

## ANSWERS TO SECTION 4 OF THE SCOTTISH GOVERNMENT CONSULTATION DOCUMENT(2011) ON AN AQUACULTURE AND FISHERIES BILL

### Paras. 70-80

These paragraphs and, indeed, the whole of Section 4 seem to proceed on the premise that there is a predominantly Public Interest in the management of salmon and fresh water fisheries. This premise is, however, seriously flawed. In Scotland, subject to the existence of a Trout Protection Order, both fisheries are privately owned and administered, just as are net fisheries (see Paras. 83 &84). So far as salmon rod fisheries are concerned the purpose of past and present legislation has been essentially to regulate the rights of riparian proprietors inter se rather than being directed to any rights on the part of the public at large. This is not to say that proprietors should be oblivious to their moral obligations to the preservation of the salmon resource but such obligations are not properly the subject of the proposed legislation.

It follows that District Salmon Fishery Boards are rightly described as “committees of the association of salmon fisheries proprietors in the district” (Para. 76) and wrongly described as “public bodies” (Para. 77). RAFTS are non-statutory and have a much broader remit, as well as having to qualify as charities. They are quite distinct from District Boards and should be treated separately from them. In the case of Boards the recommendations envisaged under Para.78 would be wholly inappropriate.

It follows that all three **Questions** following Para. 80 fall to be answered in the negative.

### Paras. 81-87

Although measures of voluntary restraint such as “catch and release” may be welcomed by the Scottish Government, the existence and extent of these measures should not be taken as signalling success but, on the contrary, as signalling failure. What is lacking – and has for many years been lacking – is the abundance of fish which would – and should - make such measures unnecessary.

Since the sale of rod caught fish was made a criminal offence it is not thought that there has been any major problem of in-river poaching such as would justify a complex and expensive National scheme of carcass tagging. It may be, however, that carcass tagging could be introduced for netmen who send their fish to market. If, contrary to these views, carcass tagging is introduced for rod-caught fish it should be clearly recognised that the purpose is to prevent poaching and not as a means of enforcing indirectly the practice of “catch and release”. In the result, the **Question** following Para 87 falls to be answered in the negative except in so far as covering fish sent to market.

### Paras. 88-90

Since it is narrated in Para.89 that many net and rod fishery proprietors are already willing to co-operate in providing genetic samples for scientific analysis it seems quite unnecessary to destroy that manifestation of good will by seeking legal powers and the **Question** following Para.90 accordingly falls to be answered in the negative.

### Paras. 91-92

Since, as stated above, we are dealing here with rights of private ownership there is no reason whatever why Ministers should be empowered to act of their own initiative. The powers envisaged by this and the following two **Questions** are potentially very far-reaching and their exercise could amount to expropriation. The **Question** following Para. 92 is accordingly answered in the negative.

#### Para. 93

For the same reasons the **Question** following Para 93 falls also to be answered in the negative.

#### Para 94

For the same reasons the **Question** following Para.94 falls also to be answered in the negative.

#### Paras.95-99

Crofting legislation is entirely different in nature from the legislation which at present governs salmon and fresh water fisheries. Furthermore, insofar as salmon conservation measures are statutory in origin it is not understood how these could be the subject of any form of mediation. Nor, in so far as they are voluntary, is it understood how any form of statutory mediation could be made applicable, let alone helpful. The underlying confusion here appears again to be the notion that some predominantly Public Interest is involved. In any voluntary buy-out of net fisheries by rod interests it is quite unlikely that parties would ever agree to arbitration as to what price should be paid. Correspondingly, if net fisheries are to be closed by some form of compulsory purchase there is no doubt that some form of Statutory compensation will have to be paid. It is simply wishful thinking to suppose that there is any third route to solving the potential conflict between rod and net fisheries and for this reason the **Question** following Para.99 falls to be answered in the negative.

#### Paras.100-102

Comprehensive effort data for rod fisheries has never been supplied and, even supposing that it could realistically be supplied in future, there would be nothing in the past to compare it with. It would thus be a very long time before such data could be used or relied upon in any meaningful way.

It is also extremely doubtful whether it would in fact be practicable to supply such data, let alone with a statutory sanction for providing false or misleading data. Proprietors, including angling associations, have no way of knowing what effort is expended by their tenants since the extent, if any, of that effort on any particular day will very largely be governed by the state of the river and the overhead conditions. The situation for rod fisheries is thus quite different from that for net fisheries which are run as commercial businesses.

In the foregoing circumstances it is thought that while proprietors can be asked to supply what data they can on a voluntary basis it would be quite wrong to suppose that this highly complex area can be made the subject of a detailed statutory requirement.

For these reasons the **Question** following Para 102 is answered in the negative.

#### Paras.103-104

These paragraphs assert that “there may be a public interest “ in salmon and freshwater fisheries comparable to that which obtains for fish farming in the sea. That assertion is, however, disputed and on that basis both the **Questions** following Para. 104 are answered in the negative.

Paras.105-106

It was perhaps anomalous to make a District Board the licensing authority for the introduction of salmon or salmon spawn since it suggests that the Board is, to that extent, performing some public function. There is therefore a case for altering this state of affairs and to that extent the **Question** following Para. 106 is answered in the affirmative.

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