

The Aquaculture and Fisheries (Scotland) Bill – Business Regulatory Impact Assessment

Title of Proposal

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Purpose and intended effect

Introduction

This Business and Regulatory Impact Assessment (BRIA) provides information on the various powers detailed within the Aquaculture and Fisheries (Scotland) Bill and an assessment of their regulatory impact across Scotland. Its development has been supported by the response to the consultation on the partial BRIA which took place from 8 February through to 13 April (extended from the original deadline of 16 March 2012)ⁱ and significant stakeholder engagement over the summer period.

Background

In December 2011, the Scottish Government published a consultation on possible aquaculture and fisheries legislation, in particular to ensure the sustainability of aquaculture (notably salmon farming) growth and interactions with wild (salmon and freshwater) fisheries. A partial Business and Regulatory Impact Assessment (BRIA) and an Environmental Assessment were published alongside the consultation.

The Consultation paper recognised that Scotland was home to thriving and important aquaculture and freshwater fisheries sectors. Between them, aquaculture production and salmon and freshwater fisheries were estimated to be worth over £650m (in 2010) to Scotland (substantially more taking into account added value and other benefits). It recognised the significant contribution the sectors make to the Scottish economy, and most particularly to remote and rural communities.

The Scottish Salmon Farming Industry Research Report published in April 2012ⁱⁱ details the creation of over 500 jobs over the last three years and capital investment in the region of £205m in farms and processing. It also refers to Scotland's National Maritime Plan and the objective of farmed fish production increasing steadily year on year to give an overall increase of 50% by 2020. The report suggests that this is achievable through continued careful planning and by maintaining investors' confidence in Scotland.

The Scottish Government believes that to achieve continued and sustainable economic growth in both sectors it is imperative that interactions between the two sectors are managed efficiently and effectively, and with due recognition of any wider marine and environmental impact.

A total of six responses to the BRIA Consultation were received, although some respondents elected to make related comments within their response to the Aquaculture and Fisheries Bill consultation document.

This final BRIA provides information on the various policy proposals outlined in the consultation document and now being progressed within the Bill. Some narrative on those proposals which are not being pursued can be found in the Scottish Government's

response to the consultation paper which can be accessed at: <http://www.scotland.gov.uk/Topics/marine/Fish-Shellfish/bill> All of these take account of the analysis of the responses to the consultation exercise.

Objectives

The primary objectives of the Bill are to ensure that farmed and wild fisheries – and their interactions with each other – continue to be managed effectively, maximising their combined contribution to supporting sustainable economic growth with due regard to the wider marine environment.

The Bill and its accompanying documents can be viewed on the Scottish Parliament website at: The Scottish Government response to the Consultation Analysis Report can be accessed at <http://sh45inta/Publications/2012/08/6066> This outlines the Scottish Government's intentions in relation to all the proposals within the consultation paper.

The Bill is divided into 6 parts.

Part 1 has a number of aquaculture themes designed to strengthen the regulatory framework for the industry to continue delivering sustainable growth going forward - the creation of a legal requirement for marine finfish farm operators to operate under the terms of a farm management agreement (or statement), within an appropriate management area; an amendment to the Aquaculture and Fisheries (Scotland) Act 2007 to make provision for the taking of samples of, or from, fish on fish farms; powers to prescribe technical requirements for equipment used in fish farming; provision for regulations controlling and monitoring the operations of wellboats and related intervention and enforcement provisions; and provisions for orders to prevent the spread and ensure the effective control of commercially damaging native species.

Part 2 has two themes. First, the introduction of 'good governance' obligations on DSFBs to improve openness, transparency and accountability to their constituency; a requirement for DSFBs to consult prior to submitting applications to Scottish Ministers for measures under the 2003 Act; and the power to end the operation of a DSFB committee which is persistently failing to meet its obligations. Second, a series of amendments to the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 on enhancing management of salmon fisheries. These amendments comprise: powers to create a statutory carcass tagging scheme, to take fish and fish samples and require information from fisheries; power to recall or restrict DSFB powers to consent to the introduction of salmon or salmon spawn; and powers for Ministers to make changes to the Annual Close Time at their own hand, and require monitoring and evaluation of measures granted. These amendments acknowledge the current arrangements for local management of fisheries but highlight the need for effective contingency arrangements in the event of failure by boards or overriding national interests or challenges.

