

Aquaculture and Fisheries Bill Consultation Document

Partial Business & Regulatory Impact Assessment

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PARTIAL BUSINESS AND REGULATORY IMPACT ASSESSMENT

Introduction

1. This is a Partial Business and Regulatory Impact Assessment (BRIA) for the issues set out in the Aquaculture and Fisheries Bill Consultation Paper published on 12 December 2011. The consultation paper can be accessed here: <http://www.scotland.gov.uk/Publications/2011/12/06081229/0> .
2. The consultation paper is intended to stimulate discussion and consideration of relevant issues and possible approaches and legislative provisions. It does not at this stage constitute firm legislative plans.
3. Many of the issues and measures set out in the paper reflect and build on discussions and developments taken forward with relevant stakeholder interests over, in some cases, long periods. However specific measures, and their anticipated impacts, have been the subject of limited detailed discussion so far, primarily with industry sectoral umbrella bodies. We will be engaging further and in more detail with stakeholders on anticipated business and regulatory impacts (and other matters) as a consequence of the consultation exercise; as part of ongoing business and in more detailed development of plans in relevant areas (such as the proposed technical standard for finfish aquaculture); and as we firm up our plans for legislation. Meanwhile, we have where possible provided some commentary and indicative figures on anticipated impacts of options and proposals.
4. **We welcome comments and suggestions for developing the Business and Regulatory Impact Assessment, to help ensure that discussions about the impacts of proposed legislation, when we reach that stage, are as well informed as possible.**
5. A number of the measures under discussion would constitute 'enabling' rather than specific measures and their actual impacts are not able to be assessed in advance of specific implementation proposals. Some measures are not expected to involve industry in any substantive costs. These measures have not been subject to BRIA at this stage.
6. Proposed measures for the protection of shellfish growing waters are subject to a separate consultation exercise and BRIA, so are not covered here.

Business and Regulatory Impact Assessments

7. A partial BRIA is set out in the following pages covering each of the following issues (with, in some cases, issues brigaded together where we think this is appropriate):

Aquaculture

- Statutory requirements relating to Farm Management Agreements and appropriate scale Management Areas, and related dispute resolution provisions;
- Measures to address unused consents;
- Additional data collection and, where appropriate, publication;
- Provisions to reduce or remove biomass consents;
- Additional controls on wellboats;

- Additional controls on processing facilities;
- Improved regulation of seaweed cultivation;
- Additional controls on commercially damaging species.

Aquaculture and Wild Salmonid Interactions

- Introduction of a Technical Standard for finfish farms operating in Scotland;
- Powers to take or require samples of fish from fish farms, for genetic or other analysis.

Salmon and Freshwater Fisheries Management

- Modernising the operation of District Salmon Fishery Boards;
- Enhancing the management of Salmon Fisheries including mixed stock fisheries including:
 - Powers to require carcass tagging of wild Atlantic salmon and sea trout;
 - Powers to take or require genetic samples or fish for genetic or other analysis;
 - Amendments to existing provisions on salmon conservation measures;
- Powers to amend licensing scheme for introductions of fish to freshwater.

Enforcement Provisions

- Extension to scope and scale of Fixed Penalty Notices;

8. The issues set out in the consultation paper for which no BRIA is provided (for the reasons set out above) are:

- Technical amendments to enforcement provisions - section 30 of the Fisheries Act 1981 (no substantive costs identified);
- Charging – where we propose enabling legislation. The costs to industry, and related benefits, would depend on the charging options chosen.

Purpose and Intended Effect

9. The overall aim of the measures discussed in the consultation paper is to ensure efficient and effective management practices, to ensure in turn sustainable aquaculture and fisheries which contribute to the overall Scottish Government purpose of sustainable economic growth.

10. The measures discussed reflect and build on existing arrangements, discussions and developments undertaken, in many cases, in partnership with the relevant stakeholder interests.

- Objective

Key objectives of the measures are to:

- strengthen and modernise legislation and management practices in relation to aquaculture and fisheries in Scotland; and
- promote greater openness and transparency, including on the collection and publication of key data on aquaculture and salmon and freshwater fisheries.

- Background
In depth background is available in each of the separate proposal sections.
- Rationale for government intervention
In depth rationale is available in each of the separate proposal sections.

Consultation

- Within Government
The consultation paper has been subject to consultation across Scottish Government. We believe the issues and measures it discusses are consistent with UK and EU policy.
- Public Consultation
The consultation paper comprises public consultation on the measures. Responses will help inform legislative plans and further development of BRIAs.
- Business
As explained above, initial discussions only have been held with umbrella organisation representatives - including from the Scottish Salmon Producers Organisation (SSPO), Association of Salmon Fishery Boards (ASFB), Rivers and Fisheries Trusts of Scotland (RAFTS) and Salmon Net Fishing Association of Scotland (SNFAS), the British Trout Association, Association of Scottish Shellfish Growers and the Scottish Fishermen's Federation (SFF).

On the proposed technical standard, there has been wide engagement with the salmon and trout finfish farming industry, net, pen and mooring suppliers & manufacturers and engineers - through a SARF project to develop a Scottish Technical Standard (STS) for finfish aquaculture. This included workshops in Inverness, Shetland and Oban in June 2011 to which all finfish production businesses and trade associations operating in Scotland, fish farm equipment manufacturers and suppliers were invited.

The consultation paper/process comprises further, formal consultation with business, and we will be engaging further with industry interests as we take forward more detailed consideration of measures.

Options

11. In depth consideration of options, sectors & groups affected, benefits & costs are available in each of the separate proposal sections.

Scottish Firms Impact Test

12. As previously explained in the consultation section, we have had wide ranging discussions so far with the Scottish Salmon Producers Organisation (SSPO), Association of Salmon Fishery Boards (ASFB), Rivers and Fisheries Trusts of Scotland (RAFTS) and Salmon Net Fishing Association of Scotland (SNFAS), the British Trout Association, Association of Scottish Shellfish Growers and the Scottish Fishermen's Federation (SFF).

13. Policy officials have already and will continue to engage with the salmon farming, shellfish and wild & recreational fishery industries along with others affected.

Due to the continued industry engagement we have planned we feel it is not proportionate to have face-to-face discussions with individual businesses.

- **Competition Assessment**
We have fully considered the questions posed in the Office of Fair Trading (OFT) competition assessment test above and conclude that our proposals are unlikely to hinder the number or range of businesses or the ability for operators to compete. The proposals are unlikely to significantly affect competition and will apply equally to all.
- **Test run of business forms.**
No new forms will be introduced as a result of these proposals.

Legal Aid Impact Test

14. As no new criminal penalties are introduced by these regulations, we do not anticipate that there will be an impact on the Legal Aid Fund.

Enforcement, sanctions and monitoring

15. In depth analysis of these areas is available in each of the separate proposal sections.

Implementation and Delivery Plans

16. These will also be developed and refined in light of responses to the consultation paper and this Partial Business and Regulatory Impact Assessment, discussions with stakeholders and as we firm up our legislative plans.

Summary and recommendation

17. Summary and recommendations are available in each of the separate proposal sections.

Responses

18. Consultation responses should be submitted no later than Friday 16 March 2012. It is important that a Respondent Information Form is submitted with consultation responses, so that we can treat responses appropriately.

Please send your response to:

Aquacultureandfisheriesconsultation@scotland.gsi.gov.uk

or

1B-North, Victoria Quay, Edinburgh EH6 6QQ

Telephone 0131 244 6243

Fax 0131 244 6512

If you have any queries contact Catriona Graham on 0131 244 6243.

Proposals

- **Statutory requirement for finfish farmers to participate in Farm Management Agreements (FMAs);**
- **Powers for Scottish Ministers to prescribe/direct appropriate scale Farm Management Areas (FMAs) where appropriate;**
- **Related provisions for independent arbitration.**

Objectives

1. To optimise fish health and production management practices (thereby improving productivity, reducing fish losses and increasing sustainability); and to help minimise potential impacts on the environment (including the potential for any significant adverse impacts on wild salmonids).

Background

2. A voluntary Code of Good Practice for Scottish Finfish Aquaculture has been developed and is in place. It aims to bring the standards of practice of every finfish farmer up to a specified acceptable level and to provide an alternative to detailed regulation. Where more than one company operates within a defined Farm Management Area, the Code recommends development and implementation of a Farm Management Agreement, under which production is co-operatively managed to reduce and manage risks posed by infectious agents and parasites (for example, through stocking, fallowing and sea lice management practices). Where there is no Agreement in place, or a single company operates within the Area, the Code recommends production of a Farm Management Statement setting out key aspects of the companies' operations.

3. Farm Management Areas are defined by the industry. The Code indicates there are currently 86 Areas. Separately, Marine Scotland designates Disease Management Areas, for the purpose of statutory controls for the management of fish diseases.

4. There is no arbitration process for disputes in relation to FMAs.

Rationale for Government Intervention

5. Most, though not all, finfish farmers in Scotland we understand seek to work to the requirements of the Code. Adherence to its provisions is independently audited. However there are no statutory requirements for farmers to comply with the Code and no sanctions against those who decline or fail to adhere to its provisions. In theory, this means that it is possible for finfish farmers to operate legitimately, but in ways which may be detrimental to wider (environmental or, indeed, other fish farmers') interests. We want to ensure best practice is adopted by all concerned, to help ensure those wider interests – and the investment of those who do adhere to best practice - are protected.

6. On Farm Management Areas, an appropriate balance needs to be struck in defining practical, manageable areas within which co-operative management measures can be agreed and implemented between companies, and suitably defined areas to manage and mitigate disease risks.

7. There is existing statutory provision in the Aquaculture and Fisheries (Scotland) Act 2007 ('the 2007 Act') allowing for the approval, in whole or in part, of any code of practice and related provisions (section 7) and for monitoring and enforcement by the Scottish Ministers (section 8).

8. The Healthier Fish Working Group, established in 2009, recommended in 2010 that 1) the Scottish Government should make it a legal requirement that all operators in the marine environment enter into a Farm Management Agreement; and 2) the Scottish Government should work with the Scottish Salmon Producers' Organisation (SSPO) to put on a legal footing the independent arbitration process being established by the SSPO, ensuring that such a system is fair to all finfish producers.

Key Options

- a) Continuation of the status quo (do nothing), whereby industry works to the voluntary Code;
- b) Approve (or adopt) the Code in full, on a statutory basis, and monitor and enforce compliance, as provided for in the 2007 Act;
- c) Approve/adopt, monitor and enforce part(s) of the Code, again on a statutory basis as provided for in the 2007 Act;
- d) Provide for prescription by Ministers of the content of Farm Management Agreements and the delineation of Farm Management Areas, and for related monitoring and enforcement provisions; and
- e) In relation to arbitration arrangements i) leave to industry/the SSPO; or ii) make statutory provisions.

Sectors and Groups Directly Affected

9. The marine finfish farming sector.

Benefits

- a) **Do nothing:** no additional management benefits, but no direct additional costs to either the private or public sectors;
- b) **Approving, monitoring and enforcing the full Code on a statutory basis:** would make best practice a statutory requirement and provide anticipated benefits in improved fish health, improved disease and parasite risk management and mitigation across the industry and the wider marine environment;
- c) **Approving, monitoring and enforcing key sections of the Code:** would mean more targeted regulation and related compliance monitoring and enforcement activity, with improvements in key areas (including sea lice management) to the potential benefit of farmed and wild fish;
- d) **Prescription by Government of the content of Agreements, size of Management Areas and arbitration arrangements:** could provide consistency and continuity of approach across issues, potentially with benefits in terms of particular of disease and environmental impact management and mitigation;
- e) **Arbitration arrangements** would be intended to manage disputes between industry interests, so that mutually acceptable arrangements for farmed fish production could proceed, to the overall benefit of Scotland (i.e. optimum production at minimal risk). Those arrangements i) if devised and put in place by the industry, would leave any related costs with them, which may be appropriate given the likely operational nature of most disputes; whereas ii)

those subject to statutory provisions would be likely to involve some (e.g. legislative) cost, but may be regarded by some as potentially more independent.

Costs (including for monitoring, enforcement and sanctions)

- a) **Do nothing:** would involve no additional costs but would mean no improvements in management arrangements and practices compared to the status quo. Existing issues and risks – including from any industry non-compliance with the Code - would continue, with continuing monitoring of compliance with the code by the industry itself, and monitoring and enforcement of other, statutory requirements by the public sector;
- b) **Approving the Code in full on a statutory basis:** would by implication create a large number of statutory requirements on industry and transfer the monitoring and enforcement burden – and related significant costs – from industry to the public sector/purse. To be fully effective, this may require new statutory sanctions with associated potential costs to both the public sector and, in the case of non-compliance, industry;
- c) **Approving key sections of the Code:** would place some additional statutory burden on the public sector/purse, with some risk of duplication of compliance monitoring activity/cost between the public and private sector;
- d) **Government prescription on Farm Management Agreements/Areas:** would lead to significant costs for the public sector in determining appropriate arrangements and their monitoring and enforcement. Inappropriate and/or impractical requirements would have very significant implications for industry, to the extent that some operations could become unviable with associated significant financial implications.
- e) **Arbitration arrangements:** it is envisaged that any arbitration costs would be met largely by those taking advantage of the facility. Actual costs for individual cases we assume would be small (and would presumably be incurred voluntarily in a bid to achieve resolution on issues), depending on the nature of the arrangements put in place and the nature and circumstances of any dispute subject to arbitration proceedings.

Summary and Recommendations

10. It is difficult for the Scottish Government to assess accurately and at this stage of discussion the likely financial and other costs of some of the options identified above. On the basis of current information and analysis, overall, option c), in which key sections only of the Code are approved or adopted on a statutory basis and involving limited Government/public sector intervention, seems to us to provide the most appropriate balance of costs and benefits. We will however welcome views from, and discussion with, industry and others on key options, costs and benefits.

