered that all unused sites should be incorporated back into the planning process or that consents should be revoked where sites are closed or left derelict, or whose owners are no longer operating, or where unused sites are detrimental to other operators in a MA.
- Several respondents considered the case where an unused site is utilised as a firebreak or buffer zone. Some felt that such ad hoc measures were inappropriate, and that the planning system and FMAs should effectively manage the size and distance between farms without the need for firebreaks. Some suggested that unused sites that have been used as firebreaks should be preserved as such after revocation of consents, while others felt that unused sites should be re-evaluated for their suitability prior to being re-consented.
- Some respondents felt that communication was important, with several stating that additional consultation should be undertaken on this issue, and others suggesting that communication between stakeholders, e.g. about site following practices, could be improved and that this may help to resolve the situation.

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

- 3.3.133 There was overall support for the provision of powers to revoke consents, with 77 respondents supporting this view and 32 opposed. Forty declined to comment.
- 3.3.134 Almost half of those supporting the proposal were respondents from the freshwater fisheries sector, with 35 agreeing and just two disagreeing. There was also strong support from the public sector with almost three-quarters of respondents in favour and just two local authorities opposed. Voluntary groups and individuals were similarly supportive. There was also general support within the marine fisheries sector.
- 3.3.135 The aquaculture industry were strongly opposed to the introduction of these powers, with the 17 respondents answering „no’ accounting for over half of all negative responses. Just one aquaculture respondent agreed with the proposal. As for several previous questions, some of the individual respondents stating their opposition to the proposal submitted their responses via the aquaculture industry.
- 3.3.136 The remaining stakeholder groups (other commercial businesses and professional/academic bodies) had mixed views on this issue.

Discussion

- 3.3.137 Several key issues were raised by respondents in response to this question. The key issues raised by consultees in their responses are presented below.

Use of powers for revocation

- 3.3.138 Some respondents from the public, freshwater fisheries and voluntary sectors broadly agreed to the proposed powers, and focused on their potential use. One freshwater fisheries respondent felt that this power may be needed to allow the creation of MA in certain circumstances, and added that there should be a mechanism for Fishery Boards and local communities to be able to apply to Ministers to use such a power.
- 3.3.139 The ASFB felt that the proposed power will be particularly important as the understanding of potential interactions between aquaculture and wild salmon grows in the future. They also expressed concern that such a power does not currently exist, particularly noting that most aquaculture developments are given permanent planning consent. The issue of the current permanency of consents was also raised by several other freshwater fishery consultees.

Mandatory versus voluntary revocation

- 3.3.140 A public body felt that Ministers should only have the power to request the revocation of a consent, as opposed to requiring it. Another voluntary respondent agreed, and felt that there needs to be proper justification in the public interest for depriving a person of their property (a consent), and added that in their view, the problems associated with the Locational Guidelines do not provide this justification.
- 3.3.141 Others agreed with the idea of a more consensus based approach. A public body felt that such powers should only be used on sites where operators are willing to relinquish their site, and that ideally, any revocation should be beyond

the scope of any appeals process. Another clarified that this could be a costly process and may be best resolved by dialogue between operators initially, and facilitated by the relevant industry association.

- 3.3.142 One public body felt that power to revoke particular consents should reside with the consenting authority rather than Ministers. One individual respondent felt that neither the Scottish Government nor Fishery Boards should be involved in the procedures for revoking consents as they felt that they have a vested interest. Rather, the consultee suggested that a respected conservation body should make such a ruling.

Evidence based approach to revocation

- 3.3.143 A freshwater fisheries respondent broadly agreed with the proposed power, but clarified that Ministers should only have the ability to revoke a consent where evidence suggests that the site may be having a detrimental effect on either the environment or the health of fish. They stated that such powers should not be used to free biomass for other farms in the area.

Implementation of revocation powers

- 3.3.144 Several respondents discussed the implementation of the proposed powers. One voluntary sector respondent suggested that such powers should be introduced as part of the implementation of the Marine Strategy Framework Directive. A public body stated that they would support the use of a formal Ministerial Direction to SEPA as the preferred method of facilitating this process, if licences issued by SEPA under CAR were to be subject to these powers.
- 3.3.145 One local authority felt that while planning authorities have powers to revoke planning permission under section 65 of the Town and Country Planning Act (Scotland) 1997, they noted that this is complex and therefore not an appropriate means of tackling unused sites. They felt that a discontinuance notice under Section 71 of the Act might be an option as it would be relevant to all planning permissions. However, they also noted that this needs confirmation from Ministers and would incur compensation liability. An aquaculture industry respondent felt that introducing powers to revoke unused consents is too heavy-handed, risks protracted legal disputes, and noted that Ministers' powers on consents are well-defined under the Act.
- 3.3.146 One voluntary respondent felt that it was important that licences for freshwater sites with open net pens be revoked in a timely manner, particularly when located in areas close to migratory systems.

Concerns about revocation

- 3.3.147 Aquaculture industry respondents further outlined their disagreement with the proposal. The SSPO and several other aquaculture industry consultees stated they were „entirely against giving powers to use in undefined situations'. One freshwater fisheries consultee agreed with this, believing that this would set an unacceptable precedent for state intervention in private business. A professional/academic consultee felt that this proposal was wide-ranging and non-specific, and noted that it would deter investors in developing sites with a „very limited life' and compared this with problems in the Irish aquaculture industry.

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

3.3.148 A total of 90 consultees provided a response to this question. Of these, 32 were freshwater fisheries respondents, 15 individuals and politicians, 14 aquaculture industry, 13 voluntary sector, nine public bodies, three other commercial businesses, two marine fisheries and two professional/academic bodies.

Discussion

3.3.149 A large number of respondents did not provide a specific response to this question, but instead endorsed the view of their sectoral representative body, specifically the ASFB (21 respondents) and SSPO (16 respondents). Several key issues were raised by respondents in this question, and these are discussed in the following paragraphs.

Application to all consents

3.3.150 Some 51 respondents felt that this power should apply to all consents, including local authorities, voluntary sector organisations, freshwater fisheries interests and private individuals. The ASFB also proposed comprehensive coverage, supported by numerous freshwater fisheries consultees who together account for around half of those who agreed with the proposal.

3.3.151 Some respondents from the voluntary and freshwater fisheries sectors specified that powers to revoke all consents should relate to both marine and freshwater production.

Conditions for application

3.3.152 Some consultees outlined specific conditions for use of these powers in their responses. One professional/academic respondent felt that power to revoke should only be exercised where there is a clear argument that the revocation would be in the general interest of enhancing the sustainability of the aquaculture industry and all stakeholders. A consultation authority broadly agreed, stating that these powers should only be used in exceptional cases.

3.3.153 However, another consultation authority felt that this power should only be used for sites where operators are willing to relinquish their consent. They felt that it would need to be beyond the scope of an appeals process.

3.3.154 A range of consultees identified specific instances where they felt these powers should be utilised. These broadly included:

- Sites that are consistently unable to meet the consent conditions imposed on them.
- Where there has been a clear breach of the consent conditions.
- Sites or areas of sites that are shown to be unsuitable or unused sites considered inappropriate due to environmental reasons (i.e. sites 'sensitive to wild fish' or where there has been damage to the environment or biosystems).
- sites that have not been used for a specified period of time (suggestions ranged from two to eight years).

- 3.3.155 One local authority felt that, should any consent be removed, regardless of the reason, all other related consents should also be removed by the appropriate consenting authority. They felt that this would ensure that the area of consent is not sterilised for any future development in that area.
- 3.3.156 One public body suggested that Scottish Ministers could require developers to submit proposals for unused sites, to allow authorities to return a view on the continuation of any unused consents.
- 3.3.157 An individual consultee recommended that there should be input from the ASFB and the Atlantic Salmon Trust in relation to this issue.

Key concerns

- 3.3.158 The SSPO, supported by the majority of aquaculture industry respondents, reiterated their views from the previous question, stating that they are against giving Ministers powers to use in undefined situations. This was supported by a freshwater fisheries respondent, who felt that these powers should not be permitted under any circumstance.
- 3.3.159 One respondent from the aquaculture industry felt that if such powers were introduced, they would need to be very restricted in scope and be subject to further discussions with industry.

Audit and Review process

- 3.3.160 A number of respondents, mainly from the aquaculture industry, were concerned that the Audit and Review process has failed to resolve issues in the industry. In particular, several consultees felt that, while there will be a continued process of operators rationalising and restructuring their holdings on commercial market terms, this process is being significantly impaired by the failure of the Audit and Review process.
- 3.3.161 As detailed in Question 6, one aquaculture consultee believed the existing review processes should be completed before any new options are considered. A public body added that the current Fish Farm Review programme will resolve the matter, and reiterated their view that another co-ordinated review would not be useful. They also felt that this is largely a historical issue, which is unlikely to occur in the future.

Existing legislation

- 3.3.162 Several consultees, including those from local authorities, the aquaculture industry and other commercial industries, felt that Scottish Ministers' powers are already well-defined under the Town and Country Planning (Scotland) Act 1997.
- 3.3.163 However, two local authorities felt that the application of the existing powers is likely to be time consuming and resource intensive. These powers would normally only be employed where there are compelling reasons and an overriding public interest in the revocation of the planning permission. They nevertheless considered that these powers should reside with the planning authority.

Other issues

3.3.164 In addition to stating their opposition to the introduction of the proposed powers, several aquaculture industry consultees, including the SSPO, raised further specific concerns beyond the scope of the consultation in their response to this question. These issues included orphaned CAR consents, legacy sites and the operation of the Locational Guidelines System, as discussed in greater detail in paragraph 3.3.131 for Question 6.

In summary:

- There was support amongst a range of respondents for the introduction of these powers. Opposition to the proposal mainly came from the aquaculture industry. Discussion ranged around whether such powers should be granted, who would exercise them, the conditions in which they would be applied, and which consents should be covered.
- Key issues for the aquaculture industry were 'giving powers to use in undefined situations' and concerns that this approach would be heavy-handed. One respondent was also concerned that such powers may be a potential deterrence for investment in the industry. A significant number of respondents felt that discussion between industry and regulators/other stakeholders would be a preferred approach, at least in the first instance.
- Several consultees felt that there is already sufficient existing legislation in place to revoke consents. In contrast, some respondents from the freshwater fisheries sector expressed concern about the lack of existing powers, given that planning permission is permanent in nature and therefore cannot take account of the developing understanding of the interactions between aquaculture and wild salmon.
- There was some discussion around who should have the powers to revoke consents: Scottish Ministers, the consenting authority, or an independent third party were included in the suggestions.
- Respondents provided a range of suggestions about the application of these powers including: where sites lie unused for a specific time period (1 - 8 years); where consent conditions have been breached; and where the site is unsuitable for use for environmental and/or sustainability reasons. Some felt that these powers should only be exercised under exceptional circumstances; others considered that, as a pre-requisite, the site owner should be willing to relinquish the site.
- Over half of the respondents felt that these powers should apply to all consents, and some requested that this should relate to both marine and freshwater consents. The aquaculture industry raised concerns about orphaned CAR consents and legacy sites.

Collection and Publication of Sea-lice Data

Question 9. What in your view is the most appropriate approach to be taken to the collection and publication of sea-lice data?

3.3.165 A total of 105 respondents answered this question. Of these, 40 respondents were from the freshwater fisheries sector, 23 individuals and politicians, 15 aquaculture industry, 15 voluntary sector, ten public bodies, three marine fisheries sector, three professional and academic bodies and five other commercial businesses. The level of detail provided in response to the question varied between respondents.

Discussion

3.3.166 The consultees raised a number of issues in their responses to this question.

Responsibility for data collection and publication

3.3.167 Several consultees considered the responsibility for collection and publication of sea-lice data to be an important issue.

3.3.168 Some felt that Marine Scotland Science (MSS) or the Scottish Government should publish the information. For example, a voluntary sector respondent felt that central organisation would be necessary to maintain standards. Others, including one freshwater fisheries respondent, suggested that government-employed inspectors would be required to ensure objectivity.

3.3.169 Several freshwater fisheries respondents suggested that this responsibility should be shared between the Scottish Government and the aquaculture industry. One respondent suggested that the Scottish Government liaise with industry over the provision of data, although a marine fisheries respondent felt that any collection of data should be to agreed standards laid down by MSS.

3.3.170 Other consultees focused on potential costs of data collection and its economic impact. Some consultees felt that the costs for data collection should be met by the industry. A public body agreed that the costs should be met by industry, and a voluntary sector respondent proposed that the monitoring costs should be viewed as a basic business expense, and suggested that a levy system be used to support centralised monitoring. However, an aquaculture industry respondent felt that this proposal should be reconsidered due to the economic impact on the industry if this data was made available. Others, however, disagreed and felt that the data collection should be funded by those who would be using it. This included a number of individuals.

3.3.171 Technical aspects of data collection were also raised by respondents. One respondent (an „other commercial business”), suggested that agreed standards for structuring and manipulation of data may lead to substantial cost savings, more effective management and growth opportunities, despite being a potentially major task for industry. They also commented on data validation, and provided advice on electronic monitoring equipment and archiving environments.

3.3.172 A public body noted that this topic had been discussed extensively at the recent Sea Lice Symposium, organised by the Scottish Aquaculture Research Forum and the SSPO. It noted that effective louse control is dependent on the

availability of detailed and reliable information. It also suggested that the Aquaculture Database, to be introduced later this year, may provide a means of displaying the data, but noted that if this was not the case, a portal should be developed as soon as possible. Further comments were made by this respondent on timing, transparency and application of the data (paragraph 3.3.203 of this report).

Suitability of existing arrangements

- 3.3.173 Many aquaculture industry representatives, including the SSPO and a number of individual companies, contended that no new arrangements should be made as the SSPO Health database already provides this information. Some consultees, largely comprising aquaculture industry respondents, raised concerns about possible requirements, potential for duplication with existing systems and issues that could arise. Others felt that significant investment had already been made to set up the database, and that it should be recognised as the principal vehicle for information gathering.
- 3.3.174 The SSPO explained that quarterly reports from this database have been published on their website throughout 2011, and that from 2012 an annual report will be provided summarising management information and sea-lice statistics. This will be done with a view to extending the role of producer organisations in environmental matters, as a result of Common Fisheries Policy reports.
- 3.3.175 The SSPO, again supported by the majority of aquaculture industry respondents, also sought Scottish Government re-engagement in the SSPO database. Many of these consultees felt that the Scottish Government withdrawal from the TWG was unfortunate.
- 3.3.176 A public body supported the use of the SSPO arrangements, noting that more detailed information could nevertheless be accessed, where it was necessary for compliance purposes. It pointed out that the real value of the data is for those who could be affected by the issue (i.e. those within MAs).
- 3.3.177 More specifically, in addition to points raised by the SSPO, an aquaculture industry respondent felt that insufficient time had been allowed for the current system to effect change and that it was premature to suggest alternatives. It expressed significant doubts over whether a government-led approach would allow for sufficient confidentiality on the grounds of commercial sensitivity, and accuracy of information. This view was also held by a public body, highlighting the need for a system where producer confidentiality and control of this data must be considered.
- 3.3.178 A further aquaculture industry consultee pointed out that until the information within the SSPO is made more accessible for genuine stakeholders, concerns are likely to persist. A freshwater fisheries respondent noted the existing industry database, but questioned the purpose of the information.

Level of disclosure

- 3.3.179 Many respondents felt the data should be site-specific, with full disclosure. A smaller number, largely from the aquaculture industry, felt that this could be problematic (due to confidentiality and misuse of information) and that regional/area wide data was more appropriate. This is likely to be part of the

reasoning for supporting the SSPO database as discussed above. However, several freshwater fisheries respondents disagreed, stating that the aquaculture industry should be allowed to explain data, and this concern is not sufficient reason to withhold or sanitise the data.

- 3.3.180 Some consultees felt that the data would only be useful if it showed information for individual sites. This included several local authorities, with one stating that they felt it was essential that there is increased openness in the reporting of sea-lice numbers in Scotland, given their impact on farmed salmon and wild fish. They proposed that records should be site-specific to allow particular sites with issues to be identified.
- 3.3.181 A second local authority agreed with this view, stating that data should be in a format that permits accurate interpretation of what is happening at individual sites within the same water body and within management areas. Other public bodies agreed that information should be site-specific and not regional, with one noting the importance of openness and transparency for sea-lice management. Another local authority called for site-specific information to be made widely available, stating that clearer information on poorer sites would help regulators to guide development.
- 3.3.182 The freshwater fisheries sector agreed that site-by-site information was required, and the ASFB emphasised that raw data, at the individual farm level, should be made available. This was supported by a number of other respondents from the sector, including one freshwater fisheries respondent who agreed that information should be site-specific and not aggregated, and strongly objected to the withholding of raw data.
- 3.3.183 Several of these respondents felt that full public access was important for allowing assessment of sea-lice control strategies and impacts on wild fisheries, and would allow prioritisation of problem sites for the FHI. One respondent highlighted this as a means of assessing cumulative impacts on wild fisheries, which they felt could not be adequately assessed in the planning process without this information. Of those who called for full disclosure by site, several argued that the existing situation and its lack of transparency meant that Scotland is perceived as „less environmentally conscious’ when compared with other countries where there are greater levels of information. One freshwater fisheries respondent felt that it should be mandatory for the aquaculture industry to share sea-lice data with trusts, noting that trusts should use this data discreetly.
- 3.3.184 One professional/academic organisation suggested that data on a farm-by-farm basis would be most useful, and raised concerns that the Scottish Government cannot access data and maintain confidentiality as a result of Freedom of Information (FoI) requirements. As a solution, it suggested that publication could be done after a delay, to protect operators from interference with operations at a micro-level.
- 3.3.185 Several environmental interests and public bodies also agreed with publishing data at the individual site level. One public body felt that the SSPO database provided insufficient information to allow for sea-lice infestation management, and supported publication of individual site data, immediately after louse counts or treatments are undertaken.

- 3.3.186 Another noted that powers are already available in legislation to obtain information required to manage parasites, including enforcement powers, but that the issue lies more in the publication of data than in its collection. They did not offer a view on the most appropriate approach, but supported measures that would use information to improve transparency and help to address issues including failing management or emerging sea-lice therapeutant resistance.
- 3.3.187 One voluntary sector respondent strongly suggested that the monitoring information should be available in disaggregated form. A second respondent from this stakeholder group was also strongly supportive of publishing individual level information, and the use of this information within planning to assess cumulative impacts. They referred to the Salmon Aquaculture Dialogue Standards which require test results to be made available within seven days of testing. Two other voluntary sector respondents agreed with this response, and a third held the view that the gathering of information must not be industry-led and should be open to the public.
- 3.3.188 One public body commented that, in their view, recent moves by the aquaculture industry to make public collated sea-lice data would not effectively resolve the issues. This was supported by others, including a freshwater fisheries respondent, who felt that aggregated data would not be sufficiently robust to facilitate proper assessment of the impacts of sites on wild fish. Several respondents from the freshwater fisheries and individual stakeholder groups felt that allowing full public access to sea-lice data would help increase knowledge about where high sea-lice concentrations exist and increase understanding of the impacts of sea-lice on wild salmonids.
- 3.3.189 However, this view was countered by an industry-based view that information should not be made available at this level. One individual respondent with ties to the aquaculture industry argued that sea-lice information should be kept on an area basis, as opposed to covering individual sites or companies. Others raised issues around dealing with information that is commercially sensitive. Some respondents felt that information should be anonymous and provided by area. An individual pointed out that making raw data available could leave it open to manipulation or misuse. A public body noted that the aquaculture industry has concerns about this, but countered that greater transparency would serve to show advances that have been and are being made in sea-lice control.
- 3.3.190 Another public body suggested that interrogation should be possible if data was made available if required, but essentially remained within control and confidentiality of the producer. It emphasised that compliance should be the trigger for accessing data, rather than data collection being the primary driver. It supported a system of providing information to the national and regional databases, as with the current SSPO arrangements. It suggested that full public access would not be appropriate, as it would lack appropriate context. It emphasised that the data should be available to those who would be primarily affected (i.e. those within FMAs). These groups would benefit from having access to accurate and timely data.
- 3.3.191 Two consultees noted the high level of conflict that this issue raises. One aquaculture industry respondent suggested that concerns about disclosure were attributable to past misuse of information. It called for the Scottish

Government to work fairly with all stakeholders in a clear and consistent manner to achieve an appropriate approach to identifying underlying biological issues. Another respondent from the other commercial stakeholder group also noted that this is an obvious area of tension, and was supportive of publishing accurate and meaningful data in order to provide evidence to inform management.

- 3.3.192 Some consultees suggested specific data that should be collected and made accessible, including chemical use and frequency (one freshwater fisheries respondent) and information on impacts on migratory salmonids (one marine fisheries and one voluntary sector respondent).
- 3.3.193 In addition to general issues around transparency, the accuracy of data and means of verifying it were also raised by a small number of consultees. One individual suggested that penalties should be introduced for inaccuracy or non-reporting. Another individual suggested that data should be verified by members of the public, stating a preference for the involvement of local salmon and sea trout angling clubs. One fishermen's association also supported this approach. A voluntary sector respondent felt that the data should be externally audited and self-policed by the aquaculture industry.

Applying information

- 3.3.194 The purpose and utility of information gathering and publication was raised by several consultees. Of those who commented on timing, the majority emphasised the need for regular reporting to facilitate management responses.
- 3.3.195 One public body emphasised that data collection should serve to inform a genuine material interest and/or requirement, not simply scrutiny where such interest and/or requirement is not clearly evident.
- 3.3.196 Some consultees were sceptical that providing data to Marine Scotland would effectively resolve the issues that the monitoring would seek to address. A professional/academic respondent felt that the proposals within the consultation did not address what effect the gathering of information would have. It suggested that publication of the information would be justifiable where it leads to improved treatment, as opposed to simply being a tool for those who oppose aquaculture. Similarly, a freshwater fisheries respondent queried what would be done with the information and whether data would resolve the perceived problems.
- 3.3.197 One respondent from the other commercial business sector felt that making „accurate and meaningful' sea-lice data publicly accessible will provide information on whether sea-lice [from aquaculture sites] affect wild fish.
- 3.3.198 One fishermen's association had no firm view on the best monitoring system, but suggested that its application should focus on determining how the treatment is working. Some consultees suggested responses to different levels of sea-lice identified in monitoring. An individual, for example, felt that post-treatment sampling should be undertaken to verify the efficacy of measures.
- 3.3.199 Several felt that full public access to sea-lice data was essential for improving knowledge about concentrations of sea-lice and their impacts on wild fish.
- 3.3.200 A consultation authority also emphasised the importance of collecting, collating and analysing data in a way which improves management, and helps to identify

and address failures. A second also felt that disclosure was necessary to facilitate effective treatment.

- 3.3.201 A voluntary sector respondent emphasised that the information gathered should be used to inform assessments of cumulative impacts within the planning system.
- 3.3.202 However, one professional/academic body felt that the proposals do not explain how creating an extra layer of scrutiny on sea-lice data will lead to a better result, and questioned what additional insights, skills and experience Marine Scotland would bring in this regard. One individual/politician agreed, stating that farmers and vets currently take the necessary decisions regarding the appropriate timing for treatments.

Timing

- 3.3.203 Timing was raised by many respondents, with suggestions ranging from real-time and weekly to quarterly reporting. One consultation authority suggested that to facilitate appropriate treatment, access to data should be 'as near to real time as possible'. A local authority agreed that real-time information would be ideal, but acknowledged that monthly reporting would be more realistic. One aquaculture industry respondent felt that a real-time data stream, accessible to defined stakeholders, should be the ultimate objective.
- 3.3.204 A voluntary sector respondent also supported real-time reporting. Another public body suggested that real-time data would be appropriate in some instances, but that it should be accessed on a confidential basis.
- 3.3.205 Some suggested weekly publication, including a small number of consultees from the freshwater fisheries and voluntary sectors. The ASFB, endorsed by a large number of freshwater fisheries respondents, suggested weekly reporting of results and monthly publication of the findings. Two voluntary sector respondents referred to publication of findings within a seven-day period.
- 3.3.206 Some respondents gave specific suggestions on the publication of data:
- Some favoured monthly (or 'at least monthly') publication of the data (five freshwater fisheries respondents, two local authorities, two individuals and one marine fisheries respondent). One local authority acknowledged that monthly should be more feasible than real-time information.
 - A voluntary sector respondent proposed bi-monthly reporting.
 - Two freshwater fisheries respondents proposed that the information is gathered no less than quarterly.
 - Others were less specific, but mentioned that reporting should be 'timely', 'regular', or 'early'.
 - A consultation authority was of the view that the regularity of data collection was a less significant problem than its publication and transparency.

Comparison with other countries

3.3.207 Some consultees questioned why data collection is an issue when it is readily available in other countries. Their suggestions included the following:

- Norway's requirements were supported by 11 consultees as an appropriate model to apply in Scotland. One local authority suggested that Scotland was lagging behind other countries in terms of aquaculture management. It proposed that, as many of the relevant companies already operate in Norway where there are established and accepted reporting procedures, there should not be a problem with having similar requirements in Scotland. A public body agreed stating that, as much of the Scottish salmon industry is owned by Norwegian companies or has related operations in Norway, adherence to their standards should not be problematic. Several others, including two freshwater fisheries sector, three voluntary sector and three individuals, also felt that the Norwegian approach should apply.
- An Angler's Association respondent suggested that the British Columbian model would be a good starting point, with monthly site-by-site monitoring.
- Another Fishermen's Association referred to both the Norwegian and Canadian models.
- The Marine Biological Association suggested that the Irish model would be a useful approach as it provided timely publication.

In summary:

- There was some support for combined government and industry responsibility for data collection and publication.
- The timing and frequency of data reporting was discussed by many respondents. Suggestions ranged from real-time to annual reporting, with most focusing on weekly, quarterly or monthly reporting. However, some consultees suggested that this was not as important as the publication, availability and use of information collected.
- Many respondents support the publication and verification of disaggregated data, but this was strongly opposed by the aquaculture industry who preferred regional data and supported the current system using an SSPO Health Database.
- Public access to information was discussed by a range of stakeholders, with no consensus on this issue. Some called for improved accessibility, with several suggesting that Scottish Government/Marine Scotland involvement was necessary to ensure fairness and transparency.
- There was strong support for adopting similar systems to those used in other countries (i.e. Norway, Canada (British Columbia) and Ireland).

Surveillance, Biosecurity, Mortality and Disease Data

Question 10. Do you agree that aquaculture business ought to be required to provide additional information on fish mortality, movement, disease, treatment and production as set out above?

- 3.3.208 There was strong support amongst respondents, with 78 respondents agreeing and 30 disagreeing. Forty-one declined to comment.
- 3.3.209 Almost half of the responses supporting the proposal were from the freshwater fisheries sector, and these 38 consultees accounted for over three-quarters of the stakeholder group. The remainder of this group declined to answer the question.
- 3.3.210 Public body respondents were strongly supportive with three-quarters (nine) agreeing, with none opposed. Two-thirds of voluntary sector consultees (14) supported the proposal with the remainder declining to comment. There was also general support within the marine fisheries sector with half of the consultees (three) answering „yes’ and half declining to answer.
- 3.3.211 The aquaculture industry was strongly opposed to the proposal, accounting for over half of all negative responses, with just one respondent in favour. There was overall opposition from professional/academic bodies with two of the three respondents answering „no’.
- 3.3.212 The remaining stakeholder groups (individual/politicians and other commercial businesses) had mixed views.

