

**Andrew Graham-Stewart**

**Comments on ‘Aquaculture and Fisheries Bill Consultation Document’  
March 2012**

**General comments**

As a writer on issues relating to the conservation of wild salmon and sea trout, I am encouraged by several aspects of the Consultation Document – not least possible measures in the forthcoming Bill on a tighter regulatory framework for aquaculture and mixed stocks net fisheries.

**Specific comments**

**Section 1: The sustainable development of aquaculture**

*Q1. Do you agree that we should, subject to appropriate safeguards, make it a legal requirement for marine finfish operators to participate in an appropriate Farm Management Agreement with sanctions for failure to do so, or to adhere to the terms of the agreement?*

Yes

*Q2. Do you agree that operators should have primary responsibility for determining the boundaries (and other management arrangements) for Management Areas, but with Scottish Ministers having a fallback power to specify alternative Areas?*

Yes

*Q3. Do you agree that an independent arbitration process should be put in place (with statutory underpinning) to resolve disputes related to Farm Management Agreements?*

Yes

*Q4. How do you think such a system might best be developed?*

No comment

*Q5. Do you agree we ought to review the question of unused consents?*

Yes.

*Q6. What do you consider are suitable options to promote use or relinquishment of unused consents?*

Use of an unused consent should not be granted without an appropriate independent risk assessment being undertaken

*Q7. Do you agree that Scottish Ministers should be given powers, ultimately, to revoke, or to require or request others to revoke, consents?*

Yes

*Q8. Should any such power relate to all or to particular consents (and if the latter, which)?*

All

*Q9. What in your view is the most appropriate approach to be taken to the collection and publication of sea-lice data?*

The most appropriate approach is for full public access to sea lice data in a disaggregated form. So as to ensure accountability, lice levels on individual farms should be readily available and not hidden away, as is currently the case, behind a fig-leaf of “commercial confidentiality”. Publication should at the very least mirror the situation in Norway.

*Q10. Do you agree that aquaculture businesses ought to be required to provide additional information on fish mortality, movements, disease, treatment and production as set out above?*

Yes

*Q11. What are your views on the timing and frequency of submission of such data?*  
Such data should be submitted on a weekly basis.

*Q12. Do you agree that Scottish Ministers should have powers to require SEPA to reduce a biomass consent where it appears to them necessary and appropriate – for example to address concerns about fish health and welfare?*

Yes

*Q13. Do you agree we should make enabling legislation giving Scottish Ministers powers to place additional control requirements on wellboats?*

Yes

*Q14. Do you think Scottish Ministers should be given additional powers to place controls on processing plants?*

Yes.

*Q15. Do you agree that the regulatory framework should be the same for all seaweed farms?*

No comment.

*Q16. Do you agree that the most appropriate approach to regulation of this sector would be through marine licensing?*

No comment.

*Q17. If not, what alternative arrangements would you suggest?*

No comment.

*Q18. Do you agree that we should provide for additional powers for Scottish Ministers in relation to commercially damaging native species?*

No comment.

## **Section 2: Protection of shellfish growing waters**

*Q19. Do you agree with the introduction of provisions to protect shellfish growing waters and support the sustainable growth of the shellfish industry?*

No Comment.

### **Section 3: Fish farming and wild salmonid interactions**

*Q20. Do you agree that there is a case for giving Scottish Ministers powers to determine a lower threshold above which remedial action needs to be taken in appropriate circumstances and potentially as part of a wider suite of protection measures?*

Yes. In many situations lower (and statutory) treatment thresholds than the industry's (flawed) recommendations are required. The salmon farming industry's Code of Good Practice (which is no more than an advisory document) suggests the criterion for triggering sea-lice treatments on farms between February 1 and June 30 should be an average of 0.5 adult female lice per fish and between July 1 to January 31 an average of 1.0 adult female lice per fish – the objective being to minimise lice on farmed fish in the spring when wild salmon and sea-trout smolts migrate to sea. However with individual farms now holding hundreds of thousands of fish, an average of 0.5 adult female lice per fish adds up to a vast number of lice producing many millions of larvae capable of attaching themselves to passing wild smolts with potentially fatal consequences.