11. The table below summarises what we see currently as key anticipated costs and benefits of the options outlined.

Summary of Anticipated Costs and Benefits

Option	Industry/Private Sector		Public Sector	
	Costs	Benefits	Costs	Benefits
a) Do nothing	Continued operational and financial risk from non-statutory approach. No new financial costs.	None	Continued environmental and public benefit risk from non-statutory approach.	None
b) Approve or adopt full Code on statutory basis.	Likely loss of business for Audit bodies.	Audit costs transferred to public sector /purse. Lower operational and financial risk from non-statutory approach.	Significant compliance monitoring and enforcement costs and/or opportunity costs.	Reduced environmental /public benefit risk.
c) Approve or adopt key sections of the Code.	Likely reduced business for audit bodies.	Possible reduced audit costs. Lower operational financial risk from non-statutory approach.	Additional compliance monitoring and enforcement costs and/or opportunity costs.	Reduced environmental /public benefit risk.
d) Prescription by Government of Farm Management Agreements and Areas.	Operations, viability and competitiveness could be at risk from possible introduction of inappropriate/ impractical arrangements - could result in job, production, financial losses.	Could result in reduced reliance on sea lice treatment chemicals, reduced fish losses, increased profitability and improved image.	Big resource and research costs to determine detailed arrangements for Management Agreements/ Areas, related compliance and enforcement.	Improved fish health management, reduced risk/ incidence of serious disease and associated financial and reputational issues. Reduced environmental /public benefit risk.
e) Arbitration arrangements introduced i) by industry; or ii) on statutory basis.	In either case, anticipated that small arbitration costs would be borne by those involved.	In either case, production operations and risk management optimised between companies. Option ii) may be regarded as potentially fairer, in particular by non-SSPO members.	i) None ii) Small, legislative and admin costs – assumed arbitration case costs would be borne by those involved.	Production operations and risk management optimised between companies – with less associated risk/more potential public benefit.

Proposal

- **To address the issue of unused fish farm consents, to ensure they do not act as a barrier to development and growth in aquaculture in Scotland.**

Objectives

1. To ensure aquaculture production is not artificially constrained by the issue of unused consents; to consider measures to discourage unnecessary holding of unused consents, including giving Scottish Ministers powers to revoke consents in appropriate circumstances.

Background

2. A number of both finfish and shellfish farms that are consented are not being actively farmed. Details are set out in the tables below.

Table 1 – Finfish sites

	Total consented	Inactive or not in use	Percentage of total not being used
SEPA CAR Consents (2009 figures)	433	194	44.8%
SEPA Biomass Consented (2009 figures)	393,200 tonnes	140,282 tonnes	35.7%
MSS Active / Inactive Farms (2010 figures)	445	185	41.6%

Table 2 – shellfish sites

	Total consented	Inactive / or not in use	Percentage of total not being used
MSS Active / Inactive Farms (2010 figures)	449	127	28.3%

3. We are aware that sites may be inactive for a variety of reasons – for example because they are held/act as ‘firebreaks’ for disease or parasite control, for potential future commercial development, pending resolution of development plans and the acquisition of other required consents etc. However, the industry also argue that it is difficult to find appropriate sites for development and that they need additional sites if they are to meet growth targets. Freeing up even a relatively small proportion of currently inactive sites/related consents could potentially allow additional production on existing sites and/or some new sites to be brought into production (since the estimated cumulative environmental impacts would be reduced).

Rationale for Government Intervention

4. The Locational Guidelines: Marine Fish Farms in Scottish Waters designate areas into categories (1, 2 or 3) based on the Marine Scotland Science predictive model to estimate environmental sensitivity (nutrient enhancement and benthic

impact) of sea lochs. Category 1 areas are those considered to be the most environmentally sensitive and where further development is therefore limited.

5. The model takes into consideration the impacts of total consented biomass of all the finfish farms in the relevant water bodies, regardless of whether they are in production - on the basis that they could be made operational and impact on the environment. In effect, inactive sites may constrain production and development in both existing and possible new sites.

6. There is no intention for the Scottish Ministers to over-ride the legitimate interests of companies in holding sites and consents where appropriate for operational and business development purposes. We believe there may be circumstances however – for example, in the case of ‘orphan sites’ where the owner may no longer be known/exist, or potentially where sites have been held inactive for a lengthy period – where it would be legitimate, in the wider interest, for the Scottish Ministers to consider removing consents, thereby freeing up potential development. We think it is appropriate to consider the issue, and the circumstances and the powers under which consents might ultimately be removed or relinquished. It is also appropriate to consider possible approaches related to the grant of new consents, to help avoid the same issue arising in the future.

Key Options

- a) **Do nothing:** no additional regulatory control, with companies permitted to continue to hold consents for inactive sites. This could limit expansion of the industry in particular areas. Industry could be encouraged to take a broader, sectoral (as opposed to individual company) perspective on the issue – for example so that unused consents could be exchanged, surrendered or bought in the interests of development of the aquaculture sector overall. However the question of unused consents has been of concern for a number of years, suggesting there may be no simple industry-led solution to the issue.
- b) **Place conditions on new consents, to ‘use or lose’** – new sites could be required to be developed within, say, 3 years or associated consents would be relinquished.
- c) **Withdraw consents, or levy charges on sites which have not been used for some time (e.g. 3 years) or if they have fallen derelict:** a levy could be charged or consent withdrawn if sites/consents are not used for production for a specified continuous period. (Could be used in conjunction with option b)
- d) **Powers for Ministers to revoke consents:** an option to enable Ministers to revoke consents for a number of reasons, not necessarily limited or set to a particular timeframe. This could include powers to revoke consents for wider (e.g. ‘public interest’) reasons where appropriate.
- e) **Make consents temporary:** prior to Local Authorities being given the responsibility for aquaculture development, development consent was provided on a temporary basis by the Crown Estate, typically on a 10-15 year basis. Temporary planning consent is also provided in other areas: wind farms for example are generally provided with 25 years planning consent. This option would require the operator/company to re-apply for all consents after a period of time (e.g. 10 years). Any that were not being/had not been utilised could have their renewal refused.

Sectors and Groups Affected

7. The marine aquaculture (finfish and shellfish) industry as a whole; individual marine fish farm companies and shellfish farming companies; industry regulators and Local Authorities (as Planning Authorities).

Benefits

- a) **Do nothing:** the main benefit of maintaining the status quo would be that there would be no additional administrative or financial requirements on industry, local authorities, regulators or government. Aquaculture companies could continue to hold consents as now. Individual companies may be able to give, sell or exchange consents to facilitate development where appropriate. However, experience to date suggests such activity is limited.
- b) **Placing conditions on new consents to 'use or lose':** the main benefit to this approach is that it might discourage companies for applying for sites/consents – due amongst other things to the associated costs (which may, including administrative costs, run to a few thousand pounds) - unless there was a firm intention to use them for production. Since the arrangements would apply only to new sites, applicants would be aware of the requirements before applying for a site/consent. We estimate that 1 in 10 new consents may be acquired but not farmed. So over a 10 year period, if there are, say, 5 new sites a year, this option might prevent a further 5 sites being acquired and not farmed – in effect, potentially releasing related production capacity. The value of such production is difficult to assess, since it depends on the carrying capacity of water bodies, the grant of planning permission and other consents, uptake of available capacity by the industry, production and price levels and other factors. However, making some heroic estimates involving 1 'freed up' site every 2 years, production and price levels we would anticipate added gross production value of at least £1 - £1.5m per annum, on an incremental basis. For the purposes of illustration and calculations in this BRIA, we have assumed a net benefit per site per annum of £100,000. In those cases there would also be a gain in asset value to the new consent holder which may be more or less than the loss in asset value to the previous owner (see costs section below).
- c) **Withdrawing consents or levying charge for sites which have not been used for some time (e.g. 3 years) or if they have fallen derelict:** a benefit of this approach is that arrangements and time limits would be transparent and equitable. We estimate that withdrawing consents should sites not be used for 3 years could result in perhaps 100 unused sites become available (with others being used by the operators). Assuming 100 currently unused sites and related consents are utilised (whether by existing or new owners) over a 10-year period, the result – based on an estimated net benefit of £100,000 per site per annum as above - would be a net benefit to Scotland, by year 10, of £10m per annum. As above, where sites change hands this may result in gains in asset value for some firms and losses in asset value for others.
- d) **Revoking consents:** the benefit of this approach is that it would provide powers and flexibility to deal with a range of circumstances. We envisage that unused consents would be revoked primarily in areas where the existence of those consents was preventing sustainable expansion of the industry (i.e. areas where companies indicate they would like to expand but they are

constrained by the estimated impacts of unused biomass consents): or where there are 'orphan sites' (i.e. the owners are unknown and/or cannot be traced). Assuming 50 such consents might be revoked and the sites (or alternative sites) are developed by industry, over a 10 year period, the result would be a net benefit to Scotland, by year 10, of £5m per annum. Again, where sites change hands this may result in gains in asset value for some firms and losses in asset value for others.

- e) **Making consents temporary:** again, the benefit to this approach would be transparency and equity. This option would be likely to result in a number of farms relinquishing consents over the years. Assuming 50 such cases, and that all of these would be developed by companies over a 10 year period, suggests a net benefit to Scotland of £5m per annum by year 20 (i.e. allowing for an initial 10-year consent period, followed by a further 10-year period to take full advantage of relinquished sites/consents).

Costs

- a) **Do nothing:** there would be no unavoidable new costs for either the public or private sector as a consequence of this option. The opportunity costs of unused consents would remain, unless industry interests were persuaded and able to deal with the issue themselves.
- b) **Placing conditions on new consents to 'use or lose':** although unused sites/consents have commercial value to a company and may be reflected as a company asset on its balance sheet, this option would not impact on sites/consents already held by them and would therefore not involve any unavoidable additional costs to industry. There would be some limited consequential administrative costs on regulators (Local Authorities, SEPA and Marine Scotland Science) to administer and monitor new arrangements.
- c) **Withdrawing consents or levying charges for sites which have not been used for some time (e.g. 3 years) or if they have fallen derelict:** unused sites/consents have a commercial value to the operator, which may be reflected on its balance sheet (and, for example, used as collateral for borrowing). Individual values will vary depending on circumstances. For the purposes of this BRIA we have assumed an average book value per site of £1 million (based on the recent sale in April 2011 of 2 fish farms in Shetland at £2.2 million). Withdrawing consents for a site would therefore constitute a book value loss for the company concerned - although it would remain open to the company to seek to replace those consents. Prima facie, this suggests that, if 100 sites/consents were withdrawn because they had not been used or had become derelict, the effect would be up to a £100m reduction in the asset values of Scottish aquaculture companies. If sites are long term unused/derelict, this would indicate that they are potentially less suitable for production and hence that their value may be significantly less than the average. Moreover, the intention in withdrawing unused consents would be that the production capacity they represent could be actively and sustainably utilised – by other companies if necessary in which case there would be an offsetting asset gain to the firm newly acquiring the consent. So the overall financial effect of this measure could be cost neutral or even positive (on the basis that it could facilitate increased, sustainable aquaculture production).

The cost to industry of any levy which might be placed on any unused or derelict sites would depend on the nature of the levy and the number of sites involved. The Crown Estate operates arrangements whereby, where no harvest has been undertaken in a calendar year, a 'flat' annual rent of £500 per lease is charged. This doubles to £1000 after 4 years, and doubles again for every subsequent 2 years of continuous non-production. Introducing, administering and monitoring legislative provisions around further such arrangements would result in some additional administrative costs to Government, regulators and local authorities, offset by income generated. For illustrative purposes, if this approach was taken with respect to the current unused sites the cost impacts could be in the range of £x-£y.

- d) **Revoking consents:** Similar considerations and costs arise, at an individual company level, as for option c) above. In the case of any revoked consents relating to 'orphan sites', however, there would by implication be no cost to individual companies. In any circumstances where those unused consents were held by a company but were seen to be preventing potential sustainable expansion of the industry more generally, any costs to individual companies (including book value losses) would be offset by the wider opportunities afforded by freeing up development and capacity. It is difficult to assess, but we would hope the overall financial effect on industry might be neutral or even positive (on the basis that revoking unused consents and effectively re-issuing them could result in increased production overall, and new site/consent owners could ascribe similar values to the assets).

Any legislative provisions introducing such proposals would again result in some additional administrative costs to Government, regulators and local authorities. This may need to include, for example, provisions for arrangements for representations/appeals against the proposed revocation of consents.

- e) **Making consents temporary:** a key associated cost here would be long-term uncertainty for the industry and the likely impact in reducing its attractiveness for long term investment. Firms would also incur additional costs in having periodically to re-apply for consents - estimated at £xxx per site (based on average planning fees of x, a new SEPA CAR licence of £2801, Marine Licence costs of x), plus administrative costs.

This option would be expected to result in a number of farms losing some consents at the end of the temporary consent period. As for previous options, this may have financial (asset value) implications at the individual company level, but we would anticipate neutral or even positive overall financial effects due, as for options c) and d), to the 'recirculation' of available consents and potentially increased production overall.

Any legislative provisions introducing these proposals will again result in some additional administrative costs to Government, regulators and local authorities.

Enforcement, Sanctions and Monitoring

- a) **Do nothing:** no additional enforcement-related requirements or costs arising for public or private sector.