Discussion

- 3.3.213 The consultees raised a number of issues in their responses to this question.

Confidentiality

- 3.3.214 Confidentiality of data was discussed by a number of respondents. An individual consultee noted the need for any data collected to remain confidential, and was concerned that data supplied to Marine Scotland could be released to the public under FoI legislation. Several aquaculture industry and professional/academic respondents had similar concerns about maintaining the commercial confidentiality of supplied information.

Existing provisions for data collection

- 3.3.215 Several respondents discussed existing legislation and requirements for data collection and submission in their responses. One aquaculture industry respondent felt that there are already mechanisms in place within Marine Scotland to collect fish mortality, movement, disease and treatment data through existing fish health legislation, and suggested that the aquaculture industry Fish Health Database should be used and further developed. Several freshwater fisheries and voluntary sector respondents felt that this data could be made available via a publicly available website. However, a voluntary consultee felt that while operators should be required to collect information on fish mortality, movements, disease, treatment and production, there is no requirement for them to actively provide it. They felt that regulators should have powers to require provision of this information when they need it, and a public sector body shared this view.

3.3.216 A shellfish industry respondent stated that information on fish mortality, movements, disease treatment and production is already supplied by the shellfish aquaculture industry under the annual Shellfish Farm Production Survey.

Timing and frequency of data collection

3.3.217 While Question 11 related to timing and frequency of data collection, some consultees discussed this in response to Question 12. A freshwater fisheries respondent felt that the timing of data submissions should be based on its use, and recommended that treatment, mortality, and treatment efficacy data should be provided in real time, while other data may be more appropriately reported on a monthly or annual basis. A marine fisheries consultee felt that mortality information should be provided to Marine Scotland within 48 hours, and added that notification of movements and disease treatments should be made in advance. This is discussed in greater detail by some respondents in their responses to Question 11.

Other issues

3.3.218 Several respondents from the aquaculture industry, individual/politicians, professional/academic and freshwater fisheries sectors, including the SSPO and ASFB, stated their support for the recommendations of the Healthier Fish Working Group.

3.3.219 A voluntary sector consultee felt that all the information suggested on pages 14 and 15 of the Consultation Document⁹ should be required from all fish-farm businesses by law under an amended Record Keeping Order.

3.3.220 Several voluntary sector respondents stated that Scotland should bring itself into line with Norway's standards. However, several aquaculture industry consultees disagreed, stating they felt that increased data collection would provide „an uneven playing field for Scottish finfish aquaculture producers' compared with their international competitors, and noted that additional financial burdens would be associated with collecting and providing additional information.

3.3.221 Two respondents, a consultation authority and voluntary sector consultee, felt that sanctions for non-compliance or providing false or misleading data should also be incorporated into the Bill.

BRIA comments

3.3.222 A freshwater fisheries respondent commented on the partial BRIA and noted that for Questions 9 to 11, they prefer option 2¹⁰.

3.3.223 An aquaculture industry respondent commented that they felt that options 2 and 3¹¹ in the BRIA would „substantially adversely affect the risk profile of aquaculture investment in Scotland, and estimated an investment reduction of

⁹ Marine Scotland (2011) Aquaculture and Fisheries Bill Consultation Document, Pages 14-15 [online] Available at: <http://www.scotland.gov.uk/Publications/2011/12/06081229/0>

¹⁰ BRIA Option 2 requires „that a full range of additional data is submitted to Government (with options as to its timing and frequency – periodic or ‚real time' – and as regards what ought to be published)'.

¹¹ BRIA Option 3 requires „that sea-lice data are submitted' with options on frequency, timing and publication).

£10 million per year and annual losses of some £7 million per year due to the proposal.

Question 11. What are your views on the timing and frequency of submission of such data?

3.3.224 A total of 103 respondents answered this question. Of these, 39 were freshwater fisheries respondents, 20 individuals and politicians, 16 aquaculture industry, 14 voluntary sector, six public bodies, three marine fisheries, three professional/academic bodies and two other commercial businesses. Forty-six respondents declined to comment.

Discussion

3.3.225 The consultees raised the following key issues in their responses to this question.

Healthier Fish Working Group

3.3.226 The SSPO and many other aquaculture industry consultees strongly supported the recommendations of the Healthier Fish Working Group in relation to the timing and frequency of the submission of data. A further 19 responses support the SSPO response and the recommendations of the Healthier Fish Working Group, including two individuals.

Data collection – frequency of intervals

3.3.227 Respondents provided a range of views on the frequency of data collection. Of those who expressed a specific preference on timing:

- Nine respondents supported quarterly reporting, including several individuals, freshwater fisheries respondents and one local authority.
- Ten respondents favoured monthly reporting, predominantly from the freshwater fisheries and public sector.
- Eight respondents supported weekly reporting, largely from the freshwater fisheries sector.
- One freshwater fisheries respondent felt that annual reporting would suffice and another supported twice-yearly reporting.

3.3.228 A further group of seven respondents from a range of backgrounds suggested that reporting should be undertaken in „real time’ or as and when required. One voluntary sector respondent suggested that data collection conducted „as frequently as possible’ would help to identify and address emerging problems. A consultation authority asked for real-time data (or as close as possible to it) to allow operators to understand the operation and disease status of sites in their locale held by other companies. An aquaculture industry respondent felt that this would be similar to data now collected by fishing boats and would facilitate transparency and sharing of information, with two other voluntary sector respondents sharing this view.

Flexibility

3.3.229 Some 18 respondents emphasised the importance of flexibility in data collection, to allow for tailoring of collection and reporting to the different issues

and types of information required. One professional/academic respondent suggested that timing and frequency should be set for the different data types to maximise their benefits whilst avoiding imposing undue burdens on the aquaculture industry. A freshwater fisheries respondent agreed that timing should depend on the purpose for which the data will be used.

- 3.3.230 Views, however, on the specific time requirements for specific data types varied between consultees. A consultation authority was of the view that in some cases data need only be provided on an annual basis (i.e. overall mortality data and farm production). For others (i.e. fish movements and treatment notification), they suggested that more frequent reporting may be required, and noted that immediate data provision may be needed in the event of a disease outbreak. This respondent also made the point that operators should be keeping up-to-date records for all these elements, regardless of the reporting cycle. Four voluntary sector respondents also stated that data should be collected in a meaningful period to allow appropriate action to be taken.
- 3.3.231 Several other respondents identified issues that require less frequent reporting. One freshwater fisheries respondent felt that treatment notification data may be collected less frequently than other issues.
- 3.3.232 A number of respondents highlighted issues that, in their view, should be reported immediately, in real time or as soon as possible:
- A professional/academic respondent suggested that treatment, mortality and information on treatment efficacy should be provided in real-time with other issues provided in monthly or annual reporting.
 - A voluntary sector respondent felt that escapes or higher than usual mortality should be reported within 24 hours of detection.
 - A freshwater fisheries respondent proposed reporting mortality within 48 hours of detection. It also suggested that advance notification of movements and disease treatments should be sent to Marine Scotland, so independent random compliance monitoring can be undertaken periodically.
 - Another freshwater fisheries respondent stated that escape data should be reported immediately.
 - A voluntary sector respondent stated that disease should be notified immediately on identification.
 - A public body recommended that incidents or issues requiring immediate report should be agreed through consultation with the aquaculture industry.
- 3.3.233 Some suggested linking data collection with operational activities. One individual felt that data should be collected before treatment and a fortnight before harvesting. Another individual suggested that data should only be reported after a production cycle is completed.
- 3.3.234 Providing another perspective that focuses on the receiving environment, a freshwater fisheries respondent suggested that timing and frequency should depend on the history of disease in an area and could be determined through a risk assessment process.

- 3.3.235 A freshwater fisheries respondent felt that the same requirements should be made as with sea-lice data collection.
- 3.3.236 A voluntary sector respondent made a distinction between data collection and reporting requirements. They stated that whilst data collection should be required, operators may not necessarily need to actively provide it, with regulators having powers to require it to be provided when it is needed.

Balancing data collection needs with industry burden

- 3.3.237 Some nine consultees stressed the need to balance the requirement for an appropriate data collection interval with consideration of the burden this could place on the aquaculture industry. One local authority, for example, supported quarterly reporting, but noted the need to consider the impact this would have on the industry. A similar view was expressed by another local authority.
- 3.3.238 Four voluntary sector respondents felt that additional information should be collated and submitted as a package to reduce the burden on both authorities and industry.
- 3.3.239 One public body noted that there are necessarily trade-offs between ensuring better biosecurity and burdening industry with paper work.
- 3.3.240 An alternative view was given by a voluntary sector respondent who suggested that the advent of readily updateable on-line systems should make it possible to update the information on a weekly basis. As a result, it proposed that there is no reason why information should not be provided without any additional costs for the tax payer.
- 3.3.241 A public body suggested that the data collected, timing and frequency should be defined by the aquaculture industry itself. It felt that it should only be gathered where there would be genuine value from it, but if this was established it accepted that it may be useful. Several aquaculture industry respondents agreed, stating that they welcome proposals for more effective and efficient sea-lice treatments from Marine Scotland and SEPA.

Verification

- 3.3.242 Eight respondents raised issues around accuracy and verification of this data. One individual felt that independent verification is necessary and that data collection should be at random, un-notified intervals. Another suggested that without independent verification, the data may be unreliable. A freshwater fisheries respondent felt that policing/monitoring was necessary to ensure regulation, and another freshwater fisheries consultee supported some sort of verification. They also noted that the need for timely release may mean that some data may be published in an „unverified’ form.
- 3.3.243 As for Question 10, some consultees discussed who should be responsible for dealing with the data, with one freshwater fisheries respondent suggesting that it should be controlled by SEPA. An individual consultee felt that it should be held only by Marine Scotland or the SSPO. Accessibility was also raised, and one freshwater fisheries consultee suggested that the information should be passed to ASFB/RAFTS.

Level of detail

- 3.3.244 As with Question 9, there were varying views on the level of detail at which data should be gathered and presented. A freshwater fisheries respondent suggested that data should be site-specific, whilst a professional/academic respondent was of the strong opinion that it should only be area-based. Site-by-site data was supported by several other freshwater fisheries respondents.
- 3.3.245 Confidentiality issues were again raised by a public body, which pointed out that this should not be compromised by FoI requirements, particularly given the potential for misinterpretation of the information.

Adequacy of existing arrangements

- 3.3.246 Several consultees felt that the current annual request for information is adequate. These responses were mainly producer-based, and were founded on the view that there would be no benefit in providing additional information. For example, one aquaculture industry respondent suggested that this would impose another cost on the industry with no perceptible benefit. A second industry consultee stated that this data is already collected by Marine Scotland inspectors.
- 3.3.247 A freshwater fisheries respondent noted that there are already legal requirements to report most of the information on mortality and felt that movement data should be readily available.

In summary:

- There was strong support for additional information to be provided, as proposed in the Consultation Document. However, there was also strong opposition to this proposal from the aquaculture sector.
- Several respondents consider that powers and mechanisms for data collection already exist. Concerns were expressed about the costs associated with obtaining additional information, „with no perceptible benefit’. Several respondents felt that the recommendations of the Healthier Fish Working Group were fit for purpose and that additional information, as proposed by the Consultation Document, was not necessary.
- There were several suggestions as to which organisation should be responsible for holding submitted data, including Marine Scotland, SEPA, and the SSPO, and that data should be verified. However, some consultees raised concerns over the ability of some organisations charged with holding this data to maintain confidentiality, particularly in relation to Freedom of Information requests.
- Few of the respondents who supported the proposal expressed views about the frequency of data collection. Rather, they tended to focus on the level of detail (site-specific vs. area-based, in the main) or on the frequency of reporting. As with sea-lice data (Question 9), the frequency of data reporting was discussed by many respondents, and while suggestions ranged from real-time to annual reporting, most focused on real time, weekly, quarterly or monthly reporting. Overall, the responses suggest that a flexible approach may be suitable, with the benefits of frequency to highlight issues requiring prompt action needing to be balanced with the costs of data collection.
- Several respondents felt that Scotland’s practices should be in line with those of other countries, with strong support amongst these for adopting the Norwegian approach.

Biomass Control

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

3.3.248 There was overall support for this proposal amongst consultees: 78 responses agreed with powers to reduce biomass consents where necessary and appropriate, whilst 36 disagreed. Thirty-five declined to comment.

3.3.249 In terms of support, almost half of the responses in favour of the proposal were from the freshwater fisheries sector, with 36 agreeing and two disagreeing (one DSFB/RAFTS and an angler’s association). Public sector respondents were also supportive, with seven respondents agreeing and three disagreeing. Two-thirds of the voluntary and marine fisheries respondents were also in support, with the remainder in each declining to comment.

3.3.250 However, the aquaculture industry consultees were strongly opposed, with the 16 respondents from this group who disagreed accounting for almost half of all negative responses. There was also opposition from two of the three professional/academic bodies who responded to this question.

3.3.251 The remaining stakeholder groups (individual/politicians and other commercial businesses) had mixed views.

Consents and treatment

3.3.252 Some respondents provided additional comments on limiting the biomass of sites to assist in controlling sea-lice. One local authority felt that the biomass of fish on a site should be limited to ensure the effective treatment of sea-lice with a single type of medicine. They felt that there was no reason for farms to be permitted to hold more fish than can effectively be treated. A public body broadly agreed, but suggested that operators should voluntarily stock sites at a biomass that can be practically treated rather than the maximum permitted biomass.

3.3.253 An aquaculture industry respondent had a different perspective, suggesting that SEPA should allow sufficient medicine to an operator to allow the effective control of a site's modelled biomass. An individual respondent agreed, stating that every site should have the full range of licensed products for sea-lice treatments available.

3.3.254 A freshwater fisheries respondent stated that these factors are not taken into account in decision making on setting biomass consents, and that there was a need to permit powers to reduce biomass consents. A professional/academic respondent agreed, stating that Ministers should revisit licence constraints in relation to the efficient use of some sea-lice medicines. Another respondent noted previous discussions on the possibility for licensing farms under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 to align limits on the farm biomass with the licensed amount of medicines and to allow the entire farm biomass to be treated within a reasonable timescale (called the „Limiting Factor Approach'). They felt that Ministers should have powers to allow for this, and suggested Ministerial direction as the most appropriate means.

3.3.255 One freshwater fisheries and several voluntary sector respondents felt that the proposed powers should be extended for environmental issues, for example, to control sea-lice „emissions' from farms and persistent benthic pollution problems at some sites. The ASFB, supported by several freshwater fisheries respondents, agreed with this and stated that „sea-lice emanating' from salmon farms should be treated as a „discharge and/or pollutant'.

Role of SEPA

3.3.256 Some respondents used their responses to elaborate on their disagreement with the proposal. One freshwater fisheries respondent felt that SEPA involvement was not appropriate in this matter. An aquaculture industry respondent felt that existing legislative powers for SEPA were sufficient for them to act on environmental concerns, and for Marine Scotland to act on animal welfare issues.

Legitimacy of intervention

- 3.3.257 Some respondents were uncertain about aspects of the proposal, and others queried how it would be implemented. A public body questioned whether the proposal was a remedy, sanction or both. They added that the aquaculture industry should be putting controls in place to reduce reliance on therapeutants, and that addressing sea-lice management issues more holistically would be preferable to reducing biomass. A local authority and another public body questioned how Ministers would make a determination that biomass should be reduced to address health and welfare issues, and also what data would be used.
- 3.3.258 An individual respondent shared this view, stating that fish health matters are the responsibility of the operator and their veterinary surgeons. One public body felt that this measure should only be used as a last resort, and only after the site operator is allowed to introduce their own management measures to address biomass and fish health issues first. Another agreed, and added that this could be taken into account in planning applications for new or modified sites.

Industry impacts

- 3.3.259 Several other aquaculture industry and professional/academic respondents noted that there is no evidence of a link between consented biomass and fish health, and felt that reducing biomass does not mean that fish health and welfare will improve. Several respondents stated that this issue was debated prior to the passing of the Aquaculture and Fisheries (Scotland) Act 2007.
- 3.3.260 Several aquaculture industry respondents felt that this proposal could lead to significant costs to farm operators and result in job losses. One aquaculture respondent added that they estimate that a reduction in biomass or closure of one farm due to non-viability would have a private sector cost of £25 million per year.
- 3.3.261 A freshwater fisheries respondent contended that this would only be the case where operators have demonstrably failed to control sea-lice.

In summary:

- There was strong support from many respondents, except the aquaculture industry, for powers to reduce biomass of sites, particularly to ensure the effective treatment of sea-lice and reduce benthic pollution.
- Some respondents discussed the use of sea-lice treatment medicines, and considered that this is not taken into account in the process of setting the biomass of a site. There was some disagreement about the potential for alignment of biomass and therapeutic consents. Some felt that the biomass should be reduced to match the volume of therapeutic permitted; others considered that the permitted volume of therapeutic should be increased instead. Others questioned the link between improving fish health and reducing biomass.
- Some respondents, predominantly from the aquaculture industry, felt that fish health matters are the responsibility of site operators and their veterinary surgeons and that the proposed powers would be inappropriate. Concerns were also expressed that biomass reductions could lead to significant costs to farm operators and result in job losses.

Wellboats

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

- 3.3.262 There was overall support for the introduction of enabling legislation for wellboats amongst respondents, with 84 responses agreeing with the proposal and 25 disagreeing. Forty respondents declined to answer the question.
- 3.3.263 Greatest support was expressed by the freshwater fisheries sector with 36 respondents for and just two against the proposed measures. Similarly, all of the public bodies, voluntary sector and marine fisheries respondents who responded to this question were supportive. Respondents within the other commercial businesses and professional/academic bodies were broadly for the proposed measure, with just one respondent in each disagreeing with the proposal.
- 3.3.264 In contrast, the majority of aquaculture industry respondents were opposed to this measure, with 11 responses disagreeing with the proposal, compared to six respondents agreeing. Several of those who opposed the proposal stated that they were against „undefined enabling legislation without a clear view of purpose or application’.

Discussion

- 3.3.265 As in previous questions, the individual respondents had mixed views. Many of the individuals who disagreed with the proposed powers had submitted their responses via an aquaculture industry group.

Governance

- 3.3.266 A voluntary sector respondent felt there is presently insufficient regulation on wellboats, and supported the interim step of introducing secondary legislation.
- 3.3.267 Several aquaculture industry and individual respondents felt that a Technical Working Group on wellboat design may be helpful, but noted that this should also consider the requirements of other international markets.
- 3.3.268 One professional/academic respondent felt that this issue was discussed by the Ministerial Working Group on Scottish Aquaculture, noting that wellboat technology is developing rapidly and that this could address the majority of concerns raised by the Scottish Government.
- 3.3.269 Several individual and aquaculture industry respondents were concerned that any legislative requirements on wellboats might impede these advances in technology. Another industry respondent agreed, adding that this issue is already covered in the CoGP.
- 3.3.270 However, a commercial respondent felt that Ministers could play a role in ensuring high minimum standards for wellboats. A public body felt that the Scottish Government may have a role to play, adding that a memorandum of understanding with the Norwegian Ministry of Fisheries may offer the opportunity for „harmonising controls’ on wellboats between the two countries.

Monitoring of operations

- 3.3.271 Monitoring of wellboat operations was discussed by several consultees in their responses to this question. A local authority discussed tighter discharge conditions and installation of Vessel Monitoring Systems (VMS) on wellboats, noting that there are currently exemptions for VMS within UK territorial waters. A marine fisheries and aquaculture industry respondent also suggested the mandatory use of satellite tracking, and felt that the status of wellboat valves (whether open or closed) should be automatically transmitted with their position.
- 3.3.272 However, three aquaculture industry respondents stated that the capability to track wellboats via GPS and obtain information on valve status is already available, and that the industry already undertakes this monitoring. They therefore questioned the need for additional legislation.
- 3.3.273 A marine fishery respondent felt that more wellboats should be used for treatments as opposed to other treatment methods, and added that wellboat activities should be monitored by Marine Scotland compliance officers.

Location of discharges

- 3.3.274 The location of wellboat discharges was discussed by several respondents, with two aquaculture industry and marine fishery respondents suggesting that discharges should be on-site after undertaking treatments. In contrast, a marine fisheries respondent (supported by others) contended that treatment water discharges from wellboats should only be conducted in pre-designated areas located well offshore.

Impact on industry

- 3.3.275 Several aquaculture industry respondents raised concerns about new measures burdening the industry. One supported the proposal, but noted that measures should be „fit for purpose’ and should not impose unreasonable requirements on the industry. One respondent felt that the estimated cost in the BRIA was a „substantial underestimate’.

Questions on implementation

- 3.3.276 Several consultees asked for further clarification of, or made suggestions for, the implementation of the proposed provisions.
- 3.3.277 Some consultees asked whether existing legislation (i.e. the Marine (Scotland) Act 2010) would be amended to achieve this and noted the need for alignment. A consultation authority stated that wellboat operations and discharges at marine farm sites should be controlled under the Water Environment (Controlled Activities) (Scotland) Regulations 2011. A public body sector consultee noted the complexity of responsibilities for fish health management, stating that sea-lice chemicals in wellboats are currently licensed by Marine Scotland and in-bath treatments are licensed by SEPA.
- 3.3.278 There were mixed views on the need for measures. A freshwater fisheries respondent felt that Infectious Salmon Anemia (ISA) concerns should be considered in developing wellboat controls. However, an individual respondent felt that, since the ISA outbreak in 1998/99, wellboats have not been an issue in the spread of disease.
- 3.3.279 Several respondents from the aquaculture industry, freshwater fisheries and professional/academic sectors felt that further dialogue/debate between wellboat operators, the aquaculture producers and the Scottish Government is required on this issue.

In summary:

- There was strong support for this proposal from the freshwater fisheries sector, public bodies and individual respondents. Several felt that a Technical Working Group on wellboat design to consider the requirements of Scottish and international markets could be helpful.
- However, there was also significant opposition to this proposal from the aquaculture industry and individual respondents. In particular, there was opposition to „undefined enabling legislation without a clear view of purpose or application’, as well as concerns about new measures burdening the industry.
- Monitoring of wellboat operations was discussed by several consultees, with some supporting tighter discharge conditions and use of monitoring systems (i.e. VMS, GPS, status of valves) for wellboats.
- The locations of wellboat discharges were also raised, with some calling for on-site discharges after treatments, and others calling for set-up of pre-determined discharge areas located off-shore.
- Several respondents felt that additional discussion between stakeholders on this issue is required, and asked for clarification on a number of factors related to the proposal (i.e. timescales, legislation).

Processing Facilities

Question 14. Do you think Scottish Ministers should be given additional powers to place controls on processing plants?

- 3.3.280 There was overall support amongst respondents for additional powers for controls on processing plants with 76 responses in favour, and 29 against. Forty-four declined to comment.
- 3.3.281 There was strong support amongst freshwater fisheries respondents with 37 consultees answering „yes’, and just one answering „no’ (angler’s association). There was also strong support from the public, voluntary and marine fisheries sectors.
- 3.3.282 In contrast, aquaculture industry respondents were strongly against the proposal with 14 answering „no’ and just three answering „yes’. Three of the five respondents from other commercial businesses also opposed the proposal, with just one respondent stating their support.
- 3.3.283 The professional/academic bodies and individuals/politicians had mixed views.

Support for extended powers

- 3.3.284 Several voluntary respondents stated their support for the extension of powers to improve biosecurity in the aquaculture industry’s operations. Several public bodies broadly agreed with the proposed controls, but also felt that this should be subject to safeguards to ensure due process and that costs to the aquaculture industry are manageable.

Scope of the powers

- 3.3.285 A freshwater fisheries respondent felt that it is important that all diseases are considered and not just sea-lice in this proposal. A consultation authority added that existing powers over processing plants for notifiable diseases should be extended to cover other types of releases that they felt pose risks to wild and farmed fish populations. They specifically stated that this should include the release of sea-lice and/or larvae from fish delivered to processing sites from both a wellboat and from the plant operations themselves. Several freshwater fisheries respondents also held this view.
- 3.3.286 This issue was also discussed by an aquaculture industry respondent who noted an increased demand in the industry for killing fish at the farm and transporting them to shore for processing, and questioned whether the necessary blood and sea-lice containment measures were currently in place. However, several aquaculture respondents disagreed, stating that sufficient controls already exist through environmental and fish health legislation. A voluntary respondent suggested that SEPA already has powers over emissions, discharges and waste disposal for registered processors in aquaculture.

Evidence

- 3.3.287 An individual respondent questioned what evidence there was showing that processing plants are contributing to the spread of sea-lice. An aquaculture industry respondent noted that there was no information showing the nature and scale of such a problem that needed to be addressed, reserving their view until more detail was provided.

Other issues

- 3.3.288 A public body felt that the avoidance and mitigation of risks of disease should be added to the risk assessment protocols for fish processing plants. They felt that the legislative controls on both premises and practices should address any risk appropriately, and that this should be part of existing legislation or powers.
- 3.3.289 Another public body felt that Scottish Water has powers to control trade effluent discharges by sewer via Trade Effluent Discharge Consents. They added that this consent could include a clause relating to the prohibition or limitation of discharges of live sea-lice or viable eggs.
- 3.3.290 Another requested that farmed fish processing plants discharging via the sewer network should be considered in the Bill, particularly in relation to their compliance with the wider proposals.

BRIA comments

- 3.3.291 A freshwater fisheries respondent commented on the partial BRIA, stating that they favour option 2¹².

¹² BRIA Option 2 refers to „provide powers for Ministers to place appropriate additional controls on processing facilities to mitigate the risk of spread of sea-lice and pathogens’.

In summary

- While there was support for the extension of these powers, largely to improve biosecurity (i.e. sea-lice, disease), the need to ensure that the associated costs to industry are manageable was also raised by some of these respondents.
- There was significant opposition from the aquaculture industry and some individual respondents. Some respondents questioned what evidence there was to show that processing plants are contributing to the spread of sea-lice.
- Several respondents felt that sufficient controls already exist through environmental and fish health legislation, and SEPA's current powers. Others felt that the proposal should be extended to cover all diseases, not just sea-lice.

Seaweed Cultivation

Question 15. Do you agree that the regulatory framework should be the same for all seaweed farms?

- 3.3.292 There was significant support for a common regulatory framework in the responses to this question. A total of 65 respondents agreed that the regulatory framework should be the same for all seaweed farms, compared to eight who disagreed. More than half (76) of all respondents did not answer this question.
- 3.3.293 There was support across most types of stakeholder for the proposal, although the level of support varied between groups. Aquaculture industry respondents were strongly in favour with 14 respondents agreeing and just two disagreeing. There was also strong support from public sector consultees with 11 of the 12 respondents in favour, and amongst professional/academic body respondents (two of the three consultees).
- 3.3.294 While over half of the individual/politician respondents declined to answer, there was strong support for the proposal amongst those who did, with 14 agreeing and just one disagreeing. Similarly, most voluntary sector and marine fisheries respondents who responded were supportive of the proposal.
- 3.3.295 The majority of the freshwater fisheries respondents to this question were strongly supportive with ten agreeing and just two disagreeing (a DSFB/RAFTS body and another freshwater fisheries related business). The small number of respondents representing other commercial businesses expressed agreement.

Discussion

- 3.3.296 Several respondents supported proposals for seaweed cultivation to be subject to planning control, as with other aquaculture industries. Several individual and aquaculture industry respondents added that planning consents for seaweed, finfish and shellfish farms should be with the same planning authority. One local authority agreed that all types of aquaculture development

should be covered under the one regulatory framework, adding that seaweed farming should be brought under planning control.