Part 3 relates to enforcement of sea fisheries legislation, in particular the powers of British sea-fishery officers to enforce the legislation, powers to detain vessels in connection with court proceedings and inspection and associated powers not currently provided where there are no vessels, vehicles or relevant premises involved – for example on a beach. There are also provisions relating to the retention, disposal and forfeiture of objects and fish seized.

Part 4 of the Bill amends the Water Environment and Water Services (Scotland) Act 2003 to provide for the protection of shellfish waters once the Shellfish Waters Directive is repealed in 2013. The Bill also amends the Sea Fisheries (Shellfish) Act 1967 to make clear that the Scottish Ministers' order-making powers under section 1(1) of that Act can extend to all types of shellfish (molluscs and crustaceans) and are not restricted to specified shellfish; and makes clearer the extent of Ministers powers in relation to the appointment of an inspector to conduct an inquiry into the proposed making of several and regulating orders.

Part 5 of the Bill gives Scottish Ministers' powers to impose charges in connection with the carrying out of functions relating to fish, shellfish farming, salmon and freshwater fisheries, or sea fisheries. There are also provisions relating to the extension of the system of Fixed Penalty Notices ("FPNs") which was introduced for sea fisheries under part 4 of the Aquaculture and Fisheries (Scotland) Act 2007. The Bill widens the scope of offences that could be subject to a FPN which in practice provides a way for operators to deal with their regulatory non-compliance outwith the criminal court system.

Rational for Government Intervention

The Scottish Government is very aware of the significant contribution that the aquaculture and fisheries sectors make to the Scottish economy and the significant part they can play in the future in helping to ensure a sustainable economic future for Scotland. Scotland has a celebrated aquaculture and fisheries brand, and with it high consumer expectation about quality and value. The Scottish Government wants to build on that.

The Scottish Government is also aware that sustainable economic growth must be supported by a regulatory framework which is flexible, proportionate and adaptable, and that is able to recognise the wide implications of the sector on Scotland's marine environment and climate change.

A number of the measures within the Bill constitute enabling rather than specific measures, and reflect some of the key themes to emerge from the consultation.

Consultation

- **Within Government**

Discussions with Scottish Government colleagues from relevant policy teams have been ongoing throughout the Bill's development. Most specifically, these have involved:

- Justice Directorate and the Crown Office and Procurator Fiscal Service (COPFS).
- Marine Scotland and the Scientists at the Marine Laboratory.
- Scottish Environment Protection Agency (SEPA).

Colleagues from these organisations have contributed to the development of the specific proposals underpinning the Bill and continue to be involved in the policy areas as Marine Scotland policy teams work through the application of the Bill proposals

- **Public Consultation**

Many of the proposals detailed in the Bill reflect and build on discussions and developments with stakeholders over a substantial period. The partial BRIA had been developed with limited detailed stakeholder engagement but with an expectation that further discussion would take place following the completed analysis of the responses to the consultation, and as the individual policy proposals were refined (for example the proposed technical standards for finfish aquaculture).

From December 2011 to March 2012, the Scottish Government consulted on a number of proposals which could be included in an Aquaculture and Fisheries Bill. Responses were published on the Scottish Government website in March/April 2012ⁱⁱⁱ.

During the summer period, the Minister for Environment and Climate Change and officials from Marine Scotland were involved in a number of stakeholder events designed to widen their understanding of some of the consultation responses, the concerns and areas which would benefit with greater clarity. In total, more than 70 meetings/visits have taken place since the consultation was first published.

For consistency and comparability purposes, those bodies and individuals who responded to the consultation were classified in the same categories as those adopted when the consultation was completed on the previous Bill in 2006. That has ensured that it is possible to identify any instances where there has been any notable change in the balance of views on particular policy themes.

The analysis of the responses to the consultation has helped to inform the development of the Bill. They have also raised other policy considerations that might be explored at some future point.

- **Business**

The Bill reflects the initial discussion with umbrella organisations prior to the consultation period, discussion with bodies during the consultation period, and further engagement leading up to the introduction of the Bill in October 2012. Many businesses, as stakeholders, have responded as part of the consultation process and form part of many of the contribution working groups, for example in relation to the development of technical standards.