- b) **Placing conditions on consents to ‘use or lose’:** production monitoring is already undertaken by Marine Scotland Science, showing whether sites are active or not, so no substantive need is envisaged for additional monitoring. If this option was to be progressed, legislation would seem necessary to ensure a sound legislative footing for necessary consent conditions, involving some associated public sector cost.
- c) **Withdrawing consents or levying charges for sites which have not been used for some time (e.g. 3 years) or if they have fallen derelict:** production monitoring is already undertaken by Marine Scotland Science, showing whether sites are active or not, so no substantive need is envisaged for additional monitoring. If this option was to be progressed, legislation would again be required to ensure a sound legislative basis a) for withdrawing consents; and b) for an appropriate charging regime.
- d) **Revoking consents:** production monitoring is already undertaken by Marine Scotland Science. If this option was to be progressed, legislation would be required to provide a sound legislative basis for the revocation of consents (and any related representation/appeal provisions).
- e) **Making consents temporary:** production monitoring is already undertaken by Marine Scotland Science. In principle, this option might be able to be pursued under existing legislation, but new/amended legislation may be desirable to provide transparent arrangements for temporary consents and provisions (including for representations/appeals) relating to renewal/non-renewal of consents.

Summary and Recommendations

8. The aquaculture industry suggests a lack of available sites is constraining its sustainable growth in Scotland. We believe addressing the issue of unused consents may help to address that, at least in part: and ought to be addressed.
9. There are a number of options for doing so. We do not believe the status quo (option a) - doing nothing) is appropriate, unless industry can show that appropriate steps are being taken to resolve the issue without Government intervention.
10. Option b) has some attractions in that it would not have any ‘retrospective’ effect: but that approach would only deal with future consents, leaving the question of existing unused consents. We believe that is not the optimal approach.
11. Either of options c) or d) would in our view constitute appropriate options. Option c) would provides transparent, equitable arrangements, with potential impacts on individual companies, but of more general benefit to Scotland. Option d) may provide a more flexible power, for utilisation in different, particular circumstances – by implication, subject to judgements on the part of the Scottish Ministers as to when and how to apply.
12. Option e), whilst a possibility, would in our view introduce potentially unhelpful unpredictability into future granting of consents and may therefore impact on investment decisions and the objective of sustainable industry expansion. We do not believe it is an optimal approach.
13. We will welcome stakeholders views on the outlined and suggested preferred options (and indeed on any others).

Proposals

- ***Collection and publication of sea-lice data, and***
- ***Provision by businesses of additional surveillance, bio-security, mortality and disease data.***

Objective

1. The provision of better data to improve fish health surveillance, we believe, will help to aid early identification of any emerging fish health or disease risks and thereby to maintain, protect and enhance Scotland's high health status on finfish farms.

Background

2. Aquatic animal health surveillance in Scotland is coordinated by Marine Scotland Science. This is largely carried out on a risk based approach, but is supplemented by passive and intelligence led surveillance. We believe that the provision of additional data and information from fish farms, as proposed, is essential to improve surveillance arrangements, risk assessment and prioritization and to assist in the early detection of notifiable and emerging disease.

3. Questions about the impacts of sea lice, and access to and publication of sea lice data, are particularly contentious issues. Under The Fish Farming Businesses (Record Keeping) (Scotland) Order 2008 it is a requirement for individual businesses to maintain records of sea lice data. These records are inspected by fish health inspectors. The records are not collected and related data are not published.

4. The majority of the Atlantic salmon farming industry in Scotland (98% of production by volume) is represented by the Scottish Salmon Producers' Organisation (SSPO). The SSPO has developed a database holding sea lice and other data, to assist as a management tool for the industry. Data on sea lice are published on the SSPO website in aggregated form, by region.

5. Some, particularly wild fisheries interests, want sea lice data published at the level of the individual site/business, because of uncertainty and concerns about the possible impacts of sea lice on wild salmonids. Aquaculture industry representatives argue that issues about sea lice and their management are complex and data are open to mis-interpretation and misrepresentation: and that publication of data about individual sites and companies is unnecessary and may be detrimental to their commercial interests.

Rationale for Government Intervention

6. Scottish Government is the Competent Authority in relation to EU fish health requirements; and we want to ensure we have access to data that optimises our ability to identify, manage and mitigate risks and the impacts of disease in and between finfish farms. We need to ensure appropriate consideration of the interests of both farmed and wild fisheries sectors, both of which make an important socio-economic contribution – including in remote and rural areas.

Key Options

1. **Do nothing** (status quo);
2. **Require that a full range of additional data is submitted to Government** (with options as to its timing and frequency – periodic or ‘real time’ – and as regards what ought to be published);
3. **Require that sea-lice data are submitted** (again with options on frequency, timing and publication).
4. **Take advantage of work already done by industry** in collecting data and maintaining a database, subject to appropriate access/publication arrangements.

Sectors and Groups Directly Affected

7. Primarily the salmonid finfish farming sector, but with a key interest on the part of the recreational (salmonid) fisheries sector.

Benefits

1. **Do nothing**. No benefits – except that there would be no additional requirements or direct costs to either the private or public sectors.
2. **Require a full range of data** to be submitted to Government. This option would provide Government with additional data allowing additional analysis, risk assessment and potentially earlier identification of any emerging or potential fish health or disease issues. The actual value of this is difficult to assess but can be seen against, for example, the potential cost to industry/Scotland (likely to run to £millions) of a serious disease (e.g. ISA) outbreak.
3. **Require that sea lice data only are submitted** to Government. Would provide broadly similar (though lesser) benefits as for option 2.
4. **Require industry to maintain data/a database**, with related arrangements for Government to access/obtain reports and with appropriate data publication arrangements (to be agreed). This approach could offer similar benefits as for options 2 and 3 above, though would need to be subject to certain safeguards and assurances about data etc.

Costs

1. **Do nothing**. No direct additional costs to industry or Government, but no associated fish health surveillance etc improvements.
2. **Require a full range of data** to be submitted to Government. Would impose some – although we anticipate limited – costs on industry (who will already hold data). Potentially significant resource implications for Government to receive, hold and analyse additional data – particularly if to be provided, analysed and utilised in or close to real time.
3. **Require that only sea lice data are submitted** to Government. The potential additional direct costs to industry would hopefully not be significant since they already collect and submit data to the SSPO database and which could be used to fulfil submission requirements. Costs to government would be potentially significant if a new database was required to be set-up to hold and facilitate the analysis etc of data (by implication, potentially duplicating some work already done by industry).
4. **Utilising industry data/database**, with appropriate access to/publication of data could reduce substantially additional costs to Government, but would need to be subject to agreement, safeguards and assurances.

Enforcement, Sanctions and Monitoring

- 1 **Do nothing.** No additional compliance monitoring or enforcement implications.
- 2 **Requirements for submission of comprehensive data** to Government would require amended legislation, including provisions for additional offences (e.g. for failure to provide, for providing false information etc), with associated monitoring arrangements and sanctions.
- 3 **Requiring the submission of sea lice data** would carry similar (though lesser) requirements as for option 2 above.
- 4 **Requiring industry to maintain data/a database** and providing or permitting Government access to data could potentially be done on a statutory or non-statutory basis. If the former, there would seem to be a need for new legislation to provide for data requirements and potential offence provisions (as for options 2 and 3 above).

Summary and Recommendations

8. The consultation paper seeks views on appropriate arrangements for the collection of data from industry, including the collection and publication of data relating to sea lice. We will consider the response to consultation – including any responses in relation to this partial BRIA – before deciding on the most appropriate approach. Meanwhile, we will welcome any comments in relation to the foregoing analysis and summary table below.

Summary of Costs and Benefits Table

Option	Private Sector		Public Sector	
	Costs	Benefits	Costs	Benefits
1. Do nothing	-	-	-	-
2. Requirement for range of data to be submitted to Government	Anticipated limited additional costs since industry will hold this data in any event.	Potential generic industry benefits in reduced risk of disease outbreak etc.	Potential significant costs e.g. £150,000 to set up database, £20,000 per annum in analysis costs plus potentially increased surveillance costs.	Enhanced fish health surveillance, risk management, leading to lower risk of significant fish health issues or disease outbreak.
3. Require that sea lice data only are submitted to Government.	As for option 2., with more limited requirements and related costs.	As for option 2, but on more limited basis.	Largely as for option 2, though at lesser cost.	As for option 2, in relation to sea lice issues and impacts only
4. Utilisation of industry data/ database, with safeguards etc.	Limited to any costs associated with additional safeguards /requirements – database already in development /use.	Builds on existing industry management tool.	Limited to added analysis/ surveillance costs. May be related issues about transparency etc.	Subject to appropriate data etc may provide similar benefits to options 2 and 3, without most additional public sector (database) costs

Proposal

- *Temporary or permanent reductions in biomass consents, to help manage sea lice in particular problematic areas/circumstances.*

Objective

1. To provide powers for Ministers to determine lower levels of permitted biomass in a fish farm/site where there are concerns about the effective management of sea lice and their potential impacts, thereby ensuring that fish health and welfare and the potential wider impacts of sea lice are considered alongside environmental impacts.

Background

2. At present the level of biomass permitted (licensed) on a marine finfish farming site is determined by SEPA on environmental grounds. There is no legal power for SEPA to limit the biomass based on sea lice levels/management. Nor is the level of permitted biomass linked to the permissible volume of chemo-therapeutant that may be required to treat that biomass effectively. There is therefore a risk of imbalance between what is consented and what is necessary to ensure appropriate sea lice management and to mitigate potential impacts.

Rationale for Government Intervention

3. We believe it may be appropriate, in certain circumstances (where, for example, there is evidence of a serious or intractable problem with sea lice management) that there should be powers for Government to set a lower biomass limit, to help safeguard fish health and mitigate wider potential risks. SEPA's powers in relation to consents for fish farming are limited to consideration of environmental impacts. It is appropriate for Scottish Ministers to take a wider perspective and to have powers to require SEPA to reduce a biomass consent to help ensure appropriate and sustainable sea lice management.

Key Options

1. **Do nothing** (status quo).
2. **Establish powers Ministers to require SEPA to reduce biomass consent.**

Sectors and Groups Directly Affected

4. The marine salmon farming sector.

Benefits

- 1 **Do nothing.** No benefits in terms of fish health and wider risk management, but no direct additional costs to either the private or public sectors.
- 2 **Establish powers for Ministers to require SEPA to reduce biomass consent.** Would provide more options for more effective sea lice control, with benefits in improved fish health management and reduced risk from any wider sea lice impacts.

Costs

- 1 **Do nothing.** No additional direct costs, but also no improvements in fish health and risk management related to sea lice controls.
- 2 **Establish powers for Ministers to require SEPA to reduce biomass consent.** Could involve potentially significant costs to fish farm operators if required to reduce production volumes, with possible knock-on effect on jobs and suppliers.

Enforcement, Sanctions and Monitoring

- 1 **Do nothing.** No additional enforcement, sanctions or monitoring.
- 2 **Establish powers for Ministers to require SEPA to reduce biomass consent.** Provisions for Ministers to require SEPA to reduce a biomass consent would not necessarily involve new offence/enforcement provisions, since biomass consents are already subject to appropriate enforcement arrangements. There may however be a need for some additional, targeted monitoring activity in circumstances where a biomass consent had been reduced: and we envisage a possible need to deal with consideration and potential representations from industry in relation to any such proposals.

Summary and Recommendations

5. We believe Option 2, providing powers for Ministers to require SEPA to reduce biomass consent when it is determined necessary and appropriate, is the more appropriate approach. This option would involve costs to the particular business affected, in terms of reduced production, but would see localised benefits to fish health management particularly in relation to minimising the risks associated with the potential spread of sea lice and pathogens which may affect other farmed and wild salmonids.

Summary of direct Costs and Benefits Table

Option	Private Sector		Public Sector	
	Costs	Benefits	Costs	Benefits
1. Do nothing	Continued sub-optimal sea lice controls, with associated risks.	No additional direct financial costs for industry.	No improvement in fish health and risk mitigation related to sea lice management.	No additional direct public sector costs.
2. Establish powers to require SEPA to reduce biomass consent.	Costs of lost production due to reduced consent – could potentially make some sites non-viable	Potentially better control of sea lice, improved stock performance and prolonged life (efficacy) of available therapeutants.		Added option for fish health and risk management/mitigation, with potential wider benefits in terms of reduced disease risk and more generally for fish farming and wild fisheries sector.

Proposals

- ***Enabling powers for Ministers to place additional controls on wellboats. Details to be decided but could include, for example:***
 - ***satellite monitoring of wellboat movements (as for fishing vessels);***
 - ***additional controls on discharges, whether at sea or to land (for example, with related lice filtration/destruction requirements);***
 - ***remote monitoring of wellboat activity, including fish movements/discharges.***

Objective

1. The aim is to help minimise risks – to farmed and wild fish - from parasites (sea lice) and pathogens, thereby helping to improve fish health and to protect the interests of both the farmed and wild fish sectors.

Background

2. The spread of the serious notifiable disease infectious salmon anaemia (ISA) in 1998 and 1999 was linked to movements of wellboats. It has also been reported that wellboats may act as a vector for the spread of pancreas disease (PD), significant disease that affects on-grown salmon, and the spread of sea lice following treatments in wellboats and discharges en-route. We have had representations from some in the fish farming industry that discharges from wellboats in some areas may be causing them lice issues (and therefore pose a fish health hazard).

3. A voluntary Code of Good Practice for Scottish Finfish Aquaculture has been developed which advises on how risks in wellboat operations, such as cross-infection and hazards to bio-security measures between farms, can be minimised. Not all finfish farmers are signatories to the Code. There is no obligation for the advice to be adhered to and no sanctions for non-compliance.

Rationale for Government Intervention

4. There is no statutory requirement that farmers record wellboat movements or what they are moving. This means that cross-contamination of pathogens continues to be a major concern. The introduction of additional control requirements on wellboats would enable us to raise standards of bio-security, and improve monitoring of fish movements by wellboat and wellboat/discharging activities within and across national boundaries.

