

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

Since the concept introduction of Area Management Agreements the industry has progressed well in respect of the role that the Farm Management Agreement with all stakeholders has had to play. This was outlined in the 2006 Code of Good Practice for Fin Fish Aquaculture which was recently revised and updated following closely in the footsteps of the recommendations of the Strategic Framework for Scottish Aquaculture. In our experience at Aquascot working over the long term with a number of our partnership suppliers we have experienced mixed Business Continuity, the lows and highs when it has come to fish health, quality and ultimately our customers eating experience. It is evident to us is that where you have a successful Management Area; one in which a single farming business has complete control of the biological area this usually yields the best results. Where you have two farm operators there is often some compromise and where you have three or more the situation more often than not delivers a much poorer quality fish. We have been mapping fish health and quality very closely since May 2008 and have a clear and accurate picture of what will deliver best for our customers and in turn can quite clearly define where best to source our raw material. An appropriate legal framework will create economic, environmental and welfare value.

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

There are overarching agreements through the Healthier Fish Working Group that initially the MAs should be managed by the industry. However today we still see a number of Management Areas and the farming operators within them struggling to deliver what is right for them, the fish and the industry. An appropriate way of partnership working is required between industry and Government to move this situation forward.

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)

It has to come from an appropriate expert or expert body who are completely independent from the industry.
We have a number of examples already within our industry where there are disagreements to find common ground.
These have been active disagreements, some prolonged over time, exist in the industry. Therefore it could be argued the industry has not or are not dealing with effectively. There is currently a good example in Shetland in relation to Areas 8a & 8b where common ground agreement cannot be met. Both businesses who are suppliers have asked if we can help resolve.

Unused Consents

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

YES

NO

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

We already have examples where farms have been relinquished as in Shetland or are being used constructively to create buffer zones/ firebreaks or have been replaced by shellfish farms. There was a requirement to review all such unused consents and establish their current status to determine their future suitability & future. We must now get on with this action.

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

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

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)

This is perhaps the biggest area of contention that we face as an industry. We are all aware that there is a database vehicle but until this information is made more accessible for all genuine stakeholders there will always be concerns. The TWG should be re-instated and refreshed with good stakeholder engagement. We live in an age of increasing transparency, the status quo is not sustainable

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)

In respect of Healthier Fish Working Group we should not be adverse to sharing data with all genuine stakeholders. Ultimately a real time data stream, accessible to defined stakeholders, is likely-similar to the data now being collected from fishing boats. This is necessary as aquaculture takes place in an open, shared resource.

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

As an industry we know that we have a number of problem FMAs and in this instance we should consider biomass as being one of the headings within the over-arching risk assessment. This particular subject and area should have maximum stakeholder buy in and agreement. However, where this cannot be reached in rare, high risk situations, Government should have sanction to intervene

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

We know that we already have good control requirements on wellboats which are now a vital component in respect of the management within each farming business. Not only should we consider FMA specific wellboats therefore eradicating breaching each other's FMAs but we have to install state of the art tracking equipment, manage more effectively treatment/sea lice and mortality discharges particularly when at sea. We now also have an increasing demand to kill at the farm and dead haul to shore but are we satisfied that we have the necessary blood and sea lice containment in place?

Processing Facilities

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

YES

NO

Are current processing plants fit for purpose in respect of receiving live or dead haul stock? Both operations run the risk of introducing pathogens and sea lice back into the environment and in a worst case scenario back into FMAs. Controls need to define that processing plants and wellboats are not contributing adversely to the health and well-being of stock in the sea by their actions.

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 per Marine(Scotland) Act 2010. Local authority has already made decisions where unused consents have been transferred over to seaweed cultivation and there are now a number of examples of multi-trophic agreements within FMAs. Local planning laws should be able to manage this process through to conclusion.

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

We already have experience of not dealing quickly and effectively enough with a commercially damaging shellfish species. There is an obvious loophole here that requires to be addressed.

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

To have a second protection within a FMA that will help further endorse good water quality management is key.

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

This is a very contentious issue. I think first and foremost we have to take stock where we have a very successful relationship between farming area, fish, farmer & fish health manager and identify why this strategy is successful in the face of a farm(s) that are not. There are many examples of both not just in Scotland but in other fish farming countries. We have to find common ground to ensure that all stakeholders are protected and that fish health and welfare is paramount.

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

Another key priority after our sea lice challenge & Pancreas Disease is the issue of escapes. While it is acknowledged that the excellent work to date of the 'Improved Containment Working Group' has led to great progress the goal has to be zero tolerance. There is no doubt that our weather patterns are becoming more punishing for fish farms and this was further witnessed recently where we had a major loss and a number of small escapes coupled with some near misses. The argument is both that in exceptional weather circumstances our equipment will fail and that in other cases the fact that the farm withstood the weather challenge is a testament to the quality and standard of the equipment. In establishing a 'Technical Standard' we already have a good benchmark which has been operating in Norway and having signed a MoU with Norway combined with our own good work within the SARF industry project we now have a good road map. In the face of continuing criticism we have to make sure that we develop a standard that is fit for purpose and will stand up to any challenge made of it.