Options

Aquaculture and Fisheries (Scotland) Bill – Part 1

- **Fish Farm Management Area**

A number of options were considered:

1. Continuation of the status quo (do nothing), whereby industry works to the voluntary Code;
2. Approve (or adopt) the Code in full, on a statutory basis, and monitor and enforce compliance, as provided for in the 2007 Act;
3. Approve/adopt, monitor and enforce part(s) of the Code, again on a statutory basis as provided for in the 2007 Act;
4. Provide for prescription by Ministers of the content of Farm Management Agreements and the delineation of Farm Management Areas, and for related monitoring and enforcement provisions; and
5. In relation to arbitration arrangements i) leave to industry/the SSPO; or ii) make statutory provisions.

The responses to the partial BRIA raised a number of issues, including:

- Disagreement over the suggestion that there would be a benefit in the reduced level of environmental and public benefit risk.
- Suggestion that the likely impact of the collective proposals would see a collapse in the business of the relevant auditing bodies at a cost of around £0.5m per annum and a potential comparable costs increase to Marine Scotland if the same level of assessment were to be maintained.
- View that the intervention was not required, was unworkable and would have damaging consequences.

Conclusion

At present, FMAs are in place on a voluntary basis between most operators. It was concluded that that there was significant benefit to be gained from requiring all operators of authorised aquaculture production operators to be party to, and ensure that marine fish farms are managed and operated in accordance with, a Farm Management Agreement, or to maintain a Farm Management Statement. This should ensure that operators in each area work in unison with respect to treatments, fallowing and the harvesting of fish and stocking levels on the farm, building on the best practice already in place.

- **Escapes and taking samples from fish farms**

A number of options were considered:

1. Do nothing. There would be no increased understanding of the level or manner/source of escape, with no related containment. Improvements and ongoing associated risks.
2. Providing Ministers with enhanced powers to take or require samples would of itself impose no additional significant costs on industry. These would only accrue if evidence/sources of potentially detrimental escapes were to be identified and need to be addressed.

The responses to the partial BRIA raised a number of issues, including:

- Concerns around the basis for the policy
- Purported benefits are considered unfounded and unrealistic.
- Considered an unjustified costs to the public purse.

Conclusion

To leave matters as they currently operate would not achieve the improvements in containment activities required to address the associated risks. It would also restrict the ability to collect samples to develop and test robust detection methods or to take samples. It was concluded that there remained significant benefit in additional powers to take or require samples of fish farms, for tracing purposes.

- **Fish Farming – Equipment**

A number of options were considered:

1. Do nothing - where the majority of industry work to (salmon), or relevant sections of (trout), the Code but which does not define "fit-for-purpose" with regard to fish farm equipment (nets, moorings, pens etc). In the absence of new measures some equipment (nets, pens and moorings) may not be fit for purpose and there will not be any clearly auditable means of assessing whether any equipment being used is fully suitable for the environment in which the farm is operating. This may impose costs not only on the affected business but also through possible interactions between farmed and wild salmonids. There will also be costs associated with loss of stock due to escapes through use of inappropriate equipment by companies not following best practice and/or not signed up to COGP/ QTUK standards. This risk will be increased in economic downturns and significant weather events.
2. Develop a Technical Standard which will be adopted by the industry as part of a revised Code. All finfish farming businesses are already required to operate with "fit for purpose" equipment to prevent escapes including upgrading or replacing equipment due to age/wear and tear etc. This measure would clarify how 'fit for purpose' should be interpreted and should provide greater certainty to operators and suppliers. SSPO compliance with the CoGP is audited by Food Certification International (FCI) and trout compliance audited by Quality Trout UK (QTUK). Businesses signed up to the revised CoGP should replace kit with equipment of known technical standard leading to increased confidence to investors and some stakeholders. All suppliers should be able to work to agreed known standards across the industry. Although currently a condition of SSPO membership, the CoGP is voluntary and not in statute. Also, this option would not cover salmon non-SSPO members or trout operators not being audited by QT UK.
3. 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. All finfish farming businesses are already required to operate with "fit for purpose" equipment to prevent escapes including upgrading or replacing equipment due to age/wear and tear etc. As with Option 2 this measure would clarify how 'fit for purpose' should be interpreted and will provide greater certainty to operators and suppliers. However, this option through revised Fish Health Inspectorate inspections would ensure all businesses and not just those signed up to the Code will (after an

appropriate lead in time) be required to operate using equipment of known technical standard.

4. Develop a Technical Standard in statute and establish an inspectorate to ensure compliance with these aspects of the Code. In addition to the measures set out in Option 3, an Inspectorate with increased technical/engineering expertise would be established (or the role of FHI could be expanded) to audit farm equipment to ensure that it meets the required standards. This option would not be reliant on Industry audit regimes.
5. We also considered an option to develop a technical standard with associated certification and inspection regime - similar to the NYTEK system to Norway and perhaps developed through the British Standards Institute - but rejected this at an early stage due to its evidently poor value for money.