Key Options

- 1 Do nothing (status quo).
- 2 Establish powers for Ministers to impose requirements on wellboats – for example to monitor movements, discharges and require the wellboat discharge to be filtered to remove all stages of sea lice.

Sectors and Groups Directly Affected

5. The marine salmon farming sector.

Benefits

- 1 **Do nothing.** No direct additional costs to either the private or public sectors.
- 2 **Establish powers,** for example to monitor movements, discharges and require the wellboat discharge to be filtered to remove all stages of sea lice. This would see benefits to improved fish health management across Scotland's marine farmed Atlantic salmon sector. It is difficult to place an absolute value on the associated benefit, but we would expect benefits to accrue (in terms of reduced risk and improved fish health) both to individual fish farmers, and generally to the farmed and wild fish sectors.

Costs

- 1 **Do nothing.** There would be no improvements in fish health management and the issues surrounding cross-contamination of pathogens by wellboats would remain.
- 2 **Establish powers,** for example to monitor movements, discharges and require the wellboat discharge to be filtered to remove all stages of sea lice. There would be significant costs associated with "retro" fitting filters to wellboats, fitting monitoring equipment to wellboats and costs associated with monitoring. New wellboats could be required to be fitted with filters in the build-phase. There would be significant logistical issues in use of wellboats shared between Norway and Scotland as the fleet is not large and there are many boats that operate between the countries, suggesting a need to align requirements with Norwegian regulation.

Enforcement, Sanctions and Monitoring

- 1 **Do nothing.** Would mean continued auditing by the industry (through Food Certification International) with no additional enforcement, sanctions or monitoring.
- 2 **Establishing powers** and introducing provisions to monitor movements, discharges and to require the filtering of wellboat discharges to remove sea lice would require additional monitoring and compliance provisions/activity and provisions for related offences.

Summary and Recommendations

6. We will welcome views in response to the consultation paper, but are minded to pursue Option 2, establishing powers to monitor wellboat movements and discharges and to require the filtering of sea lice from wellboat discharge. We believe this would offer significant benefits to fish health management, notably by helping to minimise risks associated with the potential spread of sea lice and pathogens affecting farmed and wildfish.

Summary of Direct Costs and Benefits Table

Option	Private Sector		Public Sector	
	Costs	Benefits	Costs	Benefits
1. Do nothing	Continued risks and no improvements in fish health	No additional costs.	Continues risks and no improvements in fish health or related improvements in economic performance.	No additional costs.
2. Establish powers e.g. to monitor movements, discharges and to require the filtering of wellboat discharges to remove (all stages of) sea lice.	Fleet of 20 plus wellboats would be required to “retrofit” at £300,000 per boat. Monitoring systems per boat at £30,000. Total potential costs of ~£6 million or if new wellboats are built they would have to be redesigned and the boat itself would have a higher costs.	Fish health improvements and reduced risks of disease outbreak and costs associated with losses to disease and sea lice treatments. Difficult to identify absolute value of benefits.	Need to build on existing monitoring systems within Marine Scotland, with some associated costs, including for monitoring and response requirements.	Improvements in fish health and reduced risk of disease outbreak and costs associated with mitigation. Difficult to identify absolute value of benefits.

Proposal

- ***Additional controls on facilities processing farmed fish (salmonids).***

Objective

1. To reduce the risk of spread of parasites (sea lice) or pathogens from processing facilities (including harvesting stations).

Background

2. Processing plants in Scotland primary process high volumes of farmed fish (the total production of farmed salmon in Scotland in 2010 was about 155,000 tonnes). Facilities are subject to controls (notably by SEPA), but which are in general concerned with pollution prevention and control. Controls are not in place relating to the potential spread of sea lice or pathogens, which may impact on farmed or wild fish. We have had representations from some in the industry about the risks posed by processing discharges, including in potentially undermining effective local Farm Management Agreement arrangements by importing for processing fish from outside the area (and which may not have been subject to similar rigorous management arrangements).

Rationale for Government Intervention

3. Treatment/filtration to mitigate against the possibility of sea lice or pathogen discharge falls outside SEPA's remit. We believe it would be appropriate to give Ministers powers to place additional controls on processing plants (which may include powers to require filtration to remove all stages of sea-lice, and particulates), to mitigate the risk of sea lice and pathogen dispersal, thereby providing further fish health and disease safeguards for both farmed and wild fish.

Key Options

- 1 **Do nothing** (status quo).
- 2 **Provide powers for Ministers to place appropriate additional controls on processing facilities** to mitigate the risk of spread of sea lice and pathogens.

Sectors and Groups Directly Affected

4. The marine salmon farming and processing (including harvesting) sector.

Benefits

- 1 **Do nothing.** No direct additional costs to either the private or public sectors, but no added sea lice/pathogen risk mitigation.
- 2 **Establish powers to allow Ministers to introduce controls on processing facilities** to minimise the risk of the spread of sea lice and pathogens. This would help mitigate risks from the spread of sea lice or pathogens from processing facilities, helping to protect farmed and wild fish health and mitigating disease risk.

Costs

- 1 **Do nothing.** There would be no improvements in fish health management and the issues surrounding the potential spread of sea lice and pathogens, and associated disease risk, from processing facilities would remain;
- 2 **Establish powers to allow Ministers to introduce controls on processing facilities** to mitigate the risk of the spread of sea lice, pathogens and disease. We envisage there would be some but limited additional costs to Industry as filters will already be in place to filter effluent as part of existing requirements. There are less than ten significant facilities processing salmonids in Scotland.

Enforcement, Sanctions and Monitoring

- 1 **Do nothing.** No additional enforcement, sanctions or monitoring.
- 2 **Establish powers to allow Ministers to place controls on processing plants** to mitigate the risk of the spread of sea lice and pathogens. Legislation would need to provide for offences for failure to meet requirements, with arrangements to monitor and enforce compliance alongside other, existing control measures.

Summary and Recommendations

5. We favour Option 2, giving powers to Ministers to place controls on processing facilities to mitigate the risk of the spread of sea lice and pathogens. This would see both localised and national benefits to fish health management, particularly in relation to minimising the risks associated with the potential spread of sea lice and pathogens affecting other farmed and wild salmonids.

Summary of direct Costs and Benefits Table

Option	Private Sector		Public Sector	
	Costs	Benefits	Costs	Benefits
1. Do nothing	Continued operations that do not optimise fish health management, with related risks.	No additional costs.	Continued risks to fish health and economic performance of the sector. No additional mitigation of risk of outbreaks of disease and sea lice epizootics.	No additional benefits.
2. Establish powers to allow Ministers to place controls on processing facilities to mitigate the risk of spread of sea lice and pathogens.	Some added costs in stricter requirements for filters, filtration method and subsequent monitoring.	Better control of sea lice, and pathogens leading to improved management within and between areas.	No additional costs.	Greater mitigation of fish health and disease risk. Reduced costs of any mitigation.

Proposal

- ***Regulation of all seaweed farming through Marine Licensing arrangements.***

Objective

1. To ensure that seaweed cultivation/farming is appropriately regulated.

Background

2. Since 2007, planning consent for fish farming has been regulated under the Town and Country Planning Act 1997. Under this Act, fish farming is defined as the breeding, rearing or keeping of fish or shellfish (which includes any kind of sea urchin, crustacean or mollusc). Seaweed cultivation is not therefore covered by the 1997 Act. Any potential seaweed farmer would need to obtain a Marine Licence (under part 4 of the Marine (Scotland) Act 2010) for depositing equipment in the sea.
3. However, if suitable equipment was already in the water and had been used for another activity (e.g. mussel ropes), no Marine Licence would be required as the equipment is already deposited and there would be no new activity to licence under the Marine Licensing regime.

Rationale for Government Intervention

4. Seaweed cultivation may offer socio-economic opportunities. While environmental impacts of the activity are expected to be low or beneficial, we believe there is a need for regulatory oversight and controls. Regulatory arrangements should reflect the potential impact of the activity and should not depend simply on the circumstances of the operator (i.e. whether they happen to have used appropriate equipment for another activity).

Key Options

1. **Do nothing** (status quo): would continue to provide a variable system where seaweed cultivation would only be regulated under Marine Licensing if the operator needed to deposit new equipment in the water;
2. **Regulate all seaweed cultivation under Marine Licensing:** would ensure that all seaweed cultivation applications would be dealt with under the Marine Licensing regime;
3. **Regulate all seaweed cultivation under the Town and Country Planning Act 1997:** would mean amending the legislation so that seaweed cultivation was considered as development, along with fish farming, under the 1997 Act.

Sectors and Groups Affected

5. Individuals/Companies wishing to cultivate seaweed, Local (Planning) Authorities, Government (in particular Marine Scotland's Licensing Operations Team).

Benefits

1. **Do nothing** – If no action was taken, any individuals or companies who had equipment in the water that was suitable for cultivating seaweed (e.g. mussel ropes) would not need to apply for a Marine Licence (which would carry associated costs).
2. **Regulate all seaweed cultivation under Marine Licensing** – This approach would help ensure that any potential negative impacts on the environment are identified and mitigated or avoided. It would bring consistency to the way in which seaweed farms are regulated in future, avoiding any risk that certain companies/individuals are at an advantage by virtue of past (different) activity.
3. **Regulate all seaweed cultivation under the Town and Country Planning Act 1997** – Benefits essentially as for option 2. This approach may also make it easier to develop a co-ordinated approach to Integrated Multi Tropic Aquaculture (IMTA) sites.

Costs

1. **Do nothing** – There would be no additional financial costs on private or public sector.
2. **Regulate all seaweed cultivation under Marine Licensing** – There would be a small cost to those setting up a seaweed farm who currently would not need to apply for a Marine Licence as they already have suitable equipment in the water. There would be a minor additional administrative burden for Government as most applications will already currently be considered by the Marine Scotland Licensing and Operations Team.
3. **Regulate all seaweed cultivation under the Town and Country Planning Act 1997** – If regulation for seaweed cultivation was transferred to local authorities under the Town and Country Planning Act, applicants would be required to pay £145 for each 0.1 hectare of surface equipment and £50 for each 0.1 hectare of the sea bed area used. This option would also result in some additional financial and administrative burden on planning authorities.

Enforcement, Sanctions and Monitoring

1. **Do nothing** – no enforcement, sanctions or monitoring required.
2. **Regulate all seaweed cultivation under Marine Licensing** – In essence, existing marine licensing legislation and related arrangements would apply.
3. **Regulate all seaweed cultivation under the Town and Country Planning Act 1997** – If an individual or company failed to obtain a licence for a seaweed farm under revised legislation, the sanctions available under the 1997 Act would apply, with compliance monitoring and enforcement-related activity the responsibility of the Planning Authorities.

Summary and Recommendations

6. We not do think Option1 (the status quo) is appropriate as this would continue the situation whereby regulatory controls are not comprehensive or consistent.

7. Our preferred option would be Option 2 (extension of Marine Licensing arrangements) as this would, for the most part, maintain the status quo while addressing an evident lacuna and providing a more consistent and fairer approach across the marine sector. We believe there would be negligible additional costs to either the public or private sector.

Summary Cost and Benefits Table

Option	Private Sector		Public Sector	
	Costs	Benefits	Costs	Benefits
1. Do nothing	-	Benefits to those who currently do not need to obtain a licence	-	No new legislation necessary
2. Regulate all seaweed cultivation under Marine Licensing	Minor costs to those that currently do not need to obtain a licence	All companies on a level playing field	Minor added administrative and enforcement costs to Government	Regulation is more comprehensive and consistent; risks addressed
3. Regulate all seaweed cultivation under the Town and Country Planning Act 1997	Minor costs to those that currently do not need to obtain a licence	-	Ongoing added administrative and enforcement cost for local authorities	Regulation is more comprehensive. Risks addressed

Proposal

- ***Powers for Ministers to introduce controls to help prevent the spread of potentially commercially damaging native species.***

Objective

1. To provide powers to help prevent the spread of (native) species that may prejudice the commercial production of traditionally farmed species.

Background

2. The spread of some native species can impact detrimentally on the production of other farmed species. For example, a new species of mussel, *Mytilus trossulus*, has been found in significant numbers over the last few years growing on commercial mussels ropes within Loch Etive. This species has poor meat yields and thin shells, which means it is not commercially viable. Managing its spread is therefore important to the long term sustainability of commercial mussel production in Scotland.

Rationale for Government Intervention

3. While there are now comprehensive controls to prevent the spread and control of non-native species (through the Wildlife and Countryside Act 1981), controls on native species are limited. In the absence of government intervention it is likely that individual shellfish farmers will not have sufficient incentives to invest an adequate amount in control of *M. trossulus* or any other potential commercially damaging species. We believe it is important for Government to take an overview and ensure appropriate controls can be put in place if and when an issue is identified.

Key Options

1. **Do nothing**
2. **Introduce a package of measures to ensure commercially damaging native species are identified and for them to be controlled and prevented from spreading**
3. **Introduce legislation that could require specifically the identification and control of *M. trossulus* and prevents its further spread**

Sectors and Groups Affected

4. Aquaculture operators and Government – in particular Marine Scotland Science

Benefits

Do nothing – There would be no financial or administrative cost to government or industry.

Introducing measures to allow commercially damaging species to be identified and controlled – Would have an overall benefit to the aquaculture industry in identifying, controlling and helping to prevent the spread of species that may be commercially damaging to the industry.

