



## MARINE SCOTLAND AQUACULTURE AND FISHERIES BILL

### COMHAIRLE NAN EILEAN SIAR - RESPONSE TO 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, subject to suitable safeguards being implemented to recognise and address practical production differences between operators e.g. between conventional and organic fish farmers. In addition FMAs should include good practice arrangements on infrastructure and site decommissioning with consideration given to a requirement for operators to lodge a bond to ensure this issue is addressed at the appropriate time.**

##### 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.**

##### 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.**

4. HOW DO YOU THINK SUCH A SYSTEM MIGHT BEST BE DEVELOPED? (PAGE 10)

**The suggestion that the SSPO, whose membership accounts for 95% of Scottish salmon production, take responsibility for developing arrangements for access to an independent arbitration process is appropriate.**

##### Unused Consents

5. DO YOU AGREE WE OUGHT TO REVIEW THE QUESTION OF UNUSED CONSENTS? (PAGE 11)

**Yes when referring to unused lease consents granted by The Crown Estate.**

6. WHAT DO YOU CONSIDER ARE SUITABLE OPTIONS TO PROMOTE USE OR RELINQUISHMENT OF UNUSED CONSENTS? (PAGE 11)

**Suitable options to promote the use or relinquishment of unused consents include options such as placing conditions on consents to develop sites within a given period and also withdrawing consents where they have not been used for a period of time. In addition use or relinquishment of unused consents could be encouraged through an Industry Code of Practice. The transfer of the bio-mass consent to another site would require revocation of the lease. The outcomes of this element of the consultation should be discussed by the Government's Improved Systems for Licensing Aquaculture Development (ISLAD) before conclusions are reached.**

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)

**No.**

8. SHOULD ANY SUCH POWER RELATE TO ALL OR TO PARTICULAR CONSENTS (AND IF THE LATTER, WHICH)? (PAGE 12)

**The focus should be on Lease consents from The Crown Estate.**

**Sections 65 – 68 of the Town & Country Planning (Scotland) Act 1997 set out the powers already held by a planning authority for the revocation of a Planning Permission. The exercise of these powers are complex, likely to be time consuming and resource intensive and would normally only be employed where there are compelling reasons of over-riding public interest as to why the Planning Permission would be revoked.**

#### **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)

**An integrated sea-lice strategy is essential for the health and welfare of farmed fish, as proposed through Farm Management Agreements, and is also important in relation to potential impact on freshwater fisheries. The collection and publication of sea-lice data should be open, transparent and timely and be available on a site by site basis, not aggregated by region.**

#### **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.**

11. WHAT ARE YOUR VIEWS ON THE TIMING AND FREQUENCY OF SUBMISSION OF SUCH DATA? (PAGE 16)

**The timing and frequency of submission of data should balance the relevance of the data with the administrative burden of collecting and submitting that information on an issue by issue basis.**

## **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 but only as a measure of last resort and following opportunity by the operator to introduce appropriate management measures to address biomass and fish health issues.**

## **WELLBOATS**

13. DO YOU AGREE WE SHOULD MAKE ENABLING LEGISLATION GIVING SCOTTISH MINISTERS POWERS TO PLACE ADDITIONAL CONTROL REQUIREMENTS ON WELLBOATS? (PAGE 17)

**Yes.**

## **Processing Facilities**

14. DO YOU THINK SCOTTISH MINISTERS SHOULD BE GIVEN ADDITIONAL POWERS TO PLACE CONTROLS ON PROCESSING PLANTS? (PAGE 17)

**Yes.**

## **Seaweed Cultivation**

15. DO YOU AGREE THAT THE REGULATORY FRAMEWORK SHOULD BE THE SAME FOR ALL SEAWEED FARMS? (PAGE 18)

**Yes.**

16. DO YOU AGREE THAT THE MOST APPROPRIATE APPROACH TO REGULATION OF THIS SECTOR WOULD BE THROUGH MARINE LICENSING? (PAGE 17)

**No.**

17. IF NOT, WHAT ALTERNATIVE ARRANGEMENTS WOULD YOU SUGGEST? (PAGE 18)

**Integrated multi-trophic aquaculture, involves the cultivation of seaweed in combination with shellfish and or finfish aquaculture. Given that fin-fish and shellfish are regulated through the planning system, it would seem more logical for the seaweed aspects to also be subject to the same consenting regime. There is merit in bringing all seaweed cultivation fully into the planning system and that it not be dealt with through marine licensing. This is in line with the Comhairle's previous views regarding planning control in the marine environment in relation to aquaculture developments.**

## **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.**

## **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.**

### **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.**

#### **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 – this should include both cages and their moorings and be extended to include a requirement for a site assessment so that the equipment can be safely moored for the wave and weather climate at the site.**

#### **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.**

### **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.**

24. DO YOU AGREE THAT THERE SHOULD BE A CODE OF GOOD PRACTICE FOR WILD SALMON AND FRESHWATER FISHERIES? (PAGE 29)

**Yes.**

25. IF YES, SHOULD SUCH CODE OF GOOD PRACTICE BE STATUTORY OR NON-STATUTORY? (PAGE 29)

**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.**

## **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.**

## **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)

**No comment.**

29. DO YOU AGREE THAT SCOTTISH MINISTERS SHOULD BE ABLE TO PROMOTE COMBINED SALMON CONSERVATION MEASURES AT THEIR OWN HAND? (PAGE 32)

**No comment.**

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)

**No comment**

## **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.**

## **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)

**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)

**Any additional information collected should be by agreement between proprietors and/or Boards and regulatory authorities.**

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)

**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.**

36. IF SO, WHY AND IN WHAT CIRCUMSTANCES? (PAGE 35)

**In the circumstances outlined in the consultation document e.g. where a Salmon Fishery Board is authorising its own actions.**

## **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.**

### **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.**

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.**

40. ARE THERE PARTICULAR REGULATORY AREAS THAT MERIT A HIGHER OR LOWER MAXIMUM SUM? (PAGE 39)

**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.**

### **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.**

### **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.**

### **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.**

### **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)

**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 on the condition that a full consultation exercise is undertaken to determine which services will incur a direct charge, which services will incur a more generic charge at a sectoral level, which services will continue to be provided at no cost at the point of delivery and the justification for so doing.**

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)

**N/A.**

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)

**N/A.**