The responses to the partial BRIA raised a number of issues, including:

- Broad aquaculture industry support for the proposals.
- Concern that any new standard would need to be phased in over an appropriate period to allow adjustment of the requirement.
- Difficult to assess additional costs at this stage.

Conclusion

There is strong support from industry for a Scottish Technical Standard and this is being progressed within the Bill. We will continue to work with all stakeholders to ensure that appropriate transitional procedures are in place for its introduction.

Fish Farming – Wellboats

A number of options were considered:

1. Do nothing.
2. Establish powers for Ministers to impose requirements on wellboats - for example to monitor movements, discharges and require the wellboat discharge to be filtered to remove all stages of sea lice.

The responses to the partial BRIA raised a number of issues, including:

- Appropriate to consider this issue.
- Need to identify cost and resource implications.
- Difficult to quantify costs with certainty.
- Agreement to underlying proposals but question the need for powers to put them into effect.

Conclusion

The aim is to help minimise risks – to farmed and wild fish - from parasites (sea lice) and pathogens, thereby helping to improve fish health and to protect the interests of both the farmed and wild fish sectors. It was not considered acceptable to leave matters as they currently stood which would effectively not lead to any improvements in fish health management and the issues surrounding cross-contamination of pathogens by wellboats would remain. Provisions are made in the Bill to take this forward.

- **Commercially Damaging Species**

A number of options were considered:

1. Do nothing
2. Introduce a package of measures to ensure commercially damaging native species are identified and for them to be controlled and prevented from spreading
3. Introduce legislation that could require specifically the identification and control of *M. trossulus* and prevents its further spread

The responses to the partial BRIA raised a number of issues, including:

- The reasons for control from a commercial perspective are understood.
- Difficult to see how the spread of a naturally spawning species can be controlled where there is a planktonic life cycle stage and identification on growing responses occurs post spawning.

Conclusion

The provisions within the Bill provide for the notification of commercially damaging species. This will ensure that species that are listed as commercially damaging species, and are therefore considered a risk to the aquaculture industry, are reported to Scottish Ministers, can be investigated at an early stage, and control measures can be implemented as considered necessary.

Sectors and groups affected

Fish Farm Management Areas - The marine finfish farming sector

Escapes and taking samples from fish farms - Marine finfish farming sector.

Fish Farming (Equipment) - Finfish aquaculture operators; fish farm equipment suppliers and manufacturers; Marine Scotland; Planning Authorities

Fish Farming (Wellboats) - The marine salmon finfish sector.

Commercially Damaging Species - Aquaculture operators and Scottish Government.

Benefits

Set out below are the estimated benefits arising as a direct result of the Bill.

	Qualitative description of benefits	Quantitative assessment of benefits
Fish Farm Management Area	<p>The creation of a legal requirement for marine finfish farm operators to operate under the terms of a farm management agreement (or statement). The benefits will be:</p> <p>Improved management practices.</p> <p>Greater accountability.</p> <p>Greater opportunities to prevent and anticipate environmental problems or the development of transmittable fish diseases</p>	<p>Difficulty to quantify but the ability to reduce the impact of sea lice through management practices would help to reduce the industries current treatment costs estimated to be around £30m per annum.</p>
Escapeses and taking samples from fish farms	<p>The provisions will provide powers for Scottish Ministers to amend the Aquaculture and Fisheries (Scotland) Act 2007 to enable inspectors to take or require samples of fish from any fish farm in Scotland for the purpose of developing and implementing methods for tracing the origin of any known or suspected escape of fish and examining potential impacts associated with escapees or for any other purpose.</p>	<p>Anticipated industry savings through reduced stock loss and improved productivity as a result of increased operational efficiency. enhanced powers to collect or require samples of fish from fish farms for genetic or other analysis for tracing purposes, is our preferred option.</p> <p>Localised benefits to wild fisheries interests and would encourage improved containment on fish farms leading to better overall economic performance.</p>
Fish Farming – Equipment	<p>This provision will allow the Scottish Government to progress the work of the Improved Containment Working Group. The benefits will</p>	<p>Work is still ongoing to develop and finalise the technical standard to be adopted but it is anticipated that any additional costs associated with the new equipment/design would</p>