- 3.3.297 One freshwater fisheries respondent felt that the regulatory framework should not be the same for all seaweed farms. They felt that small scale operations should be treated differently to large/industrial scale sites, with larger sites having tighter controls on the amount of product that can be harvested over a set time period. A voluntary sector respondent also recommended that the differences between separate farms are recognised and reflected in the regulatory framework (i.e. via additional conditions attached to a licence).

In summary:

- Of those who responded to this question (less than half of all responses), most expressed strong support for this proposal. This view extended across the stakeholder groups.
- Some respondents felt that planning consents for seaweed, finfish and shellfish farms should be with the same planning authority.
- However, a few respondents considered that the regulatory framework for seaweed farms should differ depending on the size and scale of operations, with tighter controls on larger, industrial-scale sites.

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

- 3.3.298 There were mixed views in response to this question. Of those who responded to this question, 43 respondents agreed that marine licensing would be the most appropriate approach to regulation of this sector, and 32 disagreed. As for Question 15, almost half of the consultees (74) declined to comment on this question.
- 3.3.299 Most marine fishery respondents, freshwater fisheries respondents and voluntary sector respondents expressed strong support for this proposal.
- 3.3.300 Aquaculture industry respondents were strongly against the proposal with 14 disagreeing and just three agreeing. All of the respondents from the other commercial businesses who responded to this question disagreed with the use of marine licensing for seaweed cultivation.
- 3.3.301 The responses from professional/academic bodies, individuals/politicians and public bodies were mixed. Of the public sector consultees, local authorities were largely opposed while consultation authorities and other public bodies were largely in favour.

Discussion

- 3.3.302 Several respondents, from the marine fisheries, voluntary sector and the aquaculture industry, felt that it would be sensible to include this sector in the licensing provisions of the Marine (Scotland) Act 2012. Several respondents felt that this would be appropriate irrespective of the scale or location of sites.

- 3.3.303 Some aquaculture respondents disagreed with the proposal, noting that they saw the main development of seaweed farming in multi-trophic aquaculture. As such, they felt that unless the responsibility for all aquaculture planning is moved to the marine licensing system, all planning consents should be with the Local Authority currently responsible for processing planning consents for existing aquaculture developments. One aquaculture industry respondent noted that local authorities have previously made decisions where unused consents have been transferred to seaweed cultivation, and has several examples of multi-trophic agreements within FMAs.
- 3.3.304 A public body felt that the cultivation of seaweed will be based on demand from the energy, chemical (including animal feedstocks) and nutra/pharmaceutical industries, in combination with food interests. They felt that the town and country planning legislation is not the most appropriate vehicle for the sector, noting that the regulatory system should be flexible to cater for the growing sector. They therefore suggested that the arrangements for marine licensing were most appropriate.
- 3.3.305 There were mixed views on the need for a single regime. A public body felt that seaweed farms could be effectively consented through either marine licensing or town and country planning legislation. However, another felt that as other aquaculture development is under planning control, seaweed cultivation should also be brought under planning control.
- 3.3.306 One marine fisheries respondent made a general comment suggesting that the fishing sector be named as statutory consultees for licensing applications.

Question 17. If not, what alternative arrangements would you suggest?

- 3.3.307 Of the 60 responses to this question, 19 were freshwater fisheries, 15 aquaculture industry, nine public bodies, nine individuals/politicians, four voluntary sector, two professional/academic bodies and two other commercial businesses.
- 3.3.308 Consultees raised a number of issues in their responses to this question, and these are presented in the following paragraphs.

Planning should provide the regulatory framework

- 3.3.309 Public sector respondents proposed that seaweed farms should be regulated through the planning system. This was considered logical, given that finfish and shellfish are regulated through the planning system, allowing for developments to be assessed as a whole. They suggested that there would be merit in bringing all seaweed cultivation fully into the planning system and not dealing with it through marine licensing. It was noted that local authorities have existing policy frameworks that could guide future seaweed farm developments, and that council planning officers are experienced in considering similar applications for finfish and shellfish farming developments.
- 3.3.310 Local authorities suggested that seaweed cultivation should be incorporated into the meaning of development under the planning legislation, to reduce confusion. They also highlighted a need for alterations to the EIA Regulations to ensure large seaweed farms are covered appropriately. One stated that

recent marine licence applications for seaweed farming have been the cause of concern for local communities and marine users in their local area, due to similar aquaculture developments currently being considered under two different consenting regimes. They felt that seaweed cultivation should be considered under the same consenting regime (i.e. planning) as other aquaculture developments, and that this would allow seaweed cultivation to be considered under permitted development rights.

- 3.3.311 Aquaculture industry representatives also felt that these developments should be addressed by local authorities. Many aquaculture industry respondents pointed out that there should be a single body to determine planning consents for finfish farms, shellfish farm and seaweed farms. They were of the view that the local authority would therefore be the appropriate body, unless responsibility for all aquaculture were to revert to the marine licensing system. They would welcome the proposal to move to marine licensing only if all aquaculture development was to pass to this system from planning. A further four respondents from the professional/academic sector, freshwater fisheries sector, public sector and other commercial businesses shared this view.

Regulation should be through marine licensing

- 3.3.312 Some consultees proposed that marine licensing would be a more appropriate consenting regime. One professional/academic body felt that this was more appropriate for both seaweed and other aquaculture sectors, and that planning should only deal with terrestrial issues. They felt that this could be an opportunity to revise planning regulations which had not anticipated the more holistic approach to marine planning provided for by the marine legislation. Several other consultees shared this view including an aquaculture industry respondent who felt this would benefit the finfish industry and also encourage the development of more seaweed farms in Scotland.
- 3.3.313 One public body pointed out that different methods for cultivation were likely to emerge, some based on shellfish cultivation, but others not. The regulatory system will therefore need to accommodate different developments on shore and offshore, and to manage their environmental impacts as well as effects on other users of the sea. It anticipated that the issues will be largely marine, with some entirely subsurface and others with flexible boundaries, and acknowledged the interest and role of coastal local authorities in these activities and their impacts. Exceptions were also noted; for example, it may be appropriate for seaweed cultivation to be part of a single development proposal for an area over which finfish and/or shellfish cultivation are to be practised immediately alongside each other.

Avoiding unnecessary regulation

- 3.3.314 Some consultees emphasised the need for a proportionate response. One voluntary sector consultee suggested that licensing would be appropriate, perhaps with some derogation for low production, whilst another individual respondent felt that a harvest quota system should be in place (as expressed in response to Question 16).
- 3.3.315 Others expressed more general views that any increase in regulation would damage the aquaculture industry.

Environmental protection

- 3.3.316 A consultation authority stated that in addition to licensing of seaweed cultivation, they would also support a new provision in the Bill to require all seaweed harvesting, for both commercial and personal use, to be licensed to ensure protection of environmental resources. A public body commented on seaweed harvesting, particularly the potential for over-collection to damage seaweed stocks and their associated biota, including Priority Marine Features. However, they felt that for most seaweed species „this can be offset through careful attention to harvesting methods and frequency’.
- 3.3.317 Another voluntary sector respondent felt that control of activities in the water environment is best achieved by SEPA under the CAR and not by marine licensing. They felt that licensing could have disproportionate regulatory impacts, unless the environmental assessment of proposals was to demonstrate environmental impacts, or chemical inputs were required. They suggested that „it may be more appropriate to require registration of individual farms, if a potential cumulative impact is anticipated, or to classify seaweed cultivation as a new activity covered by the Schedule 3 of CAR, and develop appropriate general binding rules to control it’.
- 3.3.318 Another consultation authority felt that either marine licensing or planning could be effective.

In summary:

- There was no consensus on the appropriate regulatory approach for seaweed cultivation.
- Of those who responded to this question (around half of all responses), just over half expressed support for marine licensing. This view extended across the stakeholder groups but rested primarily with the marine fisheries, voluntary and freshwater fisheries sectors.
- There was strong opposition from the aquaculture industry, who felt that unless all aquaculture development is moved to the marine licensing system, all planning consents should be with the Local Authority currently responsible for aquaculture developments.
- Several local authorities supported regulation of seaweed cultivation through the planning system, indicating that existing frameworks were in place to address this issue.
- However, some consultees supported a move to marine licensing for both seaweed cultivation and other types of aquaculture. Some felt that licensing would be the most appropriate system to deal with marine development, and that planning should focus on terrestrial development.
- Others considered that there was no need for a single regime. One respondent suggested that seaweed farms should be covered by the CAR, as opposed to either marine licensing or planning.
- Some consultees commented on the need to avoid undue regulation, and highlighted the need for a proportionate approach on this issue.
- One respondent considered that the proposal to regulate seaweed cultivation should be widened to include seaweed harvesting.

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

- 3.3.319 A total of 51 respondents agreed with providing additional powers relating to commercially damaging native species, whilst 26 disagreed. Seventy-two declined to comment.
- 3.3.320 Public sector respondents were strongly supportive of the proposal. Freshwater fisheries respondents who answered this question were strongly supportive with 17 for and just two against (DSFB/RAFTS and an angler's association). Three marine fishery respondents, two of the five other commercial business respondents, and two of the three professional/academic sector respondents were also in favour of the proposal.
- 3.3.321 The aquaculture industry respondents were largely against the proposal with 11 respondents answering „no' and five answering „yes'.
- 3.3.322 Voluntary sector and individual/politician respondents had mixed views.
- Definition of commercially damaging native species**
- 3.3.323 Several respondents discussed the use of the term „commercially damaging native species', with some uncertain about its context in relation to the Bill. An

individual felt that the concept and definition of a „commercially damaging native species’ has not been explained adequately, suggesting that it could include otters and marine mammals. Freshwater fisheries respondents pointed out that this question could be taken to apply to „native freshwater fish species living in the vicinity of freshwater aquaculture sites’, adding that if this was the case, they would oppose the creation of such powers.

- 3.3.324 A freshwater fisheries and voluntary respondent discussed the need to ensure that powers are limited to controlling native species under cultivation and are not used to control those growing under natural conditions. This view was also held by a public body who felt these powers must not compromise the biodiversity and conservation considerations that should be afforded to native species, particularly those with restricted range or habitat requirements. They added that these powers must not be used to „seek or ensure the extinction of any native species deemed to be detrimental to commercial interests’. A consultation authority stated that any control measures introduced should take into account the wider environmental impacts from such measures.

Support for extending powers

- 3.3.325 One freshwater fisheries respondent stated their support for such powers and suggested a means of extending them. They felt that a system should be established to allow Ministers to make funds available for dealing with the detection and outbreaks of these species. Where responsibility can be apportioned for the presence of these species, Ministers should have powers to prosecute or revoke licences. A public body added that these powers should also have „a legally binding requirement to invoke positive measures to conserve the previously troublesome native species should its existence become threatened’.

Specific concerns

- 3.3.326 Several respondents, including individuals and the aquaculture industry and freshwater fisheries sector, stated their support for managing an identified problem of „*Mytilus trossulus*’ (bay mussel). While some felt that this issue should be dealt on an case-by-case basis, others suggested that specific legislation was necessary.
- 3.3.327 One freshwater fisheries consultee recognised the need, in some instances, to control native species where adverse effects on fish welfare are identified, such as with seal predation. However, they felt that this should be managed through a licensing system on a site-by-site basis.

Further information required

- 3.3.328 Several respondents were reluctant to support the proposal with the available information and qualification of the proposal in the Consultation Document. One aquaculture industry respondent felt reluctant to provide Ministers with „open-ended enabling powers’ relating to commercially damaging native species. Another industry respondent felt that the case for this proposal needs to be more fully considered, and include action triggers, democratic accountability and limits on these powers. A voluntary respondent was concerned about the introduction of additional powers to Ministers, which could allow for action without local consultation.

- 3.3.329 Some respondents felt there was a need for additional discussion on this issue. One voluntary respondent stated their preference for further scientific research and a proper public debate, as they felt that allowing the control of any native species so as to further commercial production would raise wider issues. This view was also broadly held by several aquaculture industry and individual respondents, who felt that this issue requires careful consideration. A public body agreed with the premise of the proposal, but urged circumspection and attention to detail in drafting and implementing powers to ensure that it helps the aquaculture industry. They added that they believe it is always more productive for such powers to both identify and confirm the need for remedial action, and suggested allowing the industry to put forward proposals.
- 3.3.330 A public body felt that timetables for addressing occurrences of damaging species could be tied to and addressed through production and business requirements. A voluntary sector respondent felt that the provision for these powers should be linked with the management of Natura 2000 sites and the protection of species for which Special Areas of Conservation (SAC) have been designated.

In summary

- There was support for this proposal amongst those who responded to this question (just over half of all responses), including strong support from the freshwater fisheries sector. However, there was strong opposition from the aquaculture industry.
- Several respondents were uncertain about the definition and context of 'commercially damaging native species', asking for additional explanation and discussion with industry and other stakeholders. Some considered that this term could be understood to include otters, marine mammals and native freshwater fish, and concerns were expressed that the powers could be used to control native species growing under natural conditions.
- There was concern amongst respondents, predominantly from the aquaculture industry, regarding the introduction of 'open-ended enabling powers' for Ministers.
- Some respondents supported the use of powers in some circumstances, particularly for identified problems such as 'Mytilus trossulus' (bay mussel).

3.4 Section 2 – Protection Of Shellfish Areas

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

3.4.1 Of those who responded to this question, nearly all (77) agreed with provisions to protect shellfish growing waters. Only three respondents disagreed. Nearly half (69) of all respondents did not comment.

3.4.2 The aquaculture industry respondents (15) and public sector respondents (11) were all strongly in favour of the proposal. Respondents from freshwater fisheries (18), professional/academic sector (2), individuals (14), marine fisheries (3), voluntary sector (12) and other commercial business industry (2) were also supportive.

3.4.3 One aquaculture industry and two individual/politician respondents disagreed with this proposal.

Discussion

3.4.4 While there was overall agreement with the introduction of provisions to protect shellfish growing waters, several respondents provided additional comments on this issue.

3.4.5 Several freshwater fisheries and public bodies referred to their comments on this issue in their response to the Scottish Government consultation on „An Integrated Approach to Protection of Shellfish Waters’.

3.4.6 Several aquaculture industry, freshwater fisheries and public body respondents felt there was a need for new provisions to restore the protection provided by the Shellfish Waters Directive. Two freshwater fisheries respondents noted the importance of protecting shellfish growing waters, particularly as they felt that this would benefit the future sustainability of wild salmonid stocks. They added that this industry could partly replace salmon farming activity in the future. Another consultee felt that preference should always be given to the shellfish industry, as it is relatively environmentally benign.

Designation criteria

3.4.7 Some respondents discussed designation criteria. One local authority had concerns about the proposed designation criteria and the environmental objectives of shellfish protected areas. Another felt that it is important that any designations do not adversely impact on terrestrial development opportunities, specifically to avoid situations where shellfish operators may receive benefits from the provision of a designation, but onshore development may be constrained. Another freshwater fisheries respondent stated their conditional support, provided that environmental considerations are at the forefront of any decisions made.

Implementation

3.4.8 Some respondents made suggestions for the implementation of this proposal. A freshwater fisheries respondent supported the use of the marine planning system for decisions on this issue. Several voluntary sector respondents recommended that the Scottish Government consider using the global Bivalve

Aquaculture Standards as a guide for the establishment of regulations on shellfish aquaculture.

In summary:

- Of those who responded, nearly all supported this proposal.
- This was based on an agreed need to restore the protection provided by the (to be repealed) Shellfish Waters Directive.
- Some respondents expressed concerns about the potential designation criteria. One in particular was concerned about benefits accruing to shellfish operators resulting in constraints on onshore development.
- One respondent suggested that the regulations be implemented through the marine planning system. Others suggested that the global Bivalve Aquaculture Standards be used as a guide for regulation of shellfish aquaculture.

3.5 Section 3 – Fish Farming and Wild Salmonid Interactions

Sea-lice

Question 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?

- 3.5.1 The majority of respondents to this question supported the proposal with 79 agreeing, and 34 disagreeing. Thirty-six declined to comment.
- 3.5.2 Over three-quarters of the freshwater fisheries respondents answering the question (39) supported the provision and just one opposed (angler's association). Likewise, public sector respondents were strongly supportive of the introduction of this proposal with nine respondents in favour and one opposed. Two-thirds of voluntary sector respondents (14) and half of marine fisheries respondents (3) supported the proposal.
- 3.5.3 In contrast, the aquaculture industry was strongly against the proposal with just one respondent answering „yes' compared with 15 answering „no'. Consultees from the other commercial business and professional/academic sectors were largely against the proposal, with just two respondents agreeing.
- 3.5.4 The individuals/politicians respondents had mixed views.

Thresholds

- 3.5.5 The freshwater fisheries sector expressed strong support for this proposal, and emphasised the importance of addressing the impacts on wild fish of sea-lice emanating from finfish farms. These respondents, together with local authorities, felt that there are situations where lower thresholds may be required.

- 3.5.6 One local authority suggested that lower trigger thresholds for treatment should apply in more sensitive areas (i.e. where sea-lice may impact upon sites designated for Atlantic salmon or freshwater pearl mussels). A freshwater fisheries respondent suggested that salmon farms adjacent to spawning burns and nursery areas for wild fish were examples of this type of sensitive site, and felt that the aquaculture industry CoGP should be used as a minimum standard. However, a voluntary respondent felt that this sets inadequate thresholds and standards.
- 3.5.7 A public body felt that treatment thresholds should be particular to a FMA, a view also shared by an individual respondent. A freshwater fisheries respondent felt that, as farm sizes and/or the number of farms in a FMA increase, the threshold level should be reduced.
- 3.5.8 Several freshwater fisheries respondents and local authorities felt that a lower threshold during the spring period does not protect sea trout present in estuaries year round, and recommended that powers be introduced to address this.

Availability of information

- 3.5.9 Several of these consultees noted that information on this issue should be more widely available and used. One felt that information relating to specific sites where a lower threshold has been applied should be available for public scrutiny, while another felt that this information should feed into planning and site location/relocation procedures.
- 3.5.10 One consultation authority felt that recent work carried out by Marine Scotland on the development of sea-lice dispersal models and additional work by RAFTS to develop tools on risk-based approaches to spatial planning should help to identify sensitive areas. An individual noted that sea-lice dispersal modelling is in its infancy, and felt that it should be developed throughout salmon farming areas as soon as possible.

Concerns about the proposals

- 3.5.11 The aquaculture industry was strongly against the proposal, with some contending that Marine Scotland was not qualified to make judgements on sea-lice. Several aquaculture respondents noted that these proposals have been rejected in the past for reasons that are already a matter of public record. Another respondent added that reducing threshold levels would only lead to development of a centralised system, and that this would not help to reduce the threats to farmed fish.
- 3.5.12 Several respondents felt that this issue should be left to fish farmers, veterinary surgeons and their FMAs. This view was shared mainly by aquaculture industry respondents, who felt that the proposal will increase problems of sea-lice management. Some respondents noted that lowering threshold levels will also add considerably to industry costs, with one expressing concern that the consultation neither clarifies why the industry CoGP is not sufficient nor explains why the proposed ministerial powers are required.
- 3.5.13 Several respondents, across a range of sectors, were concerned that lowering the threshold could result in an increase in the number of treatments required and warned that this may lead to an increased resistance to treatment in sea-

lice populations. One stated that the current thresholds that are used as intervention triggers are based on the risk of resistance to therapeutants rather than fish health. One respondent asked for an opportunity to demonstrate more effective ways to manage sea-lice, and another felt that Marine Scotland should help in this respect.

- 3.5.14 Several respondents questioned what these powers would achieve, with one suggesting that many farms fail to meet current threshold levels. One respondent felt that the proposed measure, coupled with constraints on use of treatment medicines, effectively undermines efforts to follow an integrated management strategy.

Treatment methods vs. use of thresholds

- 3.5.15 The link between thresholds and treatment was discussed by several respondents. Some were critical of therapeutic treatments, with one respondent emphasising that lowering thresholds must not mean that sea-lice treatments are used routinely. A temporal shift in treatments using the current thresholds was suggested as a better alternative to lowering the threshold. Several respondents felt that lower thresholds may be useful in appropriate circumstances, but still indicated a preference for other non-therapeutic measures. A freshwater fisheries respondent felt that the proposed powers cannot replace the need for correct siting of farms, but added that in cases where a sea-lice problem is identified, other actions should be considered.
- 3.5.16 Several freshwater fisheries respondents contended that the current system using figures of 'lice per farmed fish' takes no account of farm biomass or cumulative biomass in the area, and is not therefore supported. Another felt that the absolute number of sea-lice released from a farm is more important than the number of lice per fish. Some suggested that sea-lice threshold levels should be changed in order to take into account farm and cumulative biomass factors in the local area to minimise risks to wild fish. An individual respondent added that these should be based on data including detailed farm lice information, accumulated effect of the number of farms in an area, overall tonnage, proximity of salmon farms to one another and wild fish migration routes (noting that there is insufficient information on migration routes).
- 3.5.17 One voluntary sector respondent stated that the risks of lowering the threshold having an impact on other non-target species and the marine ecology must be considered. A freshwater fisheries respondent commented that the use of inland farm sites would resolve this issue but did not elaborate further.
- 3.5.18 Summarising the situation, an aquaculture industry respondent highlighted the need to find common ground on sea-lice thresholds amongst stakeholders.

BRIA comments

- 3.5.19 A freshwater fisheries respondent commented on the partial BRIA, stating that they favour option 2¹³.

¹³ BRIA Option 2 refers to „Give Ministers powers to prescribe sea-lice thresholds, in certain circumstances, above which remedial action requires to be taken.

In summary:

- While most respondents who answered this question supported the proposal, there was strong opposition from the aquaculture industry.
- Support for the proposal centred on the protection of wild fish from sea-lice emanating from finfish aquaculture sites, with a particular emphasis on using the industry CoGP as a minimum standard.
- There was concern amongst some respondents about any increase in treatments and consequent effects such as increased resistance of sea-lice populations, effects on marine ecology, impacts on non-target species, and costs to the industry.
- While some respondents felt that a lower threshold may be useful in some circumstances (i.e. during the salmon migration season), there was a preference for other non-therapeutic measures to be used first.
- The aquaculture industry considered that the proposal has the potential to increase problems of sea-lice management, particularly through increasing resistance to therapeutants, and that the proposed powers have already been debated by the Healthier Fish Working Group.

Containment and Escapes

Question 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)

3.5.20 There was strong support across all stakeholder groups for this provision, with a total of 109 respondents agreeing, and just two disagreeing. Thirty-eight did not respond to the question.

3.5.21 In terms of support, respondents from the aquaculture industry (17), freshwater fisheries (42), individuals/politicians (17), voluntary sector (15), public bodies (10), marine fisheries (3), other commercial businesses (3) and professional/academic bodies (2) were all strongly in favour of the proposal for a technical standard.

3.5.22 The two respondents who disagreed were individual respondents.

Support for a standard

3.5.23 A freshwater fisheries and an aquaculture industry respondent supported the standard and noted the work of the Improved Containment Working Group. A freshwater fisheries consultee applauded measures being taken by the salmon farming industry to improve husbandry and equipment, but added that additional work needs to be done. A public body also noted the work of Thistle Environmental.

Content of the standard

- 3.5.24 As well as supporting the standard, some respondents discussed its content. One local authority felt that a „one size fits all’ approach may not be appropriate and it should provide for the construction and use of a variety of different cages (including both square and circular cages), consider design quality and aesthetics, and include a provision that each cage be marked with a manufacturer’s plate similar to that required for boats. They added that they would welcome an upper limit on the dimensions of cages in the standard.
- 3.5.25 Another public body felt that both moorings and cages should be considered in the standard. However, they suggested a requirement for a site assessment, to ensure equipment can be safely moored at the site, particularly given the presiding wave and weather conditions. Another local authority felt that the standard should consider changing mooring techniques, specifically, mooring „lines’ that are five times the water depth rather than the three times currently used.
- 3.5.26 A voluntary respondent felt that the loss of an entire farm in Shetland in recent storms demonstrated the need for a strict Scottish technical standard, particularly for those that are regularly subjected to extreme storm events.
- 3.5.27 A public body felt that the required standards of equipment should be certificated at point of purchase or deployment by suppliers, like the identification technology and systems used with nets by many salmon producers. Two respondents, one freshwater fisheries and one local authority, felt that the Technical Standard should include freshwater farms and shellfish farms respectively.
- 3.5.28 Several freshwater fisheries respondents felt that the standard should include provisions for the accredited training of personnel, to ensure competence in the use and maintenance of this equipment.

Other issues

- 3.5.29 A number of respondents also made additional comments. Several discussed closed containment systems in their responses. One public body supported the development of closed containment systems, while a voluntary sector respondent suggested that the FHI and/or SEPA should be able to require some form of closed containment operation at sites with adverse impacts on the marine environment, and specifically wild salmonids. Several consultees from the voluntary and freshwater fisheries sectors identified this as a means of resolving issues with escapes and sea-lice infestations.

Reservations about the technical standard

- 3.5.30 While broadly supportive of the introduction of a technical standard, several aquaculture industry respondents had reservations about and/or conditions for its introduction.
- 3.5.31 Several felt that some Scottish fish farms have equipment that may not meet the requirements of a new technical standard, but also have good records of containment. They felt that such companies should not be penalised with introduction of a new technical specification. A freshwater fisheries respondent noted that the development of and adherence to such a standard must also accommodate smaller aquaculture businesses and the freshwater sector.

They, and a professional/academic body, suggested that transitional procedures/long lead-in times may be required for existing farms.

- 3.5.32 However, a voluntary sector respondent disagreed, suggesting that legal lead-in times for compliance should be short. An aquaculture industry respondent agreed with the proposal, but felt that legislation is not required to achieve this.
- 3.5.33 One aquaculture industry respondent stated their agreement with the proposal, but emphasised that anecdotal evidence should not be used as a basis for legislation.
- 3.5.34 There were mixed views on the source of the problem. One freshwater fisheries respondent noted that many issues are due to human error rather than equipment failure. However, a freshwater respondent stated their concern about smolt production in open freshwater cages, where they believe smolt escapes occur through inappropriate net sizes.
- 3.5.35 One voluntary sector respondent noted their surprise that Scotland has not adopted the Norwegian technical standard.

BRIA comments

- 3.5.36 A freshwater fisheries respondent commented on the partial BRIA, stating that they favour option 3¹⁴.

In summary:

- There was strong support for introduction of a technical standard across all stakeholder groups.
- Some respondents suggested what the standard should contain, including specifics (e.g. cage types and dimensions, markings and moorings, training requirements, etc.) and more general approaches (e.g. flexible, use of site assessments).
- Some industry respondents had concerns over some farm sites, e.g. those with a good record of containment, being penalised for not meeting the standard, and suggested that transitional procedures be used for its introduction.
- Several respondents noted that they would prefer the use of closed containment systems in finfish aquaculture.
- Several respondents noted the work of the Improved Containment Working Group in working towards this standard.

¹⁴ BRIA Option 3 refers to „Develop a Technical Standard which will be adopted by the industry as part of a revised Code and revise Marine Scotland’s existing role on ensuring compliance with containment aspects of the Code to include those sections covering the Technical Standard’.

Tracing Escapes

Question 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?

