

Aquaculture & Fisheries Consultation
Area 1-B (North)
Victoria Quay
EDINBURGH
EH6 6QQ



02 March 2012

Aquaculture and Fisheries Bill Consultation

Introduction

The Scottish Wildlife Trust welcomes the opportunity to comment on the proposals for an Aquaculture and Fisheries Bill. The Scottish Wildlife Trust supports *sustainable* aquaculture. In our view, a sustainable aquaculture sector is one that maintains the quality, health and biodiversity of the waters it occupies, avoiding significant, cumulative, long-term or irreversible damage to the environment.

We would like to see Scotland become a world leader in sustainable aquaculture production. The reputation of Scottish farmed fish products depends to a considerable degree on the ecological quality of Scotland's aquatic environment. Quite apart from the need to minimise impacts on ecological grounds, it makes every sense for the industry to also minimise impacts to mitigate reputational risk. Becoming a world leader in sustainable methods of production and ensuring the highest environmental management is, we believe, the best way of mitigating this reputational risk. A truly sustainable industry makes good economic as well as good ecological sense.

On the whole we are encouraged by the scope and content of the consultation document and we particularly welcome the overall objective to promote openness and transparency and the provision of measures to support the conservation of wild salmonids.

The proposed measures provide an impetus toward improving the sustainability of Scottish aquaculture. Plans for growth in an industry that is currently unable to deal sufficiently with its environmental impacts must be approached with extreme caution. While the industry has made welcome efforts to improve environmental performance through voluntary codes, the potential risks are such that regulatory intervention is required now in anticipation of future growth.

The management of migratory salmonids in Scotland is of critical importance and is part of international efforts and obligations for the conservation and restoration of stocks. The management model for migratory salmonids in Scotland allows local decision-making by those with local knowledge of the catchment. While we appreciate this model, we support proposals allowing Ministers to intervene when the required standards of operation are not being fulfilled. Furthermore, we fully support the introduction of statutory carcass tagging to eliminate the last remaining avenue for the marketing of illegally captured salmon and sea trout in the UK.

Our response is restricted to those questions most relevant to our organisation and should be read in conjunction with that of Scottish Environment LINK, which the Scottish Wildlife Trust endorses.

SECTION 1 – THE SUSTAINABLE DEVELOPMENT OF AQUACULTURE

Farm Management Agreements (FMAs)

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

Yes. We fully support the statutory participation in Farm Management Agreements in order to facilitate co-ordinated disease and sea-lice management measures, promoting the effective use of synchronised fallowing and treatment regimes within defined areas. The current voluntary arrangement is severely

Protecting Scotland's wildlife for the future

undermined by non-participation and this is clearly not compatible with a sustainable industry. With improved management of risk and co-ordinated treatments reducing the reliance on chemicals, the benefits of well operated FMAs to the environment and wild salmonids are clear.

Appropriate Scale Management Areas (MAs)

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

Whilst it should be within the power of operators to define the boundaries and management arrangements for Management Areas, we believe the final decision should be taken after consultation with the Ministerial Working Group and stakeholders and signed off by Scottish Ministers. In order to be effective, boundaries must be based on ecological grounds and take account of the best available evidence of sea lice dispersal. Where such evidence is lacking, risk of transfers between FMAs should be managed through setting larger boundaries rather than smaller ones.

Management Measures and Dispute Resolution

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

Yes, there should be a fully independent arbitration process undertaken by a suitably qualified arbitrator.

Unused Consents

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

Yes, the issue of unused consents should be reviewed. With the anticipated expansion of the industry it is important to utilise all appropriate sites to avoid pressure to develop sites that are less suitable for fish farms.

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

We believe that all sites identified as unused at the time of publication of the revised Bill should be re-evaluated. Given the diverse nature of consented sites, and the variety of reasons why they are not used, there may be a role for a number of mechanisms to incentivise use or relinquishment of unused consents and we agree with the range of options set out in the consultation document.

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

Yes, Scottish Ministers should have the power to revoke consents of sites shown to have significant detrimental impacts on local wildlife, as identified by the marine spatial planning process. We advocate that marine spatial plans should incorporate nature conservation and sensitivity maps, which identify areas where wildlife and habitats may be sensitive to aquaculture development. Consents for sites that do not comply with the spatial guidance should, if appropriate mitigation measures cannot be found, be revoked.

