



Scottish Council for
Development and Industry

POLICY SUBMISSION

SCDI RESPONSE TO THE AQUACULTURE AND FISHERIES BILL CONSULTATION

March 2012

POLICY SUBMISSION

SCDI is an independent and inclusive economic development network which seeks to influence and inspire government and key stakeholders with our ambitious vision to create shared sustainable economic prosperity for Scotland.

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Introduction

The Scottish Council for Development and Industry (SCDI) is an independent membership network that strengthens Scotland's competitiveness by influencing policies to encourage sustainable economic prosperity. Its membership includes businesses, trades unions, local authorities, educational institutions, the voluntary sector and faith groups.

Executive Summary

Having consulted many of our member organisations with an interest in the aquaculture and fisheries industry it is clear that there are real concerns over the potential impact of some of the proposals put forward.

This industry makes a valuable economic contribution to Scotland, provides employment in many of our most fragile communities and is a leading exporter playing an important part in the recognition of the Scotland brand.

The Scottish Government has recognised that, with salmon exports worth nearly £300 million accounting for forty per cent of Scottish food exports, it has a specific priority within the wider seafood sector. While the UK continues to be the main market for farmed Scottish salmon, exports have grown by almost 10 per cent in the last year and 60 countries imported fresh Scottish Salmon last year. Demand for high quality Scottish farmed salmon continues to increase, with new market opportunities, most recently in China, emerging. It is vital to take advantage of these global opportunities for world-leading premium quality salmon products and ensure that investment in the expansion of production and employment supports economic resilience in remote areas.

We recognise the wish to ensure food safety and the recording of data to address any future difficulties, but the proposals put forward do not recognise the steps currently taken by the industry. It is recognised that it is in the industry's own interest to ensure that their farms are well managed, disease is controlled and that their image is held in high regard both within Scotland and overseas.

These proposals are for the most part regarded as heavy handed by the industry and many of the provisions would either duplicate existing powers or introduce new ones without any clear rationale of their benefit.

This industry has worked hard to build its reputation, recognises the importance of maintaining high environmental and food safety standards and continues to improve its processes through their Code.

We share the industry's concerns that much of what is proposed seems to provide more ministerial powers but without clear definition or reasoning as to why they are required above what is already in place or being enacted.

We hope that the challenging conditions in which the aquaculture and fisheries industry work will be fully taken into account along with the potential impact which additional legislation and controls would have on their costs and competitiveness.

Key Points

SCDI would like to highlight the following points:

- Scotland is the largest aquaculture producer in the EU;
- Salmon is Scotland's largest food export;
- 6,200 jobs in Scotland are estimated to be reliant on the aquaculture industry and the industry injects more than £500 million into the Scottish economy;
- Aquaculture supports many small fragile communities, particularly in the Highlands and Islands;
- Any changes must recognise the importance of this industry and the efforts made by them to maintain welfare standards and the health of their fish;
- Any new requirements or costs placed on the industry must be wholly necessary and recognise the global market place in which they trade.

SCDI RESPONSE TO THE AQUACULTURE AND FISHERIES BILL CONSULTATION

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

Comment: As highlighted in the consultation the role of FMAs is reflected in the Code adopted by almost all of those within the industry. FMAs are an important was of outlining how operators work together by mutual agreement. There would be a danger in giving FMAs statutory backing that competitiveness could be stifled, the Government could get bogged down in the detail of agreements and ultimately the costs of reaching FMAs would increase.

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

Comment: As you recognised in the consultation it is for operators to determine the boundaries for Management Areas and it is best for agreements to be reached between them over this. Given this recognition and the previous consideration by the Healthier Fish Working Group, these proposed new ministerial powers would seem unnecessary.

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

Comment: Given the work of the Scottish Salmon Producers' Organisation we believe the industry is best placed to look into this area and agree its own process at this time.

4. How do you think such a system might best be developed?

Comment: None

Unused Consents

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

YES

NO X

Comment: We understand the issue of unused consents has already been looked into and the industry is already making headway in progressing this matter.

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

Answer:

Given the planning requirements which give deadlines for the development of sites and the rent arrangements in place, it would seem there are incentives to encourage the use of sites.

Promoting the relinquishing of unused consents needs to be undertaken on a case by case basis and is best approached when an existing unused consent presents a block to another development.

The industry itself should be able to address this issue.

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

Comment: Any powers to revoke consents would need to be well defined in order to give the industry confidence in their investments and at this state it is unclear in what circumstances the use of such powers would be appropriate.

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

Answer:

It is felt that sufficient legislation is in place to address current issues and that it is important that current legislation and procedures are fully tried before any additional legislation is brought in.

Particular current issues with regard to legacy sites and orphaned CAR consents should be able to be addressed at present and only if after testing the current legislation and mechanisms, and additional powers are needed, should they be considered.