- 3.5.37 Of those who responded, 87 respondents agreed that there should be additional powers for sampling fish from fish farms, whilst 27 disagreed. Thirty-five respondents declined to comment.
- 3.5.38 There was strong support amongst freshwater fisheries respondents with over 80% of respondents (41) agreeing and just one (an angler's association) disagreeing. Similarly, all of the public body, voluntary sector and marine fisheries respondents to this question were strongly in favour. In addition, 15 individual/politician respondents agreed, whilst eight disagreed.
- 3.5.39 In contrast, aquaculture respondents were strongly against the proposal with 15 disagreeing and just two agreeing. Two other commercial respondents were opposed to the proposal, with just one in support.
- 3.5.40 The professional/academic bodies had mixed views.

Use of existing powers

- 3.5.41 One freshwater fisheries respondent stated that powers already exist for the Scottish Government to take or require samples of fish from farms to be taken for tracing purposes. However, another noted that they have been unable to obtain such samples from the aquaculture industry in the past, and suggested that the grounds for inspectors to request a sample should be determined in consultation with both the aquaculture and wild fish sectors. A further freshwater fisheries respondent suggested this power be drafted without being prescriptive as to the means. Two voluntary and public body respondents requested greater clarity on how this would be carried out in practice.

Benefits of the measures

- 3.5.42 Several individual and freshwater fisheries respondents commented that this measure could enable escaped farmed fish to be traced back to the farm from which they originated. Several freshwater fisheries respondents commented on escapes from freshwater smolt farms handling large numbers of small fish, suggesting that this method could address this issue.

Requirement for further information

- 3.5.43 A public body suggested that the ability to carry out genetic identification be established prior to this being considered, and a freshwater fisheries respondent added that they understand Marine Scotland are currently undertaking a scoping study into its technical feasibility.
- 3.5.44 A freshwater fisheries respondent suggested that, as genetic techniques develop, the collection of genetic samples from sea-lice could prove to be useful in establishing the origin of sea-lice found on wild migratory fish. However, they noted that additional powers would be required to make fish farm companies provide sea-lice samples for analysis.

Concerns / alternatives

- 3.5.45 However, several respondents made additional comments arguing against the introduction of this power. A professional/academic respondent felt that this would likely be an expensive and unnecessary research exercise, stating that it may not be possible to differentiate escaped fish on a site-by-site basis. They, and several aquaculture industry respondents, felt that the contribution of escaped farmed fish to wild populations in Scotland, by introgression or otherwise, has not been demonstrated. Several respondents, predominantly from the aquaculture industry, commented that they did not consider the proposed research to be either justified or a good use of public funds.
- 3.5.46 In addition, several aquaculture industry and other commercial respondents highlighted progress made on addressing escapes in the industry and saw no need to introduce new powers. A public body questioned why the testing of retained samples could not be used from procedures already in place. Similarly, a voluntary respondent suggested requiring marine and freshwater fish-farms to retain frozen samples of each batch of farmed fish for a given period, to allow samples to be taken for testing immediately if required.
- 3.5.47 However, a freshwater fisheries respondent suggested that this measure was based on the 'polluter-pays principle' and that either farmers allow sample collection or that such a measure be introduced to allow samples to be taken.
- 3.5.48 Several respondents provided additional suggestions and alternatives to the proposed provisions in the Bill. Several saw merit in a move in Norway to ensure all farmed fish are marked with a uniquely numbered tag.

BRIA comments

- 3.5.49 A freshwater fisheries respondent commented on the partial BRIA, stating that they favour option 2¹⁵.

¹⁵ BRIA Option 2 refers to 'Develop a Technical Standard which will be adopted by the industry as part of a revised Code'.

In summary:

- There was overall support amongst respondents for this proposal. Several respondents were of the view that this measure could enable the tracing of escaped farmed fish.
- However, the aquaculture industry and other commercial industry respondents were strongly opposed to these additional powers. Opponents suggested that progress has been made in controlling escapes, that impacts of escaped farmed fish on wild salmon have not been demonstrated, and that this “research” would not be a good use of public funds.
- One respondent felt that powers or procedures are already in place for the Scottish Government to take or to require samples of fish from farms to be taken for tracing purposes. Another questioned why the testing of retained samples of fish could not be done under procedures that are already in place.
- Several suggested that the ability to carry out genetic identification should be established before introducing these powers.
- Several alternatives were suggested, including retention of frozen samples from each batch, using the existing procedures and tagging farmed fish.
- The need for additional discussion on this issue was identified by a number of respondents.

3.6 Section 4 – Salmon and Freshwater Fisheries Management

Modernising the Operations of District Salmon Fishery Boards

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

- 3.6.1 There was overall support amongst consultees for the proposal with 99 respondents agreeing, and 24 disagreeing. Twenty-six declined to comment.
- 3.6.2 All 17 respondents from the aquaculture industry who responded to this question were strongly supportive of the proposal. Similarly, public bodies were strongly supportive with nine in favour and just one respondent (a local authority) against the proposal. There was overall support amongst individual/politician respondents with 19 for and four against. There was overall support from the other stakeholder groups, with over half of voluntary sector respondents (12) agreeing with just three NGOs disagreeing.
- 3.6.3 All three marine fisheries respondents to this question were supportive. Other commercial respondents (3) and professional/academic bodies (2) were predominantly in favour of the proposed duty, with one non-fisheries business disagreeing.

- 3.6.4 While over two-thirds of freshwater fisheries respondents (34) were in favour, one-third were opposed (15). Of these, all angler's association respondents were supportive of the proposal, with the DSFB/RAFTS sub-group split in their views with 17 for and 13 against.

The need for a specific duty

- 3.6.5 While most freshwater fisheries respondents were supportive of Boards acting fairly and transparently, most were not convinced that a specific duty was the best way of achieving this. Some were not clear on the details.
- 3.6.6 Several respondents, predominantly from the freshwater fisheries sector, stated there is already a requirement for Boards to act fairly and transparently. Several respondents emphasised that they are unaware of a proven lack of accountability and transparency in DSFBs. Several argued that Boards have no legal powers to make statutory regulations without application to Scottish Ministers and, as such, they are already subject to consultation and Ministerial approval.
- 3.6.7 A number of respondents queried the practical implementation of such a duty. They asked how „fairness’ is quantified in legal terms, who would judge compliance, and with what criteria. One respondent suggested that the Scottish Government clarify who the Boards are acting for and the benchmarks they are to be measured against.
- 3.6.8 In contrast, one respondent was critical of the current DSFB systems, stating their belief that an unequal balance of powers on DSFBs makes it impossible to implement fairness and transparency. A freshwater fisheries respondent questioned the accountability of DSFBs to the community. One freshwater fisheries respondent felt that a duty would provide consistency for industry and DSFBs. Several aquaculture industry respondents felt that a radical review of these Boards should be undertaken, with one commenting that this measure should not be considered an alternative to such a review and revision of Boards.

Potential scope of the duty

- 3.6.9 Many freshwater fisheries respondents felt that adherence to a CoP was preferable to a specific duty, and several noted that the ASFB had developed a suitable CoP and this has been adopted by some DSFBs.
- 3.6.10 One freshwater fisheries respondent added that Boards should publish plans of appropriate action in advance showing what will be carried out over a set time scale, adding that this could be used for consultation with angler's associations and landowners before any work is started. A marine fisheries respondent felt that consideration should be given to making DSFBs subject to FoI and environmental regulations.
- 3.6.11 Some respondents were in favour of the proposal, and suggested improvements to the way Boards are run and their jurisdiction. One freshwater fisheries respondent felt that Boards should also be obliged to consider effects on freshwater species and consult with anglers and their representatives when developing and implementing their activities. A freshwater fisheries respondent felt that the most effective model for the management of freshwater fisheries is to have a Board and Fishery Trust working alongside one another, adding

benefits in cost effectiveness at the local scale for all fish species. Another felt that while the system of Boards needs improvement, Fisheries Trusts and other bodies that operate in parallel with the Boards have been successfully developed. They also felt that the Scottish Government should further support the development of Fishery Trusts.

- 3.6.12 Several freshwater fisheries respondents discussed the consideration of non-migratory fish in Board activities. One respondent felt that a proposed duty should be extended to include a requirement that „a Board must have regard to the welfare and maintenance of stocks of other fish found in the river’ when making any river management decisions. Another stated that a Board’s powers to make management decisions to enhance migratory fisheries can have a detrimental impact on non-migratory species in their areas of remit. Several respondents supported the concept of a duty, provided it does not ignore angling or the welfare of other non-migratory species.

Implementation of the duty

- 3.6.13 One freshwater fisheries respondent felt that if a duty was introduced, it should be phased in and become statutory. Another freshwater fisheries respondent and a voluntary sector respondent raised the issue of compensation, stating that the Board should be liable to compensate the proprietors or tenants of that fishery appropriately if they suffer consequent losses due to activities of the Board.
- 3.6.14 A freshwater fisheries respondent felt that an independent dispute resolution mechanism should be created, although this was discussed in greater detail in responses for Question 31 (see paragraph 3.6.96).

BRIA comments

- 3.6.15 Another freshwater fisheries respondent commented on the partial BRIA, stating that they favour option 1¹⁶.

¹⁶ BRIA Option 1 refers to introducing „a statutory duty on DSFBs to act fairly and transparently. This would underpin adoption of recognised principles of good governance and practice by all DSFBs which should foster greater public confidence and trust in the DSFB system.

In summary:

- Many consultees across the stakeholder groups, particularly aquaculture and the public sector, were supportive of the proposal for a duty for Boards to act fairly and transparently.
- However, some consultees were not convinced that a specific duty was the best way of achieving this. Some freshwater fisheries respondents in particular held the view that Boards already act in a fair and transparent manner. Others suggested adherence to a Code of Practice (CoP) as a preferable alternative.
- Some questioned the practicalities of implementation of such a duty, and asked for clarification of definitions and criteria.
- Consultees made several suggestions as to what should be included in the implementation of such a duty, e.g. advance publishing of plans, making DSFBs subject to FoI and environmental regulations, consideration of other (non-migratory) fish species, using a phased approach and making provision for compensation.

Question 24. Do you agree that there should be a Code of Practice for wild salmon and freshwater fisheries?

- 3.6.16 There was strong support for this proposal amongst respondents who answered this question, with a total of 117 respondents agreeing, compared to just four disagreeing. Twenty-eight declined to comment.
- 3.6.17 There was strong support amongst respondents from all sectors with the majority of freshwater fisheries (49), aquaculture industry (16), public bodies (9), individuals/politicians (21), marine fisheries (3), voluntary sector (14), professional/academic bodies (2), and other commercial (3) respondents agreeing.
- 3.6.18 The four respondents opposed to the introduction of a CoGP for wild salmon and freshwater fisheries included one freshwater fisheries respondent, two individuals/politicians and one other commercial business.
- 3.6.19 Several respondents referred to either a CoGP, Code of Practice (CoP) or Code of Best Practice (CoBP). For the purposes of this analysis, we have used the collective term CoP to include all of these.

Existing arrangements

- 3.6.20 Several freshwater fisheries respondents, predominantly DSFB/RAFTS consultees, considered that their current adherence to the ASFB's CoP was sufficient. Some stated that they already operate in an open and transparent manner.

Potential benefits

- 3.6.21 One freshwater fisheries respondent felt that it would be beneficial, for new stand-alone wild salmon and freshwater fisheries organisations that are not

affiliated with any recognised body, to use such guidance in a CoP that adopts current best practice techniques and operations.

- 3.6.22 Some respondents, including one public body, supported the proposals to „modernise the operation of DSFBs’ and saw benefits in adoption of a CoP. Several freshwater fisheries respondents felt there were benefits for the protection of coarse fish populations and promoting improved access, with one consultee stating that a CoP would be the best way to ensure that information on catches, conservation policies, monitoring, introductions and enforcement is collected in a consistent manner for all DSFBs.

Credibility and securing buy-in

- 3.6.23 The issue of stakeholder acceptance of a code was discussed by a number of respondents, with one freshwater fisheries respondent stating that it may be difficult to gain initial acceptance of a statutory CoP. As such, one respondent proposed that it be developed initially as a voluntary device to be made statutory in due course. One commercial industry respondent felt that any code must be credible and taken seriously by the relevant industry groups, and a fish committee respondent felt that a code would have to be written by representatives of other species, as well as salmon, to be effective. They also suggested that implementation of such a CoP should be done on a catchment basis.
- 3.6.24 One freshwater fisheries respondent expressed concern that the CoP should not simply be viewed as idealised best practice but actually implemented. Sharing this view, several respondents stated that it was important that the code be independently and transparently audited. One respondent suggested involving a United Kingdom Accreditation Service (UKAS) accredited auditor, like the code for the finfish aquaculture industry.

Content

- 3.6.25 Some consultees commented on the content and functionality of a code. Several freshwater fisheries respondents noted that a standard approach is unlikely to be appropriate across the DSFB network, given the variation in size and resources between Boards. A freshwater fisheries respondent agreed, stating they oppose „any one size fits all management regime imposed from the centre or the abolition of tried and tested regulatory bodies’. Another agreed, and stated the importance of local management.
- 3.6.26 There was support amongst some respondents for the inclusion of provisions in a CoP for Boards and Fishery Trusts to have open meetings, wide consultation, publishing summary reports and/or meeting minutes, publishing accounts, and inviting evidence/submissions from the public. One freshwater fisheries respondent felt that the CoP should strongly recommend the publishing of audited accounts to openly demonstrate how money is being put back into the river systems in accordance with current best practice and guidance.
- 3.6.27 Two freshwater fisheries respondents felt that the proposal is likely to result in increases in costs for some Boards by requiring further public participation and that this may have a disproportionate impact on smaller Boards.

Existing codes of practice

- 3.6.28 Several respondents, predominantly from the freshwater fisheries sector, discussed existing CoP and/or other codes being developed, and their appropriateness for use in this sector. Several freshwater fisheries consultees discussed the ASFB-developed CoP for Boards finalised in November 2011, and also stated that a CoBP for Fisheries Management is also under development. One respondent felt that while the ASFB-developed CoP deals with governance, practice and legal obligations, the Fisheries Management CoBP is more associated with the practicalities and needs for informed fisheries management.
- 3.6.29 Several aquaculture respondents discussed the CoGP for the finfish aquaculture industry as an option for developing a CoP, at least in part. One aquaculture industry respondent strongly recommended a rigorous science-based code, including risk management provisions similar to the CoGP for Scottish Finfish Aquaculture. Another noted that some sectors of activity (i.e. broodstock, hatcheries, fish health and welfare) were directly transferable to wild fisheries management, whilst a further respondent suggested that the CoGP for aquaculture would be transferable to wild salmon and freshwater fisheries sectors. A local authority felt that a CoP should receive the same level of investment from the Scottish Government as that afforded to the fish farming industry.
- 3.6.30 A local authority felt that the preparation of a code should incorporate other CoP mentioned in the Consultation Document, and suggested that they be grouped into a single unified code. This view was also shared by a freshwater fisheries respondent.
- 3.6.31 Several respondents made additional comments on the application of such a CoP, with one consultation authority stating that other bodies responsible for managing trout or non-salmonid fisheries within Scottish freshwaters should not be exempt from fishery management controls.
- 3.6.32 An aquaculture respondent suggested the Scottish Government ascertain the status of fish stocks and develop a robust plan to restrict catches to sustainable levels using the same model as that used at sea.

Question 25. If yes, should such a Code of Practice be statutory or non-statutory?

- 3.6.33 There was strong opposition from respondents for this proposal, with 42 respondents providing supportive comments and 72 disagreeing with a statutory footing.
- 3.6.34 Individual/politician respondents had mixed views with 13 agreeing and eight disagreeing. Support was also shared amongst respondents from other sectors, although these were in the minority in their respective stakeholder groups.
- 3.6.35 Of those in opposition, aquaculture industry respondents were largely against the proposal, with 11 consultees answering „no’ compared to just four answering „yes’. Similarly, freshwater fisheries respondents were largely opposed to a statutory Code of Practice, with 36 disagreeing compared to 12

agreeing. Of these, DSFB/RAFT respondents were strongly against making a CoP statutory, with just three respondents supporting this, and 27 opposed. Public body respondents were also against this provision, with just two consultees answering „yes’ compared to six answering „no’. Opinion from the other freshwater fisheries sub-groups (angler’s association and business) was largely split.

- 3.6.36 Respondents from the voluntary sector, professionals/academics, other commercial business and marine fisheries sectors had mixed views.

Opposition to a statutory footing

- 3.6.37 While some respondents were supportive of a CoP, there was strong opposition to making it statutory. Several respondents felt that any CoP for wild salmon and freshwater fisheries should be afforded the same non-statutory status as those for the finfish and shellfish farming industry. One respondent suggested that aspects of the code should be used to inform legislation where required, as with aquaculture industry codes. A public body shared this broad view, stating that the code should be given time to bed in, and should be fine-tuned and tested on its effectiveness. Several freshwater fisheries respondents were strongly opposed to the imposition of statutory burdens on them, as this could result in significant additional cost.
- 3.6.38 Several respondents felt an industry code should be non-statutory, but were not opposed to Ministerial powers to make it statutory in the future. For example, one freshwater fisheries respondent stated that the code should be non-statutory but have a legal compulsion reserved in case of non-cooperation.
- 3.6.39 However, another freshwater fisheries respondent commented that compliance with a non-statutory code could be difficult to achieve and that a statutory code would be difficult to enforce, adding their preference for a legal requirement for a code without the code itself being statutory. They felt that flexibility is required to take account of different circumstances in different places, adding that an aggrieved party should be able to take civil action against a Board in cases where the Board’s actions are inconsistent with the code and are harmful to that party’s interests. They suggested that non-compliance with the CoP should be taken as evidence that a Board has acted unreasonably.

Need for consensus

- 3.6.40 The ability to obtain agreement on a CoP was discussed by a number of respondents. Some supported introduction of a statutory or mandatory code. However, several also felt that while a statutory code may be welcome, consensus over the various aspects might be difficult to achieve. A freshwater fisheries respondent suggested that there may be a need to induce owners to comply with a code and suggested using experience gained in protection orders (PO), linking „protection’ with agreement. However, another freshwater fisheries respondent disagreed, feeling that the current state of POs affords little protection to the species under the order, and suggested an overhaul of this system. A voluntary respondent felt that replacing POs and their functions would be detrimental to angling.

Other issues

- 3.6.41 Several respondents raised other issues on the operation of Boards and their decision-making processes.
- 3.6.42 A freshwater fisheries respondent felt that there should be a requirement for River Improvement Associations and Liaison Committees „to seek guidance firmly based on sound science to improve and enhance the fisheries they are designed to protect for the benefit of all species not just salmonids’. This was a common theme, with several respondents feeling there should be greater consideration of other species and stakeholder at various levels. A freshwater fisheries respondent questioned the fact that Boards have no statutory obligation to consider the impact of their activities on anglers. A marine fisheries respondent felt that there should be better balance between upper and lower proprietors of a river system on Boards, and stated that this could „ensure proper democratic decision-making’.
- 3.6.43 However, one freshwater fisheries respondent was unaware of any Board that resisted open meetings with other stakeholders, and several DSFB respondents noted that the current system allows consideration of a wide range of views in the discharge of their functions.
- 3.6.44 Several freshwater and marine fisheries respondents commented on the relationship between angling and netting, and suggested that netting be removed from the management of DSFBs and into Inshore Fisheries Management.
- 3.6.45 An individual respondent felt that the CoP should encourage a catch and hatch policy whereby potential broodstock would be taken to a hatchery.

In summary:

- While introduction of a Code of Practice (CoP) was strongly supported across the stakeholder groups, there was opposition from many to making it statutory.
- However, several respondents considered that development of a new CoP was not necessary. Some respondents noted that codes of practice already exist, including the ASFB-developed CoP which is being followed by a number of DSFBs, and a Code of Best Practice (CoBP) for Fisheries Management which is under development. Some considered that their current adherence to the existing CoP was sufficient.
- Several aquaculture respondents felt that aspects of the CoP for finfish aquaculture could be useful in the development of the new CoP.
- Most respondents suggested a non-statutory code, but there was also support for a non-statutory code with a reserved legal power in instances of non-compliance. Others queried what action could be taken against those who did not comply with a non-statutory CoP.
- Several respondents discussed the scope of the CoP and made suggestions about its contents, including consultation and transparency of meetings and accounts, and inviting evidence/submissions from the public. Several felt that a „one size fits all’ approach would not be appropriate across the DSFB network.
- Some felt that those responsible for managing trout or non-salmonid fisheries should not be exempt from fishery management controls. Several felt that the CoP should also cover protection of coarse fish species.

Statutory Carcass Tagging

Question 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?

- 3.6.46 There was strong support for this provision with 113 respondents agreeing, and only five disagreeing. Thirty-one respondents declined to comment.
- 3.6.47 There was strong support amongst respondents from all sectors in this proposal, with the freshwater fisheries (45), aquaculture industry (17), public bodies (9), individuals/politicians (22), marine fisheries (3), voluntary sector (12), professional/academic bodies (2), and other commercial businesses (3) answering „yes’.
- 3.6.48 The five respondents opposed to the introduction of these powers included two freshwater fisheries respondents and three individuals/politicians.

Benefits of carcass tagging

- 3.6.49 Some respondents explained their reasons for supporting for this measure, including providing information on salmon migratory habits, reducing the potential market for illegally caught fish, and securing conservation benefits for wild salmonids.
- 3.6.50 Several respondents commented that this would bring Scotland into line with English and Welsh legislation on this issue, with some expressing surprise that it had not been done previously. Some added that this would close a loophole in UK fishery legislation and reduce illegal activity. One individual added that they felt that this measure would provide greater confidence in the veracity of declared Scottish net catches. It was noted that a similar system is working well in Ireland.

Concerns

- 3.6.51 However, a freshwater respondent disagreed with the proposal, stating that while they agree with the principle behind it, they questioned several aspects including limits to be set, records to be kept and returns collected.
- 3.6.52 An individual respondent also disagreed with the proposal, stating that the extent of measures of voluntary restraint such as „catch and release’ are an indicator of failure in this sector. One freshwater fisheries consultee felt that keeping log books and records of tag numbers, weight and length of fish would create an administrative burden on small crews, and supported the continuation of the current netsmen annual fish returns system. They felt that as the sale of rod caught fish was made a criminal offence, there is insufficient indication of a major problem of in-river poaching to justify a complex and expensive national carcass tagging scheme. However, they did indicate that carcass tagging could be introduced for netsmen who send their fish to market.

Extension of existing voluntary schemes

- 3.6.53 Several respondents referred to the current voluntary scheme being operated in some parts of Scotland. Some felt that this falls short of what is required, whilst others would prefer an extended voluntary scheme, including an extension to rod and line fisheries through local initiatives.
- 3.6.54 Some respondents provided suggestions on such a scheme, and particularly on the tags themselves. Two freshwater fisheries respondents suggested that tags have the name of the Fishery or river that the fish was killed on, with another stating that all carcass tags should be individually numbered. Another stated they were keen to see the pioneering tag, currently done on a voluntary basis as a pilot scheme, as the statutory tag for Scotland based on ease of use. They added that a tag of similar design could be introduced for salmon and sea trout killed and retained by anglers, although another respondent noted that this would likely be hard to implement. One freshwater fisheries respondent felt that it should be illegal to both sell and purchase an untagged fish.

Further consultation

- 3.6.55 Two respondents discussed the need for further consultation on this topic. An individual respondent felt that in exercising such powers, Ministers should consult with District Salmon Fishery Boards and other interested parties.

Another would prefer local consultation on existing knowledge and a full debate before any powers are taken by any organisation. They felt that the final decision should consider whether the proposed powers would result in conservation benefits for all species.

- 3.6.56 Several respondents from different sectors noted that it was not clear if the proposals referred to both net and rod caught fish. However, one freshwater fisheries respondent recommended that statutory carcass tags be introduced for salmon and sea trout both killed by netsmen and killed and retained by anglers.
- 3.6.57 Several freshwater fisheries respondents commented that while supporting the carcass tagging of rod-caught fish, they were concerned about the financial burdens on our numerous local fisheries.

BRIA comments

- 3.6.58 A freshwater fisheries respondent commented on the partial BRIA, stating that they favour option 2¹⁷.

In summary:

- There was strong support for powers to introduce a carcass tagging system in Scotland, with respondents recognising numerous benefits from the proposal. These included (amongst others) provision of information on salmon migratory habits, reducing the potential market for illegally caught fish, and securing conservation benefits for wild salmon, as well as bringing Scottish legislation into line with English and Welsh legislation. Some preferred an extension of the voluntary scheme currently operating in some parts of Scotland, including an extension to rod and line fisheries through local initiatives.
- Opposition to the proposal was based on potential additional administrative and financial burdens for local fisheries. Some respondents also questioned the benefits relative to the costs.
- Some emphasised the importance of additional discussion and local consultation on this issue.

Fish Sampling

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

- 3.6.59 There was strong support for this proposal, with 91 of those who responded agreeing, compared to 25 disagreeing. Thirty-three respondents declined to comment.

¹⁷ BRIA Option 2 refers to introducing „statutory carcass tagging of wild Atlantic salmon and sea trout with sanctions for non-compliance; and create powers for Ministers to take or require fish or samples for genetic or other analysis from any fishery.’

- 3.6.60 Of those in support, freshwater fisheries consultees were strongly in favour of the proposal, with 46 in favour and just one opposed (an angler's association). All public body, voluntary sector and marine fisheries respondents who answered this question supported the proposal. Respondents from the individual/politician group had mixed views, as did respondents from the professional/academic bodies.
- 3.6.61 Of those opposed, aquaculture industry respondents were largely against the proposal with 12 consultees disagreeing and just five agreeing. Of these, respondents from aquaculture industry bodies and other aquaculture industries were largely opposed to the proposal, while fish farm operators made a range of comments. Similarly, respondents from the other commercial sector were against the proposal with three respondents against and just one in favour of the proposal.

Discussion

- 3.6.62 Some respondents linked their responses to those of Question 22, referring to collection of fish samples for tracing purposes.

Freshwater fisheries input

- 3.6.63 There was overall support amongst respondents from the freshwater fisheries sector on this proposal, with several Fishery Trusts and DSFBs stating that the staff and resources currently employed by Trusts and Boards could support the gathering and collection of these samples. Two respondents suggested that powers to take fish samples should be extended to Boards and Trusts, with one other commercial respondent suggesting that local fishery managers be involved in these sampling and monitoring programmes.
- 3.6.64 A freshwater fisheries respondent felt that equivalent powers should be included for DSFBs to enter onto land to collect fish or habitat data for management purposes, noting that Boards already have these powers for enforcement of fishery legislation.
- 3.6.65 Several voluntary respondents agreed with the proposal, adding that they felt this measure could be used to gather evidence and data for the management of mixed stock fisheries.
- 3.6.66 One freshwater fisheries respondent stated that they would prefer this to remain voluntary, adding that they are doing research in this area. A further two freshwater fisheries respondents questioned the need for this in legislation, adding that the netting industry have previously given this access for research purposes. They felt that it would be in the interests of both sectors to permit voluntary access. Others agreed, but a public body stated that agreement from all fisheries within a district to do this will not always be possible. A freshwater fisheries respondent added that most fisheries trusts and DSFBs are usually willing to provide this, but they felt that Ministers should be able to legally take fish/samples.
- 3.6.67 An individual respondent felt that there should be more use of university and fish farm laboratories in relation to this. Several respondents raised the issue of physical sample collection, and felt that genetic samples could be taken without killing the fish in question. However, they added that if such sampling

would likely involve killing the fish, the respective DSFB should be consulted prior to sampling.

