

SECTION 1 - THE SUSTAINABLE DEVELOPMENT OF AQUACULTURE

Farm Management Agreements (FMAs)

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

YES NO X

Appropriate Scale Management Areas (MAs)

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

YES NO X

Management Measures and Dispute Resolution

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

YES NO X

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

Answer:

Proposal: establish an expert panel for potential dispute resolution and arbitration in regard to FMAs

Unused Consents

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

YES NO X

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

Answer:

There are some specific issues in respect of “orphaned” CAR consents that need to be addressed. There is a small number of legacy sites where the status and ownership are uncertain, which need to be addressed. There needs to be consistency with terminology in approach to this by Marine Scotland. Any revoking of unused “consents” which would render an approved, but inactive, site unusable would represent theft of private assets by Marine Scotland. With regards to all other consents, the transfer into the Town and Country Planning system was to make sites a heritable asset. Marine Scotland cannot abandon that position.

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

YES

NO X

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

Answer:

There is a specific issue with “orphaned” CAR consents which can be dealt with administratively within existing legislation by SEPA. There are a few legacy sites where their status is uncertain. These can be addressed through the Audit and Review process.

There is a need for Marine Scotland to review the operation of the Locational Guidelines system.

Collection and Publication of Sea-lice Data

9. What in your view is the most appropriate approach to be taken to the collection and publication of sea-lice data? (Page 13)

Answer:

The Scottish Government should endorse the use of SSPO’s Health Database. The Scottish Government should re-engage with a process similar to the Tripartite Working Group.

Surveillance, Biosecurity, Mortality and Disease Data

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

YES

NO X

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

As per the recommendations of the Healthier Fish Working Group

Biomass Control

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

YES

NO X

Wellboats

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

YES

NO

Answer:

We are opposed to undefined enabling legislation. We propose a technical working group on future wellboat design.

Processing Facilities

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

YES

NO X

Seaweed Cultivation

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

YES X

NO

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

YES

NO X

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

Answer:

*As things stand, responsibility for all aquaculture planning is with the Local Authority as stated above. We would welcome this proposal only if it involved **all aquaculture development** passing to the marine licensing 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? (Page 19)

YES

NO

Answer:

- 1. No, not without qualification. The case, including the triggers for action and the need for democratic accountability and limits on powers, needs to be more fully considered.*
- 2. In the case of an identified problem, such as is the case with *Mytilus trossulus*, we would be wholly supportive of the proposal.*

SECTION 2 - PROTECTION OF SHELLFISH GROWING WATERS

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

YES X

NO

SECTION 3 - FISH FARMING AND WILD SALMONID INTERACTIONS

Sea-lice

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

YES

NO X

Containment and Escapes

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

YES X

NO

Tracing Escapes

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

YES

NO X

SECTION 4 - SALMON AND FRESHWATER FISHERIES MANAGEMENT

Modernising the Operation of District Salmon Fishery Boards

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

YES X

NO

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

YES X

NO

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

YES

NO

Answer:

Non-statutory. On the basis of our experience, the proposed wild salmon and freshwater fisheries Code of Good Practice should be non-statutory, but should be made a requirement for fishery proprietors in DSFB areas (or where Marine Scotland fulfils that function). It should also be independently audited by a UKAS accredited auditor.

Statutory Carcass Tagging

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

YES X

NO

Fish Sampling

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

YES

NO X

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

Answer:

- 1. All forms of finfish aquaculture, irrespective of their ownership should be brought within the same legal and regulatory framework. They should have the same requirements for record keeping, reporting and inspection.*
- 2. Additionally, operations undertaken for wild fisheries restocking, stock enhancement or other purposes should be required to provide information on the person undertaking the activity; and the species, origin, numbers and precise locations of the release of fish into the water body. This should be reported and published on a frequently updated Marine Scotland website (comparable to that used for escapes of farmed fish). Further, stock introductions should be planned and controlled as part of a national conservation effort.*

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

YES X

NO

Licensing of Fish Introductions to Freshwater

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

YES X

NO

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

We would go further than the proposal. We believe all fish introductions whether for fish farming or restocking should be brought within the existing legislation for aquaculture. The powers of the DSFB to operate outside that legislation should therefore be removed.

SECTION 5 - MODERNISING ENFORCEMENT PROVISIONS

Strict Liability for Certain Aquaculture Offences

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

YES **NO** **X**

Widening the Scope of Fixed Penalty Notices

38. Do you agree that we should extend the use of fixed financial penalties as alternatives to prosecution in relation to marine, aquaculture and other regulatory issues for which Marine Scotland has responsibility? (Page 38)

YES **NO** **X**

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

YES **NO** **X**

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

YES **NO** **X**

Enforcement of EU Obligations Beyond British Fisheries Limits

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

YES **NO**

No comment.

Powers to Detain Vessels in Port

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

YES **NO**

No comment.

Disposal of Property/Forfeiture of Prohibited Items

43. Do you agree that sea fisheries enforcement officers should be able to dispose of property seized as evidence when it is no longer required, or forfeit items which would be illegal to use? (Page 41)

YES

NO

No comment.

Power to Inspect Objects

44. Do you agree that sea fisheries enforcement officers should have the power to inspect objects in the sea and elsewhere that are not obviously associated with a vessel, vehicle or relevant premises? (Page 42)

YES

NO

No comment.

Sea Fisheries (Shellfish) Act 1967

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

YES

NO

No comment.

SECTION 6 - PAYING FOR PROGRESS

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

YES

NO X

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

A full and comprehensive public review of Marine Scotland, as well as detailed evaluation of the potential market for its services will have to be undertaken before such a proposal can be properly made.

48. If no new way of resourcing such activity can be found, what activities do you suggest might be stopped to free up necessary funds? (Page 43)

This question starts from an incorrect premise. To undertake the kind of privatisation this consultation is proposing will require a full and comprehensive independent review of Marine Scotland, including a detailed evaluation of the potential market for its services.