	<p>be:</p> <p>The introduction of a technical standard for finfish (not shellfish) farm equipment which will apply to all Scottish marine and freshwater finfish farms (including hatcheries), covering nets, pens and mooring systems.</p> <p>Will address the risks associated with businesses using inappropriate/inadequate equipment.</p> <p>Consistent approach within the Aquaculture industry.</p>	<p>be significantly outweighed by the savings achieved through reduced stock loss and insurance costs, increased operational efficiency and increased confidence for investors and planners</p>
Fish Farming - Wellboats	<p>The provisions aim to minimise risks to farmed and wild fish from parasites (sea-lice) and pathogens through the introduction of additional control requirements on wellboats. The benefits will be:</p> <p>Improvement in fish health.</p> <p>The ability to raise standards of bio-security.</p> <p>Improve monitoring of fish movements by wellboats.</p> <p>Monitoring of wellboat/discharging activities within and across national boundaries.</p>	<p>Improved management practices in relation to wellboats and the use of filters will see benefits to individual fish farmers (in terms of reduced risk and improved fish health) and generally to the farmed and wild fish sectors.</p>
Commercially damaging species	<p>The provisions aim to prevent the spread and ensure the effective control of commercially damaging species which may prejudice the commercial production of</p>	<p>Ability to respond quickly with preventative measures.</p>

	<p>traditionally farmed species. The benefits will be:</p> <p>Reduced risk to commercially farmed species.</p>	
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Costs

Set out below are the estimated costs arising as a direct result of the Bill.

Scottish Government	<p>Staff and administration of <100k per annum.</p> <p>£85k one off project costs to develop a Scottish Technical Standard.</p>
Local Authorities	None
Other Bodies, Individuals and Businesses	
Fish Farm Management Area	Limited as many operators are already signed up to the proposal.
Escapees and taking samples from fish farms	Industry are working with the Scottish Government and manufacturers to ensure that any additional costs are proportionate.
Fish Farming – Equipment	Any additional costs will be proportionate.
Fish Farming - Wellboats	<p>The cost to monitor the position of 20 wellboats would be around £8k per year. The cost of monitoring equipment for 20 wellboats at costs of £50,000.</p> <p>The cost to install discharge monitoring on a boat would be in the region of £75,000</p> <p>The option to retro-fit a wellboat with an appropriate filtration system would be in the region of £400k per boat.</p>
Commercially damaging species	Costs every 10 years approximately £284,700 to £525,962 (encompassing potential movement restrictions, potential surveillance programme and control costs.)

Aquaculture and Fisheries (Scotland) Bill – Part 2

Set out below are the estimated costs arising as a direct result of the Bill.

- **Governance**

A number of options were considered:

1. Do nothing - This would perpetuate the variable management standards that exist across the spectrum of Boards where there is no compulsion to act in the wider local interest.
2. Introduce 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.
3. To take local management and decision-making powers away from DSFBs and have them taken centrally.

The responses to the partial BRIA did not raise any issues.

Conclusion

In some cases when a DSFB make decisions which have an effect on those outside of the membership of the Board, this can lead to mistrust of the Board's motives by those who may feel disenfranchised mainly because the information and rationale behind these decisions is not consistently openly available. As local managers of the national and international resource DSFBs should be seen to act in the interests of that resource and all of the communities who use it.

The Bill represents the first step in the Scottish Government's commitment to modernising and improving arrangements for management of Scotland's salmon and freshwater fisheries. Further work to consider the most appropriate governance structures and responsibilities will be undertaken during this Session of the Parliament.

- **Management - carcass tagging**

A number of options were considered:

1. Do nothing - Same limited accountability for DSFBs with no or limited incentive to change. Board decisions which impact on local communities and the rationale behind their decisions will not necessarily be accessible to those affected.
2. Allow those DSFBs which currently operate in an open, fair and transparent manner to continue in their manner of operation and encourages those who are less advanced in this respect to develop their capacity to deliver consistently to a minimum standard that will engender confidence more widely in the operation of DSFBs. This should lead to better managed fisheries and may help to stimulate continuing investment in fisheries and associated developments. A benefit to Government would be an enhanced ability of DSFBs to deal with disputes without those involved having to have recourse to Government. We have been unable to provide monetised estimates of the benefits but believe that they are likely to outweigh the relatively low costs involved.