- 3.6.68 Some respondents noted that this was a recommendation of the mixed-stock fisheries working group.
- 3.6.69 Several aquaculture respondents stated that Ministers already appear to have full powers to take samples for these purposes. One respondent added that they did not agree with the principle of a power for the Scottish Government to request others to take samples on their behalf.

In summary:

- There was strong support for this proposal, but the aquaculture industry and other commercial sector respondents were largely opposed. Some respondents linked their responses to those of Question 22, which proposes similar powers for taking samples from farmed fish for tracing purposes.
- Opposition was largely based around several issues, including some consultees feeling that Ministers already have powers for this, disagreement with powers requesting others to take samples, and some preferring this practice to remain voluntary.
- Some respondents emphasised that genetic samples could be taken without killing the individual fish, but added that if this was not the case, the respective DSFB should be consulted prior to sampling.

Management and Salmon Conservation Measures

Question 28. Do you agree that Scottish Ministers should have the powers to initiate changes to Salmon District Annual Close Time Orders?

- 3.6.70 There was support amongst consultees who responded to this question, with a total of 82 respondents agreeing, and 22 disagreeing. Forty-five declined to comment.
- 3.6.71 All aquaculture industry respondents to this question (16) supported the proposal, as did professional/academic and other commercial respondents. The freshwater fisheries respondents were also supportive overall, with 34 in favour compared to nine opposed. The voluntary sector respondents were also largely supportive, with ten respondents agreeing and just two disagreeing.
- 3.6.72 Just one of the marine fisheries sector respondents responded to this question, and agreed with the proposal. Similarly, four public body respondents were in favour compared to just one opposed (other public body). Respondents in the individual/politician group had mixed views.

Consultation

- 3.6.73 One local authority felt that Ministers should have powers to initiate changes to Salmon District Annual Close Time Orders, but only after consultation with Fishery Boards. Some freshwater fisheries and other commercial and public sector respondents felt that any such measure should require full consultation with local management. However, there were also concerns this would add another layer of management to the current locally managed system. One freshwater fisheries respondent also noted that this should be subject to wider debate as other factors like „Time Share Fishing’ would be affected.

Appropriate use of the powers

- 3.6.74 Some respondents discussed situations for implementation of these powers. Several felt that such powers should only be used where there is no DSFB in place. Some respondents noted that they were not aware of a particular problem with the arrangement of DSFBs applying for both close time orders. However, others suggested that these powers be used in situations where a DSFB is not fulfilling its responsibilities, referring to compliance by DSFBs with the CoP.
- 3.6.75 A voluntary sector respondent felt that these powers should include all aspects of all species’ spawning times, with the aim of ensuring the natural undisturbed reproduction of all fish. An aquaculture industry respondent felt that this measure should go beyond the „by exception’ level that is proposed. A freshwater fisheries respondent supported the use of such a power to assist in repopulating rivers and to allow stocks to re-establish.
- 3.6.76 A public body suggested that this proposal did not go far enough, and that these powers should also be used when Marine Scotland has significant concerns about the status of salmon stocks. A freshwater fisheries respondent questioned how „significant concerns about the status of stocks’ on individual rivers would be gauged, and asked who will be responsible for assessing this in the field. A public body noted the potential financial implications associated with introducing such a power.

BRIA comments

- 3.6.77 A freshwater fisheries respondent commented on the partial BRIA, stating that they favour option 2¹⁸.

¹⁸ BRIA Option 2 refers to „all management and conservation powers to rest solely with Scottish Ministers’.

In summary:

- There was strong support for Ministerial powers to change Annual Close Time orders across nearly all of the stakeholder groups.
- Some supporters felt that this power could be used in situations such as when there are no DSFBs in place, when a DSFB is not fulfilling its duties, or when Marine Scotland has significant concerns about the status of salmon stocks. However, the question of how concerns about stock status would be gauged was also raised.
- Some respondents felt that this issue should be subject to further debate.
- The potential financial implications of introducing such a power were also raised as a concern.

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

- 3.6.78 There was overall support for this proposal with 66 respondents agreeing, and 38 disagreeing. Forty-five respondents declined to comment.
- 3.6.79 All aquaculture industry (16), marine fisheries (2), other commercial (3) and professional/academic (2) respondents who answered this question were in favour. There was also clear support from public bodies (four), voluntary sector (nine) and individual/politician (13) respondents.
- 3.6.80 However, the freshwater fisheries respondents had mixed views, with 17 agreeing and 26 disagreeing. Within this group, the angler's associations were largely supportive, other freshwater fisheries businesses were split in their views, and DSFBs and RAFTS respondents were strongly opposed.

Discussion

- 3.6.81 As for Question 28, several freshwater fisheries respondents felt that this proposal is only necessary for cases where a DSFB is not in place in a particular area. They felt that where changes to conservation measures are necessary, these should be made through the current process involving an application from the DSFB to Ministers.
- 3.6.82 Several respondents questioned the premise of this proposal, asked for explanation of the basis for the stated combined salmon conservation powers, and noted that they were not aware of a particular problem with the current arrangement with DSFBs. Some felt that promoting combined salmon conservation should be the role of local Boards, noting that the principle of local management should apply, with one emphasising that conditions are unique for each river system.
- 3.6.83 A freshwater fisheries respondent questioned the benefit of this proposal to salmon conservation, unless it was a Scottish-wide conservation measure in law. They asked for additional consultation on this topic.
- 3.6.84 Some consultees felt that Scottish Ministers should be able to exercise such powers. However, an individual respondent suggested that if such powers were introduced and exercised, Ministers should consult with the relevant

DSFBs and other interested parties on whatever decision was being considered.

- 3.6.85 One voluntary respondent suggested that the proposed powers should also include all aspects of all species' spawning times, to ensure the natural and undisturbed reproduction of all fish species. This links with comments from previous questions on promoting protection measures for all species of fish, and not just salmon and sea trout.
- 3.6.86 A freshwater fisheries respondent felt that where such measures are to be proposed by Ministers themselves, the monitoring burden should also be borne by representatives of Scottish Ministers.

In summary:

- While the majority of respondents to this question supported the proposal, there was strong opposition from DSFBs/RAFTS consultees.
- Those disagreeing with the proposal considered that continuation of the current system would be more appropriate (i.e. applications for conservation measures from the local Board to Ministers), that combined measures should be undertaken by local Boards, and that such a power should only be used in cases where there is no DSFB in place.
- Others were concerned about a lack of background information to justify the proposed measure. It was suggested that the proposed powers should also include all aspects of all species' spawning times, and not just those of salmon and sea trout.
- Some respondents considered that, if such powers were introduced, Ministers should undertake consultation with local Boards prior to implementation.

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

- 3.6.87 There was strong support for this proposal with 96 respondents agreeing, and only nine disagreeing. Forty-four respondents declined to comment.
- 3.6.88 There was strong support amongst respondents from all sectors for this proposal, with the freshwater fisheries (39), aquaculture industry (16), public bodies (five), individuals/politicians (17), marine fisheries (two), voluntary sector (12), professional/academic bodies (two), and other commercial businesses (3) answering „yes’.
- 3.6.89 The nine respondents opposed to the introduction of these powers included freshwater fisheries (five) and individuals/politicians (four).

Discussion

- 3.6.90 While there was strong support for this proposal, some consultees provided additional comments in their responses to this question.
- 3.6.91 Several freshwater fisheries respondents were supportive of this proposal, stating that it is consistent with evidence-based management. However, as for Question 29, one aquaculture industry respondent raised concerns that this is not already being done.
- 3.6.92 Rather than imposing conditions, some freshwater fisheries and public sector respondents suggested that a partnership approach be adopted, involving DSFBs, Fishery Trusts, SEPA, Marine Scotland Science and universities, amongst others. One freshwater fisheries respondent stated they would like to see this supported by the RAFTS network, while another felt that Fishery Trusts and relevant DSFB staff would be appropriate. Another freshwater fisheries respondent felt that the introduction of such conditions should be conducted with the agreement of the Fishery Trusts and Boards.
- 3.6.93 Others felt that it would be more appropriate for local action than Ministerial action, continuing a theme from previous questions supporting local management. They noted that local monitoring should be in place to provide a benchmark, and emphasised the importance of local consultation.
- 3.6.94 One voluntary respondent suggested that the proposed powers should be developed to include all aspects of all species' spawning times, to ensure the natural and undisturbed reproduction of all fish species.

Potential costs

- 3.6.95 Several respondents discussed the financial implications of this proposal, particularly for the Boards, who are already under pressure. Some suggested that financial resources should be made available to Fishery Trusts and DSFBs to cover the cost of any new monitoring and reporting requirements. A proportionate approach was also emphasised.

In summary:

- There was strong support across all stakeholder groups for this proposal.
- As an alternative to the use of conditions, a partnership approach was recommended, involving DSFBs, Fishery Trusts, SEPA, Marine Scotland Science and universities, amongst others. Others felt it should be supported by the DSFB and RAFTS networks.
- Several respondents preferred a local management approach to Ministerial intervention, and the importance of securing the agreement of the Fishery Trusts and Boards prior to the attaching of conditions was emphasised.
- Several respondents emphasised the importance of a proportionate approach, and raised concerns about the potential expense of new monitoring and reporting requirements and/or expertise required by DSFBs.

Dispute Resolution

Question 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?

- 3.6.96 There were mixed views on this issue. A total of 58 respondents agreed with the introduction of statutory provisions for mediation and dispute resolution, whilst 55 disagreed. Thirty-six respondents declined to comment.
- 3.6.97 Public bodies and voluntary sector consultees strongly supported the proposal with eight in favour and only one against, and 11 in favour and two against respectively. Two marine fisheries respondents were also supportive.
- 3.6.98 Respondents from the freshwater fisheries sector had mixed views, with 24 respondents in favour and 23 opposed. Of these, fishermen's associations and other freshwater businesses were largely supportive. However, DSFB/RAFTS respondents were marginally opposed, with 13 agreeing and 16 disagreeing. The small number of individuals/politicians, professional/academic and other commercial respondents who answered this question also had mixed views.
- 3.6.99 The majority of aquaculture industry respondents were strongly opposed with 14 respondents answering „no' and just two answering „yes'.
- 3.6.100 While opinion was largely split amongst respondents, many made additional comments covering a range of issues.

Issues for mediation

- 3.6.101 Several freshwater fisheries consultees felt that a mediation process could usefully address:
- Disputes between different classes of proprietors on conservation measures being considered for their area.
 - Disputes between boards and other organisations and individuals with an interest in the sustainability and welfare of non-migratory fish stocks.
 - Disputes between parties interested in both migratory species and other fish species.
 - Fishery closure or limitation on conservation grounds.

National v. local approaches

- 3.6.102 One freshwater fisheries respondent felt that it was important to decide how and under what circumstances Ministers are brought in to arbitrate. Another felt that such a mediation process should only be used sparingly and under certain circumstances, and added that it should not be used to defer routine decision-making by Ministers.
- 3.6.103 Several freshwater fisheries respondents felt that it would be better that resolution be achieved at the local level in the first instance, informed by local knowledge, with further recourse to mediation as a final means of resolution if required.
- 3.6.104 Several respondents discussed the issue of compensation in their responses. One freshwater fisheries respondent felt that there may be compensation

claims if such a system centred on measurable losses of revenue for other fishing (i.e. trout or coarse fishing). Another felt that mediation should only consider specific matters relating to compensation for the introduction of conservation measures by Boards. Another freshwater fisheries respondent agreed, adding that the ASFB should provide independent and professional mediation with experience in valuation for this purpose. A public body agreed that this may be useful, but stated they were not convinced that it should be statutory. Several freshwater fisheries respondents proposed that Ministers should have the ultimate decision in any dispute, should resolution not be achieved on either a voluntary basis or following a mediation process.

Cost and benefit

- 3.6.105 Several consultees discussed financial arrangements in relation to the mediation process itself. One freshwater fisheries respondent felt that the expense of mediation should be shared by all concerned, and suggested development of a costing system, allowing a proportion of the expense to be based on the ability of an applicant to pay. However, others felt that public funding for the introduction of additional provisions was not justified.
- 3.6.106 A range of respondents felt that this proposal was not necessary. Some suggested that there was existing legal scope for this, or that this is already a function of the former Tripartite Working Group and FMAs.

In summary:

- Overall there were mixed views on this proposal. Only the public and voluntary sectors were strongly supportive; the aquaculture industry was strongly opposed.
- A range of respondents, as for Questions 3 and 4, felt that this proposal was not necessary, as there is already adequate provision under existing Scottish arbitration law and / or this is already a function of the (former) Tripartite Working Group and FMAs.
- Some respondents supported the proposal for a mediation process but felt that such mediation would be better undertaken by parties other than Ministers, e.g. at the local level or through the ASFB. Several identified the types of disputes where mediation would be helpful. Some respondents suggested that the scope of mediation should extend to disputes between parties about migratory species and other fish species. Others wanted Ministers to make the final decision in the event of mediation being unsuccessful.
- The scope of mediation was also discussed. Some respondents felt that mediation should only consider disputes about compensation.
- The benefits of the proposal, compared to its costs, were questioned. Compensation was discussed by some consultees. There were also suggestions for the costs of mediation to be shared or based on the ability of an applicant to pay.

Improved Information on Fish and Fisheries

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

- 3.6.107 There was strong support amongst respondents for this proposal, with 97 agreeing with a legal requirement for comprehensive data, compared to 16 disagreeing. Thirty-six respondents declined to comment.
- 3.6.108 The majority of respondents in all stakeholder groups were in favour of the proposal. All aquaculture respondents to this question (16) agreed, and the public bodies (seven), voluntary sector (12), marine fisheries (three), professional/academic (two) and other commercial respondents (three) were also supportive with at most one consultee in each sector against the proposal. There was additional support from the freshwater fisheries (38) and individual (16) respondents.
- 3.6.109 Eight freshwater fisheries, six individuals/politicians, one public body and one voluntary sector respondent disagreed with the proposal.

Discussion

- 3.6.110 Several respondents commented on the benefits of such a requirement. Possible benefits highlighted included encouraging owners to improve the salmon population numbers or at least strengthening the assessment of salmon and sea trout stocks.

Scope of existing arrangements

- 3.6.111 However, respondents from several stakeholder groups commented on the uncertainty of the value of this information. It was noted that Marine Scotland Science have been undertaking a pilot study to assess the potential value of such data. Some of the support for the measures was dependent on the availability of supporting data.
- 3.6.112 A freshwater fisheries respondent pointed out that Ministers and River Commissions currently have powers to collect this information in the Tweed District. This model could be used in other areas, and extended to include the use of broodstock and hatcheries.
- 3.6.113 Similarly, an individual felt that the primary responsibility for the collection of catch data should be given to the DSFB, or MSS where no DSFB exists, as they likely have the best knowledge of their catchment. This may also provide an incentive for the respective DSFBs to obtain good data to support fishery management in their area. A freshwater fisheries consultee felt that there is significant resource within the DSFBs, Fishery Trusts and MSS, and suggested that more integration between them could help to obtain consistent and useable data.

Difficulties with data collection

- 3.6.114 Some respondents felt that there are difficulties in collecting rod effort data, due to either practicalities or inherent inaccuracies in data collection itself. Several freshwater fisheries respondents felt that the collection and monitoring of comprehensive effort data for rod fisheries would be „totally impractical’. An individual respondent also stated their view that it is „extremely doubtful

whether it would be practicable to supply such data, let alone with a statutory sanction for providing false or misleading data'. One stated that rod data itself is meaningless as some rods fish harder and longer than others, with other respondents identifying a range of variables that can affect the validity of effort data (e.g. experience of the angler, their familiarity with the river, weather conditions, technology and equipment used, etc). An aquaculture respondent felt that these were more a demonstration of success than reliable data. An individual consultee stated that even proprietors and associations do not know the amount of effort expended by their tenants, given these variables.

3.6.115 Some respondents highlighted that the current collection of salmon data catches is flawed, particularly as it is the individual fishing beat or right that provides the figures.

3.6.116 The reliability of the data and scope for checking it were questioned. Likelihood of compliance was raised as a concern by several respondents, and some were concerned that it may discourage angling. Some examples of circumstances where data collection could be particularly challenging included rod effort data on club waters or waters which are not leased or monitored, and „un-ghillied' fisheries. Respondents felt that the risk of drawing inaccurate conclusions from unreliable effort data outweighed its possible benefits.

Data interpretation

3.6.117 Other respondents commented on the usefulness of rod effort data in the short-term and suggested that interpretation could be limited at first by a lack of established trend data. However, a public body did note that the existing catch statistics database does contain valuable information.

3.6.118 Another commercial respondent commented that effort data can be difficult to quantify. Careful consideration should be given to how the data would be collected, how units would be defined, and how information would be interpreted in a meaningful way to allow decision-making at the local and national levels. A freshwater fisheries respondent felt that data from net fisheries would be more useful than rod fisheries.

3.6.119 One freshwater fisheries respondent felt that it should be a more immediate priority for MSS to concentrate on its existing catch dataset to achieve value from this. They added that they saw a need to improve MSS datasets to more reliably reflect catch trends, and to account for the variables mentioned earlier (i.e. reduced angler effort, general trends from spinning to fly fishing and technological advances) in their consideration of catch trends.

3.6.120 A freshwater fisheries respondent felt that it may be better to encourage voluntary data collection schemes via local organisations or trusts than make it a legal requirement.

3.6.121 Some felt that additional consideration and consultation is needed on this issue to ensure that it has a meaningful contribution to fisheries management. Clarification on the information required, on how it would be collected and on how it would be used was requested.

Cost

- 3.6.122 Potential increases in costs were noted by some respondents. Several freshwater fisheries consultees felt that a legal requirement to provide this data should only be introduced if there is no undue expense to DFSBs. Some respondents suggested that co-operation in data collection would be forthcoming if appropriately funded.

In summary:

- There was strong support for the collection of comprehensive rod effort data from all the stakeholder groups. The benefits of this requirement were considered to include, for example, the strengthening of the assessment of salmon and sea trout stocks.
- Some consultees suggested the DFSBs, Fishery Trusts and MSS should undertake the data collection, with one suggesting that co-operation between them could help to obtain consistent and useable data.
- Some respondents questioned the value of this information, and highlighted the need for careful interpretation until fuller trend data is established. Difficulties in collecting rod data were raised, including the objectivity of data, the need for verification and willingness to provide the information.
- Some respondents expressed concerns at potential costs arising from this level of data collection. A voluntary scheme for data collection was suggested as an alternative.

Question 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?

- 3.6.123 A total of 95 respondents answered this question. Of these, seven were public bodies, 13 aquaculture industry, three marine fisheries, 38 freshwater fisheries, two professional/academic bodies, 11 voluntary sector, 18 individuals/politicians, and three other commercial businesses.

Overall views

- 3.6.124 The majority of respondents generally agreed with the principle of providing additional information on both fish and fisheries, but also held other views and/or reservations on this issue.
- 3.6.125 One respondent from the commercial sector felt that record keeping and reporting were important in both the aquaculture and fisheries industries. They suggested that similar regimes should be in place in these industries, for obtaining an accurate and thorough picture of both fish health and conservation issues.
- 3.6.126 However, another individual respondent disagreed, disputing the public interest in collecting additional information, and disagreeing with the assumption about the „public interest’ in salmon and freshwater fisheries mentioned in paragraph

104 of the Consultation Document. They felt that the proposed collection of data was not comparable to that undertaken for marine fish farming.

- 3.6.127 Similarly, several respondents, from the freshwater fisheries, individual and public sectors, felt that no additional information was required beyond that already collected or outlined in the proposed Bill provisions.

Introductions and re-stocking

- 3.6.128 Fish introductions and hatchery operations were commonly suggested as a priority for additional information.
- 3.6.129 Many aquaculture industry respondents, including the SSPO and others who endorsed their response, felt that a requirement should be in place for the provision of information on wild fisheries restocking activities, for stock enhancement or other purposes. They felt that this data should be collected by those undertaking the activity, and should include the species introduced, origin, number stocked and precise locations of the release of fish into the water body. One aquaculture respondent expanded on the last point, stating that the siting of stocking operations must be recorded so that future effects of stocking can be evaluated, particularly given the considerable discussion around both the fragility of west coast stocks and genetic strains being local to a particular tributary. Several of these respondents recommended that this information be reported and published by Marine Scotland on a frequently updated website, in a similar way to that of farmed fish escapes.
- 3.6.130 This view was broadly shared by many respondents across the other stakeholder groups, with some suggesting that the collection of additional information relating to fish introductions and restocking should be undertaken. Of these, several respondents from the freshwater fisheries and public bodies sectors suggested that information on the number of licenses issued, advice taken or sought, number of fish introduced, species type, source, location, stage and purpose of stocking be obtained routinely.
- 3.6.131 A further three freshwater fisheries respondents and one other commercial respondent felt that information should be provided on hatchery operations including fish numbers, life stage, source, stocking records, management needs, monitoring strategy and measures of success.
- 3.6.132 While agreeing with these respondents, a public body saw advantages in interpreting and analysing this data if it was recorded and made available, and felt that this could reduce the risk of misclassifying stocking data. Two other respondents suggested the development of an integrated national database or public register for fish movements and introductions based on licenses and authorisations issued.
- 3.6.133 Another public body agreed with the proposed provisions, but expressed concern that many of those currently responsible for stocking do so without either consulting or obtaining an appropriate licence from the relevant authority. They were concerned at the lack of transparency in the process, particularly relating to the number, stage and source of fish being stocked, and the location and rationale for stocking in each of these areas. They added that information relating to monitoring the success or failure of these activities is also lacking, and that similar data is available for other species in Scotland through a licensing system operated by MSS. In the interests of transparency, this

information should also be made available. A respondent from the 'other commercial' sector broadly agreed, and stated that stock introductions should be planned and controlled as part of a national conservation effort.

Availability of information

- 3.6.134 Several respondents raised issues on the publication and availability of information collected, with some suggesting the need for an agreed regular timeframe for collection and publication.
- 3.6.135 Several public and voluntary sector respondents felt that this data should be consistently published and available for scrutiny. A freshwater fisheries sector respondent felt that all fisheries data should be freely available to all bodies involved in the management of Scottish game fisheries, irrespective of who has collected it.
- 3.6.136 Several respondents suggested that information should be routinely reported and made publicly available, although one felt that an annual report should be prepared.

National strategy

- 3.6.137 The ASFB and several freshwater fisheries respondents suggested the development of an integrated national strategy for the collection of data. The ASFB stated that a national strategy should consider the use of existing data sources, such as the existing catch statistics database. A commercial industry respondent also felt that a national database or public register should be developed for monitoring purposes for hatchery operations, fish movements and introductions. This could be based on the licences and authorisations issued for these operations.
- 3.6.138 One consultee suggested that the approach in the Tweed District could be implemented throughout Scotland, although it was also noted that, in a cross border context, data should be collected in collaboration with the Environment Agency.
- 3.6.139 As detailed in responses for Question 32, this view was shared by one voluntary sector respondent who suggested that MSS, DSFBs, River Trusts and individual proprietors could provide this information. They stated that, together, these formed a significant resource that could be deployed in an integrated and efficient manner and help to ensure consistent and useable data, particularly as catch statistics are currently collected by MSS, by DSFBs and by the District Assessor.
- 3.6.140 Several respondents discussed the collection of this data. Some felt that Boards have a number of regulatory and statutory functions relating to salmon and sea trout movements, and that information should be available on these activities as a matter of course. One respondent suggested that independent proprietors and clubs should report all habitat, catch and stocking data for areas where there is no DSFB in place.
- 3.6.141 The ASFB also noted that they are aware that MSS are currently undertaking a pilot study on specific river systems to assess the potential value of data collection, and they are content for Ministers to take powers to collect data for utilisation in the successful conclusion of the MSS pilot study.

3.6.142 One voluntary respondent suggested that data collection requirements could be defined by either a CoP or in statute.

Further consultation

3.6.143 Several consultees stated the importance of reaching agreement on provisions for additional information collection with proprietors, Boards and regulatory authorities prior to their introduction. More specifically, there was a suggestion that data collection requirements should be set via regular consultation between MSS, SNH, the Institute of Fisheries Management (IFM) and fish conservation bodies.

Limitations of data collection

3.6.144 A number of respondents raised questions about the collection of additional data. Several respondents, predominantly from the freshwater fisheries, individual and voluntary sectors, felt that there could be costs for the Boards. They recommended that resource implications should therefore be taken into account. A cost/benefit approach was suggested to ensure the most valuable information is prioritised.

3.6.145 Another freshwater fisheries respondent felt that it would be difficult for proprietors and Boards to provide accurate information, particularly as they are not present on site at all times.

3.6.146 One respondent stated that the question did not arise from the Mixed Stock Salmon Fisheries Working Group report. They felt that the intentions of the question and the role of Fishery Trusts were unclear. They stated that it is these bodies, rather than Boards, that investigate issues of fisheries management and commission or carry out original research in most parts of Scotland.

Reporting and data collection system

3.6.147 Some consultees commented on a structure for reporting the data.

3.6.148 Aquaculture respondents felt that data collection should be standardised across the Boards, and that biological information should be provided to the same level of detail as that required for the aquaculture industry. One pointed out that this would report the management of the lifecycle from 'broodstock to plate', and would be broken down at key elements within a hazard analysis and critical control points (HACCP) plan. This was also the view of an academic respondent, who stated that the reporting requirements should be the same as for the aquaculture industry, adding that 'the current system does adequately assess the risk presented to aquaculture operators by wild fish activities'.

3.6.149 One individual respondent suggested that the state of wild fish resources and fisheries in each area in Scotland should be reported annually, and that this should be reviewed by an independent Fisheries Commission (Scotland) prior to reporting to Ministers. Another suggested that any additional information collected should be available to owners to help their efforts in improving the number of salmon in their river.

3.6.150 A voluntary sector respondent felt that all data returns required for the annual published reports should be made compulsory.

Specific information for inclusion

3.6.151 Most responses to this question included suggestions for the collection of specific data that the respondents felt would be of value.

3.6.152 The following types of data were suggested:

- Catch rates / catch and release statistics (i.e. whether the salmon/sea trout was retained or returned). This should include routine catch data for sea and/or brown trout, particularly on the west coast of Scotland.
- Sizes of fish caught.
- Date of capture.
- Rod numbers.
- Rod days fished (rather than rod days let off).
- Fly, spinner or bait.
- Fish caught per rod hour (to establish fishing intensity).
- Information on diseased or injured fish, observations of any unusual stock conditions, numbers of sea-lice found on rod-caught salmon, etc. One respondent emphasised that this should be reported in real time.
- Information on the number of licenses issued for each species.
- Further information on net effort (not mean figures), including number of keep-ins / fish taken from nets.
- Types and number of migratory fish caught, killed and returned.
- The number of fish of farmed origin present in catches.
- Information that may influence catch and fish health, including water levels, temperature, weather conditions, river conditions and other conditions which may affect the availability of fish, and hence the catch data. One respondent suggested that data collection could allow the inclusion of adult fish stocks into EU Water Framework Directive classification procedures.
- Information for the monitoring of the impact of management measures (e.g. gravel movement, culvert placement, revetment construction, etc).
- Juvenile abundance levels.
- Information on poaching activity and the results of electro-fishing activity. One respondent suggested that fixed penalty notices be issued for those failing to submit catch returns.