Taking *M. trossulus* as an example, the potential economic impact of a commercially damaging species can be illustrated. Before the introduction/spread of *M. trossulus* into Loch Etive, at its peak (2001) the loch produced approximately 786 tonnes of mussels. Estimated annual profits are estimated to be £300 per tonne (revenues £1000 per tonne (2010 Shellfish Production Survey) and costs £700 per tonne (source: Prospects for Shellfish report), providing total annual profits of £235,800. Commercial mussel production in Loch Etive, as a consequence of *M. trossulus*, has dropped to nil. The total benefit in Loch Etive over 10 years, had measures been available and able to identify and control the species, can therefore be calculated as almost £8m (gross), involving profits totalling some £2.4m.

If no powers are taken to control the spread of *M. trossulus* (or other potentially commercially damaging species), it is possible that it could spread to other areas with similar consequences. It would seem reasonable to assume similar costs.

In addition, the proposed measure would provide the ability to introduce controls in relation to other potential commercially damaging species. If, for example, there were one instance of another commercially damaging species occurring over a 20 year period, then using similar costs as calculated for *M. trossulus* would suggest benefits over 10 years (should the effects be avoided) of £1.2m.

On that basis, we suggest a total potential (net) benefit to industry of this option of £3.6m over 10 years.

Introduce legislation that enables specifically the identification and control of *M. trossulus* – This option would provide potential benefits to the mussel farming industry as above, helping to prevent the spread of *M. trossulus*. The value of potential benefits is as calculated above at £2.4m over a 10 year period.

Costs

1. **Do nothing** – This is the baseline option against which the other options are assessed and so there are no additional costs or benefits. We assume that there could continue to be one ‘Loch Etive’ scale outbreak every ten years.
2. **Introduce a package of measures to allow commercially damaging species to be identified and controlled** – Progressing this option would result in administrative, legislative and monitoring costs for government. We anticipate costs of between £200 and £1000 per order. Some situations may require more detailed analysis and a surveillance programme, costs for which require further consideration.

Progressing this option could also result in costs to industry, as companies could be prevented from moving species, or could be required to carry out control work. The control work underway in Loch Etive is estimated to cost £284,700. Assuming that there are 2 instances of similar issues (one of *M. trossulus*, one of another species) occurring every 10 years, potential costs to industry can be estimated at **£569,400** over that 10 years. That needs to be offset, however, against the potential benefits of identifying and preventing the spread of any such species, with potential overall costs as identified in the ‘Benefits’ section above.

3. **Introduce legislation that requires specifically the identification and control of *M. trossulus*** – Using the worked examples above, if *M. trossulus* was to spread to another area where mussels were cultivated and control

measures were implemented, potential costs to industry might be assessed at £284,700 every 10 years. There would also be costs to Government, largely as per Option 2.

Enforcement, Sanctions and Monitoring

1. **Do nothing** – no additional compliance monitoring, enforcement or sanctions necessary.
2. **Introducing measures to allow commercially damaging species to be identified and controlled** – would require legislation, with related requirements and relevant offences and penalties (e.g. for any failures notify, breach of control arrangements etc).
3. **Introduce legislation specifically for the identification and control of *M. trossulus*** – again, would require legislation, with related requirements and relevant offences and penalties (e.g. for any failures notify, breach of control arrangements etc).

Summary and Recommendations

5. Option 2 is the preferred option as this would provide the best protection against the potential spread and impacts of species that may affect production of traditionally farmed commercial species. Option 3 would help to deal with the current problem caused by *M. trossulus* but would not provide for controls in relation to any other commercially damaging species that may be identified.

Summary Cost and Benefits Table

Option	Private Sector		Public Sector	
	Costs	Benefits	Costs	Benefits
1. Do nothing				
2. Measures to identify and control of commercially damaging species	£569,400 over 10 years as above	£3.6m over 10 years as above	£200-£1000 per order, plus potential additional surveillance and science analysis costs	Additional protection for socio-economic benefits generated by aquaculture.
3. Measures specifically to identify and control <i>M. trossulus</i>	£284,700 over 10 years as above	£2.4m over 10 years as above	£200-£1000 per order, plus potential additional surveillance and science analysis costs	Additional (but lower level) protection for socio-economic benefits generated by aquaculture.

Proposal

- ***Give Scottish Ministers powers to determine a threshold (lower than that set out in the industry Code) for the incidence of sea lice on farmed fish, above which remedial action is required.***

Objective

1. To set a lower threshold for action in certain circumstances, to minimise the risks (including to wild salmonids) from sea lice.

Background

1. Management of sea lice and mitigation of their potential impacts (on both farmed and wild fish) is a key issue. The industry Code sets out a strategy for sea lice management and advises a threshold for treatment for sea lice, average of 0.5 adult female lice between 1st February and 30th June inclusive and average of 1.0 adult female lice 1st July to January 31st inclusive.
2. We think there is a case for lower thresholds to apply, for example in key areas where there are significant wild fisheries and/or high levels of biomass of wild fish (meaning that the overall burden of lice in the marine environment could be high). However, there are possible tensions with fish health and welfare considerations: in substance, a lower threshold for/more frequent treatment with chemo-therapeutants may have detrimental impacts on farmed fish health and welfare.
3. We need to get the balance right, in these sorts of circumstances, between fish health and welfare and wider environmental considerations. We therefore propose to set a lower threshold, in appropriate circumstances, above which measures to address the lice burden need to be considered and introduced. This may involve additional therapeutant treatments (where acceptable/appropriate) or other potential management measures. If measures to manage and mitigate the risks from sea lice are not successful, then other measures (such as reducing the permitted level of production biomass) may need to be considered.

Rationale for Government Intervention

4. The aim is to ensure the potential wider impacts of sea lice on the marine environment (including any potential impacts on wild salmonids) are considered and addressed, in the wider interests of the recreational fisheries sector and the wider Scottish interest.

Key Options

1. **Do nothing** (status quo);
2. **Give Ministers powers to prescribe sea lice thresholds, in certain circumstances, above which remedial action requires to be taken.**

Sectors and Groups Directly Affected

5. The salmonid finfish farming sector, in relation to seawater production.

Benefits

1. **Do nothing.** No direct additional costs to either the private or public sectors.
2. **Give Ministers the powers to prescribe lower thresholds above which measures are required.** Would reduce overall sea lice burdens in sensitive circumstances/areas, reducing related risks to wild (and other farmed) salmonids.

Costs

- 1 **Do nothing.** There would be no improvements in fish health management, with ongoing sea lice-related risks.
2. **Give Ministers the powers to prescribe lower thresholds above which measures are required.** Would place additional, more severe burdens on industry to manage sea lice, with associated costs. Ultimately, if measures fail, could see production biomass reduced or, as a last resort, removed due to inability to manage sea lice adequately.

Enforcement, Sanctions and Monitoring

- 1 **Do nothing.** No additional enforcement, sanctions or monitoring.
- 2 **Give Ministers the powers to prescribe lower thresholds above which measures are required.** Options for proposed measures, compliance monitoring and related offences would require to be developed.

Summary and Recommendations

6. We believe Option 2, which would give Ministers the powers to prescribe lower thresholds in certain circumstances, above which remedial options need to be taken, would afford necessary protection (including to wild salmonids) from potential detrimental impacts from sea lice.

7. It is difficult to assess the actual costs of any such requirements from a theoretical perspective: but we will welcome views on the potential implications of the proposed approach.

Summary of direct Costs and Benefits Table

Option	Private Sector		Public Sector	
	Costs	Benefits	Costs	Benefits
1. Do nothing	None for the Industry but related risks (including to wild fish and fisheries) would continue.	None, but no additional direct costs.	No direct additional costs, but ongoing wider (including socio-economic) risks related to sea lice burdens.	None other than avoiding additional costs.
2. Give Ministers powers to prescribe lower thresholds above which remedial measures are required.	Costs relating to additional measures (actual costs dependent on measures involved).	Potential better management of sea lice with associated fish health and productivity benefits	Some additional costs involved in deciding when/how to require lower threshold/measures: and in related compliance monitoring and enforcement.	Reduced risks overall from sea lice, helping to safeguard socio-economic benefits from fish farming and recreational fisheries.

Proposal

- ***Introduction of a Technical Standard for finfish farm equipment for businesses operating in Scotland***

Objectives

1. To help ensure the containment of fish, prevent escapes, improve productivity, increase sustainability, and minimise the potential for any significant adverse impacts on wild salmonids.

Background

2. The voluntary Code of Good Practice for Scottish Finfish Aquaculture (CoGP) recommends that *'Installations, facilities, moorings, pens and nets etc should be fit for purpose for the site conditions and installed by an appropriately qualified person*. However, there is no defined standard for equipment and no robust audit process. Also, under existing powers in the Aquaculture and Fisheries (Scotland) Act 2007, Fish Health Inspectors inspect sites to ensure that measures are in place to contain fish and prevent escapes. Whilst they can check records for attestations from manufacturers that the equipment is fit for purpose, they cannot be expected to identify below-water-line failures or whether equipment is appropriately set up.

3. Whilst there has been a general trend in recent years of reducing fish farm escapes, 2011 has seen a significant upturn as a consequence of storm-related damage to equipment and related losses of fish. More generally, concerns exist about risks associated with businesses not replacing old equipment or use of equipment inappropriate for site conditions. This risk is increased in times of economic difficulties when businesses are less able to finance replacement equipment. There are also concerns about ongoing 'drip escapes' which are generally associated with use of inappropriate mesh sizes on nets or screens.

Rationale for Government Intervention

4. Through the Improved Containment Working Group, industry has agreed to a Scottish Technical Standard for fish farm equipment to apply to all Scottish marine and freshwater (including hatcheries) finfish farms covering nets, pens and mooring systems with an appropriate lead in time for industry to replace existing kit.

5. There are a number of reasons for introducing a Scottish Technical Standard:

1. The current system in Scotland relies on recommendations in industry's voluntary Code of Good Practice that *'Installations, facilities, moorings, pens and nets etc should be fit for purpose for the site conditions and installed by an appropriately qualified person'*. There is currently no defined standard and no robust audit process;
2. To provide greater certainty as to what is and what is not suitable. Anecdotal evidence suggests that companies will balance risk with equipment quality and, ultimately, cost. The larger companies can generally afford higher specification equipment but some operators may risk using unsuitable or lower quality equipment. This will be more of an issue when farm gate prices of fish are lower and businesses have limited capital to invest in new and replacement equipment;

3. Some businesses rotate equipment between sites – sometimes with very different environmental conditions. This is based mainly on experience and local knowledge. A defined standard that states exactly what equipment is suitable for specific conditions would give confidence to the business and also to planners, regulators and insurers;
4. Under existing powers in the Aquaculture and Fisheries (Scotland) Act 2007, Fish Health Inspectors inspect sites to ensure that measures are in place to contain fish and prevent escapes. Whilst they can check records for attestations from manufacturers that the equipment is fit for purpose, they cannot be expected to identify below-water-line failures or whether equipment is appropriately set up. A standard would help address this, at least to an extent;
5. Industry has suggested that planning authorities have been reluctant to approve new sites where there are local concerns about potential escapes and impacts on the environment. The current system relies on companies asking suppliers for attestations that the equipment is “fit for purpose”. Having a standard in place would help reassure planners, decision makers and the wider stakeholder community about the suitability of equipment;
6. Norwegian government and industry have advised that NYTEK raised the level of awareness around escapes and forced farm managers to improve training of personnel and to be more demanding towards equipment suppliers. We would anticipate similar benefits in Scotland;
7. Work on developing a draft standard is well underway - through the Scottish Aquaculture Research Forum (SARF) - in conjunction with industry. The project team is expected to deliver a draft Scottish technical standard; and a gap analysis report recommending further information required to develop the standard (which will also include recommendations for inspection, certification and accreditation methods).

6. The consultation paper proposes enabling legislation for Scottish Ministers to have the powers to instruct industry to adopt a Scottish Technical standard. Further discussion with industry, equipment suppliers and the wider stakeholder will be required on the detail of the proposed standard and on any inspection and audit regime. The specific costs and benefits of the proposed measures will depend on the as-yet-unknown details of any scheme, in particular on how ‘fit for purpose’ is defined in terms of equipment standards. **Once the details of a proposed scheme have been formulated we will produce a further BRIA to ensure and to demonstrate that any measures which we introduce represent value for money.**

Key Options

7. Key options we have identified are:

Option 1: Do nothing (status quo) - where the majority of industry work to (salmon), or relevant sections of (trout), the Code but which does not define “fit-for-purpose” with regard to fish farm equipment (nets, moorings, pens etc).

In the absence of new measures some equipment (nets, pens and moorings) may not be fit for purpose and there will not be any clearly auditable means of assessing whether any equipment being used is fully suitable for the environment in which the farm is operating. This may impose costs not only on the affected business but also

through possible interactions between farmed and wild salmonids. There will also be costs associated with loss of stock due to escapes through use of inappropriate equipment by companies not following best practice and/or not signed up to COGP/ QTUK standards. This risk will be increased in economic downturns and significant weather events. For example, the January storms of 2005 led to the escape of nearly 900,000 fish and loss of several £million worth of equipment. There may also be loss of production capacity and thus productivity due to lack of planning approval for new sites.

Option 2: Develop a Technical Standard which will be adopted by the industry as part of a revised Code. All finfish farming businesses are already required to operate with “fit for purpose” equipment to prevent escapes including upgrading or replacing equipment due to age/wear and tear etc. This measure would clarify how ‘fit for purpose’ should be interpreted and should provide greater certainty to operators and suppliers. SSPO compliance with the CoGP is audited by Food Certification International (FCI) and trout compliance audited by Quality Trout UK (QTUK). Businesses signed up to the revised CoGP should replace kit with equipment of known technical standard leading to increased confidence to investors and some stakeholders. All suppliers should be able to work to agreed known standards across the industry. Although currently a condition of SSPO membership, the CoGP is voluntary and not in statute. Also, this option would not cover salmon non-SSPO members or trout operators not being audited by QT UK.