*Q21. Do you agree we should provide powers for Scottish Ministers to require all finfish farms operating in Scotland to use equipment that conforms to a Scottish Technical Standard? (The technical content of the standard would be defined separately.)*

Yes.

*Q22. Do you agree that there should be additional powers for Scottish Ministers to take or require samples of fish from fish farms, for tracing purposes?*

Yes, particularly from freshwater smolt farms. Escapes from such farms have serious implications for the genetic integrity of wild fish. The operators of these farms typically deny losing any fish. The proposed new powers would have the potential to enable genetic testing, thus opening up the possibility that the source of any introgression of foreign strains into our native wild fish could be pinpointed.

### **Section 4: Salmon and freshwater fisheries management**

*Q23. Do you agree that we should introduce a specific duty on Boards to act fairly and transparently?*

I believe that the best means of achieving fairness and transparency by Boards is adherence to the Association of Salmon Fishery Boards' Code of Good Practice.

*Q24. Do you agree that there should be a Code of Good Practice for wild salmon and freshwater fisheries?*

Yes.

*Q25. If yes, do you think such a Code of Good Practice should be statutory or non-statutory?*

Non-statutory initially.

*Q26. Do you agree that Scottish Ministers should have powers to introduce a statutory system of carcass tagging for wild Atlantic salmon and sea trout?*

It is vital that Scotland falls into line with the statutory numbered carcass tagging schemes that already operate in the rest of the UK. This would essentially remove the loophole that currently enables fish caught illegally in England and Northern Ireland to be laundered through Scotland. Furthermore a numbered carcass tagging scheme would provide far greater confidence in the veracity of *declared* Scottish net catches. I was recently shown actual catch records for a major netting operation in the 1970s and 1980s; they were very significantly different to the official declared catches. If we are to manage salmon and sea-trout stocks effectively, then it is imperative that

we have accurate catch figures. The Salmon Net Fishing Association of Scotland opposes the introduction of any numbered carcass tagging scheme (it favours voluntary tagging schemes – without numbers – which are nothing more than marketing tools) because of the additional administrative burden; it seems rather odd that netmen elsewhere in the UK have little difficulty in applying numbered tags and keeping the necessary records but apparently north of the Border their counterparts are adamant that they would be incapable of performing this simple task.

*Q27. Do you agree that Scottish Ministers should have powers to take or require fish and/or samples for genetic or other analysis?*

Yes

*Q28. Do you agree that Scottish Ministers should have powers to initiate changes to Salmon District Annual Close Time Orders?*

I believe that such powers should only be used where there is no District Salmon Fishery Board in place.

*Q29. Do you agree that Scottish Ministers should be able to promote combined salmon conservation measures at their own hand?*

No.

*Q30. Do you agree that Scottish Ministers should be able to attach conditions, such as monitoring and reporting requirements, to statutory conservation measures?*

Yes

*Q31. Do you agree that we should introduce statutory provisions related to mediation and dispute resolution, to help resolve disputes around salmon conservation, management and any related compensation measures?*

Yes, so long as any mediation and dispute resolution process is truly independent.

*Q32. Do you agree that there should be a legal requirement to provide comprehensive effort data for rod fisheries?*

No

*Q33. What additional information on the fish or fisheries should proprietors and/or Boards be required to collect and provide; and should this be provided routinely and/or in specific circumstances?*

N/A

*Q34. Should Scottish Ministers have powers to require Boards and/or proprietors or their tenants to investigate and report on salmon and sea trout and the fisheries in their district?*

Yes, so long as any such investigation does not impose undue strain on the resources of the Board in question.

*Q35. Do you agree that Scottish Ministers should have powers to recall, restrict or exclude the jurisdiction of Boards in relation to fish introductions, in certain circumstances?*

Yes.

*Q36. If so, why and in what circumstances?*

When fish stocking is being exercised without due regard for accepted best practice in line with the ASFB/RAFTS guidance on stocking.

