

CONSULTATION QUESTIONS

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

Agree in principle. More detail on how compliance/non-participation would be monitored and what sanctions would be taken is required. Would there be a sliding scale of offence? There is also an argument that compulsory participation may work against small independent operators or organic producers as they may not be able to fit in with the terms of any existing agreement for economic or production reasons. There may need to be a lead in time for agreements to be introduced where they seek to achieve synchronised stocking and fallowing.

Care would need to be taken in regard to synchronised treatments (for lice) as this could result in a rapid escalation of resistance where operators use same chemical at same time on repeated occasions.

If considering bio-security as part of an agreement there would be a need to include shellfish operators in any agreed area as shellfish can potentially bio-accumulate some infectious agents.

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

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

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

Arbitration should be independent of developers and/or their producer organisation although the latter could take responsibility for identifying and facilitating the process. Planning authorities could also participate in the process - Shetland Islands Council has undertaken this role in the past.

Unused Consents

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

YES ✓

NO

With the caveat that this should apply to **all** the consents for a particular development.

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

Planning consents already include conditions that require development to commence within 3 years of granting and for equipment to be removed if site not used for a period in excess of 3 years – although the latter does not remove the planning consent. This allows for sites to undergo extended fallowing for environmental benefits. Similar conditions could be attached to other consents – sea bed lease, CAR, marine licence, etc. Developers could be encouraged to inform appropriate authorities where sites are undergoing extended fallow rather than becoming economically unusable.

Where a site becomes uneconomic to use (too small, insufficient biomass), all consents would require to be rescinded otherwise the site may prevent appropriate modifications at adjacent sites. Industry needs encouragement to relinquish these sites rather than holding on to the consents in order to block some other aquaculture or other marine development.

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 ✓

Power to revoke a particular consent should reside with the consenting authority – these are required to consult in granting any permission and this approach would be feasible in terms of revocation of the same.

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

The 1997 Planning Act sets out the powers held by planning authorities for the revocation of planning permissions with or without the consent of the developer. Removal of planning consent is likely to be time consuming, resource heavy and complex, particularly where a developer opposes any such removal. However this power should reside with the planning authority.

Where any consent is removed, for whatever reason, it should be the case that all other related consents should be removed (by the appropriate consenting authority) so as not to sterilise the area for any future development.

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)

Clear and precise data on sea lice is essential in terms of the health and welfare management of both farmed and wild salmonid populations. Data needs to be in a format that permits accurate interpretation of what is happening at individual sites, within the same water body (i.e. voe or sea loch level) and within any agreed management areas. Data should be readily available to relevant bodies (regulators, etc.) so that the issue is open and transparent and can be used in any decision making processes.

It is acknowledged that it may be difficult to do this on a 'real time' basis but monthly submissions/reporting should be feasible and practical.

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

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

Most of the proposed data is collected by developers routinely for 'in house' management, typically in electronic format. As such it should not be too difficult to obtain this data although there would need to be a balance struck in terms of time and resources – on this basis submission every 3 or 4 months would appear feasible.

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 ✓

How would Scottish Ministers determine that biomass should be reduced to address health and welfare issues for example? What data would be used? How would effectiveness be monitored?

Modelling (as part of CAR consent) determines the biomass that a site can support and the amount of chemotherapeutants that can be used in a cycle for that biomass to ensure that the site operates within appropriate EQS's. Bath treatments are not directly related to fish biomass but to treatment volume so reducing biomass would not be relevant. Reducing biomass may mean either less therapeutant input (when using in feed treatments) per cycle or more treatments per cycle within the EQS. The former may prove effective in health and welfare terms provided the number of treatments remains the same whilst the latter may worsen the situation by increasing the rate and/or level of resistance in the lice population. Reducing biomass does not mean that health and welfare will improve as treatment concentrations (in gm therapeutant/gm fish or ml therapeutant/ml water) remain the same.

The Aquaculture and Fisheries (Scotland) Act 2007 already allows Ministers to require operators to treat fish for the purpose of controlling parasites and this presumably includes for health and welfare reasons.

Further consideration needs to be given to this issue.

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

Would this be achieved by amendment of existing legislation such as the Marine (Scotland) Act 2010 for tighter discharge conditions and installation of VMS on wellboats, given they are currently exempt within UK territorial waters?

Processing Facilities

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

YES ✓

NO

Any controls should be based on BATNEEC and best practice.

Seaweed Cultivation

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

YES ✓

NO

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

YES

NO ✓

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

As seaweed farming is a form of aquaculture and would utilise the same equipment as shellfish developments (certainly at the outset of industry development) it would be more expedient and relevant for it to be regulated by the local planning authority through the 1997 Planning Act.

The polyculture of fin fish and seaweed has been proposed with the macroalgae acting as a 'biological scrubber' for the wastes from fin fish culture. It would be illogical for this type of development to require two different consents rather than a single one. As fin fish culture comes under the Planning Act it would again be more appropriate for seaweed culture to do likewise so that planning authorities can assess the development as a whole.

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

Although proposals do raise one or two questions such as how do you control a naturally spawning species, what control measures could be introduced (e.g. for *Mytilus trossulus* would this be simply picking the invaders of ropes)?

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 ✓

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

There is something of a balancing act to be considered on this issue. Lowering the threshold may result in an increase in the number of treatments required (for remedial action) leading to increased resistance in lice populations so that treatment efficacy is reduced. Consideration could be given to a temporal shift whilst maintaining the current thresholds thereby perhaps reducing the number of treatments when compared to lowering of thresholds only.

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 ✓

NO

Consideration should also be given to changing mooring techniques, for example moving to mooring 'lines' that are 5 times the water depth as opposed to current 3 times so as to increase the energy damping potential of the moorings. It is acknowledged that separation distances between sites may preclude this in many instances.

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

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 ✓

NO

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

YES ✓

NO

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

YES

NO

Non-statutory

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 ✓

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

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? (Page 32)

YES

NO

No opinion either way

29. Do you agree that Scottish Ministers should be able to promote combined salmon conservation measures at their own hand? (Page 32)

YES

NO

No opinion either way

30. Do you agree that Scottish Ministers should be able to attach conditions, such as monitoring and reporting requirements, to statutory conservation measures? (Page 32)

YES

NO

No opinion either way

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? (Page 33)

YES ✓

NO

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? (Page 34)

YES ✓

NO

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)

Restrict to those factors outlined in paragraph 101

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

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 ✓

NO

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

As per consultation document

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 the apply to aquaculture operations and, potentially, in other situations? (Page 37)

YES ✓

NO

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

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

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

YES

NO ✓

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

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

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

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

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 ✓

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 ✓ with consultation

NO

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)

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)