3. Introduce an additional layer of management which may provide consistency of approach though in slower time. While the costs and benefits of this option have not been monetised, it is our view that any additional gains relative to Option 1 would not justify the costs

The responses to the partial BRIA did not raise any issues.

Conclusion

The proposal for a carcass tagging scheme has the support of the angling and netting sectors. The Bill provides an enabling power for Scottish Ministers to make regulations requiring salmon caught and retained by any legal method to be tagged. A further BRIA will be completed once further details of the scheme have been developed.

- **Sampling and Information**

A number of options were considered:

1. Do Nothing.
2. Create powers for Ministers to take or require fish or samples for genetic or other analysis from any fishery.

The responses to the partial BRIA raised a number of issues, including:

- Perception that powers already exist.
- Concern that the identified benefits were too narrow.

Conclusion

It was concluded that in order to progress effective, science-based management, protection and conservation of salmon, there was a requirement to progress provisions within the Bill to Create powers for Ministers to take or require fish or samples for genetic or other analysis from any fishery.

- **Annual Close Time and Conservation Measures**

A number of options were considered

1. To continue with the status quo
2. For all management and conservation powers to rest solely with Scottish Ministers
3. To complement the existing range of management and conservation powers by giving Scottish Ministers additional reserve powers to:
 - make changes to the annual close times
 - promote combined conservation measures
 - attach conditions to approved conservation measures e.g. to ensure their impact is effectively monitored and evaluated and public reporting of outcomes.

Their were no specific comments raised in the BRIA responses.

Conclusion

It is considered appropriate that Scottish Ministers are able to initiate a wide range of management and conservation measures to ensure that salmon are adequately protected while the economic benefits of fisheries are realised.

- **Introductions**

A number of options were considered:

1. Do nothing.
2. For Marine Scotland Science to act as the licensing authority for all fish introductions to freshwater.
3. 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.

The responses to the partial BRIA included:

- Support for option 2 on the basis that risks to wild fish and farmed salmon populations would be controlled – a benefit not seen in option 3

Conclusion

Following further consideration, it was appropriate to introduce an enabling power for Scottish Ministers to be able to modify DSFBs functions with consenting to salmon and salmon spawn introductions, as well as to place monitoring requirements on consents granted.

Sectors and groups affected

Governance –Boards, Non-elected fishery proprietors, Visiting anglers and tourists, Local communities. And Fishery related businesses

Management - carcass tagging – Net fisheries, Rod and line fisheries, Conservation interests, Angling interests. Fish merchants, hoteliers, restaurateurs and caterers

Sampling information - Net fisheries, Rod and line fisheries, Conservation interests, Angling interests. Fish merchants, hoteliers, restaurateurs and caterers.

Annual Close Time and Conservation Measures - District Salmon Fishery Boards Proprietors, Anglers, Net fisheries and Local businesses who provide services to anglers

Introductions - District Salmon Fishery Boards, Proprietors and Anglers

Benefits

Set out below are the estimated benefits arising as a direct result of the Bill.

	Qualitative description of benefits	Quantitative assessment of benefits
Governance	The policy objective is to ensure that DSFBs, as bodies created under statute and having, in effect, public law functions, act in an open, fair and transparent way with greater accountability to their constituency.	Improved management practices, shared working and adoption of best practice could have significant long term financial and administrative benefits to the Board and the user of their Rivers. This should lead to better managed fisheries and may help to stimulate continuing investment in fisheries and associated developments.
Management - carcass tagging	Statutory carcass tagging would further enhance the existing legal framework to prevent the sale of illegally caught salmon and extend the existing legal requirement for packages of salmon to be marked with the name and address of the consignor. Powers to take or require fish or samples would enable the development of a system of statutory genetic sampling. This would provide a framework to obtain evidence from all over Scotland and could be used by various interests to inform management decisions and by Scottish Government in policy development and management.	Much will depend on the nature of the scheme adopted and the extent of any associated recording and reporting requirements.
Sampling and Information	The policy objective is for effective, science-based	Difficult to provide a quantitative assessment but