## **Section 5: Modernising enforcement provisions**

*Q37. Do you agree that strict liability criteria should apply – where they are capable of being applied – for offences related to Marine Licensing requirements insofar as they apply to aquaculture operations and, potentially, in other situations?*

Yes.

*Q38. Do you agree that we should extend the use of fixed financial penalties as alternatives to prosecution in relation to marine, aquaculture and other regulatory issues for which Marine Scotland has responsibility?*

No comment.

*Q39. Do you agree that we should increase the maximum sum that can be levied through a fixed penalty notice to £10,000?*

No comment.

*Q40. Are there particular regulatory areas that merit a higher or lower maximum sum?*

No comment.

*Q41. Do you agree that we should amend section 30(1) of the Fisheries Act 1981 as proposed?*

No comment.

*Q42. Do you agree that sea fisheries enforcement officers should be given specific power to allow vessels to be detained in port for the purposes of court proceedings?*

No comment.

*Q43. Do you agree that sea fisheries enforcement officers should be able to dispose of property seized as evidence when it is no longer required, or forfeit items which would be illegal to use?*

No comment.

*Q44. Do you agree that sea fisheries enforcement officers should have the power to inspect objects in the sea and elsewhere that are not obviously associated with a vessel, vehicle or relevant premises?*

No comment.

*Q45. Do you have any views on the proposals to amend the Sea Fisheries (Shellfish) Act 1967 to help make its application clearer?*

No comment.

## **Section 6: Paying for Progress**

*Q46. Do you agree that there should be enabling provisions for Scottish Ministers to provide, through secondary legislation, for both direct and more generic charges for services/benefits arising from public sector services and activities?*

No

*Q47. If you do not agree that there should be charging provisions, how do you envisage ongoing and new work to assist in management and development of the aquaculture and fisheries sectors should be resourced?*

Any charging regime should acknowledge the very considerable financial contribution made by DSFBs to fisheries management.

*Q48. If no new way of resourcing such activity can be found, what activities do you suggest might be stopped to free up necessary funds?*

No comment.

## **Section 7: Any other issues**

### **Section 4**

1) The weekly close time for net fisheries (6pm Friday – 6am Monday) is routinely ignored by many operators of fixed engine nets. They fail to remove the leader which channels fish into the net, often ostensibly for health and safety reasons. Each weekend that the leader is not removed equates to an additional 60 hours of fishing time. The weekly close times are designed to conserve fish stocks. Whenever the weekly close time is not adhered to (for whatever reason), I believe that it is only right that the leaders should be removed for a corresponding period at the earliest next opportunity. Furthermore there should be a statutory requirement for netsmen to notify the local DSFB whenever leaders are not removed.

2) There are indications on the basis of recent sales of netting stations in Caithness and the Dornoch Firth that mixed stocks netting activity is set to increase. I believe that, when a netting station is put up for sale, or is to be leased to a third party, the relevant DSFB should, in the interests of salmon conservation, have a statutory pre-emptive right to purchase (or lease) that netting operation before any proposed sale (or lease) can proceed. Such a mechanism would help prevent an increase in fishing effort, in line with our international commitments.

3) Some salmon fisheries (particularly net fisheries) routinely fail to submit an annual catch return to MS at Montrose. Such fisheries are not subject to any penalty for breaching this requirement. I believe that this should be remedied with fixed penalties for failing to submit catch returns.

### **Section 5**

Coastal gill netting of salmon is illegal. However monofilament gill nets specifically for “salmon fishing” are still openly marketed and retailed in Scotland. I believe that this practice should be outlawed.

### **Section 6**

The requirement for the equitable burden of salmon conservation was recognised by the Mixed Stock Working Group. The current imbalance in that burden needs to be resolved. Net fisheries accounted for almost half the retained catch (on the basis of declared catches), but only contribute approximately 1 % of the total funding raised by DSFBs for fishery management. This inequitable situation should be addressed in the legislation.