Record of management decisions

3.6.153 Two voluntary respondents felt that local management decisions, actions taken and evidence should be recorded and made available for scrutiny. They also felt that this process should be carried out consistently across the Boards.

3.6.154 Several respondents felt that information should be collected on the success of measures to improve or maintain stocks. One suggested reporting actions that have been performed to improve conditions on river systems to assist wild

salmon passage and reproduction. Others supported this, suggesting the reporting of habitat improvements and predator control measures.

Financial information

- 3.6.155 A few respondents felt that financial information, such as the value of the freshwater fisheries sector, should be documented and reported. Within this, one respondent felt that income and expenditure of DSFBs should also be recorded and reported.

In summary:

- The majority of respondents generally agreed with the principle of providing additional information on both fish and fisheries. However, a smaller number had reservations about this and considered that there was no need for further information provision.
- A need for information on fish introductions, restocking activities and hatchery operations was expressed by many respondents, based on a view that there is a lack of transparency about activities and impacts. Several respondents suggested specific information to be included in the data collection, ranging from data on stock and management, to fishing activity and associated environmental conditions. Information on disease and stock condition was also supported by several consultees. Some also sought further financial information.
- Some respondents suggested an integrated national data collection strategy and database/public register for fish movements and introductions.
- Several respondents felt that data collected should be published and made available for scrutiny in a consistent manner. Suggestions included publication on Marine Scotland's website.
- Some consultees recommended additional consultation on this issue. Several noted the importance of reaching agreement on the collection of any additional information with proprietors, Boards and regulatory authorities beforehand.
- Several respondents highlighted the potential for significant cost implications for Boards and Fishery Trusts.

Question 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?

- 3.6.156 There were mixed views on these proposed powers amongst those who responded to this question, with 75 respondents agreeing and 32 disagreeing. Forty-two respondents declined to comment.
- 3.6.157 All of the aquaculture sector respondents who responded (16) were strongly supportive. Individual/politician respondents were also supportive with 16 in

favour and just five against. Similarly, voluntary sector (11) and public body (six) consultees were strongly supportive of the proposal with just one and two respondents in these groups respectively answering „no’. There was additional support from the other commercial business (three), professional/academic bodies (two) and marine fisheries (three) respondents.

- 3.6.158 More respondents from the freshwater fisheries sector (24) were opposed to this proposal, with 18 respondents in favour. Of these, consultees from fishermen’s associations were strongly supportive, while those from other freshwater businesses had more mixed views. DSFB/RAFTS respondents were strongly opposed with ten agreeing and 20 disagreeing.

Responsibility for information / reporting

- 3.6.159 A public body and several freshwater fisheries respondents felt that a CoP for DSFBs would be the best way to ensure this information is provided in a consistent manner.
- 3.6.160 Several aquaculture respondents felt that this information could be provided through a national agency or by other means (i.e. DSFBs or fishery proprietors).
- 3.6.161 A freshwater fisheries respondent noted that certain parts of Scotland are not covered by boards, and that efforts of voluntary organisations in such areas are limited. Another respondent suggested that where there are no boards, this role should be undertaken by the Scottish Government.
- 3.6.162 One freshwater fisheries respondent stated that DSFBs currently collect and publish catch, conservation policies, monitoring, introduction and enforcement information for their districts. Another commented that most Fishery Trusts are members of the Scottish Fishery Co-ordination Centre (SFCC), and regularly submit data to MSS via this route. They felt that the potential duplication of data collection would be a waste of time and resources.

Costs

- 3.6.163 Several respondents discussed cost implications of this proposal. A public body and several freshwater fisheries asked who would pay for additional functions for a DSFB to undertake this work. A freshwater fisheries consultee was concerned that this could potentially add a significant financial burden to Boards, particularly smaller Boards with limited budgets. A commercial respondent stated that while they saw merit in the proposal, their view was conditional that this data be used appropriately and that sufficient additional resources be provided to enable these investigations to be undertaken and reported. A public body and several freshwater fisheries broadly agreed, stating that if such a power was introduced, it should be used in a proportionate way.

Suggested alternatives

- 3.6.164 Several respondents presented alternatives to the proposal in their responses. A voluntary sector consultee suggested that an outside party or organisation be employed to investigate and report on salmon, sea trout and fisheries rather than the respective Boards. A freshwater fisheries respondent felt that the Scottish Government should be assisting this investigation rather than requiring DSFBs, proprietors and their tenants to do this.

- 3.6.165 Two aquaculture industry respondents felt there was little purpose in introducing comparable measures for sea trout without also including brown trout. They added that this would bring Scottish regulations into line with those being introduced for brown trout stocking in England and Wales.
- 3.6.166 One freshwater fisheries respondent commented that they opposed the proposal, as there was no information provided showing what the DSFBs would be required to investigate.

In summary:

- There was overall support amongst most stakeholder groups for this proposal, with the exception of freshwater fisheries, and DSFB/RAFTS respondents. Some respondents felt that this proposal would duplicate existing data collection by Boards and Fishery Trusts.
- Some consultees suggested that a CoP for DSFBs could help to ensure that this information is provided in a consistent manner.
- Other suggestions for the collection of data included the provision of information to a national agency or using an outside party or organisation to report rather than Boards and/or proprietors. Others suggested that the Scottish Government should be directly involved.
- Several respondents discussed cost implications of this proposal, and raised questions about funding. Others emphasised that any such power should be used in a proportionate way.
- The inclusion of comparable measures for brown trout as well as sea trout was suggested by two aquaculture industry respondents.

Licensing of Fish Introductions to Freshwater

Question 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?

- 3.6.167 There was strong support for this proposal amongst respondents, with 95 respondents agreeing with these proposed powers and 15 disagreeing. Thirty-nine respondents declined to comment.
- 3.6.168 There was strong support amongst respondents from all stakeholder groups with the majority of respondents from freshwater fisheries (35), aquaculture industry (16), public bodies (ten), individuals/politicians (16), marine fisheries (two), voluntary sector (11), professional/academic bodies (two), and other commercial businesses (three) agreeing.
- 3.6.169 The 15 respondents who were opposed to the introduction of these powers included nine freshwater fisheries respondents (predominantly DSFBs/RAFTS consultees), five individuals and one voluntary sector respondent (an NGO).

Existing guidance

- 3.6.170 Some consultees noted that ASFB and RAFTS have developed guidance on fish stocking, and that the ASFB have also developed specific guidance on undertaking stocking programmes in SACs (currently with SNH for comment). Several freshwater fisheries respondents added that adherence to this guidance is a requirement of the ASFB-developed CoP and that this issue would be best dealt with in the CoP. A freshwater fisheries respondent commented that the proposed powers would not be needed if this Code was put into statute.

Appropriate use of powers

- 3.6.171 However, some respondents also noted that this power may be useful as a safety net, in instances where DSFBs are not fulfilling their duties. For example, one freshwater fisheries respondent felt that this could be useful in cases where concerns have been raised that a DSFB-authorized introduction does not conform to best practice or scientific advice. Another felt that such powers would only be warranted if it can be shown that a specific Board has acted in contravention of the regulations in undertaking this work. This issue was discussed in greater detail in the discussion for Question 36.

Transparency and consistency

- 3.6.172 One freshwater fisheries respondent felt that there should be transparency in the process of fish introductions from the DSFB, MSS and Ministers. Another felt that all fish introductions should be regulated in a uniform manner, and one regulator (i.e. the Scottish Government) should oversee aquaculture fish movements and stocking. Some respondents broadly agreed with introducing further controls, as stock introductions should be planned and controlled under a national conservation effort. However, all of these respondents felt that all fish introductions, either for fish farming or restocking, should be brought under existing aquaculture legislation, and that any powers for a DSFB to operate outside that legislation be removed. Another freshwater fisheries respondent felt that any legislation should apply to any fish movements within Scotland.

Effectiveness of restocking practices

- 3.6.173 Several respondents discussed the effectiveness of restocking practices and risks involved. Several freshwater fisheries respondents felt that a detailed review of the regulation and practice of fish introductions by DSFBs and MSS is „long overdue and urgently required’. One had concerns that some stocking activities undertaken in recent years have not been locally appropriate or conducted to recognised best practice. A professional/academic respondent stated that the unregulated and unrecorded movement of live salmonids is a hazard and should be subject to risk assessment, regardless of the sector involved. An aquaculture industry respondent questioned the success of restocking, but stated that they support the process „to try and secure better angling opportunities’.
- 3.6.174 One other commercial business felt that an evidence-based approach to fish introductions should be undertaken across Scotland whether consented by DSFBs or MSS. They particularly felt that a general presumption against introductions should be adopted unless it can be demonstrated that it will

achieve the desired goal without causing adverse effects on existing wild, native stocks.

- 3.6.175 Some consultees provided their views on stocking practices where fish from one river system are introduced into another. Several felt this is counter-productive and used it as an example for supporting Ministerial intervention. Another felt that Boards should be held to account by Ministers for making these introductions and others that may compromise wild native trout populations. The SSPO felt that there is a need to close a regulatory loophole allowing fish to be introduced into open waters without prior health checks by Marine Scotland. They noted that this is already a requirement of the Environment Agency in England.

Other issues

- 3.6.176 A freshwater fisheries respondent felt that Ministers should only have such powers for the introduction of non-native species. Another questioned whether this proposal referred to restocking to boost existing numbers or for the more careful re-introduction of fish. An individual felt that the Scottish Government should co-operate with owners to create available hatchery space to restock rivers. Another felt that Boards should encourage restocking.

BRIA comments

- 3.6.177 A freshwater fisheries respondent provided comment on the Partial BRIA, stating that they favour option 3¹⁹.

Question 36. If so, why and in what circumstances?

- 3.6.178 A total of 96 respondents answered this question. Of these, nine were public bodies, 14 aquaculture industry, two marine fisheries, 41 freshwater fisheries, three professionals/academics, 12 voluntary sector, 12 individuals/politicians and three other commercial businesses.

Discussion

- 3.6.179 A small number of respondents disagreed with the proposal, as they felt this should be left to the local level, for example under the authority of the local boards, local salmon fishery managers and River Trusts. However, others felt that proposed powers should be extended to cover all fish introduction operations.
- 3.6.180 One voluntary sector respondent noted that Scottish Ministers already have jurisdiction over fish introductions in parts of Scotland which are not covered by DSFBs, and over introductions of other freshwater species throughout Scotland. However, they added that they were not aware of any evidence on the effectiveness of these powers.

General views on stocking/fish movements

- 3.6.181 Respondent views on the practice of fish stocking varied, with some opposing the practice, and others supporting it.

¹⁹ BRIA option 3 refers to give Scottish Ministers reserve powers to recall, restrict or exclude District Salmon Fishery Boards' jurisdiction in respect of the introduction of fish within their rivers.

- 3.6.182 Most respondents who commented felt that stocking can have serious adverse impacts on local fish populations and/or ecology. Several indicated that they had seen what they considered to be unjustified and ill-informed stocking by local clubs and associations, noting associated problems.
- 3.6.183 The main area of concern with this practice, voiced by several academic and voluntary sector respondents, was in relation to fish hatched in one river system being introduced into another. This was a commonly-held view, leading to suggestions that fish or fry should not be stocked in areas where they were not hatched, to preserve the genetic integrity of fish in that area. One voluntary respondent advocated reducing stocking unless the 'local strain are effectively extinct'. These respondents generally agreed with the introduction of Ministerial powers to prevent the introduction of stock of any species where it is not from the same genetic pool as the natural stock of that river system, linking with comments from the previous question.
- 3.6.184 A public body respondent agreed, stating that these powers should be used to prevent or control the introduction of 'non-indigenous or locally absent' native species in an area. They elaborated by suggesting that consideration should also be given to preventing or controlling the introduction of sub-species, variants or bloodlines that may serve to dilute or decrease the genetic integrity of individual fish stocks in an area.
- 3.6.185 As for Question 35, several respondents felt there was a need for risk assessments of restocking and fish introductions. One academic respondent felt that this practice and movements of live salmonids is a well-recognised hazard, and should be risk-assessed regardless of the sector. A freshwater fisheries respondent felt that Boards should be held to account by Ministers for introducing young salmon to areas outside their normal zone, and in areas where they might compromise wild native trout.
- 3.6.186 However, this view was not shared by all respondents, with some feeling that stocking practices can have benefits for river systems. Several respondents felt that stocking was a valuable and necessary wild fisheries management tool, particularly in instances where natural recruitment is limited. However, like others, these respondents also had concerns about the introduction of non-native species.
- 3.6.187 Several respondents felt that the powers should be linked with environmental or ecological impacts. Some suggested that the Ministers should only intervene where abuse or damage to the environment is proven.

Conflict of interest

- 3.6.188 Many respondents, predominantly from the freshwater fisheries, voluntary and public sectors, felt that Scottish Ministers should intervene where conflicts of interest could arise. This included instances where Boards are authorising their own actions, with several respondents stating that it would be appropriate for Ministers to have joint powers over fish introductions in such circumstances. One individual respondent supported application of these powers for cases where Boards have shown individual or collective bias.

Powers to fill existing gaps

- 3.6.189 Several respondents, across all stakeholder groups (excluding aquaculture), stated their support for application of such powers if it can be demonstrated that DSFBs are not fulfilling their duties.
- 3.6.190 A public body respondent noted that DSFBs should properly consider and document their assessment of the impact that their introductions may have on wild Atlantic salmon (or other fish) populations. They felt that this should be part of discharging their responsibilities as a competent authority under the Habitats Regulations. They, and other consultees, noted that an assessment of the effects on wild fish of stocking practices should be carried out as a matter of course within fisheries management. This view was also raised by numerous respondents in response to Question 35.
- 3.6.191 Some respondents felt that this power should not be restricted to the Habitats Directive, with one suggesting that it should also be applicable in instances where the required „basic and legal consenting procedures’ are not being complied with.
- 3.6.192 The majority of freshwater fisheries respondents endorsed the response of the ASFB. As in Question 35, several respondents noted that the ASFB and RAFTS have developed guidance on stocking practices in a CoP and felt that this Code should be sufficient to deal with the issue of stocking. However, they agreed that such a power may be a useful safety net in circumstances where a Board is not fulfilling its obligations. Some others agreed that Ministers should be able to take powers in instances where there are objections from wild fish interests or when a Board is proposing something outwith the ASFB code.
- 3.6.193 Several freshwater fisheries respondents, including RAFTS, felt that Ministers should take powers over hatchery and associated stocking practices, particularly where advice is not being followed or practices are not being sufficiently monitored or reported. As for Question 35, given that fish introduction legislation is „relatively new’, they felt that a review by Ministers of the practice and decision-making by Boards, and MSS in areas where there are no Boards established, to check for necessary improvements and examples of good practice, would be helpful.
- 3.6.194 A public body noted that few Boards operating hatcheries for salmon apply to Marine Scotland for an appropriate licence to take salmon out of season as broodstock. They consider this to be a significant issue, particularly in cases where the river is a SAC for Atlantic salmon or freshwater pearl mussel. Others raised concerns about failure to operate transparently or within legal requirements, and suggested that this provided grounds for Ministerial intervention.

Consultation prior to introductions

- 3.6.195 Several respondents, including freshwater fisheries and public bodies, noted that Ministers already have jurisdiction over fish introductions in those parts of Scotland which are not covered by DSFBs, and over introductions of other freshwater species throughout Scotland (via MSS). Several freshwater fisheries and voluntary sector respondents felt that the burden of responsibility for good decision-making on fish introductions should rest with MSS in cases where these powers have been recalled or restricted. These consultees also

believed that the relevant Board should be consulted prior to any introductions of fish within their district.

Biosecurity

- 3.6.196 Several respondents felt that there was the potential for similar powers in relation to biosecurity and non-native species matters.
- 3.6.197 A freshwater fisheries respondent felt that these powers should be restricted or excluded on the grounds of accountability and biosecurity of other species. A public body felt that there may be emerging situations where such a power may be required for biosecurity issues. An aquaculture respondent highlighted the need for a clean bill of health for all introduced fish.
- 3.6.198 A voluntary sector respondent, reflecting the views of several others, felt that the proposed powers should be used for any cross-catchment transfer to preserve genetic integrity of fish stocks, and to improve disease and pathogen control.

Consistency with aquaculture

- 3.6.199 Many respondents suggested that fish introductions for fish farming and restocking should be controlled in the same manner to provide continuity and ensure a consistent approach. There was support for the adoption of the same rules as those for aquaculture.
- 3.6.200 As in Question 35, most of these respondents believed that all fish introductions, whether for fish farming or restocking, should be brought within the existing legislation for aquaculture and, as such, the powers for a Board to operate outside that legislation should be removed.
- 3.6.201 One respondent suggested a risk assessment and a reporting procedure to manage the lifecycle of the stocked fish within a detailed HACCP plan. They inferred that this system could be adopted more widely across other sectors.

Other issues

- 3.6.202 A freshwater fisheries respondent specifically called for a stop to the introduction of juvenile salmon in freshwater lochs for salmon farming altogether.
- 3.6.203 A respondent from the aquaculture industry stated that they were open to restocking practices being used in a section of a river, but that this should be done with a light touch and reviewed by qualified members from MSS. A freshwater fisheries consultee added that the proposed measures should be „carefully drawn’ to cover the circumstances outlined in the Consultation Document.

In summary:

- Respondents had mixed views on fish stocking/ introductions; some opposed the practice and others supported it. These views influenced the responses to Question 35. Those who opposed introductions cited adverse effects on local fish populations and/or ecology, including the genetic integrity of fish populations, and the introduction of non-native or non-indigenous species. Those who supported the practice considered that stocking was a valuable and necessary wild fisheries management tool, particularly in instances where natural recruitment is limited.
- There was strong support for the proposal amongst all stakeholder groups, and particularly for greater transparency in introduction/ stocking activities. A small number of respondents disagreed with the proposal, and felt that this should be left to the local level, e.g. Boards, local fishery managers and River Trusts. Others felt that the proposed Ministerial powers would be a safety net for cases where DSFBs are not fulfilling their responsibilities, where environmental damage is proven or where there are conflicts of interest, e.g. Boards authorising their own actions.
- Several respondents noted that the ASFB and RAFTS have developed guidance on fish stocking practices, as well as guidance for undertaking stocking programmes in Special Areas of Conservation.
- Many respondents, predominantly from the aquaculture industry, suggested that all fish introductions, whether for fish farming or freshwater fisheries restocking, should be brought within the existing legislation for aquaculture. Many considered that an assessment of the effects of stocking practices on wild fish should be carried out as a matter of course within fisheries management.
- Others felt that Ministers should undertake a review of introduction and stocking practices, and of decision making by Boards and MSS on these activities.

3.7 Section 5 – Modernising Enforcement Provisions

Strict Liability for Certain Aquaculture Offences

Question 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?

- 3.7.1 A total of 70 respondents agreed with strict liability criteria, whilst 30 disagreed. Forty-nine declined to comment.
- 3.7.2 Freshwater fisheries respondents were strongly supportive with 33 answering 'yes' and just one answering „no'. All of those who responded to this question from the marine fisheries sector (three), the voluntary sector (13) and public bodies (eight) were also in favour of strict criteria.
- 3.7.3 The aquaculture industry were opposed to the proposal, with 16 answering „no' and just one answering „yes'. Both of the „other commercial' sector responses to this question also opposed the proposal.
- 3.7.4 Respondents from the professional/academic and individual/politician sectors had mixed views.

Support

- 3.7.5 One public body stated their support for strict liability in principle, particularly where the safety and/or integrity of other marine user interests are „put at risk of compromise'. Another agreed with the proposal, but noted there should be the Right of Appeal and other safeguards on its use.
- 3.7.6 Some respondents, predominantly from the freshwater fisheries and voluntary sectors, were in favour of strict liability for escapes. They, including the ASFB, felt that such a system would be consistent with the proposed introduction of powers for Ministers for the collection of fish samples for tracing purposes, and added that this data could be used to provide evidence to identify liability and quantify impact. One voluntary consultee felt that strict liability could also be applied to any damage caused by fish escaping from salmon aquaculture facilities.

Concerns

- 3.7.7 However, there was strong opposition to the introduction of strict liability from the aquaculture industry, who raised a number of issues. An aquaculture industry body felt that the consultation lacked sufficient evidence to justify the proposal. They felt that the proposed system was unfair.
- 3.7.8 One professional/academic body stated that the findings of the Hampton Review suggest that this would be an over-reaction to a minor problem. This view was supported by several aquaculture industry respondents.
- 3.7.9 Several felt that the comparison between the aquaculture and fishing industries was irrelevant. Similarly, a respondent from the shellfish industry felt that the comparison between the shellfish industry and fishing industry was „unfair and irrelevant'.

- 3.7.10 Some aquaculture industry respondents questioned the effectiveness of such a measure if it were to be implemented. They added that it will encourage „a combative and a litigious relationship in the industry’, and there was a concern that it would change the existing open and co-operative relationships between salmon farmers and regulators.
- 3.7.11 One aquaculture industry respondent noted that the nature of aquaculture activities can make it difficult to identify those responsible for any illegal action. Another added that they and their staff were „vehemently opposed’ to this provision and that they do not view their role as a fish farmer as „one that predisposes criminal tendencies’.
- 3.7.12 Several aquaculture industry respondents noted potential financial impacts on the industry and local communities. Some felt that this may have a damaging impact on recruitment and retention of trained personnel in the industry, while another expressed concern for insurance premiums associated with „implications of widespread breaches of aquaculture operations’. Some noted that this could result in serious damage to the industry’s reputation, with consequences for jobs and the economy in fragile communities.
- 3.7.13 A voluntary sector respondent felt there should be a proper debate about the desirability and appropriateness of the proposed approach to enforcement. They felt that it was important that powers and safeguards be part of a consistent and principled enforcement mechanism implemented across a number of regimes, rather than a series of fragmented powers.
- 3.7.14 Several respondents from the freshwater fisheries and voluntary sectors felt that this proposal appears to be limited to breaches of marine licensing under the Marine (Scotland) Act 2010, insofar as this Act applies to aquaculture operations.
- 3.7.15 One voluntary sector respondent requested further information on statutory defences that may also be introduced by the Bill.

In summary:

- While many of those who responded to this question supported this proposal, there was strong opposition (amongst those who responded) from the aquaculture and other commercial businesses stakeholder groups.
- Several respondents suggested circumstances where the proposal could be usefully applied, e.g. escapes of farmed fish from aquaculture facilities.
- There were, however, strong views from opponents that this proposal was disproportionate to the perceived problem, may be unfair and ineffective, and could have damaging impacts on the aquaculture industry. They also questioned the need for this measure.
- One respondent requested further information on statutory defences that may also be introduced by the Bill.

Widening the Scope of Fixed Penalty Notices

Question 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?

- 3.7.16 Views were divided on this issue, with 41 respondents agreeing with the extension of the use of fixed penalties as an alternative to prosecution, and 35 disagreeing. Seventy-three respondents declined to comment.
- 3.7.17 All eight of the public body respondents who responded were in favour of the proposal. Both of the professional/academic respondents to this question were also supportive.
- 3.7.18 Several stakeholder groups had large numbers of consultees that chose not to answer this question. Some 13 respondents from the freshwater fisheries sector who answered the question were also in favour of the proposal. Of the voluntary sector respondents who responded, seven agreed and three disagreed (all NGOs).
- 3.7.19 Most aquaculture respondents were opposed to the proposal, with 15 respondents disagreeing and just two agreeing. There was also opposition from individuals/politicians, with six agreeing and 13 disagreeing. The only respondent from the „other commercial’ sector to answer the question was opposed to the proposal. Marine fisheries respondents had mixed views.

Limitations of support

- 3.7.20 While agreeing with the proposal, one freshwater fisheries respondent felt that it should be widened beyond aquaculture to include other situations.
- 3.7.21 A voluntary respondent agreed with the proposal, and felt there should be full public disclosure of the details associated with any fixed penalties issued. They added that this would be in the public interest and that it would help promote compliance across industries.
- 3.7.22 A voluntary sector consultee suggested caution be taken for breaches or offences that would be more appropriately dealt with in the criminal courts. They expressed concern that offences may become seen as „just an additional cost of production’. Another voluntary respondent felt that fixed penalty notices should „not be used indiscriminately simply to lessen the administrative burden from the regulator’s perspective’.
- 3.7.23 A public body felt there should be a Right of Appeal and other safeguards in place if this system was to be introduced.

Key concerns

- 3.7.24 As for Question 37, there was strong opposition from the aquaculture industry to this proposal. An aquaculture industry body felt that the proposal is disproportionate and not evidence-based, and felt that no convincing case was made in the Consultation Document for this measure. They added that „the aquaculture industry has no history of regulatory non-compliance (perceived or otherwise) which would have resulted in a £10,000 fine’ and felt that any non-compliance of this scale would go to court.

- 3.7.25 Several other aquaculture industry respondents commented that the proposal appears to have been based on the regulatory and compliance regime applied to fishing vessels.
- 3.7.26 An aquaculture industry respondent added that there are many penalty systems that could be considered, that are not solely based on a fixed penalty sum.

In summary:

- Less than half of consultees answered this question, and there were mixed views on the use of fixed penalties amongst those that did answer.
- Some of those in favour of the proposal felt that it could be widened beyond the aquaculture industry and suggested public disclosure of offences.
- Some expressed concerns about this becoming a normal business cost or a means of reducing the administrative burden.
- There was strong opposition from the aquaculture industry to the proposal. These respondents felt that it would be disproportionate and also questioned the evidence base to justify it.

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

- 3.7.27 There was no clear consensus on this question, with 37 respondents agreeing and 32 disagreeing. Eighty respondents declined to answer.
- 3.7.28 All seven public body respondents to this question supported an increase in the maximum sum for fixed penalty notices. As for Question 38, there was strong support amongst local authorities and consultation authorities for the proposal, whilst other public bodies largely declined to answer.
- 3.7.29 Of the other stakeholders who answered this question, respondents from the freshwater fisheries sector were largely supportive with ten respondents agreeing, and one disagreeing. Similarly, voluntary sector respondents were generally supportive with eight agreeing and two disagreeing (both NGOs).
- 3.7.30 Aquaculture respondents were strongly opposed to the proposal with 15 respondents disagreeing and just one agreeing. Marine fisheries respondents were also opposed, with four disagreeing and just one agreeing. The only respondent from the „other commercial‘ sector to answer the question was also opposed.
- 3.7.31 The individual/politician and professional/academic respondents had mixed views on this proposal.

Key concerns

- 3.7.32 As for Questions 37 and 38, aquaculture industry respondents were strongly opposed to the proposal.
- 3.7.33 The SSPO, supported by several other aquaculture industry consultees, stated that „the aquaculture industry has no history of regulatory non-compliance

(perceived or otherwise) which would have resulted in a fine of \$10,000' and that the proposal is „disproportionate and not evidence-based'. They felt that an independent review and mapping of the applicable regulations for fish farming is urgently needed. They added that a modern risk-assessed regulatory approach in line with the recommendations of the Hampton review is needed.

- 3.7.34 A shellfish aquaculture respondent who disagreed with the proposal also felt that the comparison between the shellfish industry and fishing industry was unfair and irrelevant (as for Question 38).