	<p>management, protection and conservation of salmon.</p> <p>For these purposes, the Scottish Government requires access to fish for investigation and sampling. This can include sampling for genetic material to aid understanding of stocks within rivers, and whole fish for acoustic tagging and tracking to identify spawning sites and identify the factors that suppress population size</p> <p>The Bill responds to the need for additional information on fish and fisheries by broadening the requirement on occupiers and proprietors to provide statistics to include provision of information.</p>	<p>policy objectives could see significant economic and environmental benefits.</p>
Annual Close Time and Conservation Measures	<p>The policy objective is for a flexible, responsive suite of management options to be available to DSFBs and Scottish Ministers to ensure that salmon are adequately protected while the economic benefits of fisheries are realised.</p>	<p>The management of Scotland's rivers would continue to be undertaken predominantly district level by those with local knowledge of the catchment.</p>
Introductions	<p>The ability to manage and develop Scotland's recreational fisheries whilst ensuring that Scottish Ministers meet their obligations e.g. under the EU Habitats Directive and as part of commitments under the North Atlantic Salmon Conservation Convention.</p>	<p>This approach will ensure that the wider impact of any introductions is considered by Marine Scotland Science.</p>

Costs

Set out below are the estimated costs arising as a direct result of the Bill.

Scottish Government	<£20k . While it is difficult to quantify the costs of a carcass tagging scheme the policy intent is to deliver a scheme which delivers the sought benefits without imposing a disproportionate financial or administrative burden.
Local Authorities	Minimal.
Other Bodies, Individuals and Businesses	Minimal.

Aquaculture and Fisheries (Scotland) Bill – Part 3

- **Extended section 30(1) of the Fisheries Act 1981**

This provision seeks to amend section 30(1) of the Fisheries Act 1981 to include the activity of sea vessels wherever they are.

- **Detention of vessels in connection with court proceedings**
- **Retention and disposal of property seized by BSFO'S**
- **Inspection and seizure of objects used in commercial sea fishing**

A number of options were considered:

- Creation of additional enforcement powers proposed
- Rest on existing statutory provisions.

The responses to the partial BRIA did not raise any issues.

Conclusion

It was considered that to rely on existing statutory provisions would leave several potential gaps in the powers available to monitor compliance with regulatory obligations and take appropriate enforcement action where required. As a consequence further powers are required.

Benefits

Set out below are the estimated benefits arising as a direct result of the Bill.

	Qualitative description of benefits	Quantitative assessment of benefits
Extended section 30(1) of the Fisheries Act 1981	The provisions in the Bill will amend section 30(1) of the Fisheries Act This will wide the scope to include the activity of Scottish vessels wherever they are.	This will help enable the effective enforcement of EU.
Detention of vessels in connection with court proceedings Retention and disposal of property seized by BSFO'S Inspection and seizure of objects used in commercial sea fishing	All three proposals are designed to provide additional enforcement powers required for sea fisheries enforcement officers in Scotland – the power to detain vessels in port to ensure the attendance of suspects at court proceedings, the power to dispose of property and forfeit illegal equipment, and the power to inspect objects associated with commercial fishing activity.	Ability to effectively enforce powers.

Costs

Set out below are the estimated costs arising as a direct result of the Bill.

Scottish Government	Minimal
Local Authorities	Minimal (see specific provision below).
Detention of vessels in connection with court proceedings	Potential risk of costs associated with poorly maintained vessels that are taken to port and no assistance is forthcoming from the owners
Other Bodies, Individuals and Businesses	Minimal.

Aquaculture and Fisheries (Scotland) Bill – Part 4

Protection of Shellfish Waters

A number of options were considered:

- Do nothing
- Create new legislative provisions to safeguard shellfish waters protected areas after the repeal of the Shellfish Waters Directive (SWD) in 2013.

Proposed measures for the protection of shellfish growing waters were subject to a separate consultation exercise and BRIA, so are not covered here.

Conclusion

The policy objective is to ensure the continued sustainability of the Scottish shellfish industry following the repeal of the Shellfish Waters Directive (SWD) in 2013 by creating new legislative provisions which have the same effect of safeguarding shellfish waters protected areas. The broad principles of the SWD will be incorporated into the river basin management planning process introduced by the Water Framework Directive (WFD). This is progressed within the Bill.

	Qualitative description of benefits	Quantitative assessment of benefits
Protection of shellfish waters	This policy objective will ensure continued support is provided to the shellfish industry, safeguarding jobs in local communities as well as protecting human health and the water environment from the effects of pollution	Difficult to quantify.

Costs

Set out below are the estimated costs arising as a direct result of the Bill.

Scottish Government	None
Local Authorities	None
Other Bodies, Individuals and Businesses	Costs on SEPA/FSA Scotland in the region of £4-5k per annum per new shellfish harvesting site.

Aquaculture and Fisheries (Scotland) Bill – Part 5

- **Charging**

A number of options were considered:

- Retain the status quo
- Introduction of an enabling power to facilitate a charging regime.