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

The power should relate to all consents.

Collection and Publication of Sea-lice Data

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

In order to fully assess strategies for the control of sea lice and gain a broader understanding of the impacts on wild fish, the results of sea lice monitoring from individual farms should be made publically available on a website. Full disclosure would demonstrate fish farms to be responsible and transparent operators and allow planning decisions to take account of the cumulative effect of fish farms in a given area.

Surveillance, Biosecurity, Mortality and Disease Data

Protecting Scotland's wildlife for the future

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

Yes, we strongly agree that the additional data and information set out in the consultation should be provided. Furthermore, in the interests of openness and transparency, and as an excellent resource in developing understanding in this field, we believe this additional information should be made publically available.

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

All additional information should be collated and submitted in a way to minimise the burden on both the authorities and industry. The timing and frequency of submissions should be set at a meaningful period to allow for issues to be picked up and resolved at the earliest opportunity.

Biomass Control

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

Yes, in order to address emerging concerns relating to the health and welfare of both farmed and wild fish, as well as the wider environment, Scottish Ministers should be given a power to require SEPA to reduce biomass consents.

Wellboats

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

Yes. As noted, wellboats have the potential to spread disease and parasites; therefore, control requirements on wellboats are urgently needed.

Processing Facilities

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

Yes. Statutory measures, which ensure the highest levels of biosecurity are adhered to, should be introduced and enforced at all stages of fish production, including processing plants.

Seaweed Cultivation

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

Yes. All seaweed farms should fall under the same regulatory framework to ensure environmental interactions are fairly and appropriately managed.

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

Yes. Using the marine licensing system to regulate the sector would be an appropriate approach. While we recognise that this sector has the potential to deliver benefits such as remediating/mitigating environmental impacts of finfish aquaculture and the potential to provide biomass and chemical components, any growth and development must be carried out within environmental limits and within the wider marine planning system.

Commercially Damaging Species

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

While the consultation document refers to *Mytilus trossulus*, the open nature of the question leaves considerable scope for interpretation. The control of any native species to further the interests of industry is a

Protecting Scotland's wildlife for the future

highly contentious issue and before we would support such a measure we would like to see robust scientific justification. We suggest that any such powers must be evidence based, tightly defined and should not compromise the conservation of biodiversity or the Nature Conservation (Scotland) Act 2004.

SECTION 2 - PROTECTION OF SHELLFISH GROWING WATERS

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

Yes. The proposal to incorporate the objectives of the Shellfish Waters Directive into the delivery of the Water Framework Directive will ensure the continued protection of coastal areas for shellfish production post 2013. River Basin Management Planning, together with additional targets to achieve the faecal coliform standard for shellfish in designated areas, could provide significant environmental benefits as well as benefits to the shellfish industry. The secondary effect of designation being that shellfish and filter feeders other than those harvested for human consumption are protected, as well as the wildlife that feed upon them.

The Scottish Wildlife Trust supports the *sustainable* growth of shellfish farming in Scotland. While the designation of shellfish waters and the provision of guidance on suitable areas for cultivation is welcome in this regard, there are wider constraints on production that require consideration, and growth can only be truly sustainable where these issues are addressed. For example, the effects of shellfish cultivation on wider biodiversity, particularly in terms of nutrient availability and the impact on other suspension feeders and throughout the food web must be considered. We look forward to the forthcoming consultation on a draft National Marine Plan and subsequent Regional Plans to provide strategic guidance on the expansion of the shellfish farming industry within the confines of wider objectives for Scotland's marine environment.

SECTION 3 - FISH FARMING AND WILD SALMONID INTERACTIONS

Sea-lice

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

Yes. While we can accept the rationale for the use of such powers in appropriate circumstances to protect wild salmonids, we do not advocate the increased use of lice treatments. The risks of increasing resistance to chemical treatments and the impact on other non-target species and the ecology of the marine environment must be considered carefully before such a power is used. Of principle importance is the move toward the adoption of co-ordinated sea-lice management measures, through the operation of mandatory Farm Management Agreements that facilitate the effective use of synchronised fallowing and chemical treatment regimes within defined areas.