Appropriate limits

- 3.7.35 Other respondents who supported the proposal made additional comments. Whilst agreeing with an increase in the maximum sum generally, one aquaculture industry respondent felt that it should not be applicable to DSFBs and should only apply to marine sites.
- 3.7.36 A voluntary respondent suggested a limit on the number of fixed penalties issued for regulatory breaches whereby, on reaching this limit, the accused would be subject to criminal proceedings. They felt that this may deter repeat offenders.
- 3.7.37 Some consultees discussed the appropriateness of the proposed penalty value. One felt that £10,000 is a „trivial amount for a serious breach of conditions'. Another suggested that introducing a £50,000 fixed penalty would be more of a deterrent. A further consultee felt that £10,000 seems arbitrary, and added that this amount would not be viable for a small scale industry (e.g. trout farming) where the majority of businesses are micro-businesses. Another suggested that a safeguard should be introduced to ensure that the monetary value of the fixed penalties would remain less than those for court cases.

In summary:

- Less than half of the consultees answered this question. There were mixed views on increasing the maximum sum for fixed penalty notices amongst those who did respond.
- Aquaculture and marine fisheries industry respondents were strongly opposed, questioning what evidence there was to support the proposal. Several respondents considered that the maximum limit would be disproportionate to any non-compliance, and felt that a modern risk-assessed regulatory approach is needed.
- There was a range of views on the penalty value, with some supporting a higher figure, and others questioning the potential impact of the proposed amount on smaller businesses. A proportionate approach was again suggested.

Question 40. Are there particular regulatory areas that merit a higher or lower maximum sum?

- 3.7.38 Views on this question varied, with 31 respondents agreeing that there were particular areas meriting a higher or lower sum, and 35 disagreeing. Eighty-three respondents elected not to answer this question.
- 3.7.39 Several stakeholder groups had large numbers of consultees that chose not to answer this question. Of those who answered the question, most from the freshwater fisheries sector agreed with differentiation (nine compared with one who disagreed). Voluntary sector respondents were also largely supportive with eight answering „yes’, and one answering „no’.
- 3.7.40 Only two aquaculture industry respondents agreed with this proposal (15 disagreed). Unlike the previous two questions, public body respondents had mixed views with just two respondents agreeing, and five disagreeing. The only respondent from the „other commercial’ sector to respond to the question answered „no’.
- 3.7.41 Individuals/politicians, professional/academic bodies and marine fisheries had mixed views.

Discussion

- 3.7.42 While several freshwater fisheries consultees made additional general comments on the proposal, others (predominantly from the aquaculture industry) referred to their responses to Question 39.

Reasons for variations

- 3.7.43 Some respondents suggested circumstances where higher penalties could be invoked:
- Offences relating to environmentally sensitive areas (e.g. maerl, seagrass, biogenic reef habitat, etc). Areas such as the Clyde area, the cod recovery zone, Lamlash Bay No Take Zone (NTZ) and Loch Creran were highlighted as environmentally sensitive areas.
 - Farmed salmon escapes to sea should merit a higher maximum fixed penalty notice.
 - Persistent breaches or deliberate breaches based on the balance of commercial costs and fine levels.
- 3.7.44 One respondent questioned the need for this provision and asked why fish farm staff should be penalised, adding that if regulatory non-compliances are identified, they should be addressed to the company owners and not to site staff.

In summary:

- Over half of respondents elected not to answer this question.
- There was no consensus amongst respondents on whether there was a case for higher fixed penalty sums in certain regulatory circumstances. Many referred to their responses to Question 39.
- Several consultees suggested circumstances where higher penalties could be merited, including those relating to environmentally sensitive areas, escapes and persistent breaches of regulations.

Enforcement of EU Obligations Beyond British Fisheries Limits

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

- 3.7.45 There was strong support amongst respondents for this proposal with 41 agreeing with an amendment, and only four disagreeing. One hundred and four respondents, two-thirds of the total, declined to comment.
- 3.7.46 There was support amongst the freshwater fisheries (ten), voluntary (nine), public bodies (eight) and professional/academic (two) respondents with no consultees from these sectors opposing the proposal. There was strong support from individual/politician respondents with seven in favour and just one opposed. The only two aquaculture industry respondents who answered the question also supported the proposal.
- 3.7.47 Marine fisheries respondents had mixed views: three agreed, while three, together with one individual/politician, disagreed. There was no response from the „other commercial’ sector.

Discussion

- 3.7.48 A public body felt that it was important that Scotland’s fisheries activities are enforced to the same level and under similar powers to those in England and Wales. Two voluntary respondents agreed, adding that Section 30(1) of the Fisheries Act 1981 should be brought into line with the Marine and Coastal Access Act 2009 in England and Wales, adding that this would reduce the need for subordinate legislation. A marine fisheries respondent felt that the Scottish Government should lobby neighbouring nations to embrace the same concept.
- 3.7.49 Several voluntary respondents felt that the legislation relating to sea fisheries in Scotland must be made fit for purpose to ensure Scotland is able to fulfil its obligations under EC Directive 2008/56/EC (the Marine Strategy Framework Directive). Several commented that this opportunity could be used to amend the Act to further improve the management of Scotland’s inshore fisheries. They recommended amendment of relevant sections to place the emphasis on an ecosystem-based approach to sustainable fisheries management. They felt that this underpins any measures carried out under the provisions of the Act.

- 3.7.50 While adding their support to the proposal for EU fishing regulations and obligations to be enforced beyond the 200 nautical mile fisheries limit for Scottish vessels, a voluntary respondent requested additional information on how this will be implemented and enforced.

In summary:

- Those who responded to this question (around a third of all respondents) largely supported the proposed amendment.
- Some felt that this would bring Scottish provisions into line with the requirements of the Marine and Coastal Access Act 2009 in England and Wales.
- Some respondents suggested that the Fisheries Act 1981 could be further amended to place an emphasis on an ecosystem-based approach to sustainable fisheries management in some sections.

Powers to Detain Vessels in Port

Question 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?

- 3.7.51 Most respondents who answered agreed with this proposal, with 47 respondents answering „yes’ compared to three answering „no’. Almost two-thirds of respondents (99) declined to answer.

- 3.7.52 There was support amongst freshwater fisheries (13), voluntary (nine), public bodies (eight), professional/academic (two) and individual/politician (ten) respondents with no consultees from these sectors opposing the proposal. The only two aquaculture industry respondents to answer the question also supported the proposal.

- 3.7.53 Again, marine fisheries respondents had mixed views: three agreed and three disagreed (all three opponents to the proposed provision were from this sector). There was no response from the „other commercial’ sector.

Discussion

- 3.7.54 Several voluntary sector respondents felt that powers to detain vessels for court proceedings should be brought into line with statutory measures in England and Wales. A marine fisheries respondent stated they were content to accept the principle of this proposal, adding that it appears to close a loophole for foreign vessels.
- 3.7.55 However, a marine fisheries respondent was strongly opposed, stating that a vessel should be allowed to return to sea to resume fishing should a suitably qualified skipper be available.
- 3.7.56 One voluntary sector respondent supported the proposal, but added that they felt it to be imperative that sea fisheries enforcement officers be allocated sufficient resources to make full use of these powers.

In summary:

- While almost two-thirds of consultees declined to answer this question, there was strong support for the proposal from those who did.
- While few additional comments were received on this proposal, support for it was based on the closure of a loophole for foreign vessels, and bringing powers into line with those in England and Wales.
- One respondent felt that it was imperative that enforcement officers are given sufficient resources for this.
- One respondent who opposed the proposal stated that vessels should be allowed to return to sea.

Disposal of Property/Forfeiture of Prohibited Items

Question 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?

- 3.7.57 There was strong support amongst consultees that answered this question, with 49 respondents agreeing, and only two disagreeing. Almost two-thirds of respondents (98) declined to answer.
- 3.7.58 There was support across the stakeholder groups. All of the respondents who answered the question from the following groups were unanimously supportive of the proposal: freshwater fisheries (14), voluntary (nine), public bodies (eight), professional/academic (two) and individual/politician (ten). The only two aquaculture industry respondents to answer the question also supported the proposal.
- 3.7.59 Again, marine fisheries respondents had mixed views, with four respondents agreeing and two disagreeing. There was no response from the „other commercial’ sector.

Discussion

- 3.7.60 A number of respondents discussed illegal equipment, with one freshwater fisheries respondent stating that such equipment should be seized during enforcement exercises, and that it should be disposed of rather than returned to the operator.
- 3.7.61 Several respondents from the marine fisheries sector stated they would not oppose disposal or forfeiture of items that are proved to be of an illegal nature.
- 3.7.62 One voluntary sector respondent felt that the current system, where seized catches must be stored until court proceedings are complete, is unjustifiable to both regulators (i.e. in terms of storage costs and disposal costs of biological matter) and from an environmental perspective (i.e. where biomass is removed from the fishery).

- 3.7.63 Several freshwater fisheries respondents emphasised that it should be illegal to sell equipment that is not legal within the UK (i.e. monofilament gill nets). An individual respondent stated that despite coastal gill netting of salmon being illegal, monofilament gill nets specifically for salmon fishing are still openly marketed. The ASFB added that while it is currently an offence to take salmon with a gill net, this does not prevent salmon being intercepted and killed in these nets provided they are not landed. They agreed with other respondents that there should be regulation of gill netting and suggested this be done along the lines of English bylaws. They also felt that such orders should be made either by Ministers of their own volition or upon application by a DSFB.
- 3.7.64 A voluntary sector respondent felt that tackling illegal netting would have wider conservation benefits, noting the potential for „marine mammals to become trapped or entangled in active (or abandoned) nets’ and suggesting that this has been an issue for mammals and birds in the past.

In summary:

- While almost two-thirds of consultees declined to answer this question, there was strong support for the proposal from those who did. The marine fisheries sector was the only group with mixed views.
- Several respondents felt that there should be regulation of gill netting, that illegal netting should be targeted, and that it should be illegal to sell equipment that is not legal in the UK (specifically monofilament gill nets).

Powers to Inspect Objects

Question 44. Do you agree that sea fisheries enforcement officers should have the powers to inspect object in the sea and elsewhere that are not obviously associated with a vessel, vehicle or relevant premises?

- 3.7.65 Although two-thirds of respondents (100) did not answer this question, of those who did the majority (45) agreed with these proposed powers, and only four disagreed.
- 3.7.66 There was strong support amongst most stakeholder groups to this question with freshwater fisheries (13), voluntary (nine), public bodies (seven) and professional/academic (two) respondents unanimously in favour. Individual/politician respondents were strongly in favour with nine respondents answering „yes’ and just one answering „no’. More marine fisheries respondents agreed than disagreed, with four respondents answering „yes’ and just two answering „no’.
- 3.7.67 The two aquaculture industry respondents who answered the question had mixed views (one agreed and one opposed). There was no response from the „other commercial’ sector.

Discussion

- 3.7.68 A public body provided a detailed response both agreeing with the proposal and suggesting that these powers should be accompanied by a requirement

that „keep pots’ be clearly marked with both the name and port letter numbers (PLN) of the corresponding vessel to assist enforcement officers.

- 3.7.69 A marine fisheries respondent discussed procedures for undertaking these inspections. They felt that in cases where enforcement officers have reasonable cause to inspect an object, and where those responsible for any particular unattributed object in the sea can be easily identified, they should be given the opportunity to be involved in any inspection. They added that in cases where it is not possible to identify the responsible party, enforcement officers should be able to show reasonable cause before inspecting the object.

In summary:

- While almost two-thirds of consultees declined to answer this question, there was strong support for the proposal from those who did.
- A respondent discussed procedures for undertaking these inspections, requesting that officers have reasonable cause for an inspection and that those parties responsible be given an opportunity to be involved.

Sea Fisheries (Shellfish) Act 1967

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

- 3.7.70 A total of 30 respondents agreed with this proposed amendment, whilst 17 disagreed. Over two-thirds of respondents (102) declined to answer.
- 3.7.71 There was support across the stakeholder groups who answered this question. The freshwater fisheries respondents were supportive, with eight in favour and just one opposed. Professional/academic bodies who answered this question (two) were unanimously supportive. There was also support from public body respondents with seven respondents answering „yes’, and two answering „no’.
- 3.7.72 Marine fisheries consultees were largely against the proposal with two agreeing and four disagreeing.
- 3.7.73 Respondents from the voluntary sector had mixed views (five supporting and three opposed), as did those from the aquaculture industry (two in favour and two opposed) and individuals/politicians (four supporting and five opposed). There was no response from the „other commercial’ sector.

Discussion

- 3.7.74 Some freshwater fisheries respondents welcomed the proposal to add clarity to the Sea Fisheries (Shellfish) Act 1967, although one felt that the proposal should encompass all shellfish. A voluntary respondent noted that the alteration of the Act should „not lessen the rigour by which any order granted under the Act will be considered by the government and the tests which are applicable under Schedule 1 of the Act’.
- 3.7.75 Several voluntary respondents went further, suggesting that the Sea Fisheries (Shellfish) Act 1967 be reviewed and amended to ensure that it is „fit for

purpose'. One consultee felt that this was important to ensure that Scotland fulfils its obligations under EC Directive 2008/56/EC (the Marine Strategy Framework Directive). This view was shared by a public body, who added that this opportunity should also be used to ensure that the definition of shellfish is consistent across regulatory regimes. They felt that any amendments to the Act should „support the application of regulating orders as a means of implementing regional management systems within inshore waters’.

- 3.7.76 However, a shellfish aquaculture respondent disagreed with the proposal, and questioned why the Act should be amended, as in their view it would incur unnecessary cost.

In summary:

- While over two-thirds of respondents declined to answer this question, there was general support across most stakeholder groups who did respond. The marine fisheries sector respondents were largely opposed.
- One shellfish industry respondent felt that the Act was sufficiently defined and opposed any amendment on the grounds that it would incur unnecessary costs.
- Some respondents felt that the Act should be made „fit for purpose’, with several suggesting the definition of shellfish be made consistent across regulatory regimes, and that any amendments should support regulating orders to implement regional management systems within inshore waters.

3.8 Section 6 – Paying For Progress

Question 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?

- 3.8.1 A total of 67 respondents agreed with enabling provisions for charging for services, whilst 40 disagreed. Forty-two respondents declined to comment.
- 3.8.2 All ten public body respondents to this question were supportive. Freshwater fisheries consultees were also largely positive with 37 respondents agreeing and just three disagreeing (one DSFB/RAFTS and two angler’s association). Similarly, 11 respondents from the voluntary sector were in favour compared to just two opposed (NGOs and campaign groups).
- 3.8.3 In contrast, the majority of the aquaculture industry (16) and marine fisheries (4) respondents were opposed to the proposal, with just one respondent from each group in favour. There was also opposition from the professional/academic (2) and other commercial respondents (2).

3.8.4 Individual/politician respondents were split in their views on the proposal, with seven respondents in favour and 11 respondents opposed.

Discussion

3.8.5 This question prompted a large number of additional comments from respondents, and these varied greatly in focus and level of detail. Several distinct issues were raised, and these are discussed in the following paragraphs.

Need for clarification

3.8.6 Several respondents from the aquaculture industry, freshwater fisheries, voluntary, public bodies and professional/academic sectors felt that additional consultation should be undertaken specifically on this issue. Some aquaculture industry respondents and a professional/academic respondent felt that the services and benefits referred to are unclear. The SSPO stated that it must be properly and fully developed as a basis for public consultation.

3.8.7 These consultees noted the need for further clarification on a range of issues:

- Clarification of the demand for these services and benefits from the industry.
- Additional value of the services and benefits.
- Determination of the services and associated charging regime (i.e. the services incurring a direct charge, the services incurring a generic charge, and the services provided at no cost at the point of delivery).
- How revenue will be distributed.
- Who may be charged, levels of payment and benefits.

3.8.8 Several aquaculture industry respondents questioned what the Scottish Government provides „for free’, with some noting that this information was necessary for them to make a proper assessment of the proposal.

Linking cost with benefits

3.8.9 The scale of this payment was the subject of much discussion. Some respondents, predominantly from the freshwater fisheries sector, agreed with the principle that those receiving direct and exclusive benefits should pay for public services. Several freshwater fisheries respondents expressed concern about generic charges being passed on.

3.8.10 A voluntary respondent made a comparison to the „polluter pays principle’ and broadly supported cost recovery on this basis. Several of these respondents felt that fisheries proprietors often benefit more than the general public from such activities, and should pay accordingly. A voluntary respondent noted that the direct and exclusive benefits for businesses would need to be identified for such a system to work. Several other freshwater fisheries respondents noted the difficulty in determining benefits, adding that they do not accrue purely to specific individuals or businesses.

Key concerns

3.8.11 There was strong opposition to the proposal from the aquaculture industry and marine fisheries sector.

- 3.8.12 Several aquaculture industry respondents questioned what the Scottish Government provides 'for free', with others discussing whether any of the services provided are actually wanted or needed by the industry. An aquaculture industry respondent was concerned that the industry could be charged for 'additional public sector scrutiny' which they felt was neither necessary nor requested. Another aquaculture industry respondent noted that the industry already procures and pays for research and development and other services, and indicated that any such government charges would need to be subject to industry specification and an open competitive tender arrangement.
- 3.8.13 Some felt that costs associated with statutory functions should rest with the Scottish Government, and stated that the aquaculture industry will only contribute to certain research projects provided they are worthwhile and value for money to the industry. Along these lines, a freshwater fisheries respondent felt that the enabling provisions should be scaled back across the board, and suggested that the Scottish Government return to the core requirement of fulfilling statutory obligations only.
- 3.8.14 However, a marine fisheries respondent stated that the Scottish Government is obliged under EU regulation to provide the services of management, compliance and science. They were concerned about this being interpreted as enabling the future imposition of charges for services, and noted that there has been no aquaculture industry consultation in the development of this proposal.

Levels and mechanisms for charging

- 3.8.15 Some consultees provided suggestions on the proposed charging regime using a levy system. Several freshwater fisheries respondents and one public body suggested that SEPA's charging regime would provide a good model for this one. They noted that SEPA levy a charge for each specific application made, and suggested that generic services (i.e. setting up the framework for CAR, data collection standards, etc) should not be charged. It was noted that as per the SEPA model, the Scottish Government would be expected to meet certain performance requirements, with one consultee specifically stating that there should be a provision for a statutory timeframe included in the Bill. A marine fisheries respondent also supported charging provisions in the form of levies for fish farms, but noted that a statutory requirement for accurate figures to be provided on occupancy levels would be necessary to enforce this.
- 3.8.16 A professional/academic consultee felt that the provision of 'relatively unspecified charging' would not be well accepted in the current financial climate. Some consultees felt that some benefits may be reasonably viewed as being 'for the common good', and in such cases, they felt that public sector activities should be funded largely from general taxation.
- 3.8.17 A freshwater fisheries respondent expressed concern about the potential for charges for conservation applications to fall to DSFBs, stating that the aim of these applications should be to deliver environmental benefit. Several others from the freshwater fisheries and individual/politician stakeholder groups, felt that any charging regime should acknowledge the financial contribution made by DSFBs to fisheries management. Some freshwater fisheries respondents

and one public body consultee stated that any charges should be kept at a sufficient level to ensure they are not too large for smaller DSFBs.

General comments on charges

- 3.8.18 Several consultees made general comments on charging issues in their responses. For example, a voluntary respondent felt that one of the main issues facing both the industry and Marine Scotland is uncertainty over ownership of the resource. Another noted that there are presently statutory costs for riparian owners relating to migratory fish, and that these will be passed on to the angler with other overhead costs.
- 3.8.19 Several respondents discussed rod licensing, with one angler's association agreeing with the concept of anglers contributing to the cost of 'managing fisheries, fish stocks and the environmental quality of fishing waters'. However, they disagreed with rod licence fees being used to support general public revenues. A voluntary respondent shared this view, but felt that this income should be shared with river liaison committees. Similarly, an angler's association felt that any revenue received should be applied to support specific activities only.
- 3.8.20 A voluntary sector respondent felt that it is important that SEPA be fully funded to meet the extended responsibility.

In summary:

- While many consultees supported the proposal for enabling powers to allow for charges for public services, there was strong opposition from the aquaculture and marine fisheries industries.
- Some consultees felt that additional consultation should be undertaken on this issue. They asked for clarification of the services and benefits to be provided, as well as the charging regime.
- The scale of this payment was the subject of much discussion. Freshwater fisheries respondents were concerned about generic charges, and asked for a proportionate approach to reflect the finances of DSFBs.
- Concerns were raised about the ability to identify and attribute 'direct and exclusive benefits' and there was a view that activities 'for the common good' should be funded largely from general taxation.
- Industry was concerned that they could be charged for 'additional public sector scrutiny' which they felt was neither necessary nor requested.
- Some suggested use of a levy system based on applications made and service standards, along the lines of the SEPA model.

Question 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?

3.8.21 A total of 69 respondents answered this question. Of these, there were two from public bodies, 14 from the aquaculture industry, three from marine fisheries, 28 from freshwater fisheries, three from professional/academic bodies, seven from voluntary groups, ten from individuals/politicians, and two from other commercial businesses.

Additional burdens to industry

3.8.22 There was significant opposition to the Paying for Progress charging provisions, from the aquaculture industry in particular. Several felt that there will be significant resource implications and substantive costs associated with the proposal, and were concerned that these will fall on the shoulders of the local industries and perceived beneficiaries.

3.8.23 Several respondents felt that many of the charges were not in their commercial interest. Some felt that the aquaculture industry would suffer a loss of competitiveness, while others questioned the aims of the proposal.

Necessity of services

3.8.24 As for Question 46, some aquaculture industry respondents and a professional/academic respondent questioned the need for the proposed measures. Several respondents stated that they should not be charged unjustifiable costs for additional public sector scrutiny which is not necessary or requested. An academic respondent stated that many services, such as providing additional data and paying for the cost of its analysis by the Scottish Government, would not be seen by the sector as being in their immediate commercial interest. They added that the government must maintain its commitment to reduce the red-tape burden on industry.

3.8.25 The SSPO and several other aquaculture industry respondents discussed this in some detail. The SSPO stated that:

- Four of the eight service sectors provided by government (Aquaculture Policy Department, Regulatory Policy, International Relationships and Grants) were already funded by general taxation to which the aquaculture industry and its employees make substantial contributions.
- A further two service sectors (Planning and Licensing) are already subject to a charge on the applicant.
- The remaining two sectors (Research and Fish Health Inspections or FHI), were considered to be of little benefit to the aquaculture industry, with FHI costs duplicating services that are already provided by professional fish farm veterinarians.

3.8.26 They added that they already procure and pay for research and development, and would be against paying for unspecified services in an open ended way.

3.8.27 One aquaculture industry respondent felt that most of the issues raised were already covered in existing legislation, and covering these in more depth would stretch resources and increase costs. They also noted that such changes would also put a strain on Marine Scotland's Fish Health Inspectorate.

Support for the proposals

- 3.8.28 Whilst broadly supportive of the proposal, a public body recommended that charges should be set in consultation with industry, and aim to be „cost neutral, with no profit element, if they are provided by the public sector’.
- 3.8.29 A freshwater fisheries respondent supported charging the aquaculture industry, given its multinational character, and considered it to be reasonable that the cost of enhanced monitoring should be recovered from the industry. They were of the view that the public should not be expected to subsidise private enterprise. However, this respondent also felt that it would be wrong to impose blanket generic charges for services that in practice do not always exist. Referring to the example of the Northern Isles where assistance is limited, they noted that the benefits of public sector management are not evenly spread.

Additional bureaucracy and duplication of work

- 3.8.30 Many respondents, predominantly from the aquaculture industry, questioned the need for additional „bureaucracy’.
- 3.8.31 Responses from a range of sectors indicated that the aquaculture industry was already doing some of this work and any legislation implemented should not replicate this. The additional value of this was questioned. Again, it was pointed out that fees are already in place for licensing and planning, and that industry may not support the additional provisions for which charges may be levied. Several aquaculture industry respondents suggested that using working groups or expert committees instead of the services provided by the public sector would negate the need for these extra costs.
- 3.8.32 Several aquaculture industry respondents felt that most of the issues raised are already covered within existing legislation and suggested a fuller review to increase streamlining and reduce the need for costs.
- 3.8.33 Several respondents from the freshwater fisheries sector also commented on this issue. Two agreed with aquaculture industry respondents that any changes should not duplicate work already been done by the DSFBs.

Public funding

- 3.8.34 Except for those from the aquaculture industry, there was reasonable support for public funding for at least some activities. However, respondents’ opinions varied greatly as to what should be funded.
- 3.8.35 An academic respondent noted that the Scottish Government has obligations to comply with EU Directives on environmental matters, and as such, improvements in environmental performance give both the government and the general public benefits. They felt that there is a clear public interest in many cases, thus justifying allocating a proportion of public funding in such cases.
- 3.8.36 There were mixed views on the level of public sector funding contributions. For example, a voluntary sector respondent suggested that while general day-to-day running expenses could be publicly funded, the relevant industries should contribute through licence payments. In contrast, others felt that the proposed provisions should be centrally funded by the Scottish Government.
- 3.8.37 A voluntary sector respondent felt that public funds should be available for „certain costed projects’, and added that they felt there was a specific case for

the protection and maintenance of walkways, habitats, and general environment conservation to be for the benefit of all.

Consideration for DSFB operations

- 3.8.38 Eighteen DSFB respondents endorsed the views of their association, the ASFB, who limited their comments to the salmon and sea trout fisheries sector. Together, they expressed concern about the potential effects of these proposals for their sector.
- 3.8.39 The ASFB noted the benefit to Scotland that the DSFBs provide, and felt that to replicate the management models of DSFBs where Board members give their time on a voluntary basis would be very costly. They felt that any decisions on the level of change, or indeed the need for any changes, should be taken in light of the considerable value already provided by DSFBs. Several respondents emphasised the current burden on Boards and Trusts, with some highlighting that the increasing number of applications for hydro and wind farm developments is contributing to this burden.
- 3.8.40 Going beyond this, one freshwater fisheries respondent considered funding and charges across the wider aquaculture and freshwater fisheries industries. They were broadly supportive of the charging of the aquaculture industry, but also felt that the financial positions of „grass roots voluntary organisations’ (i.e. River Boards and Trusts) always need to be taken into account.

Tailoring of charges

- 3.8.41 Some respondents felt that charging should be considered on a case-by-case basis. One suggested that this should also take into account the needs and responsibilities of the parties involved. Others pointed out that the benefits of public sector management are not evenly distributed and therefore blanket charges were not appropriate.

Additional consultation

- 3.8.42 Several consultees from the marine and freshwater fisheries sectors felt that additional consultation was required. Some felt that any charging regime should be developed in partnership or consultation with the aquaculture industry and fisheries stakeholders. More detail on the proposals was also sought.
- 3.8.43 One voluntary sector respondent felt that the principle of the proposal has merit, but noted that the funding methods and the way that the benefit will be distributed needs wider debate. A further three respondents from the freshwater fisheries sector did not object to the proposal on principle, but noted that they „reserve the right to oppose particular provisions’ if they appeared to be contrary to their interests (i.e. coarse fishing, coarse angling).

Role of Marine Scotland

- 3.8.44 Some respondents, predominantly from the aquaculture industry, questioned the overall role of Marine Scotland, expressing concern about the reasoning underlying the proposal. Nine of these respondents believed that a „full and comprehensive public review of Marine Scotland’ was needed, including a detailed evaluation of the potential market for its services, before this proposal is made.