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

*In all cases today a fish farm or their supplier will know the genetic make-up of their stock. While universal sampling is currently controversial the information would go a long way to resolving disputes or accusations of escaped fish entering wild rivers. The data therefore could be used positively to either prove an escape or dismiss it but in both cases the findings could be used to further enhance best practices.***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

It is unfortunate that we see a lack of common ground between the Aquaculture Industry and the DSFBs and the possibility of legal challenges. There is a will within both wild fisheries and aquaculture to work together in harmony and there are a number of good examples of this. In respect of wild west coast fisheries it would be encouraging for all relevant stakeholders to discuss the 'Wish List' that exists and begin working together towards a good and democratic conclusion. Transparency is key to this process.

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

YES

NO

There is currently a very good CoGP for Aquaculture which should be easily transferable and where there are good examples of fish farmers working in collaboration with wild fishermen/river owners it is the skills and knowledge of the CoGP that are being adopted to help deliver successful conclusions.

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

YES

NO

As with any good CoP it should be open to audit both by internal and external accreditation bodies.

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

A must to drive Traceability, Quality & Provenance linked to KPI benchmarks.

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

There are a number of examples where this practice already exists with no legal obligation. Could this not form part of any new TWG agreement as part of what would be mixed data set that would be shared with members.

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

We need to be looking at all open and closed season dates whether it be river or nets men and ask ourselves are they correct and do they enhance sustainability. There are again some very good examples of farmed salmon businesses and river owners working closely together on conservation measures.

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

YES

NO

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

Again there are good examples of this within current farmed fish & wild fish restoration/collaboration projects and therefore should be a benchmark and in turn an easy step change.

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

We already have good examples of where this is already in existence and in other cases used to function through TWG/AMAs.

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)

If we are truly going to manage correctly then the procedures should be similar to aquaculture where there is a risk assessment in place and a reporting procedure which manages the lifecycle from brood stock to plate broken down at key elements within a HACCP plan.

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

This is required if we wish to establish clear guidelines in respect of river restoration projects.

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 Q.33

If we are truly going to manage correctly then the procedures should be similar as in aquaculture where there is a risk assessment in place and a reporting procedure which manages the lifecycle from brood stock to plate broken down at key elements within a HACCP plan.

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

Looking from the outside in, there are and have been a number of worrying accusations levelled at our industry from illegal chemical use or seal shootings to welfare breaches. When these happen there are quite rightly questions to be answered but worse still there is a whole media business out there ready to tell the story who do not work to the ethic innocent until proven guilty. When you have customers out there who really do care and will judge

*you on the result then we have a duty to ensure that when the law is broken we have in place a system that allows us to act swiftly allowing the rest of us to continue with the good work uninterrupted. There may be an element of difficult change for some with this proposal but we have to ensure that we have an industry that is truly fit for purpose and farmers are not faced with continually looking over their shoulder. All we are ensuring is that we are truly driving **Trust** within our industry. We pride ourselves on being a highly regulated industry that contributes massively to the economy creating wealth, health and happiness.*

The outcome of these recent accusations are key to what we end up proposing within this difficult question of enforcement provision.

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**

If we find ourselves in the uncomfortable situation where we have suffered a major breach of trust within in our industry then we should have a system in place which effectively delivers. If it is preferred to have a system that is in line with most food production chains within agriculture rather than sea fishing then that is what we should look at.

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**

We have to decide what system is best and is maybe just not solely based on a fixed penalty sum. There are many penalty systems that can be looked at.

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

YES

NO

If we do decide on a penalty notice then it should as I have already mentioned be weighted against all the possible breaches. These can be assessed, detailed and listed from our current regulatory framework.

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

Already enforced in England & Wales.

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

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)

I would hope that a collaboration agreement could be found between fish farmers, wild fishing interests both sea and river, government, accreditation bodies, scientific research houses and the private sector to find ways of delivering the necessary and substantial funds and resources. By pooling together all the current and known research & development services we must ensure that we do not in any way duplicate or add further costs to the collaboration agreement.

We want to see aquaculture grow. In fact all the indications are that aquaculture is where we will get a large amount of fish protein to fill the growing world population. It will though have to be delivered through good aquaculture. We have some of the best people in the world, and we have some of the best water, but we have been hampered over the years in finding common ground which has left us at times fragmented. We have a quota management system that has allocated rights to individuals and companies to farm fish through a regulated system. When aquaculture proposals come and are seen to impact on an area, communities or individuals, we unfortunately end up with some debates and at times bad feelings that have been lengthy and protracted. There have been some negative outcomes for individuals or businesses at times and we must ensure that we do not end up with long legal procedures which will not in any way give confidence to the next generation of freshwater or seawater farmers.

Within the renewed strategic framework for Scottish aquaculture there is an acknowledgement that the industry has always faced difficulties in securing finance and today that is no different as we face an unprecedented and incredible economic downturn. There was broad agreement that it was crucial that mechanisms were put in place to facilitate access to financial support and potential investors must be encouraged to view the industry as a long term viable and trusting business. The desired outcome was always to create an investment climate which supports and underpins the long term future and competitiveness of the various sectors with investment in best practice