Containment and Escapes

21. Do you agree we should provide powers for Scottish Ministers to require all finfish farms operating in Scotland to use equipment that conforms to a Scottish Technical Standard?

Yes. Escapes through system failure are not acceptable. While events such as extreme weather are difficult to anticipate, the industry and the regulator should aim to eliminate all escapes through technological means and common standards for the construction and operation of facilities. As human error remains a significant factor in escape events, we also call for those installing or operating fish farms to be suitably qualified and conform to high standards and best practice.

Tracing Escapes

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

Yes, escapes from fish farms cause significant harm to wild salmon through competition, displacement and interbreeding. In order to improve accountability, Ministers should be given powers to take or require samples from fish farms, so that escaped fish can be traced back to the farm or company of origin. Such a step would ensure that farm operators are held to account and remedial action can be initiated.

SECTION 4 - SALMON AND FRESHWATER FISHERIES MANAGEMENT

Modernising the Operation of District Salmon Fishery Boards

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

Yes. DSFBs are custodians of a nationally and internationally important asset (which, it should be noted, has suffered serious declines across the whole of the North Atlantic region), therefore it is critical that local management decisions are subject to wider scrutiny and a consistent standard of operation is developed across all of the Boards. Such a duty would provide a level of confidence that all Boards are operating in the public interest, and acting in a fair and open manner consistent with bodies holding similar legal functions and with others with a legitimate interest in the resource, its conservation and management

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

Yes. A Code of Good Practice would ensure all DSFBs operate at a consistent standard across the country.

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

In the first instance, the Code of Good Practice should be established in a non-statutory form. As a contingency, the proposed Bill should contain a power to introduce measures requiring adherence to a Code, or sections of it, as deemed necessary by Scottish Ministers.

Statutory Carcass Tagging

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

Yes. Statutory carcass tagging for wild Atlantic salmon and sea trout would significantly reduce the market in illegally caught fish. A system of tagging, working in combination with the existing ban on sale of rod caught salmon and sea trout would ensure that only legitimately captured fish, easily identifiable by tags that are only issued to licensed operators, are offered for sale. The scheme would not only help tackle poaching in adherence with international obligations to reduce the levels of illegal and unreported catch, but would improve the reliability of declared catch data, in turn aiding stock assessment and the conservation of salmon and sea trout.

In addition, tackling illegal netting will have wider conservation benefits as there is considerable potential for marine mammals and birds to become trapped in active, or abandoned, nets. Monofilament gill nets are very difficult for marine mammals and birds to detect and they can, and have, become entangled and drowned.

The introduction of such a statutory carcass tagging scheme in Scotland would complement the existing scheme in England & Wales, where the Environment Agency has identified a potential loophole, whereby illegally caught fish can be offered for sale as wild Scottish salmon which do not currently require a tag. Similar schemes exist in Ireland and it is widely acknowledged that a UK wide statutory system is required to effectively close down all opportunities to market illegally captured fish.

Fish Sampling

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

Yes. As stated in the Report of the Scottish Mixed Stock Salmon Fisheries Working Group, Genetic Stock Identification (GSI) is an important tool, providing fisheries managers with evidence of the home river of the salmon or sea trout being caught by coastal net fisheries. Such research provides certainty on which stocks are being exploited, allowing fully informed management decisions that aid the conservation of salmon and sea trout. To be effective, GSI projects must have access to a representative quantity of samples and thus cannot rely on voluntary participation alone. As genetic analysis is also an important tool in the management of rod fisheries any new powers should not be limited to net fisheries. We therefore agree that Scottish Ministers should have powers to take or require fish and/or samples from any fishery and would encourage the application of this power to take forward and gather evidence on the debate associated with the management of Mixed Stock Fisheries.

Protecting Scotland's wildlife for the future

Management and Salmon Conservation Measures

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

Yes. Scottish Ministers must adhere to legal obligations under the Habitats Directive to maintain or restore European protected species including Atlantic salmon. Therefore, where no Board exists, or a Board is not fulfilling its duties or failing to act in accordance with the conservation of stocks, Scottish Ministers should be able to call upon reserve powers to intervene and introduce measures that provide the appropriate level of protection.

