

THE FISHERMEN'S ASSOCIATION LIMITED

Aquaculture and Fisheries Bill

Response to Consultation Document following meeting with Marine Scotland 5 April 2012

After a useful and informative meeting with Marine Scotland (Bruce Buchanan, Simon Dryden and Eamon Murphy) primarily on Sections 5 and 6 of the Document the following are FAL's comments on the issues discussed:

1. Due Diligence

This defence should be incorporated in the Statute rather than it being left to the court to decide whether or not it applies. See S 109 Marine and Coastal Access Act, 2009

2. Seaweed Cultivation

The Fishing Industry should be a statutory consultee.

3. Fixed Penalty Notices:

As the intention is to extend the concept to Marine Protection and Aquaculture and not extending scope of fisheries offences FAL has no objection

4. Penalty increase:

FAL accepts that the Penalty has to act as a sufficient deterrent. However, currently if the Administrative Penalty is over £2000k then a report on the alleged offence has to go to the PF. It is understood that the proposal to increase the maximum penalty to a sum equal to twice the level 5 on the standard scale i.e. £10k, will result in more offences falling under the FPN system. However the application of this cannot be disproportionate.

Under a Summary conviction the maximum penalty is £5k (level 5). Accordingly there has to be a ceiling on certain types of offences otherwise the statutory maximum would be exceeded by this proposal.

This proposal does not mirror the provisions in the Marine and Coastal Access Act, 2009 - "The amount may not exceed the maximum amount imposed on summary conviction."

So FAL does not agree to this proposal to increase the maximum to £10k. Instead it suggests instead that the increase be 80% of Level 5 and on a second offence refer the report to the PF.

5. Enforcement of EU obligations beyond British Fisheries limits

The proposed amendment will also mean fewer statutory instruments being required in future to transpose EU restrictions and obligations on commercial fishing. FAL appreciates that this will mean less work for MS Compliance but will it mean less scrutiny by officials and Parliament of EU regulations

6. **PARA 129 of Document:** Powers to detain vessels post submission to PF of report in “fast track” cases (non UK). FAL agrees to this
7. **PARA 132:** Please explain the safe guards
8. **PARA 137** FAL has no objection to proposal
9. **Section 6 – Paying for Progress**

This is the most controversial part of the Consultation Document as far as FAL is concerned even though MS restated that they will continue to meet the costs of implementing EU Regulations and that there will be no surcharge on **all** licences.

It was explained that any such charge would be targetted to a sector or sectors that would benefit from a joint MS /SECTORAL initiative such as “problem solving, new research”-- That is somewhat unclear and needs to be specified. In any event what about the new Fish Industry Science Alliance (FISA) and the proposed Centre for Excellence? These are the vehicles for a voluntary joint approach – Industry and Government? Why is there a need for a statutory enabling provision?

The Seafish Industry Authority collects a statutory levy. Why therefore is another levy required to be paid? Surely problem solving (whatever that might mean)/new research could be channeled through Seafish with MS contributing the public sector funding.

FAL is very apprehensive about the desire by Marine Scotland to include enabling provisions in the Bill for:

1. **direct charges for services from which individual/businesses gain a direct benefit and**
2. *within the scope of devolved powers, more generic charges which might be applied at a broader(sectoral) level reflecting the more generic benefits to a group or sector arising from public sector expenditure*

In 1999 Portsmouth University was commissioned by DEFRA to produce a report – *Charging the Industry?*

This Report examined the rationale for charging in fisheries and investigated the types of charging scheme that in principle could be applied in the UK. The following are some quotes from the Report:

“Publicly funded management could be argued to be a subsidy to industry and should be removed or reduced

“Charges could be used in order to recover from industry of the public costs of fisheries management-- administration, enforcement and research

“Charges could be introduced for the specific purpose of raising revenue for Government over and above the costs of management.

“Fish stocks represent a national resource and so society as a whole should receive a share of the benefits from their exploitation.

“In the short run charges will result in some vessels that were borderline profitable becoming unprofitable leading to these leaving the industry.

The model run by the University looked at a VCU based fee.

It was estimated that this would encourage larger vessels to leave rather than smaller ones. So capacity (VCUs) was estimated to decrease more than fleet size vessels leaving the fleet.”

Given the desire of the EU to remove overcapacity and despite the Scottish industry having more than its fair share of pain as a result of decommissioning the enabling provisions are seen as a potential threat by Government to implement EU policy to the detriment of the Scottish industry and the businesses and communities it supports. Accordingly FAL opposes this proposal

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For FAL Secretaries

16 April 2012