Option 3: Develop a Technical Standard which will be adopted by the industry as part of a revised Code and revise Marine Scotland’s existing role on ensuring compliance with containment aspects of the Code to include those sections covering the Technical Standard.

All finfish farming businesses are already required to operate with “fit for purpose” equipment to prevent escapes including upgrading or replacing equipment due to age/wear and tear etc. As with Option 2 this measure would clarify how ‘fit for purpose’ should be interpreted and will provide greater certainty to operators and suppliers. However, this option through revised Fish Health Inspectorate inspections would ensure all businesses and not just those signed up to the Code will (after an appropriate lead in time) be required to operate using equipment of known technical standard.

Option 4: Develop a Technical Standard in statute and establish an inspectorate to ensure compliance with these aspects of the Code. In addition to the measures set out in Option 3, an Inspectorate with increased technical/engineering expertise would be established (or the role of FHI could be expanded) to audit farm equipment to ensure that it meets the required standards. This option would not be reliant on Industry audit regimes.

We also considered an option to develop a technical standard with associated certification and inspection regime – similar to the NYTEK system to Norway and perhaps developed through the British Standards Institute - but rejected this at an early stage due to its evidently poor value for money.

Sectors and Groups Affected

8. Finfish aquaculture operators; fish farm equipment suppliers and manufacturers; Marine Scotland; Planning Authorities.

Benefits

Option 1: Do nothing and continue with the status quo where Industry work to the CoGP. Baseline option therefore no benefits.

Option 2: Develop a Technical Standard which will be adopted by the industry as part of a revised Code. The specific benefits of this measure will depend on the particular details of the 'fit for purpose' specifications and the number of farm sites signed up to the code whose equipment is not of the required standard. Neither of these is known at present but we assume that the measure would lead to a tightening up of standards on at least some farm sites. As a result there will be improvements in the containment of fish and a reduction in escapes – both events and “drip” escapes – compared to the 'do nothing' baseline.

Option 3: Develop a Technical Standard which will be adopted by the industry as part of a revised Code and revise Marine Scotland's existing role on ensuring compliance with containment aspects of the Code to include those sections covering Technical Standard. As for Option 2, the specific benefits of this measure will depend on the particular details of the 'fit for purpose' specifications and the number of farm sites whose equipment is not of the required standard. Neither of these are known at present but we assume that the measure would lead to a tightening up of standards on at least some farm sites. In addition this will apply to all farms, not just those signed up to the Code. As a result of the broader scope, we would expect that the benefits under this option in terms of improved containment and reduced escapes to be greater than under Option 2.

Option 4: Develop a Technical Standard in Statute and establish an inspectorate to ensure compliance with these aspects of the Code. The nature of the benefits will be the same as under Options 2 and 3. There would also be increased transparency with industry compliance. We would expect the scale of the benefits to be greater under this option as the expert inspectorate is more likely to uncover instances where in-water equipment is not meeting the standard.

Costs

Option 1: Do nothing and continue with the status quo where Industry work to the CoGP: baseline option therefore no costs.

Option 2: Develop a Technical Standard which will be adopted by the industry as part of a revised Code. Industry will incur additional costs compared to the baseline where they are required to fit more expensive equipment in order to meet the specifications of the 'fit for purpose' requirements. As with the benefits, the specific costs of this measure will depend on the particular details of the 'fit for purpose' specifications and the number of farm sites signed up to the Code whose equipment is not of the required standard. Neither of these is known at present but we assume that the measure would lead to a tightening up of standards on at least some farm sites and hence some additional costs

Option 3: Develop a Technical Standard which will be adopted by the industry as part of a revised Code and revise Marine Scotland's existing role on ensuring compliance with containment aspects of the Code to include those sections covering Technical Standard. Expected industry costs as per option 2, but likely to be higher due to the extended scope of this Option. Probable additional costs on public sector for Marine Scotland inspections and possible additional costs to co-opt

technical/engineering expertise. Also duplication of auditing process by FCI and QTUK.

Option 4: Develop a Technical Standard in Statute and establish an inspectorate to ensure compliance with these aspects of the Code. Expected industry costs as for Option 3, but likely to be higher due to the more rigorous inspection envisaged under this Option. Also potential for significant additional financial burden on establishment and running of an inspectorate/audit scheme that is currently audited by an independent organisation, Food Certification International (FCI) or Quality Trout (QT) UK. Possible for reduction of costs above if Inspectorate formed from an existing organisation with capability or potential to adapt and assume this Inspectorate function.

Enforcement, Sanctions and Monitoring

Option 1: Do nothing (status quo). Continue auditing by FCI and QTUK; and Marine Scotland FHI containment inspections/enhanced inspections under the 2007 Act with no additional enforcement, sanctions or monitoring.

Option 2: Develop a Technical Standard which will be adopted by the industry as part of a revised Code. Continue auditing by FCI and QTUK; and Marine Scotland FHI containment inspections/enhanced inspections. Requirement for additional monitoring/inspection. Options for offences and enforcement would need to be developed.

Option 3: Develop a Technical Standard which will be adopted by the industry as part of a revised Code and revise Marine Scotland's existing role on ensuring compliance with containment aspects of the Code to include those sections covering Technical Standard. Continue auditing by FCI and QTUK; and Marine Scotland FHI containment inspections/enhanced inspections. Requirement for additional monitoring/inspection. Options for offences and enforcement would need to be developed.

Option 4: Develop a Technical Standard in Statute and establish an inspectorate to ensure compliance with these aspects of the Code. Significant requirement for monitoring/inspection. Options for offences and enforcement would need to be developed.

Summary and Recommendations

9. Option 3 is the preferred option in which industry adopts a technical standard as part of a revised Code and Marine Scotland inspection regime is in place to ensure all industry and not just those signed up to independently audited codes of practice have expected standards in place. Intervention is only made where Industry measures are considered to be sub-optimal. This builds on existing practice, reduces need for establishment of an additional inspectorate, reduces potential for duplication of existing industry inspection/audit regimes and provides the best balance between costs and benefits.

Summary of direct Costs and Benefits Table

Option	Private Sector		Public Sector	
	Costs	Benefits	Costs	Benefits
1. Do nothing	None.	None	None	None
2. Develop a Technical Standard which will be adopted by the industry as part of a revised CoGP	Costs for new equipment for businesses not operating to QTUK or CoGP standards. Additional costs for FCI & QTUK audits	Suppliers/ manufacturers work to agreed known standards across the industry. Increased confidence to investors. Industry savings to those working to the revised CoGP through reduced stock loss. Increased opportunities for expansion /increased productivity due to increased operational efficiency.	Additional burden to FHI inspection regime. Probable costs associated with MS co-opting engineering expertise. Duplication of auditing process by FCI and QTUK.	Overall continued improvement with containment of fish, reduced escapes – both events and “drip” escapes. Wider related ‘public benefits’ in terms of reduced risk to jobs, income etc in both farmed and recreational fisheries sector
3. Adopt Develop a Technical Standard which will be adopted by the industry as part of a revised CoGP and revise MS existing role on ensuring compliance with containment aspects of the CoGP to include those sections covering Technical Standard	Costs for new equipment for businesses not operating to QTUK or CoGP standards. Additional costs on industry for additional FCI & QTUK audits	Suppliers able to work to agreed known standards across the industry. Increased confidence to investors. Industry savings to those working to the revised code through reduced stock loss. Increased opportunities for expansion /increased productivity due to increased operational efficiency.	Additional burden to FHI inspection regime. Probable costs associated with MS co-opting engineering expertise.	Overall continued improvement with containment of fish, reduced escapes – both events and “drip” escapes. Increased confidence for regulators and planners. Wider related ‘public benefits’ in terms of reduced risk to jobs, income etc in both farmed and recreational fisheries sector

Option	Private Sector		Public Sector	
	Costs	Benefits	Costs	Benefits
<p>4. Develop a Technical Standard in Statute and establish an inspectorate to ensure compliance with these aspects of the CoGP. Significant requirement for monitoring /inspection</p>	<p>Costs for new equipment for businesses not operating to QTUK or CoGP standards. Possibly additional burden on industry for additional FCI & QTUK audits</p>	<p>Suppliers able to work to agreed known standards across the industry. Increased confidence to investors. Industry savings to those working to the revised code through reduced stock loss. Increased opportunities for expansion /increased productivity due to increased operational efficiency.</p>	<p>Probable additional costs on public sector for MS inspections and possible additional costs to coopt technical /engineering expertise. Also duplication of auditing process by FCI and QTUK. Potential for significant additional financial burden on establishment and running of an inspectorate /audit scheme that is currently audited by an independent organisation, Food Certification International (FCI) or Quality Trout (QT) UK. Possible reduction of costs if inspectorate formed from an existing organisation with capability or potential to adapt and assume this inspectorate function.</p>	<p>Overall continued improvement with containment of fish, reduced escapes – both events and “drip” escapes. Increased confidence for regulators and planners. Wider related ‘public benefits’ in terms of reduced risk to jobs, income etc in both farmed and recreational fisheries sector</p>

Proposal

- **Additional powers for Scottish Ministers to take or require samples of fish from fish farms, for genetic or other analysis, for tracing purposes.**

Objective

1. To enhance the powers available to Ministers so as to ensure an appropriate range of powers to allow or require sampling for tracing purposes (in turn, to help identify potential sources of escape risk).

Background

2. Escapes of farmed fish are a significant issue for the industry and escapees can potentially have impacts on wildfish in relation to genetic mixing (introgression), competition for food, displacement and the potential for transmission of pathogens. Powers exist (in section 5(3) (a) of the Aquaculture and Fisheries (Scotland) Act 2007) for samples to be taken of fish from farms, but these powers do not we believe provide an appropriate range of powers.

Rationale for Government Intervention

3. There are existing, but limited, powers for Ministers (via Fish Health Inspectors) to take samples, to facilitate the tracing of possible escapees. We think it appropriate to fill a legislative lacuna to allow Ministers wider sampling powers, necessary to help protect wider marine (including wild fish/fisheries) interests.

Key Options

- 1 **Do nothing** (status quo).
- 2 **Give Ministers enhanced powers to collect genetic samples of fish from fish farms for genetic and other sampling for tracing purposes.**

Sectors and Groups Directly Affected

4. The finfish farming sector.

Benefits

- 1 **Do nothing.** No direct additional costs to either the private or public sectors.
- 2 **Give Ministers enhanced powers.** We believe would lead to a better understanding of the level and likely sources of escapees, helping to address and reduce associated risks. This would in turn, by helping to identify and address containment issues, lead to improved economic performance in aquaculture (due to reduced losses) and less risk of introgression, competition etc effects on wild fish/fisheries.

Costs

- 1 **Do nothing.** There would be no increased understanding of the level or manner/source of escape, with no related containment. Improvements and ongoing associated risks
- 2 **Giving Ministers enhanced powers to take or require samples** would of itself impose no additional significant costs on industry. These would only

accrue if evidence/sources of potentially detrimental escapes were to be identified and need to be addressed.

Enforcement, Sanctions and Monitoring

- 1 **Do nothing.** No additional enforcement, sanctions or monitoring.
- 2 **Giving Ministers additional powers to collect or require samples.** Options for related requirements, and offences eg for failure to comply with relevant requirements, would need to be developed.

Summary and Recommendations

5. Option 2, in which Ministers would be given enhanced powers to collect or require samples of fish from fish farms for genetic or other analysis for tracing purposes, is our preferred option. This would see localised benefits to wild fisheries interests and would encourage improved containment on fish farms leading to better overall economic performance.

Summary of direct Costs and Benefits Table

Option	Private Sector		Public Sector	
	Costs	Benefits	Costs	Benefits
1. Do nothing	None – but continuation of existing uncertainty about level and sources of escapes		None – but continuation of existing uncertainty about level and sources of escapes, with impacts on cross-sectoral relations	
2. Give Ministers enhanced powers to collect or require samples of fish from fish farms for genetic or other sampling for tracing purposes.	Minimal – unless sampling identifies an escapes issue requiring to be addressed.	Could identify sources of escapes, which could help a) prevent escapes, with economic benefits to farms; and b) mitigate risks to wild fish/ fisheries from impacts of escapes. Overall economic benefit.	Targeted actions envisaged, but would carry some costs related to additional sampling, analysis etc.	Improved knowledge of the likely level and sources of escapes could lead (through improved containment etc) to wider environmental and socio-economic benefits. Potential to improve cross-sectoral relations

Proposal

- ***Modernising the operation of District Salmon Fishery Boards.***

Objective

1. To engender greater confidence in the operation of District Salmon Fishery Boards (DSFBs) by ensuring that Boards and their members act in accordance with recognised standards of modern governance, openness and fairness when exercising their functions as a committee of the association of salmon fishery proprietors under the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003.

Background

2. To bring DSFBs broadly into line with other bodies who hold public law functions, we propose to place a duty on them to act in a fair, open and transparent manner. This will involve encouraging all DSFBs towards operating in conformity with standard sector-developed codes of conduct, introducing a system for facilitating dispute resolution whether through mediation, arbitration or other participative processes for disputes and having in place a system for making information on the fishery readily accessible.

Rationale for Government Intervention

3. In some cases when a DSFB make decisions which have an effect on those outside of the membership of the Board, this can lead to mistrust of the Board's motives by those who may feel disenfranchised mainly because the information and rationale behind these decisions is not consistently openly available. As local managers of the national and international resource DSFBs should be seen to act in the interests of that resource and all of the communities who use it.

Key Options

Do nothing – This would perpetuate the variable management standards that exist across the spectrum of Boards where there is no compulsion to act in the wider local interest.