This was not included as part of the consultation on the partial BRIA.

Conclusion

In view of the considerable pressure on current funding arrangements designed to support sustainable growth with the wider marine environment, it is considered necessary to move forward on an enabling provision for Scottish Ministers to make regulations for or about the imposition of charges in connection with the carrying out of certain fishery functions which will be specified in the regulations.

	Qualitative description of benefits	Quantitative assessment of benefits
Charging	The Bill will detail enabling powers to introduce charges for a number of fishery functions	Difficult to quantify until a charging regime has been fully scoped out but It is recognised that the rationale and detailed arrangements for charges will need to be considered on a case by case basis and ensuring that they did not impact disproportionately on competitiveness.

- **Fixed Penalty Notices**

A number of options were considered:

1. Do nothing - leave Section 25 dealing only with the current limited range of offences under sea fisheries enactments and keep the current maximum penalty of a sum equal to 80% of level 4 on the standard scale (£2,000).
2. Amend Section 25 of the Aquaculture and Fisheries (Scotland) Act 2007 to widen the scope of offences covered by FPNs to include all of the possible offences which Marine Scotland is responsible for monitoring compliance with and not just sea fisheries enactments as at present, but leave the current maximum penalty as it currently stands at £2,000. This would mean that the scope of offences would be widened beyond sea fisheries offences. However, with the maximum penalty unchanged, FPNs may be relatively ineffective and have limited, if any, application

where the seriousness of the offence and the harm done requires a sanction beyond £2,000. It would also mean that we would not be able to remove additional cases from the criminal justice system.

3. Amend Section 25 and Section 27 of the Aquaculture and Fisheries (Scotland) Act 2007 to widen the scope of offences covered by FPNs to include all of the possible offences which Marine Scotland is responsible for monitoring compliance with and not just sea fisheries enactments as at present. Also amend Section 27 of the 2007 Act to make the maximum penalty a sum equal to a penalty 2 times level 5 on the standard scale (£10,000). The Scottish Ministers would be able to prescribe, through a statutory instrument, different maximum levels of penalty for each marine regulatory area.

The responses to the partial BRIA raised a number of issues, including:

- Uncertainty as to why FPN's should be extend to the aquaculture sector.
- Perception that it would not have any benefits but would be hugely damaging.
- Belief that FPN's would become common for minor non-compliance.
- Preference towards prosecution through the procurator fiscal on the basis that anything 'less' represents an unacceptable regulatory approach with significant unintended consequences.

Conclusion

It was evident that many responses were unclear as to reasoning for the proposal and how it might be applied. In view of the fact that the use of fixed penalty notices is an established aspect of Scottish Criminal Law, these proposals are being progressed within the Bill.

	Qualitative description of benefits	Quantitative assessment of benefits
Fixed Penalty Notices	The expansion of the fixed penalty notice system to include other regulatory offences would not only be beneficial to the conservation of the marine environment but also to Marine Scotland, the Crown Office and Procurator Fiscal Service, the fishing industry, other industries that work in the marine environment and recreational users of the sea. It would provide certainty to operators about the consequences of regulatory non-compliance through a transparent and equitable process.	Difficult to quantify as this stage, but would result in lower legal costs to business and to the criminal justice system by potentially removing cases from court proceedings.

Legal Aid Impact Test

We do not consider that the proposals could result in expenditure from the legal aid fund.

Enforcement, sanctions and monitoring

The Scottish Government will carefully monitor how the new legislation and regulations are working in practice by carrying out reviews and seeking feedback from stakeholders through the Stakeholder Reference Group which was established to inform the development of the Aquaculture and Fisheries (Scotland) Bill and, the Ministerial Group on Aquaculture. Compliance and enforcement will be maintained by Marine Scotland Science (MSS) Fish Health Inspectorate.

Implementation and delivery plan

It is anticipated that many of the measures within the Bill will be progressed at the earliest opportunity and certainly during the course of the Parliament.

Post-implementation review

As detailed above.

Declaration and publication

October 2012

ⁱ <http://sh45inta/Publications/2012/02/8291>

ⁱⁱ

http://www.scottishsalmon.co.uk/userFiles/886/FINAL_SSPO_Industry_Survey_Report.April_2012.pdf

ⁱⁱⁱ <http://www.scotland.gov.uk/Topics/marine/Fish-Shellfish/bill>



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