3.8.45 The SSPO and several other aquaculture industry respondents were opposed to paying for unspecified services, and noted that they procure and pay for research and development themselves. Whilst the aquaculture industry would not rule out procuring services from Marine Scotland, this would be subject to industry specification and an open competitive tender process. One freshwater fisheries respondent also suggested that any new activity should be undertaken through competitive commercial tendering to ensure value for money and efficiency. One respondent questioned the ability of Marine Scotland to deliver an appropriate standard of service.

Rod licence scheme

3.8.46 Two respondents discussed rod licences. A voluntary sector respondent recommended a rod licence system similar to that in place in England and Wales, but also noted that this should be debated further. A freshwater fisheries respondent suggested any proposals for generic charges, such as rod licences, should consider the differing needs of different areas.

3.8.47 Both respondents felt that income raised should be returned in proportion to the respective areas. Suggested uses included improvements to fishing habitats for all species, or being passed to local Boards and Protection Order (PO) Committees.

Suggestions and options for the implementation of charges

3.8.48 Several consultees provided suggestions for the implementation of charging systems for public services. One public sector consultee proposed adopting a system where statutory services to industry are subject to annual review and adjustment and recommended that this should be clearly defined in legislation. They suggested that when industry seeks a service from the public sector, they should be informed of the charges beforehand (i.e. £X per sample or visit, etc). They recommended that any new charges be phased in over an agreed period.

3.8.49 Similarly, one freshwater fisheries respondent suggested that the Scottish Government should examine the funding system of the Centre for Environment, Fisheries and Aquaculture Science (CEFAS) in England and Wales. In this model, core government funding is provided for work relating to the statutory obligations of the FHI, and commercial sources of income are sought for research activity and where specific business development activity is undertaken.

3.8.50 Other respondents broadly agreed with the proposals in the Consultation Document, but attached a range of caveats. These included:

- The approach should be cost-neutral, with no profit element, if these services are provided by the public sector.
- Costs should also be clearly defined and phased in over an agreed period.
- Plans should be agreed on a five-yearly cycle, and benefits to each stakeholder should be agreed over this timeframe with funding sought accordingly.

Other options

3.8.51 Some respondents identified a range of other options for raising funds and/or cutting costs in addition to or as an alternative to the proposals in the Consultation Document. These included:

- Self funding with grant applications for specific projects.
- Reduced spending cuts .
- Resourcing through the proceeds of crime legislation (i.e. using confiscated money and selling or scrapping confiscated vessels).
- Tendering and cost sharing between government and industry.
- Review of the existing cost structure and comparison with the actual performance delivered within existing legislation.
- Using Crown Estate revenues from fish farm leases.
- A levy based on the production from a given fish farm.
- Industry should further develop its own world leading standards, with legislation in place as a backstop.
- Funding from SEPA and SNH budgets.
- Expansion of existing and new partnerships between RAFTS, Fishery Trusts, the Scottish Government (including MSS), SEPA, the ASFB and DSFBs.

In summary:

- Aquaculture industry respondents felt that they were already doing some of this work, and were concerned about potential cost burdens. There was concern about any additional bureaucracy, and the potential duplication of existing work between the aquaculture and freshwater fisheries sectors.
- Many respondents outside the aquaculture industry were reasonably supportive of using public funding for some activities, but opinions varied over what should be covered in this way.
- Support was based on the assumption that there would be a need for fair charging of the aquaculture industry, along with recognition that the public should not subsidise private enterprise.
- Some DSFB respondents were concerned at potential impacts of this proposal on their operations, particularly in financial and resource terms.
- Several respondents felt that such charging should be considered on a case-by-case basis, and others felt that additional consultation was required prior to any changes to the current system.
- Many aquaculture industry respondents questioned the current role of Marine Scotland, and requested a public review of its operations.
- There were further suggestions for implementing a charging system, including an annually reviewed and agreed system and one modelled on CEFAS in England and Wales.
- Two respondents suggested that rod licences could be a source of funding, but added that any income raised should be returned in proportion to the areas where it was raised.
- Some respondents also suggested options for raising funds or cutting costs in addition, or as an alternative, to the proposal.

Question 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?

3.8.52 A total of 65 respondents responded to this question, including two public bodies, 14 aquaculture industry, 25 freshwater fisheries, three professionals/ academic bodies, nine voluntary groups, ten individuals/ politicians, and two other commercial businesses. No responses were received from marine fisheries consultees.

Higher penalties or additional charges

3.8.53 Rather than stopping activities to save funds, several respondents suggested ways of obtaining additional funding, largely focusing on applying additional charges to the aquaculture industry.

- 3.8.54 One individual suggested adopting higher fixed penalties and undertaking more stringent checks on aquaculture operators as a source of additional funding. A voluntary respondent added that funding could be generated by charging realistic fees for licences and consents. Another individual respondent felt that additional funding could be obtained by introducing an additional licence charge on the fish farm industry.

Improved efficiency in governance

- 3.8.55 A common thread amongst respondents was the potential for greater efficiency in Scottish Government roles and activities. Suggestions were largely centred on reviewing Scottish Government work and improving efficiencies via interactions and overlaps between government agencies and other authorities with fishery interests.
- 3.8.56 An academic suggested examination of individual fish stock assessment to determine if this is justified on ecological or management grounds. They felt that replacing this system with a more ecosystem-based approach would be more effective in both management and cost terms. They also felt that, given that the Scottish Government currently charges the aquaculture industry and DSFBs for services, additional funding could be obtained by extracting proportional charges from the marine fisheries sector.
- 3.8.57 Some respondents felt that a review of all government and agency functions in aquaculture should be undertaken, to identify overlaps and duplication of activities and responsibilities, and therefore potential cost savings. Some felt that closer liaison and co-ordination between SEPA, SNH, MSS, Local Authorities and DSFBs could free up funds. More specifically, RAFTS and another Fishery Trust suggested that the public sector should identify priority areas of work that it would maintain, with the aim of informing tighter and more focused activities to deliver in partnership with RAFTS and its members. Another respondent felt that there were opportunities for both the private and public sectors to collaborate, particularly noting the emergence of RAFTS and local trusts across Scotland.
- 3.8.58 Similarly, several aquaculture industry respondents felt that reviewing how the fish farming industry can work more closely and effectively with all stakeholders (i.e. aquaculture, wild fishing interests, government, accreditation bodies, scientific researchers and the private sector) would improve efficiency. They also suggested a review of required and essential government services to reduce costs. One respondent felt that a full review of the existing cost structure should be undertaken, and this should be compared to actual performance delivered within existing legislation.
- 3.8.59 The ASFB and other freshwater fisheries respondents suggested extending the period in which DSFBs can authorise certain activities without needing to apply to Scottish Ministers for authorisation. In particular, they felt that allowing DSFBs to consent activities like electro-fishing throughout the year would free up government resources. They added that DSFBs should be consulted when an application for electro-fishing is received for their district to ensure that there is no interference with existing sampling programmes. They also felt that a national strategy for the collection of fish data could potentially help to refine the operations of MSS and free up resources.

- 3.8.60 A public body suggested that, where the aquaculture industry is unwilling to fund discretionary services, these should be discontinued by the public sector, and provided instead by the private sector on demand.
- 3.8.61 One freshwater fishery respondent felt that basing decisions locally could reduce spend and free up investment in the industry. Another said that halting inspections of fish farms could result in savings. A second freshwater fisheries respondent suggested a cost benefit analysis of visits from the FHI.

Marine Scotland role

- 3.8.62 As in responses to Question 47, several aquaculture industry respondents were critical of the charging proposals and questioned the role of Marine Scotland.
- 3.8.63 The SSPO, supported by several other aquaculture industry respondents, felt that the question itself was inappropriate and that „any organisation seeking to develop a charged services regime must start from point zero, making the assumption that every single one of its functions and activities must be specifically justified and that the customer for whom the work is undertaken must determine the amount and detail of the work they are prepared to pay for’.
- 3.8.64 Some respondents felt that an independent review of Marine Scotland and a detailed evaluation of the potential market for its services must be undertaken before any significant change can be made. (This view was also stated in the responses to several other consultation questions.) One respondent felt that the industry is unlikely to agree with paying for services currently provided by Marine Scotland, with another stating that the industry will only contribute to certain research projects if they are worthwhile and relevant to them.
- 3.8.65 A freshwater fisheries respondent felt that certain areas of Marine Scotland activity could be stopped, particularly some research and development. It was suggested that the Marine and Freshwater Fisheries Laboratories could be transferred to the private sector, or work closely with academic institutes. Research and development work should be linked to industry priorities and operational activity should be on a more commercial footing. Other respondents recommended a better understanding of the roles and needs of both Marine Scotland and industry operators.
- 3.8.66 One voluntary sector respondent reported a perception that the Scottish Government has a conflict of interest in relation to fish farming as it supports, regulates and enforces the industry. Delegating many of Marine Scotland’s regulatory functions to non-departmental public bodies (i.e. SEPA) was suggested.
- 3.8.67 In relation to this, several aquaculture industry respondents recommended the following actions:
- Separation of Marine Scotland research and FHI functions to ensure there is no risk of impaired governance and conflict of objectives.
 - FHI responsibilities are clearly specified and codified in writing and procedures for inspectors published and available to industry.

- The role of the FHI be reviewed by an independent committee consisting of representatives of the Scottish Government, the Royal College of Veterinary Surgeons, the Fish Veterinary Society and the fish farming industry.
- An independent review of Marine Scotland's research programmes to assess relevance to government and industry, and determine if they could be delivered more effectively and cost efficiently by alternative providers or structures. This issue ties in with previous SSPO comments that Marine Scotland could undertake industry research work through a competitive commercial tendering process.

3.8.68 An individual respondent added that if the FHI provides animal health services to farmers, they need to be accountable and adequately indemnified for the consequences of their actions.

Further assessment/consultation

3.8.69 One respondent felt that the proposals on what the services and benefits are, and level of demand for them, was unclear. Others felt that further discussion would be needed before any decision to stop an activity or to introduce a rod licence system be considered further.

Other comments

3.8.70 Several respondents provided other general comments in their responses:

- An aquaculture respondent felt that the Act did not need to be re-developed within five years of having been passed (i.e. the Aquaculture and Fisheries Act 2007).
- A voluntary sector respondent felt that political will is all that is required in relation to this issue.
- A freshwater fisheries respondent stated that they do not object to the creation of charging provisions, but they reserved the right to oppose particular provisions should they be contrary to the interests of coarse fish or coarse angling.
- A professional/academic respondent felt that the FHI have to be adequately indemnified and be accountable for any consequences arising from their actions.
- Two respondents, one individual and one from the voluntary sector, felt that removing some or all offshore fish farms would allow considerable cost savings in terms of transparency and controls.
- As for Question 47, two voluntary sector respondents discussed funding from a rod licence scheme, with one feeling it was important that any money raised be returned in proportion to the local Boards and Protection Order Committees. The other stated that they would not be opposed to this, provided that part of the income from it was shared with their organisation.

In summary:

- There was some support for the placement of additional charges on the aquaculture industry (i.e. higher fixed penalties, fees and licence charges). However, this support was not shared by the industry itself.
- There was strong support amongst respondents for making savings through improving efficiency in governance. Suggestions included:
 - Addressing duplication of activities between government and agencies.
 - Closer liaison and co-ordination between stakeholders (i.e. SEPA, SNH, MSS, Local Authorities, DSFBs and the aquaculture industry).
 - Discontinuing discretionary public sector services that the industry is unwilling to fund.
 - The need for a better understanding of the roles and needs of both Marine Scotland and industry operators, and the services and benefits provided by the proposals was emphasised.
 - Adoption of a national strategy for data collection was suggested.
 - Several aquaculture industry respondents questioned the role of Marine Scotland, and suggested the following: i) separation of Marine Scotland research and FHI functions; ii) clear specification of FHI responsibilities and review of its role by an independent committee; and iii) independent review of Marine Scotland's research programmes to assess relevance and determine if they can be delivered more effectively and cost efficiently.

4 Other Comments and Issues Raised

Summary:

- This section presents a summary of additional comments and issues raised by respondents outside the scope of the consultation questions.

4.1 Introduction

4.1.1 Many respondents provided additional comments on wider issues relating to aquaculture and wild fisheries in their responses. Where possible, these comments have been reported earlier in this report, alongside analysis of responses to specific consultation questions.

4.1.2 The remainder are summarised in the following paragraphs.

4.2 Comments on the Strategic Environmental Assessment

4.2.1 Some respondents disagreed with information provided in the SEA and/or consultation documents, raising a number of issues.

4.2.2 A freshwater fisheries respondent contended that the Consultation Document significantly understated the estimated worth of aquaculture and salmon and freshwater fisheries. Another discussed the contentious nature of the data presented, adding that if no consensus could be reached by stakeholders, then independent research should be commissioned by the Scottish Government to investigate any perceived impacts from finfish farms on the wider environment. A further respondent from this sector felt that this information was optimistic, adding that the numbers of salmon returning to Scottish waters have clearly reduced from those observed 60 years ago.

4.2.3 Several aquaculture industry respondents disagreed with numerous aspects of the SEA and consultation data, with one respondent questioning some of the conclusions of the SEA and evidence behind them. Comments made on the SEA included:

- The Environmental Report lacks source references for some of the points made (i.e. survival of salmon at sea, genetic differences between farmed and wild salmon).
- There is no debate on the reasons for declines in wild salmon and trout numbers, with one consultee adding that the contrasting trends for Scotland's east and west coasts was not qualified. They felt there is no evidence to show a link between a drop in wild salmon stocks and increase in fish farms.
- Claims by many in the angling fraternity that west coast fish farms are the cause of wild salmon and trout declines were contested, and it was countered that natural events (i.e. flooding and sparse vegetation) and angling activities were instead to blame.

- Farmed salmon can leap out of the water to remove sea-lice.
- The impartiality of the WWF report on sea-lice and the reliability of the River Isma experiment for interactions between wild and farmed salmon were both questioned.
- Statements about the genetic integrity of Scottish wild salmon were questioned. One respondent contended that angling has been a major factor in the loss of genetic purity of wild salmon, due to the large numbers that have historically been removed by anglers.
- A drop in fish numbers within SACs was not solely attributable to net fishing: anglers have taken a healthy proportion from these areas in the past.
- There was little evidence on the number of salmon escaping from fish farms and breeding with wild salmon. One respondent stated that any offspring are unlikely to be viable and therefore any genetic variation will soon be bred out.
- There is no evidence showing present systems regarding wellboat controls have an impact on wild fish populations.
- There is no evidence of clear links between the increase of sea-lice in wild fish stock and fish farms, or that sea-lice are responsible for the decline of wild salmon.
- One respondent stated that surveys of wild fish for sea-lice have identified some infestations, but suggested that the approach to sampling (i.e. sweep netting) may have exaggerated the issue.

4.3 Mixed Stock Salmon Fisheries Working Group

- 4.3.1 Some freshwater and marine fisheries respondents stated their support for the recommendations of the Mixed Stock Salmon Fisheries Working Group on a range of issues.

4.4 Changes in Farming Practices

- 4.4.1 Closed containment was raised by several freshwater fisheries respondents. Some felt that the Scottish Government should encourage this, in order to mitigate impacts on wild fish.
- 4.4.2 A respondent added that they supported the use of public expenditure to support production innovations that also offer environmental benefits. Two freshwater fisheries respondents suggested the use of on-shore tanks filled with sea water to resolve issues with sea-lice and commercially damaging species.
- 4.4.3 Another consultee called for a phased withdrawal of smolt production in freshwater cages in Scotland.

4.5 Escapes

- 4.5.1 Several respondents suggested that a hard line should be taken on the issue of escapes from farmed salmon sites. One freshwater fisheries consultee felt that there should be a statutory requirement that operators take remedial action following the reporting of an escape to Marine Scotland. They also felt that genetic sterilisation of farmed fish could eliminate impacts from interbreeding of escaped salmon with wild fish.
- 4.5.2 Another two freshwater fisheries consultees suggested that consents should not be given for moving finfish farm cages into open waters on the west coast of Scotland (i.e. the Minch or North Atlantic) as they would be vulnerable to equipment failure in severe weather.

4.6 Environmental Considerations for Siting

- 4.6.1 A freshwater fisheries respondent felt that there should be a statutory presumption against smolt-rearing developments located adjacent to river catchments of key importance to wild salmonids. Several voluntary sector respondents felt that Ministers should have appropriate powers to require the relocation of fish farms, where supported by scientific evidence. One consultee felt that this measure should even be applied in situations where farms have already been granted permanent planning permission.
- 4.6.2 An individual felt that relevant DSFBs should be consulted when an Environmental Impact Assessment (EIA) for a development is conducted, or when matters relating to Town and Country Planning are known to affect a river system.
- 4.6.3 A voluntary sector respondent commented that an ecosystem approach to fisheries management should be taken by DSFBs, and promoted by SEPA and Ministers.

4.7 Provisions for Other Species

- 4.7.1 Several freshwater fisheries respondents noted that the Consultation Document is focused on salmon and sea trout, with less consideration of other fish species. This was repeatedly referred to in responses. More specifically, one respondent felt that the implications of some of the proposed measures for other marine and freshwater species (including halibut, rainbow trout and trout) have not received sufficient consideration.
- 4.7.2 Another consultee felt that any species of conservation interest (e.g. eel, Arctic char, vendace, powan, lamprey, etc) should be appropriately protected and recognised, whilst recognising that this is done largely through the network of conservation site designations at present. However, it was also noted that some widespread species (i.e. eel) with recognised high conservation value do not have any protected sites and clarification of implementation of the Eel Management Plans was sought.

- 4.7.3 Some respondents suggested that further proposals relating to other species should be the subject of future consultation, with some feeling that this was overdue.
- 4.7.4 Additional measures to protect other marine and freshwater species suggested by respondents included discontinuing a proprietor's right to remove these species without the appropriate authority.

4.8 Additional Comments Relating to DSFBs

- 4.8.1 A freshwater fisheries respondent felt that the status of trout and sea trout should be clarified, and all trout in the species 'Salmo trutta' should be within the statutory remit of DSFBs.
- 4.8.2 Another felt that DSFBs should be considered as a statutory consultee for all applications for planning permission that may directly or indirectly impact upon their river systems.

4.9 Further Consultation and Collaboration

- 4.9.1 One marine fisheries consultee felt there is a need for further consultation with other interested parties in relation to the operation of MAs (i.e. Boards, rod fisheries interests, commercial fishermen and tourist boards). They felt that the main areas of this consultation should be on sea-lice infestation of smolts, use of chemicals in areas where there is little water exchange, better control of salmon numbers per cage, and better cage construction.

4.10 Close Times and Net Leaders

- 4.10.1 Some respondents discussed wider issue with close times. One marine fisheries respondent felt that the Scottish Government should consider the abolition of weekly close times in relation to netting and introduce an allocation of 'days at sea for netting'. They felt that this would protect heritable rights and allow opportunities for fishing when there are sufficient and robust stocks.
- 4.10.2 Two freshwater fisheries and individual respondents stated that weekly close times are not being observed in some parts of Scotland, particularly noting that net fishing leaders are often left in place over close times due to health and safety reasons (i.e. rough seas making removal too dangerous). They felt that this was effectively a means of extending net fishing into weekly close times, and suggested that netsmen should be required to report all such occurrences to the DSFB when these leaders are not removed. They felt that the leaders should be removed for a corresponding period at the earliest opportunity during a valid fishing period, as compensation for fishing during a close time period. However, a marine fisheries respondent suggested abolition of weekly close times altogether to avoid netting interests taking unnecessary health and safety risks in the removal of leaders.
- 4.10.3 A marine fisheries respondent felt that the requirement that they remove netting gear from the fishing station at the end of the season should be revised, stating that as netting interests often reside there, they store their gear at the station. They felt that revision of the current provision (to remove gear from the

sea within 36 hours at the end of the season) should take account of health and safety concerns, and suggested adding „where practicable having due regard for health and safety of the personnel involved’ into the provision.

- 4.10.4 This respondent also suggested the introduction of legislation for an 80-metre exclusion zone around fixed engines within the sea, citing health and safety concerns associated with gear becoming tangled in vessel propellers.

4.11 Netting Stations

- 4.11.1 A voluntary sector consultee stated that there is a large but undefined number of inactive netting stations in Scotland, and that netting rights still exist for these. They noted that the 1997 Report by the Scottish Salmon Strategy Task Force stated that it would be inappropriate to prohibit the operation of active net fisheries, but that there should not be any increase in fishing effort.
- 4.11.2 Several freshwater fisheries and individual consultees felt that a DSFB or local angling club should have a statutory pre-emptive right to purchase or lease a netting station if it is put up for sale or lease to a third party. They felt that this would prevent increases in fishing efforts, and contribute to meeting international obligations.
- 4.11.3 Several freshwater fisheries and one voluntary sector respondent noted an imbalance in financial burdens between net and other fisheries, stating that net fisheries account for over 45% of the retained catch yet contribute just 1.3% of total funding raised for fishery management by DSFBs. They added that this should be addressed in future legislation.
- 4.11.4 A freshwater fisheries respondent felt that netsmen should report all non-salmonid species they catch in their nets.

4.12 Angling

- 4.12.1 One freshwater fisheries respondent felt that „catch and release’ of salmon should be statutory in all Scottish rivers for salmon, and particularly in the spring. They added that they felt that restrictions on rod fishing in the River Helmsdale are „suffocating the local economy’.
- 4.12.2 One freshwater fisheries respondent felt that consideration should be given to changing the annual season to reflect the changing climate.

4.13 Coarse Angling

- 4.13.1 There was concern that the proposals in the Consultation Document would adversely impact the coarse angling industry. One respondent felt that the provisions in Section 4 of the document would stop the stocking of coarse fish, and give fishermen the right to kill coarse fish if caught, effectively ending coarse fishing in Scotland.
- 4.13.2 A voluntary sector respondent felt that coarse fish should be considered in this consultation, particularly the introduction of open and closed seasons for coarse fish to reduce pressure on spawning fish stocks. They added that there are currently measures in place in England to protect coarse fish stocks.

4.13.3 A freshwater fisheries respondent suggested a series of legislative changes on the use of nets and traps, introduction of catch and release, regard for fish populations during drainage or engineering work, and less restrictive provisions relating to controls over predators for the protection of coarse fish stocks.

4.14 Protection Orders (POs)

4.14.1 Several respondents raised the issue of POs in their responses. One individual respondent in particular recommended a series of changes to the legislation, including widening the basis for applications for POs, changing the emphasis of evidence to reflect balance between access and conservation/ protection, and the introduction of Ministerial powers to introduce a PO in circumstances where it can be demonstrated that native species or their environment are at risk.

4.14.2 They also felt that present legislation does not encourage local involvement and decision-making in the management of the fisheries, and suggested changes to the operation of Management Committees and Liaison Committees.

4.15 Gaps

4.15.1 The following gaps in the consultation were identified by a range of respondents:

- Provisions on pollution.
- Seal shooting.
- Acoustic deterrent devices.
- Pesticides and crustaceans.
- Protection of wild fish.
- Feral beavers in Tayside.
- Licences for crayfish captures.
- Equitable burden of conservation needs.
- Locational planning issues (to address perceived environmental impacts on wild fish).

4.16 General Comments

4.16.1 Several respondents felt that the proposals detailed in the Consultation Document could cause significant financial burden to the aquaculture industry, with some respondents stating that they „could see additional costs of up to £20 million per year incurred by the aquaculture industry’ and one respondent estimating a cost to the aquaculture industry of £700 million over the next 10 years.

4.16.2 A freshwater fisheries respondent felt that ‚it would be a disaster for Scottish salmon fisheries if Mixed Stock Fishery (MSF) high sea fisheries were to resume’.

- 4.16.3 Another expressed disagreement with SEPA guidance concerning the requirement for a „walk-by’ survey of any water course less than a metre in width.
- 4.16.4 A voluntary sector respondent felt that the CoGP for Scottish Aquaculture should be reviewed, and suggested this be undertaken with a multi-stakeholder perspective. They added that they felt the Aquaculture and Fisheries (Scotland) Act 2007 contains provision for the adoption of the CoGP as a legal requirement.
- 4.16.5 A local authority discussed the issue of permanent planning permissions in their response. They stated that the Town and Country Planning (Marine Fish Farms Development) Order 2011 granted permanent planning permission to a large number of sites in their district. However, they have not yet received information on which sites, equipment and planning boundaries have been approved, and have not been able to include them on the planning register or take enforcement action.
- 4.16.6 A local authority questioned who will be responsible for consenting waste and chemical discharges of farms located beyond three nautical miles off-shore, and suggested that this should be discussed by the Working Group for the Ministerial Group on Aquaculture.
- 4.16.7 An individual respondent suggested that the Scottish Government look into a perceived opportunity for the proposed Aquaculture Regional Advisory Council to be set up in Scotland.

5 Summary of Key Issues

Summary

- This concluding section reflects on the key issues and themes emerging from the consultation analysis.

5.1 Key Issues and Trends

- 5.1.1 Overall, opinions on most of the issues in the Consultation Document were strongly divided between the aquaculture industry, and freshwater fisheries / other environmental stakeholders.
- 5.1.2 With a small number of exceptions, the aquaculture industry was largely critical of many of the proposed Bill provisions, with most aquaculture industry respondents aligning themselves with the response provided by the SSPO. The opposition appeared to relate to concerns about excessive regulation of the industry, and adding unnecessary red tape to a growing industry. Several felt that the Scottish Government was sending out mixed signals, with aspirations for industry growth being undermined by proposals for tighter regulation. The industry was generally supportive of many of the proposals outlined in Section 4 of the Consultation Document.
- 5.1.3 Concerns also related to perceived financial and reputational damage to the aquaculture industry and the likely increases in cost burdens and reduced ability to be competitive in worldwide markets. A potential increase in liability of aquaculture industry operators and their workers resulting from strict liability and fixed penalties was also highlighted by both company responses and individuals working within the industry.
- 5.1.4 In contrast, freshwater fisheries bodies were largely supportive of proposals for the Bill, with the exception of some opposition to the proposals in Section 4 of the Consultation Document (i.e. relating to salmon and freshwater fisheries management). The freshwater fisheries respondents largely referred to the response of the ASFB, with several consultees adding additional comments on specific issues.
- 5.1.5 There were also contrasting views between the coarse angling/mixed fishery industry operators and a number of DSFBs. Several anglers requested greater involvement in DSFB activities. Some were disappointed that other fish species are not included in the Bill provisions, raising concerns about the potential loss of these fisheries.
- 5.1.6 The existing and proposed measures in Scotland were often compared with those in other countries. Several respondents suggested adopting measures or systems currently used in Canada (British Columbia), Norway or Ireland. These suggestions related largely to data collection and publication, site monitoring and arbitration. Several respondents argued that most of the aquaculture industry firms operating in Scotland are multi-national and would be familiar with other regulatory regimes, Norway in particular.

- 5.1.7 The potential financial implications of the Bill were also raised by a range of stakeholders. Many were concerned at likely increases in costs associated with the adoption and implementation of the proposals in the Bill and questioned who will pay for them. Aquaculture industry respondents, including the SSPO, highlighted large potential losses to the aquaculture industry in meeting the proposed requirements, although most did not state a particular monetary figure. Possible costs to the public sector were also raised, specifically relating to implications for the budgets of SEPA and DSFBs arising from increased requirements and responsibilities under the proposals.
- 5.1.8 Several respondents, from across the stakeholder groups, called for additional consultation on some provisions in the Bill. These included arbitration, unused consents, collection of samples, wellboat controls, carcass tagging, conservation measures, data collection, paying for progress, strict liability and fixed penalty notices.



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