Option 1 – Preferred option, to introduce a statutory duty on DSFBs to act fairly and transparently. This would underpin adoption of recognised principles of good governance and practice by all DSFBs which should foster greater public confidence and trust in the DSFB system.

Option 2 - To take local management and decision-making powers away from DSFBs and have them taken centrally.

Sectors and Groups Affected

Boards
Non-elected fishery proprietors
Visiting anglers and tourists
Local communities
Fishery related businesses

Benefits

Do nothing – Same limited accountability for DSFBs with no or limited incentive to change. Board decisions which impact on local communities and the rationale behind their decisions will not necessarily be accessible to those affected.

Option1 – This allows those DSFBs which currently operate in an open, fair and transparent manner to continue in their manner of operation and encourages those who are less advanced in this respect to develop their capacity to deliver consistently to a minimum standard that will engender confidence more widely in the operation of DSFBs. This should lead to better managed fisheries and may help to stimulate continuing investment in fisheries and associated developments. A benefit to Government would be an enhanced ability of DSFBs to deal with disputes without those involved having to have recourse to Government. We have been unable to provide monetised estimates of the benefits but believe that they are likely to outweigh the relatively low costs involved.

Option 2 – this would introduce an additional layer of management which may provide consistency of approach though in slower time. While the costs and benefits of this option have not been monetised, it is our view that any additional gains relative to Option 1 would not justify the costs.

Costs

Do nothing – There would be no additional costs to DSFBs but an ongoing disproportionate cost in handling complaints which would likely to continue to be directed towards representative organisations and Government.

Option 1- Preferred option. The costs of acting in a consistent and open manner are likely to be <£1000 per DSFB if reported through existing web-sites and while there would be costs associated with arbitration and mediation, these would be seen as exceptional as disputes would lessen with transparent operation of the DSFBs. There are 41 DSFBs so the expected upper bound of annual costs is £40K. The costs of mediation and arbitration would be met by the participants and except in exceptional cases are unlikely to exceed £1000 per case. It is likely that these costs could be offset by a reduction in the costs in dealing with local disagreements at the moment. No more than 2 cases are expected in any year, suggesting a total annual cost of less than £2K.

Option 2 – Apart from the opportunity cost incurred in a slower, less reactive process there would be a cost to DSFBs of administering submissions to Government for ratification. There would also be costs to Government on seeking advice and ratification of these decisions. While the cost for individual applications may not be prohibitive, the accumulation over a year may prove to be substantial.

Enforcement, Sanctions and Monitoring

Do nothing – No action required.

Option 1- Preferred option. Enforcement could be done by Marine Scotland from existing resources. This would be in the form of monitoring through the current working relationships with DSFBs. There would also be monitoring of annual reports.

Option 2 – As government has a regulatory role here sanctions would ultimately be a matter for the courts for complaints about non-ratified decisions.

Summary and Recommendations

4. A number of DSFBs already operate in an open fair and transparent manner. These measures are aimed at supporting and enhancing consistent application of minimum standards of operation across all Boards. To bring all the functions of management within Government would diminish the principle of local management and we would recommend that option one is adopted.

Summary Cost and Benefits Table

Options	Costs	Benefits
Do nothing	None	None
Option 1: adoption of recognised principles of good governance and practice by all DSFBs	< £40 K pa	Open informed local management dealing with matters in an inclusive and transparent manner with increased potential for any disputes about operation of Boards to be resolved locally.
Option 2: Centralise decision- making	Substantial costs to Government which may need to be funded by the sector e.g. by cost recovery, filing fees for annual submission of reports to Government or for other management and monitoring activities	Consistent management nationwide that may not fully take into account local sensitivities.

Proposal

- ***Enhancing the management of wild salmon fisheries***

Objective

1. A system of statutory carcass tagging would enhance traceability and strengthen the reputation of Scottish wild salmon as a food of unique quality and provenance. This is in line with the Scottish Government's Food Strategy for Scotland.
2. A statutory power to require, or take, fish or samples for scientific analysis would provide, if necessary, evidence from fisheries all over Scotland which could be used to inform salmon and sea trout conservation and fisheries management decisions.

Background

3. There is presently no system of statutory carcass tagging. A number of netsmen currently operate a voluntary system. The introduction of a statutory carcass tagging system would supplement the ban on the sale of rod caught fish introduced in 2002 and contribute towards maintaining the iconic status of Scottish Wild salmon as a premier food product.
4. At present, although many net and rod fishery proprietors voluntarily provide genetic samples for scientific analysis there is no statutory requirement to do so which can lead to incomplete scientific information to inform local management.

Rationale for Government Intervention

5. Statutory carcass tagging would help to further restrict illegal salmon and sea trout reaching the market.
6. A statutory requirement for genetic or other sampling would further enable scientific analysis to be more consistently based on Scotland wide evidence.

Key Options

Option 1 Do Nothing.

Option 2 Introduce statutory carcass tagging of wild Atlantic salmon and sea trout with sanctions for non-compliance; and create powers for Ministers to take or require fish or samples for genetic or other analysis from any fishery.

Sectors and Groups Affected

Net fisheries
Rod and line fisheries
Conservation interests
Angling interests
Fish merchants, hoteliers, restaurateurs and caterers

Benefits

Option 1 None

Option 2 Statutory carcass tagging would further enhance the existing legal framework to prevent the sale of illegally caught salmon and extend the existing legal requirement for packages of salmon to be marked with the name and address of the consignor. Powers to take or require fish or samples would enable the development of a system of statutory genetic sampling. This would provide a framework to obtain evidence from all over Scotland and could be used by various interests to inform management decisions and by Scottish Government in policy development and management.

Costs

Option 1 None.

Option 2 Based on the netsmen's experience of operating the current voluntary scheme single use tags provided by the fishery and printed with the name and address of the fishery cost approximately £0.09- £0.10 per tag. Actual costs will depend on the nature of the scheme adopted and the extent of any associated recording and reporting requirements. If the requirement is placed on net caught fish only then based on 2010 catches, tags would cost in the region of £6000. There will be administration costs in setting up the system and administering it which will depend on the nature and extent of administration. Analysis of genetic samples of fish for analysis could be carried out by Marine Scotland Science or other analysts. Based on experience of analysing samples provided on a voluntary basis costs for genetic analysis could be in the region of £40 per sample.

Enforcement, Sanctions and Monitoring

7. Depending on the details of the scheme, monitoring and enforcement of compliance with compulsory carcass tagging could be carried out by Marine Scotland, by the police and by bailiffs along with their existing responsibilities. Monitoring compliance with and enforcement of the provision of fish and samples for genetic or other analysis requirement would be carried out by Marine Scotland.

Summary and Recommendations

8. To take advantage of recent scientific developments and enhance the reputation and management of Scottish salmon, we would recommend implementing option 2

Summary Cost and Benefits Table

Options	Costs	Benefits
Option 1: Do nothing	None	None
Option 2: Introduce statutory carcass tagging and powers to require fish or samples for genetic or other analysis	Actual costs will depend on nature and extent of scheme. The current voluntary scheme operated by some netsmen report a cost of £0.09-£0.10 per tag. There will be administration costs for government in setting up and operation of the scheme and costs for those required to tag fish or provide fish or samples for analysis depending on the requirements of any statutory schemes.	Increased traceability in food chain back to point of capture and support enhanced use of modern scientific techniques in fisheries management

Proposal

- *To strengthen existing management and conservation measures under the Salmon & Freshwater Fisheries (Consolidation) (Scotland) Act 2003.*

Objective

1. To ensure our rivers are sustainably managed whilst maximising the social and economic benefits for Scotland and its people. Scottish Ministers have obligations under the European Habitats Directive and as part of membership of the international treaty organisation, the North Atlantic Salmon Conservation Organisation (NASCO). They also have an ongoing commitment to protect and enhance Scotland's recreational fisheries through the Strategic Framework for Freshwater Fisheries.

Background

2. District Salmon Fishery Boards (DSFBs) or two or more proprietors (in areas where there is no Board) can apply to Scottish Ministers for a range of management and conservation measures under the 2003 Act.

Rationale for Government Intervention

3. Scotland's rivers are generally well managed. In the main DSFBs will seek to manage wild salmon for abundance of angling opportunity and enjoyment. They tend to work in partnership with local fishery trusts who have been at the forefront of developing modern non statutory fishery management plans covering 90% of Scotland.

4. Monitoring and evaluating the effectiveness of any management actions taken is essential. Based on current practice there is variation in the approach taken by DSFBs across Scotland. There may also be situations where Scottish Ministers need to take management action at their own initiative e.g. to meet legal obligations. For example, this could be appropriate in certain circumstances where rivers are designated as a Special Area of Conservation for salmon under the European Habitats Directive or where no District Salmon Fishery Board exists.

Key Options

1. To continue with the **status quo**
2. **For all management and conservation powers to rest solely with Scottish Ministers**
3. **To complement the existing range of management and conservation powers by giving Scottish Ministers additional reserve powers to:**
 - make changes to the annual close times
 - promote combined conservation measures
 - attach conditions to approved conservation measures e.g. to ensure their impact is effectively monitored and evaluated and public reporting of outcomes.

Sectors and Groups Affected

District Salmon Fishery Boards
Proprietors
Anglers
Net fisheries
Local businesses who provide services to anglers

Benefits

Option 1 – management of Scotland’s rivers continues to be undertaken on a district basis by those with local knowledge of the catchment.

Option 2 – management of Scotland’s rivers by Scottish Ministers would ensure consistency of approach across Scotland, whilst enabling them to respond quickly to emerging situations which have an impact on their ability to meet e.g. European obligations or international agreements. While the costs and benefits of this option have not been monetised, it is our view that any additional gains relative to option 1 would not justify the costs.

Option 3 – management of Scotland’s rivers would continue to be undertaken predominantly district level by those with local knowledge of the catchment. Any management action would be underpinned by appropriate monitoring and evaluation. Scottish Ministers would be able to respond appropriately to emerging situations e.g. which could have an impact on compliance with European obligations. We have been unable to provide monetised estimates of the benefits but believe that they are likely to outweigh the relatively low costs involved.

Costs

Option 1 – there would be no increased costs to DSFBs.

Option 2 – Scottish Ministers would need to allocate staff resources to manage Scotland’s rivers and enforce legislation.

Option 3 – there would be no increased costs to DSFBs and minimal costs to Scottish Ministers through increased workloads of existing staff.

Further work to develop the assessment of likely costs and resource implications will be undertaken in partnership with the sector and public sector interests.

Enforcement, Sanctions and Monitoring

Option 1 – enforcement, sanctions and monitoring would remain as at present under the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003.

Option 2 – the sanctions and monitoring provisions under the 2003 Act would be mirrored in new legislation. Scottish Ministers would be responsible for the enforcement of any management and conservation measures. They would therefore need to appoint enforcement officers to carry out the existing enforcement provisions of the 2003 Act and consider whether any changes would be required to existing legal powers.

Option 3 – the enforcement, sanctions and monitoring of the new reserve powers would mirror those of the existing reserve powers under the current 2003 Act.

Summary and Recommendations

Option 1 – to continue with the status quo leaves Scottish Ministers with e.g. a potential risk of complaints or infraction proceedings in connection with obligations under the European Habitats Directive. There is also the risk of reputational damage created by an apparent failure to take management action.

Option 2 – whilst this would provide consistency of approach across Scotland in the management of salmon fisheries, it would also create a new layer of management.

Option 3 – is recommended because it combines the benefits of options 1 and 2 with minimal cost to Scottish Ministers. Local management of Scotland's rivers encourages a sense of local stewardship based on the buy in of proprietors through the DSFB structure. This option enables Scottish Ministers to intervene in the management of the fisheries if required and would minimise the potential for complaints or risk of infraction with the associated reputational damage.

Summary Cost and Benefits Table

Option	Potential costs	Potential benefits
Option 1: Do nothing	None	None
Option 2: all management and conservation powers to rest solely with Scottish Ministers	Need for Scottish Ministers to allocate resources to manage Scotland's rivers and enforce legislation	Consistency of approach across Scotland whilst enabling Scottish Ministers to take management action where necessary
Option 3: complement the existing range of management and conservation powers by giving Scottish Ministers additional reserve powers	No increased costs to DSFBs and minimal costs to Scottish Ministers	The benefits of options 1 and 2 combined

Proposal

- ***To introduce powers to amend the licensing regime for the introduction of fish to freshwater.***

Objective

1. To sustainably manage and develop Scotland's recreational fisheries whilst ensuring that Scottish Ministers meet their obligations e.g. under the EU Habitats Directive and as part of commitments under the North Atlantic Salmon Conservation Convention.

Background

2. It is a criminal offence to introduce live fish to freshwater without a licence from the appropriate authority. In areas where there is a District Salmon Fishery Board (DSFB), the Board are the licensing authority for the introduction of salmon or salmon spawn. In all other cases (including areas without a DSFB) Marine Scotland Science acts as the licensing authority on behalf of Scottish Ministers.

Rationale for Government Intervention

3. The licensing regime for the introduction of fish into freshwater, introduced by the Aquaculture and Fisheries (Scotland) Act 2007, came into operation on 1 August 2008. Formal evaluation of the effectiveness of the new licensing regime will be undertaken in due course though it is still early days for a full review.

4. DSFBs primarily seek to manage wild salmon for abundance of angling opportunity and enjoyment. There may be instances where the licensing of the introduction of salmon by DSFBs could conflict with other management measures deemed necessary in the wider national interest. For example, this could occur in certain circumstances where rivers are designated as a Special Area of Conservation for salmon or other species under the European Habitats Directive. In some circumstances it may be appropriate to vary a DSFB's jurisdiction to licence introductions of salmonids in their waters.