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

Yes. See Q28.

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

Yes. The introduction of conditions requiring monitoring and reporting would allow assessment of whether or not the desired outcomes are being met, strengthening the efficacy of statutory conservation measures and allowing the informed review, refinement and improvement of these measures.

Dispute Resolution

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

Yes. On the basis that on-going disputes can lead to a state of inertia, which in these circumstance would be to the detriment of the natural environment.

Improved Information on Fish and Fisheries

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

Yes, the collection and analysis of effort data would greatly strengthen the assessment of salmon and sea trout stocks. It is well understood that catch data alone is insufficient as it may be greatly affected by, for example, the level of angling effort, river conditions, angler experience etc. Therefore, a gauge of effort is required to determine with any confidence the underlying trends in the status of stocks.

Even a relatively simple measure of effort (i.e. days fished) could allow for trends in catch due to changes in angling effort to be differentiated from trends which may reflect more fundamental changes in stocks. The system adopted should ultimately be simple to administer and enforce while providing the adequate level of information; there would be considerable merit for example in a system that allowed the distinction between time spent fishing for salmon and sea trout separately.

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?

The routine collection and publication of information on for example, catches, conservation measures, monitoring, introductions and enforcement will allow evidence based management aimed at the conservation of stocks and the delivery of multiple benefits. As in our response to Q23, in order to be fair and transparent, it is critical that local management decisions, actions and evidence is recorded and made available for scrutiny, and that this is carried out in a consistent manner across all of the Boards.

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?

Yes. See Q33.

Protecting Scotland's wildlife for the future

Licensing of Fish Introductions to Freshwater

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

Yes.

36. If so, why and in what circumstances?

As in our response to Q28, if it is evident that Boards are failing to apply their regulatory duties appropriately or acting in a way that would compromise the conservation of stocks and the ability of Scottish Ministers to fulfil their legal obligations under the Habitats Directive, then it would be appropriate for Ministers to be able to call upon reserve powers to recall, restrict or exclude the jurisdiction of the Boards.

SECTION 5 - MODERNISING ENFORCEMENT PROVISIONS

Strict Liability for Certain Aquaculture Offences

37. Do you agree that strict liability criteria should apply – where they are capable of being applied – for offences related to Marine Licensing requirements insofar as they apply to aquaculture operations and, potentially, in other situations?

Yes. The introduction of strict liability would help to improve compliance and accountability within the industry and beyond Marine Licensing requirements, would work well in conjunction with provisions to allow the tracing of fish escapes to the farm/company of origin.

SECTION 6 - PAYING FOR PROGRESS

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

Cost sharing and full cost recovery for services provided is a pragmatic approach where direct and exclusive benefits to businesses are identified. However, the proposal as outlined is not clear and we would need to see further detail before making any definitive position. While the consultation document provides assurance that budgets are largely protected we are extremely concerned by any suggestion that public sector cuts would affect the ability to adequately regulate activities, and in turn compromise obligations to conserve biodiversity.

About the Scottish Wildlife Trust

The Scottish Wildlife Trust was founded in 1964 to take all appropriate measures to conserve the fauna, flora and all objects of natural history in trust throughout Scotland. With over 34,000 members, several hundred of whom are actively involved in conservation activities locally, we are proud to say we are now the largest voluntary body working for all the wildlife of Scotland. The Trust owns or manages over 120 wildlife reserves and campaigns at local and national levels to ensure wildlife is protected and enhanced for future generations to enjoy.

For further information please contact:

Alex Kinninmonth – Policy Officer Living Seas
Scottish Wildlife Trust
akinninmonth@swt.org.uk

AQUACULTURE AND FISHERIES BILL CONSULTATION RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

SCOTTISH WILDLIFE TRUST

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

Kinninmonth

Forename

Alex

2. Postal Address

Harbourside House		
110 Commercial Street		
Edinburgh		
Postcode EH6 6NF	Phone 01313124749	Email akinninmonth@swt.org.uk

3. Permissions - I am responding as...

Individual / **Group/Organisation**

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate Yes