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:

At present the industry collects and maintains a health database and this should remain the principal mechanism for the collection of data.

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

Comment: Given the work by the Healthier Fish Working Group, as recognised in the consultation, their proposals would seem adequate and we cannot see any reasons for requiring additional information at this stage.

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

Comment: As above.

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

Comment: The reasoning behind this suggestion appear to be entirely based on possible future events rather than any evidence that it is required. Operators and their veterinary surgeons are responsible for the health of their fish and it is unclear why it is felt that their care is failing to meet requirements.

Wellboats

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

YES X

NO

Comment: As highlighted in the consultation Wellboats cross national boundaries and were previously implicated in the spread of Infectious Salmon Anaemia. Given their use it is vital to ensure that high minimum standards apply and Ministerial powers in this area could be helpful.

Processing Facilities

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

YES

NO X

Comment: As outlined in the consultation document there may already be existing controls to address the concerns raise, however it is not clear what those concerns are and if steps have been taken regarding them. Given existing controls may be sufficient what is the requirement for additional ministerial powers?

Seaweed Cultivation

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

YES X

NO

Comment: Given the expected growth in this area we see it as important to ensure a consistent clear framework.

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

YES

NO X

Comment: The important issue is that aquaculture is handled by the same authorities and as such this would be best handled by local authorities.

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

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| Answer: As above |
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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 X

NO

Comment: As highlighted there may be times when action would be appropriate but this will need to be more fully considered to determine at which point a species becomes commercially damaging.

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

Comment: It is vital to ensure high quality waters for the shellfish industry and protect their growing waters. The introduction of provisions to do so is welcome.

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

Comment: We do not believe that this proposal recognises the role of the farm manager or their veterinary surgeon in the care of the fish. Given the Industry Code on the management of Sea-Lice the consultation does not make clear why this is not enough and ministerial powers are required.

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

Comment: The establishment of a Scottish Technical Standard would seem a positive move that would help to give clarity for the industry and regulators alike.

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

Comment: As highlighted in the consultation, progress has been made on addressing escapes and farm managers take steps to tackle any instances when they become aware of them. Given the improvements in reducing escapes it does not seem sensible to introduce new powers that would likely see no improvements in reducing escapes.

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

Comment: There should always be a duty to act fairly and transparently and this addition would be welcomed as a way of giving more accountability to Boards.

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

YES X

NO

Comment: We believe that a Code of Good Practice could certainly help to provide a more consistent approach and ensure that stakeholders are aware of what to expect.

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 X NO

Comment: As outlined in the consultation, tagging ensuring the traceability of wild salmon and sea trout and strengthens its reputation as a food of quality.

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

Comment: At present it is recognised that many proprietors provide samples willingly and it is thought that ministers already have powers in this area.

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 X NO

Comment: Given the current position it would seem sensible for ministers to have this power.

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

YES X NO

Comment: This again would seem a sensible power.

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 X NO

Comment: Where statutory conservation measures are in place, monitoring and reporting requirements should be able to be attached.

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 X

Comment: With improved transparency and accountability of Boards, the introduction of a Code, and given existing laws, more time should be given to test whether this is required.

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 X

NO

Comment: We believe this would be helpful to help ensure as accurate a picture as possible of fish stocks.

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:

Record keeping and reporting are important across the aquaculture and fisheries industries and in order to have an accurate and thorough picture of fish health and conservation similar regimes should be in place across it.

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

Comment: We believe this would help to build that fuller picture to aid conservation.

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)

Comment: Fish introductions for either farming or restocking should be controlled in the same manner in order to provide continuity and a consistent approach.

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 X

Comment: A move to establish strict liability for any offence causes real concern amongst the industry. Whilst we understand that the nature of aquaculture activity may make it difficult to identify the person responsible for the illegal action it must be recognised that such offences are uncommon and a move to strict liability would place an unfair burden on the accused.

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

No Comment

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

No Comment

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

YES NO

No Comment

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)

Answer:

Whether public sector services and activities are paid for by the user or through general taxation needs to be looked at on a case by case basis taking account of the needs and responsibilities of either party.

With fees in place for licensing and planning already much of what is proposed within the consultation that would bring in additional costs is not requested or of benefit to the industry and duplicates existing provision by them. More detail on what charging is envisaged before a detailed response could be offered.

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)

Answer:

Before any decision to stop an activity could be taken real discussion would be needed and a better understanding of the roles and needs of both Marine Scotland and industry operators.

Both the private and public sector have different needs, and both need to look at whether those requirements are being delivered effectively, whether there is duplication that could be reduced, and whether some of the current requirements are needed at all.

More Information

For more information on this response, or to discuss this consultation in more detail, please contact Fraser Grieve, SCDI Highlands & Islands Manager on fraser.grieve@scdi.org.uk or 01463 231878.

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