Key Options

1. To continue with the **status quo**.
2. For **Marine Scotland Science to act as the licensing authority for all fish introductions to freshwater**.
3. **To give Scottish Ministers reserve powers to recall, restrict or exclude District Salmon Fishery Boards' jurisdiction in respect of the introduction of fish within their rivers.**

Sectors and Groups Affected

District Salmon Fishery Boards
Proprietors
Anglers

Benefits

Option 1 – DSFBs continue to manage the stocking of their rivers for angling opportunity and enjoyment. Stocking policy is set at the district level by those with local knowledge of the catchment.

Option 2 – this approach ensures that the wider impact of any introductions is considered by Marine Scotland Science. While the costs and benefits of this option have not been monetised, it is our view that any additional gains relative to option 1 would be unlikely to justify the costs.

Option 3 – the benefits of options 1 and 2 would be combined. We have been unable to provide monetised estimates of the benefits but believe that they are likely to outweigh the relatively low costs involved.

Costs

Option 1 – there would be no increase in costs to DSFBs.

Option 2 – there would be an increased resource requirement for Marine Scotland Science in considering all licensing applications.

Option 3 – there would be no increased costs to DSFBs and minimal costs to Scottish Ministers though increased workloads of existing staff.

Enforcement, Sanctions and Monitoring

Option 1 – enforcement, sanctions and monitoring would remain the same under the existing legislation.

Option 2 – Sanctions would remain the same as existing legislation. Enforcement and monitoring for all species would revert to those currently in place for introductions other than salmon or salmon spawn.

Option 3 – Sanctions would remain the same as existing legislation. Enforcement and monitoring for all species (i.e. salmonids along with other freshwater species) would be by Marine Scotland Science when the proposed powers to vary the jurisdiction of DSFBs are used.

Summary and Recommendations

Option 1 – to continue with the status quo leaves Scottish Ministers with e.g. a potential risk of complaints or infraction proceedings in connection with obligations under the European Habitats Directive. There is also the risk of reputational damage created by an apparent failure to take management action where it is deemed necessary.

Option 2 – Local management of Scotland's rivers encourages a sense of stewardship and requires the buy in of proprietors through the DSFB structure. This option would un-necessarily hinder DSFBs' ability to determine the stocking practice required for their catchment.

Option 3 – is recommended because it combines the benefits of options 1 and 2 with minimal costs to Scottish Ministers.

Summary Cost and Benefits Table

Option	Potential costs	Potential benefits
Option 1: Do nothing	None	None
Option 2: Marine Scotland Science to act as the licensing authority for all fish introductions to freshwater	Need for Marine Scotland Science to allocate additional resources to consider licensing applications	Ensures that the wider impact of any introductions is considered objectively by Marine Scotland Science
Option 3: give Scottish Ministers reserve powers to recall, restrict or exclude District Salmon Fishery Boards' jurisdiction in respect of the introduction of salmonids within their rivers	There would be no increased costs to DSFBs and minimal costs to Scottish Ministers	The benefits of option 1 and 2 combined

Proposal

- ***Provision for Fixed Penalty Notices for marine offences and an increase in maximum penalty allowed – changes to Section 25 and 27 of the Aquaculture and Fisheries (Scotland) Act 2007.***

Objective

1. Marine Scotland was established on April 1, 2009 and is the lead marine management organisation in Scotland and the champion of Scotland's Seas. Compliance, a division of Marine Scotland, is the organisations compliance monitoring and enforcement arm. As well as a fisheries protection role, Compliance is also nominally responsible for enforcement of the wider regulatory framework which Marine Scotland is responsible, including aquaculture, marine licensing etc. Enforcement officers have a number of options available to them to deal with non compliance in sea fisheries. This includes the ability to issue an FPN as an alternative to prosecution in the criminal courts. The intention here is to widen the scope of offences for which FPNs can be used and go beyond sea fisheries to include all marine related offences which fall within the responsibility of Marine Scotland. This will mean that enforcement officers have access to a common set of options to deal with non-compliance.
2. At the same time we would like to increase the maximum penalty which can be offered through an FPN and through this the number of offences that can be dealt with by way of an FPN.
3. FPNs have an immediate effect which deals with the criminal activity in a swift and transparent manner. The alternative of court proceedings is a much slower process with the associated risk of reducing the deterrent impact due to the length of time taken for proceedings to reach a conclusion.

Background

4. Section 25 of the Aquaculture and Fisheries (Scotland) Act 2007, makes provision for enforcement officers to issue Fixed Penalty Notices ("FPNs") in certain circumstances as an alternative to prosecution in the criminal courts. At present an FPN may only be offered as an alternative to prosecution for offences under a limited range of sea fisheries enactments. The maximum penalty that can be offered is capped at a sum not exceeding 80% of level 4 on the standard scale. The practical effect of this is that within the current scale of fixed penalties used as an alternative to prosecution, the maximum available is £2,000.
5. At present only certain sea fisheries offences can be pursued as FPNs, the intention here is to widen the scope of FPNs to include all of the other compliance monitoring and enforcement responsibilities Marine Scotland has.
6. An FPN has to be an appropriate response to the level of criminality and to be effective needs to deprive any alleged offender of any financial gain made through the criminal act. It follows, therefore, that the apparent level of criminal gain is a key factor in determining whether this form of disposal would be an appropriate one. An FPN ought also to have some deterrent value. In terms of regulatory non-compliance, there is a risk that the consequences of non-compliance may be regarded as just another business cost. This means that the level of penalties available needs to reflect the likely level of commercial gain. For individual operators and small

businesses this level may be relatively low, but for larger commercial enterprises this level may be somewhat higher.

7. We believe that an increased scope of offences that can be taken as FPNs and an increase in the level of penalties for FPNs would not only be beneficial to the conservation of the Marine Environment but also to those within and outwith Government who currently are part of the criminal justice process in the courts which deal with regulatory non-compliance.

Rationale for Government intervention

8. The rationale for having a system of FPNs is:-

- To enable penalties to be applied more rapidly and effectively;
- To increase transparency;
- To reduce cost and uncertainty for operators;
- To provide a consistent approach for dealing with infringements.

9. Penalties should be consistent and proportionate to the seriousness of the breach and the risk that the breach creates.

Key Options

10. There are three options being considered:-

Option 1 - Do nothing. Leave Section 25 dealing only with the current limited range of offences under sea fisheries enactments and keep the current maximum penalty of a sum equal to 80% of level 4 on the standard scale (£2,000).

Option 2 – amend Section 25 only. Amend Section 25 of the Aquaculture and Fisheries (Scotland) Act 2007 to widen the scope of offences covered by FPNs to include all of the possible offences which Marine Scotland is responsible for monitoring compliance with and not just sea fisheries enactments as at present. However leave the current maximum penalty as it currently stands at £2,000.

This option also means that the scope of offences would be widened beyond sea fisheries offences. However, with the maximum penalty unchanged, FPNs may be relatively ineffective and have limited, if any, application where the seriousness of the offence and the harm done requires a sanction beyond £2,000. It would also mean that we would not be able to remove additional cases from the criminal justice system.

Option 3 – amend Section 25 and Section 27. Amend Section 25 of the Aquaculture and Fisheries (Scotland) Act 2007 to widen the scope of offences covered by FPNs to include all of the possible offences which Marine Scotland is responsible for monitoring compliance with and not just sea fisheries enactments as at present. Also amend Section 27 of the 2007 Act to make the maximum penalty a sum equal to a penalty 2 times level 5 on the standard scale (£10,000). The Scottish Ministers would be able to prescribe, through a statutory instrument, different maximum levels of penalty for each marine regulatory area.

Sectors and Groups Affected

11. Commercial and recreational users of the seas around Scotland, Marine Scotland and others in the criminal justice system.

Benefits

Option 2. The main benefit of 'Option 2' relative to 'Option 1' would be the expansion of the fixed penalty system to include all of the regulatory matters for which Marine Scotland has a compliance monitoring role. The expansion of the fixed penalty system to include other regulatory offences would not only be beneficial to the conservation of the Marine Environment but also to Marine Scotland, others in the Criminal Justice System and, those that work in the marine environment including recreational users of the sea.

FPNs provide certainty to operators about the consequences of regulatory non-compliance through a transparent and equitable process. Extending the scope of fixed penalties to cover the wider regulatory non-compliance in the Marine Environment would provide greater consistency in the way regulatory non-compliance is dealt with by Marine Scotland and therefore enhance the protection given to the wider Marine environment.

The administration associated with the production of an FPN is simpler than that required for the production of a report to the Procurator Fiscal. A little over one man day per case could be saved (around £150 in staff costs).

The availability of fixed penalty notices in other regulatory areas will mean that suitable cases could be removed from the criminal justice system freeing up court time reducing the associated 'costs' to both enforcers and accused persons who would no longer have to attend court proceedings.

Option 3. There are 3 benefits associated with option 3. First, the proposed change would mirror, in respect of sea fisheries offences, the maximum level of fixed penalty that can be offered in England under the Sea Fishing (Penalty Notices) (England) Order 2011.

Second, many more offences could be and would be concluded outwith the criminal justice system with reductions in resource and opportunity costs for commercial operators, and the criminal courts. Commercial operators may be able to reduce or avoid expenditure on legal fees, and the time taken up with court appearances.

Cases that conclude through trials in the criminal courts will require enforcement officers to attend court as Crown witnesses. Experience in relation to sea fisheries has been that 2-3 man days per witness may be lost through preparation and trial stages. There is also very often a hidden cost as other staff may have to cover for staff pulled out of the front line when they have to attend court. Similarly there are also benefits to any accused person as the acceptance of a fixed penalty could provide an opportunity to reduce or avoid any legal fees. Operators would also be able to avoid the time required for their own attendance at court. In many small businesses this may mean effectively 'shutting up shop' for the time that takes with an associated loss of earnings.

The actual level of savings are difficult to quantify. Marine Scotland has little experience of submitting reports to the Fiscal outside of its fisheries protection remit. In addition some of the regulatory monitoring requirements are relatively new and

future levels of non-compliance difficult to judge. In very general terms, experience in relation to sea fisheries offences suggests that increasing the maximum penalty to £10,000 would take around 10 of the current relevant cases in that area out of the court system. This could see the overall level of sea fisheries cases disposed off by way of an FPN rise from 60% to 85%.

Suspects would also be able to avoid a criminal conviction which may have unexpected and un-helpful consequences for businesses in their wider commercial enterprises.

The third benefit would be increased protection and conservation of the Marine Environment. The application of a scheme of fixed penalty notices means that only the most serious of regulatory non-compliance will be dealt with by the criminal courts. Those who have been given the opportunity to deal with their regulatory non-compliance outwith the criminal court system but choose not to do so, face the prospect of receiving a higher sentence than the fixed penalty offered to them if they are convicted in court.

As a system of fixed penalty notices could contain an element of increasing penalties for repeat offending, the deterrent effect is enhanced.

Costs

Option 2 (in comparison to Option 1). Additional costs to Government will depend on the levels of non-compliance. The number of reports being submitted to the Procurator Fiscal in areas other than sea fisheries is currently negligible. The number of offences may, of course, increase either through an increase in non-compliance or as a result of more effective monitoring detecting existing levels of illegal activity. This is difficult to quantify.

There should be no additional cost to operators as a fixed penalty regime should in practice reduce operator costs currently associated with the criminal justice system.

The level of fixed penalties will not exceed any maximum fine available in statutory sentencing powers available to the courts.

Option 3 (in comparison to Option 1). The costs associated with Option 3 are no different to those associated with Option 2.

Enforcement, sanctions and monitoring

12. The Scottish Ministers would be able to prescribe, through a statutory instrument, different scales of fixed penalty for each marine regulatory area. It may be that in one sector, penalties up to a maximum of £5,000, are appropriate, whereas, other sectors may require access to a higher maximum e.g. up to £10,000 to provide a proportionate response to the risk and the potential harm done to the marine environment.

Summary and recommendation

Option 3 – to amend Section 25 of the Aquaculture and Fisheries (Scotland) Act 2007 to widen the scope of offences covered by FPNs to include all of the possible offences which Marine Scotland is responsible for monitoring compliance with, and also amend Section 27 of the 2007 Act to make the maximum penalty a sum equal to penalty 2 times level 5 on the standard scale (£10,000).

Summary costs and benefits table

Option 2	Annual Benefit
<p>Extending fixed penalties to all regulatory matters for which Marine Scotland has a compliance monitoring role. This can be broken down as follows:-</p> <ul style="list-style-type: none"> ▪ Saving through the cost of producing a FPN rather than a prosecution report; ▪ The court costs associated with prosecuting a criminal case; ▪ The prosecution costs associated with prosecuting a criminal case ▪ Costs to operators in legal fees for their defence at prosecutions in a criminal case; ▪ Cost of Marine Scotland and other Crown witnesses attending court 	<p>£150 per case</p> <p>£1,200 per case</p> <p>£600 per case</p> <p>£1,000 per case</p> <p>£600 per day (staff costs) per day</p> <p>At least £3,550 per case</p>
TOTAL BENEFIT	
Option 3 (extra benefits over Option 2)	Annual benefit
<p>Increasing the maximum sum available on a FPN to £10,000 would see disposal of an additional 10 sea fisheries cases per year through FPNs based on the costs identified under Option 2</p>	<p>£35,500</p>
TOTAL EXTRA BENEFIT (in addition to Option 2)	£35,500

Declaration and publication

I have read the impact assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:



Date: 31st January 2012
Stewart Stevenson, Minister for Environment and Climate Change

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Aquaculture and Fisheries Bill Consultation Document Partial Business & Regulatory Impact Assessment



RESPONDENT INFORMATION FORM

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Title Mr Ms Mrs Miss Dr *Please tick as appropriate*

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